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Executive Orders

EXECUTIVE ORDER EWE 85-1

WHEREAS, criteria for federal certification of Louisiana's motor carrier safety program require the designation of a single state agency for administering that program throughout the state; and

WHEREAS, by legislative authorization and by experience of its personnel, the Louisiana Department of Public Safety and Corrections is the most appropriate agency in government to assume the responsibilities of such a designation;

NOW THEREFORE I, EDWIN EDWARDS, Governor of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Department of Public Safety and Corrections shall take all appropriate actions to obtain federal certification of the Louisiana motor carrier safety program; shall maintain the consistency of that program with applicable federal rules and regulations; and shall assume responsibility for administering the program throughout the state.

SECTION 2: Each head of any other agency having responsibility for a state program related to those matters subject to the federal motor carrier safety program shall cooperate with the Department of Public Safety and Corrections and shall develop appropriate memoranda or agreements to ensure that the state motor carrier safety program operates in a manner consistent with federal requirements. This direction shall apply specifically to the Department of Environmental Quality (hazardous waste program), the Public Service Commission (regulation of motor carriers), the Department of Transportation and Development (regulation of trucks, vehicles and loads), and the Department of Revenue and Taxation (financial responsibility of carriers).

SECTION 3: This order shall remain in effect until amended, modified, or rescinded by the governor or until terminated by operation of law.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 8th day of January, 1985.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Jim Brown
Secretary of State

EXECUTIVE ORDER EWE 85-2

Executive Order EWE 84-16, creating the 50 States Project Advisory Committee, is hereby amended to increase the membership of the committee from 15 to 30. The additional members shall be appointed by the governor from the state at large.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of January, 1985.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Jim Brown
Secretary of State

EXECUTIVE ORDER EWE 85-3

WHEREAS, because of prevailing and anticipated market conditions in the oil and gas industry, a drop in oil prices beyond that originally estimated has occurred and may continue, resulting in a sharp decline in state revenues generated by this source; and

WHEREAS, this decline in revenues, coupled with rising expenditures in the state's social and supplementary pay programs, has created a potentially serious deficit in the state's budget; and

WHEREAS, it thus has become necessary to reevaluate and to reduce the levels of expenditures now being maintained to support governmental activities, without a corresponding reduction in services presently provided to the citizens of this state; and

WHEREAS, the fiscal condition and responsibility of this state impacts not only the public but also the private sector, particularly the businesses and industries of this state; and

WHEREAS, the public sector could benefit greatly from the expertise acquired by business and industry through functioning in various economic environments, in order to achieve and to implement a more cohesive and cost efficient plan of operations for the state;

NOW THEREFORE, I, EDWIN EDWARDS, Governor of the State of Louisiana, do hereby order and direct as follows:

Section 1: The Governor's Committee of 100 is hereby created in the office of the governor.

Section 2: The committee shall be composed of leaders representing all areas of the business and industry community, each of whom shall be appointed by the governor to serve at his pleasure.

Section 3: The governor shall appoint one member of the committee to serve as chairman. The committee may elect such other officers as it deems necessary.

Section 4: The committee shall meet at least quarterly and at other times on call of the chairman.

Section 5: The committee shall:

A. Examine each unit in the executive branch of state government to determine the relationship between the expenditures of the unit to the number and quality of services or functions being provided or performed by each such unit;

B. Examine and evaluate the operations and working procedures or methods of each said unit to determine whether the services or functions of the unit can be provided or performed on a more cost efficient basis;

C. Determine whether duplication of services or functions exists and whether related services and functions could be more effectively organized or combined to produce the same or improved results at less cost;

D. Formulate and report to the governor and to the commissioner of administration its findings and recommendations for securing maximum efficiency of executive governmental operations at the least possible cost, while providing services at current levels.

Section 6: The division of administration is directed to provide such assistance as may be required by the committee, upon request to and approval of the commissioner.

Section 7: The committee is authorized to accept and to expend any funds which may be appropriated by the legislature or which may be donated, contributed or otherwise secured by the committee from any public or private source to carry out its duties.

Section 8: No member shall receive compensation for or reimbursement of expenses incurred in the performance of his duties hereunder.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Lou-

isiana, at the Capitol, in the City of Baton Rouge, on this 11th day of January, 1985.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Jim Brown
Secretary of State

EXECUTIVE ORDER EWE 85-4

WHEREAS, it has been estimated that 35 million pounds of polychlorinated biphenyl (PCB) bearing liquids and materials are located in Louisiana, and that approximately one-tenth of that amount, or 3.5 million pounds, is in the form of pure PCB; and

WHEREAS, this estimate does not include quantities of PCB's contaminating the general environment of this state through industrial activity and through the continued use of PCB-insulated electrical transformers, capacitors, and other such equipment; and

WHEREAS, recent environmental and medical research has revealed the potentially very dangerous effects of PCB's on human health, leading to stringent federal regulation and/or prohibition of the manufacture, processing, and distribution of PCB's; and

WHEREAS, the accumulation of PCB's and PCB laden materials in this state, coupled with permit applications for the disposal of the same within this state, has demonstrated the need to study the problems created by the existence and disposal of PCB's in order to safeguard the physical well-being and health of our citizens;

NOW THEREFORE I, EDWIN EDWARDS, Governor of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Governor's Study Commission on PCB's is hereby created in the office of the governor.

SECTION 2: The commission shall be composed of ten members, each of whom shall be appointed by the governor to serve at his pleasure. Charles William Roberts, executive counsel to the governor, is hereby appointed as a member of the commission and as chairman of the commission.

SECTION 3: The duties of the commission are to:

A. Collect and study technical data concerning the composition, reactions, and uses of PCB's.

B. Study and ascertain the known and probable effects of PCB's on the environment and health of persons exposed to various levels of PCB's.

C. Determine the extent to which PCB's presently are being utilized by the industrial, commercial, and residential sectors of the state.

D. Study the methods which now are being used to dispose of PCB's, as well as potentially viable methods of disposal, to determine the most environmentally and medically sound technique for disposal.

E. Determine the extent of federal regulation of PCB's and the extent to which the government of this state can and should regulate PCB's.

F. Advise the governor of its findings and recommendations for possible legislation and/or state policies to best protect the interests of all segments of the society of this state.

SECTION 4: The commission shall meet at least once for organizational purposes and then upon call of the chairman.

SECTION 5: The commission is authorized to conduct public hearings and to invite witnesses to appear before the commission to facilitate the performance of its duties. Any witness so called shall receive reimbursement for actual expenses incurred in connection with his appearance before the commission and may

receive an honorarium for his appearance upon authorization of the chairman.

SECTION 6: No member of the commission shall receive compensation for his service on the commission, but each shall receive reimbursement for his actual travel expenses incurred in performance of his duties hereunder, in accordance with the regulations of the Division of Administration.

SECTION 7: The commission is authorized to utilize the staff, services, supplies and facilities of the Department of Environmental Quality and the Department of Natural Resources in the fulfillment of its duties.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 31st day of January, 1985.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Jim Brown
Secretary of State

Emergency Rules

DECLARATION OF EMERGENCY

Department of Commerce Office of Financial Institutions

Pursuant to the authority and mandate given to the commissioner of Financial Institutions by the Legislature of Louisiana in R.S. 6:515 (designated R.S. 6:1005 in Act No. 50 of the 1984 Regular Session) and effective on January 1, 1985, as provided in Section 3 of that Act, and in conformity with R.S. 49:953 (B) the commissioner adopts the following regulations for the purpose of administering and carrying out the provisions of Chapter 12 of Title 6 of the Louisiana Revised Statutes as effective January 11, 1985.

RULE

TITLE 10

BANKS AND SAVINGS AND LOANS

Part V: Bank Holding Companies

Chapter 61. Regulatory Framework

§6101. General Policy

A. In view of the regulatory history of the Louisiana bank industry, which has included one-bank holding companies but has prohibited multi-bank holding companies until the passage of Act No. 50 of 1984 Regular Session, effective January 1, 1985 and the exemption under R.S. 6:1003(3), the Office of Financial Institutions, (OFI), takes a divided approach to bank holding companies. One-bank holding companies shall be subject to different procedures, applications, examinations, assessments, etc. than multi-bank holding companies, as the OFI views one-bank holding companies as essentially parish bound unit-banks formed primarily for financial and legal reasons while multi-bank holding companies are formed primarily as a method of achieving statewide branch banking. Of course the related banking and non-banking activities authorized for bank holding companies are most differentiated on a basis of number of banks owned, so that the OFI will continue to monitor activities of existing and new one-bank bank holding companies for signs that increases in size and in so-

phistication of management would require examination and review on the level anticipated to be required by the OFI for multi-bank holding companies. The OFI will conduct annual examinations of each bank holding company: if a one-bank holding company, normally in conjunction with the examination of the bank; if a multi-bank holding company, normally in conjunction with the examination of the lead state financial institution subsidiary.

B. It is the policy of the OFI to preserve the soundness of the banking system and promote market structures conducive to competition. A proposed formation of a bank holding company or acquisition of additional banking subsidiaries by a bank holding company or merger of existing bank holding companies (all hereinafter referred to as acquisitions) which would have a substantially adverse effect on existing or potential competition cannot be approved unless public convenience and needs clearly outweigh the anticompetitive effects of the proposed acquisition. An acquisition which would result in a monopoly of the business of banking in any part of this state will not be approved except most extreme circumstances. An acquisition which would not have a substantially adverse effect on competition and which would be beneficial to the applicant and to the public normally would be approved provided that other banking factors are found to be favorable.

C. In evaluating an application for acquisition the following factors will be considered:

1. The effect of the transaction upon competition;
2. The convenience and needs of the community to be served;
3. The financial history of the applicant holding company as well as the bank or bank holding company to be acquired;
4. The condition of the applicant holding company and the bank or bank holding company to be acquired including capital, management, and earnings prospects;
5. The existence of insider transactions;
6. The adequacy of disclosure of the terms of the acquisition; and
7. The equitable treatment of minority shareholders of a bank or bank holding company to be acquired.

D. In order to determine the effect of the proposed acquisition upon competition, it is necessary to identify the relevant geographic market. The delineation of such market can seldom be precise, but realistic limits should be established so the effect of the acquisition on competition can be properly analyzed. The market should be delineated to encompass an area where the effect on competition will be direct and immediate. The OFI recognizes that different banking services may have different relevant geographic markets. Although the largest borrowers and depositors may find it convenient and practical to conduct part of their banking business outside the relevant geographic market, the market should not be drawn so expansively as to cause the competitive effect of the acquisition to seem insignificant because only the largest customers are considered. Conversely, the market should not be drawn so narrowly as to place competitors in different markets because only the smallest customers are considered. A fair delineation of the relevant geographic market should take into account the demands of most customers for the bank's services.

E. 1. After the relevant geographic market has been identified, the competitive effects of the proposed acquisition can be analyzed. Both the structure of the market and the intensity of competition within the market will be considered. In measuring intensity of competition, consideration will be given to the number of competitors in the market, services offered, pricing of services, advertising, office hours and banking innovations. The OFI will generally follow the competitive effects analysis of the Federal Reserve.

2. The following terms will be used to describe the competitive effects of a proposed acquisition.

No Adverse Effect. This term will be used when no change in competitive conditions would result from the acquisition. Acquisitions involving corporate reorganizations where the number of alternative sources of banking services are unchanged and where no resulting substantive change in ownership occurs are included in the category.

Not Substantially Adverse. This term will be used when some anticompetitive effects are present but such effects are not deemed sufficiently substantive to cause an undesirable competitive condition.

Substantially Adverse. This term will be used when an anticompetitive condition would result from an acquisition—an acquisition involving a dominant bank in a market and any other bank in the same category could be included in this category.

3. a. When substantially adverse effects exist, they must be clearly outweighed in the public interest by the probable effects of the acquisition on improved convenience and needs. If not clearly outweighed, the acquisition will be disapproved. Convenience and needs factors which may outweigh the anticompetitive effects of an acquisition include:

- i. The elimination of a failing, weak or stagnating bank, thereby strengthening the banking system;
- ii. The achievement of economies of scale including a better matching of source and needs of funds, thereby providing the basis for improved customer service and bank earnings; and
- iii. The extension of services not available from the bank being acquired and for which there is a clearly definable need. Such services might include a larger lending limit, specialized forms of credit, data processing, international banking, financial counseling or fiduciary services.

b. The OFI must consider the convenience and needs of the community to be served in every acquisition, regardless of competitive effects. An acquisition not having a substantially adverse competitive effect may be disapproved if there are adverse effects on convenience and needs.

4. In addition to the foregoing, the OFI considers banking factors and will normally not approve acquisition if the acquiring company or the bank or bank holding company being acquired or the resulting institutions have inadequate capital, unsatisfactory management or poor earnings prospects. Further, it is required that all shareholders be adequately informed of all aspects of the transaction.

§6103. Policy on Shareholder Matters

A. R.S. 6:1007 governs acquisitions of stock or other equity ownership of a bank or a bank holding company by a bank holding company, establishing certain minority shareholder rights. While no rule of the OFI can override legislative enactment; pending judicial interpretation, the OFI has possible precedential value and certainly persuasive value in its rules. Because several bank holding companies have their stock traded over-the-counter and because of possible conflicts with existing provisions governing minority shareholders rights enacted in the banking law recodification, the OFI sets the following guidelines and interpretations:

1. Policy considerations

a. It is our interpretation that the reference to a "bank holding company" set out in R.S. 6:1007 is a definitional reference to the acquirer in its relationship to the institution attempted to be acquired. Consequently, the definition of bank holding company contained in R.S. 6:1002(A)(1) applies and is interpreted to mean that the stock or equity ownership sought to be acquired must be of such a quantity or result in an instance of control as defined in R.S. 6:1002(A)(1). Therefore, acquisition of stock which would not result in control, unless part of a series of transactions the ul-

timate impact of which is control, is not subject to the limitations of R.S. 6:1007.

b. Using the same reasoning, the acquisition by a holding company of its own stock or the stock of its subsidiary bank is not an activity governed by R.S. 6:1007.

2. Specific exemptions

a. Over-the-counter or odd-lot acquisitions of registered securities of a bank or bank holding company by a bank holding company are not covered by this provision of law.

b. Transactions governed by R.S. 6:376 are not governed by R.S. 6:1007.

c. Formation of a one-bank holding company, as prior to the acquisition of shares, the acquirer is not a bank holding company to which R.S. 6:1007 could apply.

B. It shall be the policy of the OFI to require that adequate written disclosures be made to those shareholders of a bank or a bank holding company who are to receive purchase and/or exchange offers from an existing or a proposed bank holding company or individuals connected with such organizations. In making such disclosures, it shall be the responsibility of the purchasing bank holding company to disclose any material fact or circumstance bearing on the present condition of the bank and/or the existing or proposed bank holding company or any material fact or circumstance regarding the future prospects of either or both organizations, where such facts might reasonably be expected to influence an offer. This policy shall not be applicable to offerings which are the subject of a registration under federal securities laws and regulations or offerings which are made only to persons serving as directors and/or policy making officers of the institution being acquired or to the immediate families of such persons. Immediate family members shall include only those members residing in a common household.

C. As indicated above, it would be necessary to disclose any material fact or circumstance regarding the present condition or the future prospects of the institution(s) involved. For further guidance in preparing such disclosure statements general reference is made to the anti-fraud provisions of state and federal securities statutes and more specific reference is made to a policy statement of the Federal Deposit Insurance Corporation entitled "Offering Circular Requirements for Public Issuance of Bank Securities; Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities."

D. Disclosures in regard to the effect of the proposed acquisition on the future dividend policy of the institution to be acquired and/or the acquiring institution are considered to be of primary importance by the OFI. At a minimum, the OFI feels that disclosures, in regard to the future dividend policy of the institution to be acquired, should provide an indication as to whether a shareholder who chooses not to sell (or exchange) his shares to the acquiring bank holding company could reasonably expect a sizeable increase in dividends after the consummation of the proposed transaction. In that regard, the OFI would prefer that the projections, especially those regarding dividends, submitted with the application be made a part of the disclosure statement; but, at a minimum, these projections shall be available for examination by any shareholder of each institution at the institution's main office.

E. As a precautionary note, prospective applicants should avoid stock acquisitions "in anticipation or with knowledge of" a holding company formation unless complete and adequate disclosure is made in conjunction with any offers to purchase shares. The OFI may require remedial action by means of offers to rescind the transactions or otherwise where proper disclosure has not been made.

§6105. Compensation Agreements

A. Compensation agreements in favor of active management officials of a bank being acquired by a bank holding company which provide for compensation for such officials at levels comparable to current compensation from the targeted bank or to compensation of officials holding positions of comparable responsibility with other banking subsidiaries of the bank holding company involved, whichever is greater, shall be considered as obligations either of the bank being acquired or a successor bank if the acquisition is through merger with another bank, provided that the management official continues in the active employment of the bank throughout the terms of the agreement in a position of substantially similar responsibility. However, such agreements may provide for reasonable retirement benefits for such management officials at such time as such official would qualify for normal retirement under conditions existing at either the bank being acquired or at the bank holding company or its other banking subsidiaries at the time of acquisition.

B. All other compensation agreements which do not qualify for treatment set forth above shall be deemed to be part of the cost of acquisition of the bank being acquired and shall be accorded appropriate treatment as such under generally accepted accounting principles. Such other agreements shall be deemed obligations of the holding company; however, they may be accorded treatment as obligations of any banking subsidiary of the holding company into which the bank being acquired has been merged where such subsidiary operated as a financial institution prior to the acquisition and was not organized for the purpose of facilitating the acquisition.

§6107. Procedures; fees

A. Any transaction resulting in the formation of a bank holding company, including a merger of existing bank holding companies, or the acquisition of a bank by existing bank holding company, requires the prior approval of the OFI. The OFI may conduct an examination into the condition of the parties to the application to the extent deemed necessary. The cost of such examination shall be included in the application filing fee, which must be paid at the time of application for approval. Any transaction resulting in the formation of a new multi-bank holding company or in the addition of a bank to the consolidated report of an existing multi-bank holding company shall be an acquisition requiring prior approval by the OFI, application for which must be made. A single transaction resulting in the addition of more than one bank subsidiary shall be deemed multiple transactions equal to the number of bank subsidiaries added to the consolidated report.

B. The application filing fee for each transaction shall be \$10,000.

C. The OFI does not have separate application forms but utilizes Federal Reserve Forms Y-1 (for formations) and Y-2 (for additional acquisitions) for the convenience of the applicant. Those forms and federal instructions may be obtained from the Division of Supervision and Regulation, Federal Reserve Bank of Atlanta or Dallas, as required under the Reserve's rule on jurisdiction by deposit base. Except where the acquisition results in the target bank being a branch of another subsidiary of the holding company, approval from both the Department of Banking and Finance and the Federal Reserve is required. Depending upon the method of acquisition being used, approvals may also be required from the Federal Deposit Insurance Corporation or the administrator of National Banks. All agencies have developed a close working relationship on applications to minimize the burden on the applicant, but statutory requirements continue to make the process technically complex.

D. Before extensive work is performed in completing the

forms, preliminary conversations with the department are recommended. It is also recommended that a "draft" application be submitted for review before official filing; this is of particular importance where the applicant or counsel for the applicant has not previously completed other applications. Both the preliminary discussions and the draft application will serve to expedite the approval process in that common problems particularly in the area of unrealistic projections of financial figures and inadequate disclosures may be avoided. With respect to disclosure, particular care should be taken to assure that insiders do not engage in stock transactions prior to the filing of the application without full and adequate disclosure of their knowledge of the application and its implications. Applicants should also be fully aware that, while possibly able to avoid state or federal securities registrations requirements, the fraud provisions of those statutes may be applicable to the proposed transactions.

E. From the date of the initial filing of a holding company application, the combined state and federal process could require a minimum of four months before the transaction may be consummated. A more realistic time table would be six months assuming everything moves smoothly. Any complication, which again can usually be avoided through preliminary discussions and draft review, could extend this time period.

F. The commissioner of the OFI may approve any application which has been previously approved by the Federal Reserve within 15 days of the notice of approval from the Federal Reserve.

Chapter 63. Applications

§6301. Applications

A. Application requirements are as follows:

1. Applications for permission to become a bank holding company as defined in R.S. 6:1002, or a banking subsidiary of a bank holding company, or to continue to be a bank holding company after becoming a bank holding company under circumstances contemplated by R.S. 6:1002(A)(3), shall be in letter form accompanied by the following exhibits in duplicate:

a. A copy, containing original signatures, of Form F.R. Y-1 filed with the Board of Governors of the Federal Reserve System;

b. A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under state and/or federal securities laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with applicable state and federal securities laws and regulations;

c. A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;

d. A copy of the most recent independent audit, if any, of the applicant's books and records performed by independent public accountants; and

e. Proof of publication of the notice required by these regulations (LAC 10:6303).

2. Applications for permission for a bank holding company to acquire shares of stock in a bank which will result in the bank holding company having direct or indirect control of more than five percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits in duplicate:

a. A copy, containing original signatures, of Form F.R. Y-2 filed with the Board of Governors of the Federal Reserve System, and

b. Material requested in subsection (b) through (e) of Section (A)(1) of this regulation, if

c. Proof of compliance with R.S. 6:1007, if applicable.

3. Application for permission for a bank holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more bank holding companies, shall be in letter form accompanied by the following exhibits in duplicate:

a. A copy, containing original signatures, of Form F.R. Y-2 (merger) filed with the Board of Governors of the Federal Reserve System, and

b. Material requested in subsections (b) through (e) of Section (A)(1) of this regulation.

4. No application filed pursuant to Section (A)(2) of this regulation shall request approval to acquire shares of more than one bank or bank holding company. Applications will be considered by the OFI in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Section (A) (3) of this regulation shall request approval of more than one merger or acquisition, as the case may be. Each application submitted for filing under provisions of this regulation shall be accepted for filing or rejected by the OFI within 10 business days of the receipt unless the applicant is otherwise notified by the OFI.

5. Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this regulation, marked to indicate changes from preliminary materials filed pursuant to Paragraphs (1) (c), (2) (b) and (3) (b) of Subsection A of this regulation, shall be filed with the OFI prior to the actual transmission thereof to the shareholders. The OFI may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This Section shall not be applicable to an application which is subject to registration under the provisions of The Securities Act of 1933, as amended (federal), or the Louisiana Blue Skies Law.

6. Approval of an application filed pursuant to this regulation shall be valid for a period of 12 months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the OFI.

7. Any material changes in the method of acquisition or representation set forth in an application must be approved by the OFI.

B. Each application shall be accompanied by a certified check for the appropriate amount of the application fee, as fixed by the following:

1. An application that will result in a one-bank holding company shall be governed by the provisions of R.S. 6:331(B), so that when a phantom bank vehicle is used, the total fee shall be \$5,250.

2. Any transaction that results in the formation of a multi-bank holding company, including mergers of bank holding companies, acquisition of control of a bank holding company by a bank or bank holding company, and acquisition of a bank by an existing bank holding company shall require a fee of \$10,000. The acquisition of each new bank subsidiary of the parent or surviving bank holding company shall be deemed a transaction irrespective of the acquisition method used. In the case of a merger of two or more multi-bank holding companies, the bank holding company with the highest total deposits on its consolidated report shall be deemed the acquirer for purposes of calculating the application fee. The commissioner reserves the power to treat complicated transaction mechanisms resulting in multiple fees on the basis of the transaction mechanism's result, and thus require a lower transaction application fee. Application for such treatment must be by letter setting forth reasons for the transaction mechanism being proposed

and setting forth the equivalent simpler mechanism that would result in a lower application fee.

§6303. Public Notices

A. The applicant shall publish not more than 30 days prior to filing the application the following notice in a newspaper of general circulation in each parish where the bank or bank holding company and its bank subsidiaries to be acquired are located:

NOTICE OF PROPOSED ACQUISITION OR MERGER BY A COMPANY OR A BANK HOLDING COMPANY

Pursuant to regulations of the Office of Financial Institutions, notice is given that (name of company in bold-face type), (city and state of principal place of business), (a bank holding company) (company), proposes to (acquire shares of) (merge with) (name of bank or bank holding company), and has applied to the Office of Financial Institutions for permission to take such actions.

Persons wishing to comment on this proposal should submit their views in writing within 30 days of the date of publication of this notice to the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095.

B. In lieu of the foregoing, such publication may be in a form prescribed by the Federal Reserve Bank, Federal Home Loan Bank, or other regulatory authority having concurrent jurisdiction, provided it contains the wording contained in LAC 10:6303(A).

Chapter 65. Continuing Regulation

§6501. Audits

Every bank holding company and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the bank holding company and with the OFI.

§6503. Reports

A. On or before the date of the annual stockholders' meeting of any bank holding company, the shareholders of the holding company, regardless of class or voting rights, shall be provided the following schedules prepared on the equity basis of accounting for the last fiscal year on a comparative basis with the preceding fiscal year:

1. Year-end balance sheet on both a consolidated basis and holding company only basis;
2. Statement of income and expenses on both a consolidated and holding company only basis;
3. Reconciliation of changes in capital accounts on both a consolidated and a holding company only basis; and
4. A statement of sources and applications of funds (holding company only).

B. Annual Reports and Report of Inter-company Transactions and Balances filed with the Federal Reserve System shall be filed simultaneously with the OFI. Such reports shall bear original signatures of appropriate officials of the bank holding company.

C. Failure to file required reports on a timely basis shall subject the bank holding company to the penalties provided in R.S. 6:1004 for willful violations of regulations of the commissioner.

D. Notwithstanding the provisions of Subsection (A), any company complying with the financial disclosure requirements promulgated by the Securities and Exchange Commission shall be deemed to have complied with Subsection (A).

§6505. Non-banking Acquisitions

A. Whenever a bank holding company plans to engage in, or to acquire shares of stock in a company to be or currently engaged in, non-banking activities, the OFI shall be notified of such intentions within 10 days of the filing of any application with the

Federal Reserve System for approval to engage in such activities or acquire such shares or, in the event such approval is not required, within 10 days after the Board of Directors of the bank holding company authorizes such specific activities or acquisition or, in lieu thereof, after any published notice of intent to engage in such activities or make such acquisition.

B. Notice required pursuant to Section (A) of this regulation shall be in letter form and, insofar as is known at the time, shall state the following:

1. Name and principal location of the company to be acquired, if any.
2. Number of shares to be acquired, percentage of shares to be acquired to total share outstanding, and price to be paid for such shares.
3. Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings.
4. Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities.
5. Nature of business in which company is engaged or is to be engaged.
6. Description of additional markets to be served and additional non-banking activities to be performed.

§6507. Banking-related Activities; Prohibited Activities

A. Prior to January 1, 1985, Louisiana bank holding companies and their subsidiaries were restricted in their business activities by the provisions of R.S. 6:1003. As of January 1, 1985, restrictions on Louisiana bank holding companies and subsidiaries are governed by R.S. 6:1003 (2) and (4). The OFI preliminarily assumes that approval or disapproval of an activity by the Federal Reserve Board under 12 USC 1843 (c) (8), the Bank Holding Company Act, serves as a similar approval or disapproval for such activity by a Louisiana bank holding company, except as provided in Subsection (B), subject to notice to the OFI at least 10 days prior to initiation of the activity. Notice shall be by letter and shall state the activity, principal location at which the activity will be conducted or controlled, estimated financial impact upon the bank holding company from conducting the activity and citation of authority from the Federal Reserve Board (letter or regulation, generally) permitting the activity. The OFI reserves the right to deny or delay the activity.

B. 1. R.S. 6:1003 (4) restricts insurance activities of a bank holding company, or a subsidiary thereof. The use of the term "bank" therein with its definition in R.S. 6:1002 (C) as a "commercial bank, savings bank, trust company, or similar organization" carried forward a definition from prior law and imposes a less strict restriction than the legislative restriction placed upon insurance activities of banks or their subsidiaries in R.S. 6:242 (A) (6). The term "bank" as used in R.S. 6:242 is defined in R.S. 6:2 (1) differently than it is defined in the Bank Holding Company Law. Pending clarification of this confusion by legislative action or state or federal court ruling, the OFI assumes Louisiana bank holding companies are distinguished in their insurance activities from the more restrictive bank activities concerning insurance as limited by the definition affecting R.S. 6:242 (A) (6).

2. The OFI preliminarily assumes that approval or disapproval by the Federal Reserve Board under 12 USC 1843 (c) (8), the Bank Holding Company Act, serves as a similar approval or disapproval for such insurance activity by a subsidiary of a Louisiana bank holding company.

§6509. Allowable Electronic Banking Services

As pointed out by the Attorney General in his 1979 opinion which disallowed cash advances at ATM sites (AGO 79-579),

"neither the statutes nor the jurisprudence of Louisiana have given definitive meaning to the term 'branch bank office.'" However, this legislative void no longer exists since R.S. 6:1002(F) defines "branch" or "branch office" in such a manner as to exclude ATM's, EFT's, and similar electronic devices from the impact of the Bank Holding Company Act.

The only logical conclusion which is consistent with the stated declaration of policy contained in R.S. 6:1001 is that although such electronic devices clearly perform "branch bank" services and as such continue to fall within the activities restricted by R.S. 6:501 and R.S. 6:502 (formerly R.S. 6:54 and R.S. 6:55), the limitation within a single parish does not apply to a bank which is or becomes a subsidiary of a bank holding company. Therefore, it is the position of the OFI that such electronic devices may be established as "branches" not subject to intraparish restrictions pursuant to the requirements of R.S. 6:503 (formerly R.S. 6:328) and appropriate regulations of the Office of Financial Institutions for the establishment of branches.

Furthermore, it is the position of the OFI that electronic devices and/or terminals may be employed either in connection with agreements executed between bank subsidiaries of bank holding companies for shared systems or as independent electronic "branches" of a single bank subsidiary across parish lines.

§6511. Louisiana Bank Holding Companies Not Covered by Federal Bank Holding Company Act of 1956

Companies determined to be bank holding companies pursuant to R.S. 6:1001, et seq., but not subject to the Federal Bank Holding Company Act of 1956, as amended, are required to file all reports and applications required by these regulations notwithstanding such federal exemption.

§6513. Public Information

Unless otherwise indicated in the instructions accompanying applications, annual reports and registration statements filed with the OFI or requested by applicants or registrants shall be public information. Requests for confidential treatment shall be subject to review by the OFI. Comments received pursuant to CLR 10:6202 shall be public information.

§6515. Hearings

A. The commissioner may, in his discretion, require public hearings to be held with respect to an application pending before him. Such hearings shall be held in accordance with the applicable provisions of the Louisiana Administrative Procedure Act or OFI policy, as appropriate.

B. Whenever the commissioner, in his discretion, has reason to believe that a company directly or indirectly exercises a controlling influence over the management or policies of a bank or another company, the commissioner shall cause reasonable notice to be given to the banks or companies involved to show cause why such company should not be found to be a bank holding company as defined in R.S. 6:1002 at a hearing to be held at such time and place as shall be specified in the notice. The form of the heretofore required notice and hearings shall be in accordance with the Louisiana Administrative Procedure Act.

§6517. Proxies, Offering Circulars, Disclosure Statements

A. It shall be a basis for denial of an application for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any offer to pur-

chase or exchange shares of stock in a bank or a bank holding company which is the subject of an application hereunder.

B. No bank holding company shall offer to purchase or exchange any stock of any banking subsidiary, either directly or indirectly, unless such offer is accompanied by an appropriate offering statement prepared in accordance with standards prescribed for securities required to be registered under Part X of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950 (Securities - Blue Sky Law). This Section shall not be applicable to purchases or exchanges of stocks which are subject to the registration requirements of The Securities Act of 1933, as amended, or the Louisiana Securities Blue Sky Law, nor to non-registered securities being acquired by a bank holding company whose securities are subject to registration under such acts.

§6519. Examination Fees for Annual Examination

The OFI is considering an annual assessment based on consolidated reports of deposits of bank holding companies as suggested by the Council of State Bank Supervisors. However, until a decision of using an assessment procedure is reached, the cost of an examination shall be calculated in the same manner as is used in cases under R.S. 6:331 (C) and shall be billed to the bank holding company after examination.

Chapter 67. Affiliate Dealings And Management Fees

§6701. Affiliates

A. No bank or trust company shall purchase, lease, or sell any asset or service from or to any affiliate upon terms which are detrimental to the bank or trust company or any minority shareholders of the bank or trust company. Purchases, leases, or sales at cost or at market value shall not be considered "detrimental." Other methods for determining propriety of a transaction shall be subject to OFI oversight and review.

B. Tax payments by a bank or trust company to a bank holding company shall generally be consistent with the payment of tax liabilities which would have been made had it filed tax returns as a separate entity, eliminating any benefit arising from surtax exemptions. Timing of such payments should generally be in concert with tax payment dates prescribed by tax regulations for estimated tax payments and the rendering of final returns.

§6703. Management Fees and Other Charges

A. Management fees and other charges, other than specific charges for reimbursement of tax payment or for the purchase or lease of assets or services, payable to a bank holding company or an affiliate of a bank holding company may be paid by the banking or trust subsidiary, provided such fees and charges do not exceed the subsidiary's pro rata share of the administrative overhead of the bank holding company plus any direct expenses attributable to the subsidiary, and it is clearly demonstrated that the subsidiary has received direct benefit from its relationship with the holding company. Such pro rata share shall be determined through an equitable proration of such administrative overhead among all holding company subsidiaries and activities. The proration may be based on any reasonable formula, provided such formula is justified by appropriate memorandum in the files of the bank or trust company and approved by the Board of Directors of the bank or trust company. Such formula shall be subject to OFI oversight and review.

B. Administrative overhead shall include only those expenses incurred in general support of all holding company activities and not specifically allocable to a particular subsidiary or activity.

C. Administrative overhead shall not include net losses incurred in any holding company activity, subsidiary, or investment

nor shall the term include any closing costs, interest, service charge or other expense incurred in connection with any debt owed by the holding company. Administrative overhead shall also not include any salary or other compensation of officers, directors or shareholders which is not commensurate with duties and responsibilities performed in some official capacity with the holding company. Time devoted to performance of duties and fulfilling responsibilities at the holding company level and compensation in connection with such action shall be considered in establishing reasonable levels of compensation from the bank or trust company for persons who are employed by both entities. Each entity shall pay only that portion of the total compensation as is commensurate with the duties performed on behalf of that entity.

§6705. Payment Authorized

Fees and charges contemplated under this regulation may be paid after the liability therefor is incurred. Administrative overhead may be accrued or paid monthly based upon a reasonable projection of actual charges, provided such accrual or payment is adjusted to actual expenses at least annually. No such fee or charge may be paid in advance. Appropriate documentation and justification must be maintained in the bank for any disbursement governed by this rule.

Chapter 69. Enforcement Orders

§6901. Power to Issue Cease and Desist Orders

A. The commissioner shall have the power to issue cease and desist orders to prevent or terminate an unsafe or unsound practice or condition or a violation of any Section of the Bank Holding Company or any regulation or order of the commissioner issued pursuant to that law whenever he knows or has reasonable cause to believe that such practice exists or is likely to occur. Before issuing a cease and desist order, the commissioner shall send by registered mail a notice containing a statement of the facts constituting the grounds for issuance of the cease and desist order and fixing a time and place at which a meeting with the alleged violator or violators, whether they be a financial institution, bank holding company, its officers, directors, stockholders, employees, or any combination thereof, will be held to determine whether an order to cease and desist therefrom should be issued. If the alleged violator fails to appear at the meeting, it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent or if after the meeting the commissioner should find that the grounds specified in the notice have been established, the commissioner may issue an order to cease and desist from the violation or practice. Such order may require the violator to cease and desist from any such violations or practice and to further take affirmative action to correct the conditions resulting from such violation or practice.

B. Any order issued pursuant to this Section shall become effective upon service thereof in person or by registered mail on the violator and shall remain effective except to the extent modified, stayed, terminated, or set aside by action of the commissioner or of the district court of the judicial district in which the state bank is domiciled.

Chapter 71. Redesignation of Sections of Act 50

§7101. Redesignation of Sections of Act 50

The Louisiana Legislature provided that Chapter 12 of Title 6 of the Louisiana Revised Statutes of 1950, as amended by Act 50 of the 1984 Regular Session, was redesignated consecutively as R.S. 6:511 through R.S. 6:517, all comprising Part II "Bank Holding Companies" of Chapter 6 of Title 6 of the Louisiana Revised Statutes of 1950, as amended by Act 719 of the 1984 Regular Session. Therefore, the references made throughout this

emergency rule to the Sections of Act 50 shall be deemed references to the appropriate redesignated Sections.

James A. Hayes
Commissioner

DECLARATION OF EMERGENCY

Department of Commerce Office of Financial Institutions

Pursuant to the authority granted to the commissioner of Financial Institutions under R.S. 6:121 and R.S. 6:515 and in conformity with the provisions of R.S. 49:953(B), the following emergency rule is adopted, effective January 11, 1985.

RULE

Policy on Branch Banking: "Branch" defined
Framework of Rule

Prior to the enactment of Act Numbers 50 and 719, the Office of Financial Institutions (OFI) defined a branch of a bank as "an additional office for receiving deposits, or paying checks, or lending money apart from the chartered premises." Rule for application for new bank or new branch, *Louisiana Register*, August 20, 1980. There was no statutory definition of a branch bank, as was pointed out by the Attorney General in Attorney General Opinion Number 79-579, discussing ATM facilities as branches. Following the holding in Attorney General Opinion Number 74-1366, the Attorney General declared that "any location, at which general banking transactions substantial in nature were performed, would be classified as a bank or a bank branch office. In particular, it was the opinion of this office that the following transactions were general banking functions, and would, therefore, result in a classification as a branch bank: the deposit and withdrawal of funds, the transfer of funds from one account to another, the receipt of account information, and the making of a payment on an account. To this list we now add the granting of loans, which, together with the deposit and withdrawal of funds, and the cashing of checks, has evolved as a major function of banking institutions. This follows from the opinion of this office that the term "branch bank" is intended to include at least the routine and traditional bank services normally provided at the banks main office."

"A subsequent opinion issued by this office in June, 1977, took the position that electronic devices maintained by national banks, which allow bank customers to perform general banking functions, are "branch banks" within the meaning of 12 USCA 36(f). That statute defines a branch as any place at which deposits are received, checks paid, or money lent. Therefore, it was the opinion of this office that any electronic device which performed these services was a branch, and could only be located within the city or parish in which the parent bank was located, unless allowed under the exceptions contained at L.R.S. 6:54 and L.R.S. 6:55."

The Attorney General concludes that an ATM that only makes cash advances was a branch. Thus only the presence of one of the activities of a general banking nature was sufficient for there to exist a branch. However, the Attorney General carefully noted that a "branch" of a federal bank was defined only by the federal law (12 USC 36(f)). This office's definition in its regulations was virtually identical to the federal definition.

As of January 1, 1985, this simple situation became complex. Under Act 719, for first time, Louisiana law contains a definition of the business of banking:

§2. General definitions.

As used in this law:

(2) "Business of banking" or "banking business" means lending money and either receiving deposits or paying checks anywhere within this state.

While the term "branch" was not defined in Act No. 719,

the term "branch" was defined in the Bank Holding Company Law (Act No. 50), which became part of the recodification by legislative action and was redesignated consecutively as R.S. 6:511 through R.S. 6:517, thereby placing a definition of the term "branch" within the recodified Title 6, as follows:

§512. Definitions

F. "Branch" or "branch office" shall mean any manned office of a bank which would constitute a branch office within the meaning of R.S. 6:54, other than an automated teller machine, electronic funds transfer terminal, point of sale terminal, or similar electronic device or terminal.

It appears that the legislative action in defining the term "branch" in a manner excluding electronic devices or terminals results in the creation of a strong legal argument that such devices are no longer subject to being classified as branches and thus no longer restricted to the parish of the main office of the bank. Additionally, if the business of banking requires lending money and one more activity, the ground is laid for our own analogy to the Comptroller of the Currency's "non-bank": the Louisiana "non-branch branch" that only accepts deposits and pays checks or that only lends money. An aggressive bank might well operate state-wide chains of both types of "non-branch branches," one of either conveniently near the premises of the other type.

The more reasonable interpretation would be that the legislative exemption of electronic devices or terminals was for the purpose of applying the Bank Holding Company Law's provisions under R.S. 6:1003 (5) pertaining to the branching activities of the bank subsidiary of a bank holding company, which provides as follows:

For a period of five years from the date on which a bank becomes a subsidiary of a bank holding company, for such bank to increase thereafter the number of its branch offices by more than one branch office for each calendar year of such five year period elapsing after becoming such a subsidiary or by more than four branch offices during such five year period. The prohibition of this Paragraph shall not apply to a subsidiary of a bank holding company all of the bank subsidiaries of which are domiciled in the same parish. R.S. 6:1003(5).

The OFI takes the position that the legislature, in order to implement its declared policy of permitting bank holding companies to own or control more than one banking institution and in order to foster commerce, realized that the use of electronic devices or terminals by subsidiaries of bank holding companies was necessary in order to provide full bank customer services across parish lines. Although the electronic facility maintains its "branch" characteristic, it is nevertheless exempt from only the intraparis restrictions of the former law.

This position is consistent with the law, as noted by the Attorney General's opinion cited above that the identification of a branch of a federally chartered bank is a matter solely of federal law, even though the branching powers of the bank are as provided by the state in which the bank operates. This observation, combined with the legislative directive under the provisions R.S. 6:121(B) to consider parity in the dual banking system of state and national banks, compels the conclusion that bank subsidiaries of a bank holding company may use electronic devices to facilitate and encourage customer convenience and full services among such subsidiaries, whether or not the subsidiaries are within a single parish.

Because of the wording of R.S. 6:1003 (5), and in furtherance of the declaration of policy, it is the interpretation of this office that in order to utilize the exemption of electronic devices, it is not necessary for the bank subsidiary to be contained within a single holding company structure. Therefore, bank subsidiaries of different holding companies could contract for the placement of elec-

tronic devices or the use of terminals within facilities of the contracting parties across parish lines, or, alternatively, could place electronic devices at designated locations across parish lines without the necessity of a contract with a second subsidiary of a bank holding company.

However, the placement of electronic devices or terminals requires implementation of the existing procedures established under R.S. 6:503 (formerly R.S. 6:328) requiring the certificate of authority for the opening of a branch office.

Policy on Operations Centers

Further complicating the present task is the following: the increasing number of banks seeking separate facilities for their operations centers and the proliferation of national banks or financial service centers encapsulated under the term "loan production office," which neither receives deposits, disburses money, or "makes the loan," but rather serves as a solicitation and paperwork location. As noted in the quotation from the Attorney General's Opinion, the identification of what is a branch of a federally-chartered bank is a matter solely of federal law, even though the branching powers of the bank are as provided by the state in which the bank operates. The Comptroller of the Currency does not view a loan production office as a branch as it does not lend money, receive deposits, or pay checks. This office is obliged, under the provisions of R.S. 6:121, to consider parity in the dual banking system of state and federal banks.

An operations center does not require a branch application provided that the operations center never has customer contact that would result in "receiving deposits, or paying checks, or lending money."

Note that in a number of the applications that have been reviewed in the Office for permission to open a branch that was for the purpose of an operations center, the operations center in fact, through such activities as the refinancing of repossessed property held at the operations center, through the collection of loan payments directly from the consumer, through the locating of account service personnel in the operations center who accept payments to rebalance accounts or issue payments for overcharges, the operations center did in fact occasionally act as a branch office, even though the intent was clearly that it would not.

An operations center does not require a branch application provided that the operations center never has customer contact that would result in "receiving deposits, or paying checks, or lending money."

Additionally, since an operation center often involves a large capital outlay and an expanded operating expense outlay, which the office would like to review in protecting the bank's health, it is recommended out of an abundance of caution that an operations center be treated as a branch office, unless the location of the operations center or some other competitive or community service reason would prohibit approval of a branch operation at the site chosen for the operations center. In such a case, the operator of the center must clearly guard against the inadvertent operation of the center as an occasional branch office. This might well include clear and written instructions to the staff located at the center as to activities that could be construed as branch banking, the presence of no ATM or night deposit systems, signs on the premises at the entrances reading that this is not a branch and that the nearest branch office is located at _____, etc.

Investments in operations centers should be included in bank premises and equipment when calculating total investments in bank premises and equipment. The OFI has set a policy limit not to exceed 40 to 45 percent of total equity capital for such investment for a new bank, and a limit of 50 percent of total equity capital for an existing bank.

Policy on Loan Production Offices

"Loan production offices" (LPO) are authorized state-wide, provided that the loan approval, disbursement of funds, receipt of payments, or other elements of the three primary banking activities determining the existence of a branch are all conducted at the main office or at an authorized branch office of the bank. Any LPO must contain the phrase "loan production office" in its name, advertising, and other public manifestations. Violations of this rule will result in a Cease and Desist Order closing the LPO permanently.

Investments in loan production offices should be included in bank premises and equipment when calculating total investments in bank premises and equipment. The OFI has set a policy limit not to exceed 40 to 45 percent of total equity capital for such investment for a new bank, and a limit of 50 percent of total equity capital for an existing bank.

James A. Hayes
Commissioner

DECLARATION OF EMERGENCY

Department of Commerce Office of Financial Institutions

Pursuant to the authority granted to the Commissioner of Financial Institutions under R.S. 6:121 and in conformity with the provisions of R.S. 49:953(B), the following emergency rule is adopted, effective January 11, 1985.

RULE

Effectiveness of Existing Rule

All rules and regulations adopted by the Office of Financial Institutions relative to banking in effect on December 31, 1984, are hereby continued in effect unless specifically contradicted by provisions of Act No. 719 of the 1984 R.S. All rules or parts of rules are declared severable and the invalidity of any rule or part of a rule shall not affect the validity of any other rule or part of rule unless it cannot have any other reasonable result.

James A. Hayes
Commissioner

DECLARATION OF EMERGENCY

Board of Secondary and Elementary Education

The State Board of Elementary and Secondary Education, at its meeting of January 24, 1985, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act R.S. 49:953B and adopted the following item as an emergency rule:

1. The Board set a cutoff score of 75 percent for the Basic Skills Test for Grades Two, Three, Four and Five.

This emergency adoption was necessary in order that the tests may be administered, scored, and student records returned to the school districts prior to the closing of the school year.

James V. Soileau
Executive Director

DECLARATION OF EMERGENCY

Board of River Port Pilot Commissioners For the Port of New Orleans

The Board of River Port Pilot Commissioners for the Port of New Orleans ("board") adopts the following rules incumbent on all persons now or in the future holding commissions to serve as Crescent River Port Pilots (the "commissions") (and as individ-

uals the "pilots") issued by the governor of the State of Louisiana pursuant to the terms of L.R.S. 34:991, et seq.

The underlying policy of the board in adopting these rules is as follows:

(1) That pilots holding commissions maintain the highest standards of professional and physical competence to discharge their duties ensuring the safety of navigation and maintaining public confidence in the body of pilots and of each individual pilot.

(2) That pilots be free of use of any "Controlled Dangerous Substance" as defined in La. R.S. 40:961(7) but excluding "Prescriptions" as defined in La. R.S. 40:961(30) so long as use of such "Prescriptions" does not impair the physical competence of the pilot to discharge his duties within the discretion of this board.

(3) That pilots suffering from substance abuse be encouraged to seek voluntary treatment.

(4) That individual rights of the pilot be safeguarded.

(5) That no pilot using any controlled dangerous substance to the knowledge of the board be permitted to act as pilot on his commission.

(6) That any pilot found to be a user of any controlled dangerous substance shall be subject to proceedings for revocation of his commission.

(7) That all rules herein apply henceforth to pilots as well as to persons accepted into any pilot apprenticeship program and to applicants for admission to such program.

The rules of the board as to controlled dangerous substance use are as follows:

RULE 1

The board will designate a testing and screening agency satisfactory to it which agency shall perform such scientific test or tests as that agency, in its discretion deems appropriate, as to each pilot, apprentice or applicant referred to the agency by the board. The agency will report its findings to the board as to each person of any controlled dangerous substance.

RULE 2

Each pilot, apprentice or applicant shall make himself available to the agency as and when required by the board and shall submit to reasonable scientific testing procedures including, but not limited to, voluntarily furnishing body fluid samples for processing.

RULE 3

Any pilot found by such test to have any controlled dangerous substance, or any residue thereof, in his system shall be presumed disqualified to act as pilot on his commission, subject to the hearing procedures hereinafter. The pilot and the Crescent River Port Pilots Association will be appropriately notified of these findings and the pilot will refrain from any action under his commission thereafter pending such final hearing.

RULE 4

Any apprentice or applicant found by such test to have any controlled dangerous substance, or any residue thereof in his system shall be presumed disqualified to continue as an apprentice or applicant subject to the hearing procedures hereinafter.

RULE 5

The board will not recommend to the governor that any pilot's commission be suspended or revoked nor recommend to the Crescent River Port Pilots Association that any apprentice be terminated or reject any Application for Apprenticeship until a hearing is held before the board, after notice of at least 10 days to the pilot, apprentice, or applicant. The notice shall be served by certified mail, shall state the time and place of the hearing and shall set forth the test results applicable. The pilot, apprentice or applicant is entitled to be heard in his own defense either in person or by counsel, to produce testimony and to testify in his own behalf. A record of the hearing shall be taken and preserved. The record

shall contain the notice; all papers, documents, and data filed in the proceedings; all statements of the board pertinent thereto; the testimony and exhibits; and the written findings and orders of the board. The hearing may be adjourned from time to time.

RULE 6

If the pilot, apprentice or applicant admits the charges, or if upon hearing the charges and evidence, the majority of the board finds them true, the board may enter an order recommending to the governor that the pilot's commission be suspended or revoked or recommending to the Crescent River Port Pilot that the apprentice be terminated as apprentice or itself determining that the applications of the applicant be denied. As to the pilot, the board may, on finding the charges true, impose such probationary conditions as it deems appropriate.

RULE 7

Probationary conditions imposed on a pilot may include requirement that the pilot undergo, at his personal expense and responsibility, such medical treatment as may be necessary to satisfy the board of his complete rehabilitation, all subject to the requirement that the pilot voluntarily refrain from any acts as pilot on his commission during such period of probation.

RULE 8

The board will proceed in such manner that will enable it to completely determine the facts in each matter brought before it without undue delay and to render a decision consistent with the object of these rules.

RULE 9

Any pilot, apprentice or applicant directed at any time and from time to time to take the scientific test referred to herein who shall fail or refuse after notice to take such test or who shall fail to cooperate fully in the testing procedure required by the board and its testing agency shall be presumed to have failed the test thus invoking the procedures of these rules as to such pilot, apprentice or applicant who has in fact, failed the test. Any pilot, apprentice or applicant who fails or refuses on two successive occasions to take the test or to cooperate fully in the testing procedure after notice shall be conclusively presumed to have failed the test. Any hearing or procedure invoked as to such defaulting pilot, apprentice or applicant shall be at the sole cost and expense of that pilot, apprentice or applicant including, but not limited to costs of notice, hearing, counsel fees and all costs of scientific testing.

RULE 10

The cost of scientific testing of pilots and apprentices shall be borne by the Crescent River Port Pilots Association. This shall not include costs of testing of defaulting pilots and apprentices required in Rule 9. The cost of scientific testing of applicants shall be the responsibility of each such applicant.

RULE 11

The results of all such scientific testing shall be confidential between the board and the person tested, save and except that the board may report all such results to the Crescent River Port Pilots Association and where hearings be required hereunder there shall be no requirement of confidentiality.

RULE 12

The board shall have the discretion to determine whether a prescribed medication which could affect the pilot's ability to act under his commission shall require the suspension or revocation of the pilot's commission under these rules. The board may, under such circumstances accept the pilot's voluntary agreement to refrain from so acting during the course of such impairment.

George S. Vinson, Jr.
President

DECLARATION OF EMERGENCY

Office of the Governor Office of Elderly Affairs

The Office of the Governor, Office of Elderly Affairs, has exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and adopted the Louisiana State Plan on Aging for fiscal years 1983 through 1987 as an emergency rule. The effective date of this emergency rule is February 4, 1985.

This action was necessary to comply with the provisions of L.R.S. 49:950-970, The Louisiana Administrative Procedure Act, as specified in Subsection 954.A. The Louisiana State Plan on Aging is defined as a rule, and, as such, must be adopted in substantial compliance with the Administrative Procedure Act to be effective and enforced.

The notice of intent to adopt the Louisiana State Plan on Aging for fiscal years 1984 through 1987 appears in this issue of the *Louisiana Register*.

Sandra C. Adams
Director

DECLARATION OF EMERGENCY

Department of Health and Human Resources Board of Examiners of Psychologists

The Louisiana State Board of Examiners of Psychologists has exercised the emergency provision of the Administrative Procedure Act, L.R.S. 49:953-B to repeal the following rules.

RULES OF THE LOUISIANA STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

1. In telephone directories in the yellow pages under the listing of "Psychologists," no businesses will be listed except as they are subordinate to the name of a licensed psychologist who may indicate his business association.

2. Any public presentation of a business name as psychology or any derivative of the term such as psychologist or psychological is in violation of the law unless services to clients are rendered by a licensed psychologist or under the supervision of a licensed psychologist.

3. Candidates for licensure may apply as soon as they receive their Ph.D. degrees. During the 2-years supervised period intervening before the receipt of the license, the Board will act as consultant to the applicant. The Board will serve to advise the applicant regarding any questions he might have as to the adequacy of his supervised experience in meeting the requirements for licensure.

4. All applicants for licensure and re-licensure must provide a statement describing the extent and nature of their supervised experience. A statement must be provided by the supervisor of the nature, character and extent of the supervision he is providing.

5. Psychologists licensed by the Board will submit along with their application for renewal a summary report listing the names, the degrees, job titles, level of training, nature of work, and setting of work of those persons doing psychological work for whom they assume supervisory responsibilities. The Board reserves the authority to interpret the adequacy of supervision which is being assumed by any licensed psychologist and to advise the psychologist of the Board's assessment of the reasonableness and propriety of the supervisory arrangements with those persons for whom he is responsible.

6. With respect to the implementation of the law authorizing the establishment of special education centers and the des-

ignation of "other competent authorities" for evaluation and recommendations for placement in the school system of handicapped or exceptional children, the Board affirms that there shall be no other definition of the psychologist in the special education center than that provided in the licensing law, namely, that such persons should be a licensed psychologist or working under the direct supervision of a licensed psychologist.

7. Any psychologist licensed by the Board that does not respond promptly to the certified letter reminding the licensee that his license has expired will be dropped from the directory and will not be entitled to practice psychology in Louisiana until the license is renewed according to the provisions of the licensing law.

8. The cutting score on the written examination for a clear pass is at the 25th percentile or greater on National norms and that scores less than the 25th percentile will be considered by the Board in relation to all other available information.

9. Applications for reciprocity can be considered only from psychologists who received their licenses from other states while residents of those states and were actively engaged in the conduct of psychology during that period of residence.

Gregory K. Gormanous, Ph.D.
Chairman

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, will exercise the emergency provision of the Administrative Procedure Act R.S. 49:953B to adopt the following change in the Food Stamp Program as mandated by federal regulations published in the *Federal Register*, Vol. 49, No. 242, Friday, December 14, 1984, pp. 48677-48681.

RULE

Effective April 1, 1985, moneys withheld from assistance from another program, for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements shall be included as income.

The Office of Family Security (OFS) shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a federal, state, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefit under a federal, state, or local means-tested program (such as but not limited to SSI, AFDC, GA) is decreased due to intentional noncompliance, the OFS shall identify that portion of the decrease which is a penalty. The penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional violation.

(2) The OFS shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

It is necessary to adopt this as an emergency rule to avoid sanctions as federal regulations mandate an April 1, 1985 implementation date.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953B to implement the following emergency rule.

RULE

Effective January 21, 1985, the following policy contained in the rule effective September 1, 1984, published in the *Louisiana Register*, on September 20, 1984, Volume 10, Number 9, page 659 will be rescinded:

Effective September 1, 1984, the Medical Assistance Program hereby amends the policy regarding the number of therapeutic leave days which are reimbursable under Title XIX for residents of ICFs/H from the current limit of 25 days per recipient per calendar year to 45 days per recipient per fiscal year where permitted by the recipient's plan of care. For the fiscal year 1984-85, the 45-day limitation will begin on September 1, 1984. For subsequent fiscal years, the 45-day limitation will be recomputed each July 1. Leave days for the following purposes shall be excluded from the annual 45-day limitation per recipient:

1. Special Olympics
2. Roadrunner sponsored events
3. Louisiana planned conferences
4. Trial discharge leaves—limited to 15 days per occurrence

The above exclusions shall be applicable to all Title XIX ICF/H recipients effective September 1, 1984. When absences for the above purposes exceed the limit, additional days may only be reimbursed under Title XIX if included in the total number of therapeutic leave days claimed for the ICF/H recipient within the recipient's allotment of leave days.

Effective January 21, 1985, the Medical Assistance Program hereby implements policy regarding the number of therapeutic leave days which are reimbursable under Title XIX for residents of ICFs/H to read as follows:

The number of therapeutic leave days which are reimbursable under Title XIX for residents of ICFs/H are limited to 45 days per recipient per fiscal year where permitted by the recipient's plan of care. The use of paid leave days is limited to 14-day intervals per temporary absence per recipient, when permitted by the recipient's plan of care. Leaves of absence such as visits with relatives or friends, Special Olympics, Roadrunner sponsored events, Louisiana planned conferences, trial discharges, camp, and other temporary absences, excluding elopement days and hospitalizations, must be included in the recipient's plan of care.

A leave of absence is defined as any temporary absence from a facility, including but not limited to 45 days, and shall not exceed 14-day intervals per recipient per fiscal year, and is indicated in the recipient's plan of care. A leave of absence that is longer than 14 consecutive days, for whatever the reason, shall result in ineligibility for recipients eligible under the special income level. A recipient is eligible under the special income level if his/her income would make him/her ineligible for SSI benefits if the recipient was not institutionalized.

Leave days for the following purposes shall be excluded from the annual 45-day limitation but still limited to 14-day intervals per recipient and shall be included in the written plan of care:

1. Special Olympics
2. Roadrunner sponsored events
3. Louisiana planned conferences
4. Trial discharge leaves—limited to 14 days per occurrence.

Rules

RULE

Department of Commerce Office of Commerce and Industry Division of Financial Programs Administration

ENTERPRISE ZONE PROGRAM

The Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, amended the rules of the Louisiana Enterprise Zone Program to implement legislative changes to R. S. 51:1781-1789, to provide clarification of filing requirements, and to require the creation of a minimum of five new permanent jobs rather than the previous two positions required.

RULE 1. USE OF LOUISIANA MANUFACTURERS AND SUPPLIERS

The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies and equipment manufactured in Louisiana, or, in the absence of Louisiana manufacturers, sold by Louisiana residents, and to the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

RULE 2. ENDORSEMENT RESOLUTION

The request for such exemption must be accompanied by an endorsement resolution approved by the governing body of the appropriate municipality, parish, port district, or industrial development board in whose jurisdiction the establishment is to be located.

RULE 3. DOCUMENTATION OF LOCATION

The business must document its location within the boundaries of a particular Enterprise Zone.

RULE 4. QUALIFIED EMPLOYEES - URBAN ZONES

A business located in an urban Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its employees:

- (a) Are residents of the same or a contiguous Enterprise Zone as the location of the business; or
- (b) Were receiving some form of public assistance prior to employment; or
- (c) Were considered unemployable by traditional standards, or lacking in basic skills; or
- (d) Any combination of the above. Such certification must be updated annually if the business is to continue receiving the benefits of the Enterprise Zone Program.

RULE 5. QUALIFIED EMPLOYEES - RURAL ZONES

A business located in a rural Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its employees:

- (a) Are residents of the same parish as the location of the business; or
- (b) Were receiving some form of public assistance prior to employment; or
- (c) Were considered unemployable by traditional standards, or lacking in basic skills; or

Leave days under the 45-day limit include visits with relatives or friends, camp days and elopement days. Hospitalization for treatment of an acute condition is limited to 15 days per recipient per calendar year.

For the fiscal year 1984-85, the 45-day limitation began September 1, 1984. For subsequent fiscal years, the 45-day limitation which must not exceed 14-day increments will be recomputed each July 1.

Implementation of this rule is dependent on the approval of the Health Care Financing Administration (HCFA). Disapproval of the change by HCFA will automatically cancel the provisions of this rule and current policy will remain in effect.

This emergency rule is necessary to include changes/clarifications required by HCFA in a letter addressed to the assistant secretary of the Office of Family Security dated December 5, 1984.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, exercised the emergency provision of the Administrative Procedure Act R.S. 49:953B to adopt the following change in the Food Stamp Program as mandated by federal regulations published in the *Federal Register*, Vol. 49, No. 242, Friday, December 14, 1984, pp. 48677-48681.

RULE

Effective February 1, 1985, use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other federal assistance programs, or federally assisted state programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the state agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

It is necessary to adopt this as an emergency rule to avoid sanctions as federal regulations mandate a February 1, 1985 implementation date.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

- (d) Any combination of the above. Such certification must be updated annually in order for the business to continue receiving the benefits of the Enterprise Zone Program.

RULE 6. BRANCH OPERATIONS

Multi-location businesses will qualify provided that the branch located within an Enterprise Zone is treated as a separate entity for sales tax and income tax if a partnership or sole proprietorship. For a corporate multi-location business to qualify, the business location within the Enterprise Zone must be established as a separate operating division.

RULE 7. ARBITRARY TERMINATION OF EMPLOYEES

The Board will not accept an application from a business which has arbitrarily terminated employees and hired others in order to qualify for the benefits of this program.

RULE 8. ITEMS ELIGIBLE FOR SALE/USE TAX EXEMPTION

Only material used in the construction of a building, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment used in that enterprise will be considered eligible for exemption of sales/use taxes.

RULE 9. FILING OF APPLICATIONS

The applicant shall submit an application on the required forms for the exemptions from taxes allowed under this act to the Office of Commerce and Industry together with the certifications required under Rules 4 and 5. The Office of Commerce and Industry shall verify the information given in the applications. Applications shall be submitted to the Office of Commerce and Industry prior to the beginning of construction and at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard.

The business applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. The business applicant must comply with Rule 18 requiring the creation of new permanent jobs on each application he files on the project.

RULE 10. RECOMMENDATIONS OF THE SECRETARIES OF COMMERCE AND REVENUE AND TAXATION

The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Commerce and the secretary of Revenue and Taxation for their review. Within 30 days after the receipt of the application the secretaries of Commerce and Revenue and Taxation shall submit their recommendations (the secretary of Revenue and Taxation shall submit a LETTER OF NO OBJECTION in lieu of a letter of RECOMMENDATION) in writing to the assistant secretary for Commerce and Industry.

RULE 11. APPLICATION SHALL BE PRESENTED TO THE BOARD OF COMMERCE AND INDUSTRY

The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Commerce and Revenue and Taxation and the endorsement resolutions outlined in Rule 2 and shall make recommendations to the Board based upon its findings.

RULE 12. BOARD OF COMMERCE AND INDUSTRY SHALL ENTER INTO CONTRACT

Upon approval of the application, the Board of Commerce and Industry shall enter into contract with the applicant for exemptions of the taxes allowed by R.S. 51:1781-1789. The contract shall be for five years. A copy of the contract shall be sent to the Department of Revenue and Taxation and the local taxing authority.

RULE 13. REFUND ON SALES/USE TAXES

The contract will not authorize the applicant to make tax-

free purchases from vendors. The tax exemption for state sales and use taxes will be effected through issuance of tax refunds by the Department of Revenue and Taxation.

Refunds will be secured by the filing of affidavits for each calendar month with the Department of Revenue and Taxation, Sales Tax Section, which must include the following:

(1) A listing of purchases made during the month of movable property that is intended to be used on the Enterprise Zone project and the contract number of the project. The listing must include a brief description of each item, the vendor's name, date of the sale, sales price and the amount of four percent state sales tax paid. The items included in the listing must have been purchased by the owner of the project, or by a builder or other party that has contracted with the owner to provide materials and services for the project.

(2) A certification that the materials included in the listing are reasonably expected to qualify upon completion of the project for the exemption under provision of the statute.

(3) A certification that the sales/use taxes have actually been paid on the items included in the listing.

The affidavit may be filed on official Department of Revenue and Taxation "Claim for Refund" forms or on other forms prepared by the applicant. After the Department of Revenue and Taxation has verified the information on the application, a refund check will be issued for the amount of state sales/use taxes paid.

Local sales and use tax exemptions will be handled in the manner prescribed by the local taxing authority.

RULE 14. CONTRACTEES MUST FILE STATE FRANCHISE AND INCOME TAX RETURNS

Contractees qualifying for the \$2,500 tax credit per new employee employed in the business located in the Enterprise Zone shall file the same required forms and returns with the Department of Revenue and Taxation as would be required if no credit were due.

Each yearly return will have the contract number of the exemption, a certification attached showing the annual increase in employment as determined by the company's average annual employment reported to the Office of Employment Security, and the unused credits from previous years. If total tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the return.

Partnerships and sole proprietorships shall file the same returns as would be required if the exemption had not been granted. In addition, each return must include a profit and loss statement for the business located in the Enterprise Zone.

RULE 15. VIOLATIONS OF RULES, STATUTES, OR DOCUMENTS

On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of tax exemption rules, the documents or the statute is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The contractee shall then remit any and all taxes that would have been imposed but for the issuance of a contract.

RULE 16. AFFIDAVITS CERTIFYING ELIGIBILITY FILED ANNUALLY

On January 1 of each year, the contractee will file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under Rule 4 or 5. If the affidavit shows the company no longer qualifies under this rule, the Board of Com-

merce and Industry shall cancel the contract and no further exemptions will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after revocation of a contract.

RULE 17. BENEFITS ACCRUED PRIOR TO APPLICATION SUBMISSION

From the first day of January 1983, the effective date for Sales and Use Tax exemptions shall be the date an application is received in the Office of Commerce and Industry.

RULE 18. JOB CREATION REQUIREMENTS

For a business to qualify for the benefits of this Chapter, there must be an expansion in the capacity for new employees and/or a minimum of five new jobs must be created.

(1) A "new employee" shall be a person residing and domiciled in this state, hired by the taxpayer to fill a position for a job in this state which previously did not exist in the business enterprise during the taxable year for which the credit allowed by this Section is claimed. In no case shall the new employees allowed for purpose of the credit exceed the total increase in employment. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the business enterprise on:

- (a) a regular, full-time basis;
- (b) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week for at least six months during the taxable year.

RULE 19. INELIGIBILITY OF BUSINESS

Businesses that move their facility from an *original* enterprise zone/enumeration district (identified prior to 18 July, 1982), into an *alternative* enterprise (designated after 18 July, 1982), for the sole purpose of receiving the benefits of this Chapter, will not be eligible to apply for these benefits.

RULE 20. MULTI-TENANT OPERATIONS

In the case of a facility where there are more than one occupant/tenant, an owner applicant for the benefits of this Chapter must occupy a minimum of 33 percent of the total floor area of the building.

RULE 21. APPLICATION/ALTERNATIVE DESIGNATION REQUESTS REVIEW PROCESS

All applicants for benefits of this Chapter and requests for the designation of alternative Enterprise Zones must submit their proposals to an area-wide review board/clearinghouse.

RULE 22. ALTERNATIVE DESIGNATION OF ENTERPRISE ZONES

The alternative designation of an enterprise zone will be on a one-time basis only, unless there are extenuating circumstances which must have prior approval of the Board of Commerce and Industry. A local governing authority will be limited a maximum of 10 percent of the total number of *originally* qualified enumeration districts to be exchanged. A local governing authority requesting the alternative designation of an enterprise zone must provide valid reasons for requesting an exchange. In order for an applicant to meet the requirements of Rule 4 or 5, those employees who live in an enumeration district/enterprise zone which was deleted by virtue of alternative designation shall qualify for the 35 percent residency requirement.

RULE 23. APPEALS PROCEDURE

Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the Board of Commerce and Industry during which their appeal will be heard.

RULE 24. INCOME AND FRANCHISE TAX REQUIREMENTS

In order for owners of a business to benefit from the Income and Corporate Franchise Tax benefits of this Chapter, they

must be listed along with their estimated five-year Income and Franchise Tax liability. This information will be held in the strictest confidence and will be used only to estimate the potential tax relief lost to the state.

RULE 25. EXCLUSION OF RESIDENTIAL DEVELOPMENTS

A business engaging in residential-type development (construction, selling or leasing of single-family/multi-family dwellings, apartment buildings, condominiums, townhouses, etc.) shall not be eligible for the benefits of this Chapter.

Robert Paul Adams
Director

RULE

Department of Commerce Office of Commerce and Industry Division of Financial Programs Administration

The Louisiana Board of Commerce and Industry adopted the following amendments to the rules regarding Industrial Ad Valorem Tax Exemption under Article 7, Part 2, Section 21 (F) of the Louisiana Constitution of 1974. The amendments are:

RULE 2. TIME LIMITS FOR FILING APPLICATIONS

(a) A written notification of intent to apply for tax exemption must be filed with the Office of Commerce and Industry on the prescribed form at least 90 days prior to the beginning of construction or installation of facilities.

(b) Application for tax exemption must be filed with the Office of Commerce and Industry on the form prescribed not later than three months before completion of the project or the beginning of operations, whichever occurs first.

(c) The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

A cutoff date for processing tax applications to be considered for tax exemptions is four weeks prior to board meetings. The assistant secretary is authorized, at his discretion, to accept certain applications beyond this date.

NOTE: Rule 2 applies to all applications other than those covered in Rule 3.

RULE 3. MISCELLANEOUS CAPITAL ADDITIONS

Tax exemption applications on miscellaneous capital additions totaling less than \$3,000,000 may be filed in the following manner:

(a) (Capital additions totaling less than \$3,000,000 in one calendar year.)

Not later than March 31 of each year, application for tax exemption shall be filed on the prescribed form with the Office of Commerce and Industry, listing the nature, the date and the amount of the miscellaneous capital additions completed during the preceding calendar year, and deducting therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer.

Since the assessment date for Orleans Parish is August 1, applications for tax exemption on miscellaneous capital additions in this parish should be filed not later than October 31 and should cover items completed since August 1 of the preceding year.

(b) (Capital additions reaching an accumulated total of \$3,000,000 during the calendar year.)

Application for tax exemption on the prescribed forms must be filed with the Office of Commerce and Industry whenever miscellaneous capital additions on which exemption is to be requested reach an accumulated amount of \$3,000,000.

RULE 9. ASSESSED PROPERTY

The Board of Commerce and Industry will not consider for

tax exemption any manufacturing establishment, or addition thereto, once such establishment or addition has been in operation for a period of six months unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the tax rolls. If the establishment or addition is on the tax rolls the Board of Commerce and Industry will consider granting tax exemption if the assessor and the Louisiana Tax Commission both agree in writing to remove the establishment or addition from the tax rolls should the tax exemption be granted.

Under no circumstance will the Board of Commerce and Industry consider for tax exemption any manufacturing establishment or addition thereto once ad valorem taxes have been paid on said establishment or addition.

Robert Paul Adams
Director

RULE

Department of Commerce Office of Commerce and Industry Division of Financial Programs Administration

The Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, adopted new rules to implement the amendments to R.S. 47:4311-4319, the Restoration Tax Abatement Program, authorized by Act 783 of the 1984 Legislative Session.

The rules provide for a local governing authority review and approval before the Board of Commerce and Industry considers an application and restricts the exemption to existing commercial structures.

Rules of the Board of Commerce and Industry for Governing Article VII, Part II, Section 21(H) of the Louisiana Constitution and LA. R. S. 47:4311-4319

Restoration Tax Abatement Program

This is a limited exemption which allows the Board of Commerce and Industry with the approval of the governor and the local governing authority to enter into a contract granting to a property owner who expands, restores, improves, or develops an existing structure or structures in a downtown, historic, or economic development district established by a local governing authority or in accordance with law, the right for five years after completion of the work to pay ad valorem taxes based upon the assessed valuation of the property for the year prior to the commencement of the expansion, restoration, improvement or development.

APPLICATION PROCESS

Applications are filed with the Department of Commerce who assigns the application a number and determines that the application contains all the basic information required by the Department of Commerce and Board of Commerce and Industry.

The Department of Commerce then forwards the application to the appropriate local governing authority who then determines whether additional information is required, conducts a public hearing and notifies the Department of Commerce of its decision within 60 days of receipt of the application.

When the Department of Commerce receives the local governing authority decision, it reviews the application, determines if it meets the requirements of the statutes and rules and regulations of the program and makes a recommendation to the Board of Commerce and Industry.

If the Board of Commerce and Industry recommends approval of the project, it is forwarded to the governor for his commendation. The governor has 30 days to notify the Board of

Commerce and Industry and the Department of Commerce of his decision.

If the governor, Board of Commerce and Industry and local governing authority all recommend approval, the Department of Commerce will enter into a contract with the property owner for the limited exemption.

RULE 1. TIME LIMITS FOR FILING APPLICATION

Application to the Board of Commerce and Industry for the right for five years after completion of the work to pay ad valorem taxes based upon the assessed valuation of property for the year prior to the commencement of the expansion, restoration, improvement or development shall be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, Louisiana, 70804-9185 on the form prescribed not later than the two hundred seventieth day after start of construction. The Department of Commerce will forward the application to the local governing authority for review.

RULE 2. SEPARATE APPLICATION MUST BE FILED FOR EACH STRUCTURE AND FOR EACH TWO-YEAR CONSTRUCTION INCREMENT

If the construction period is longer than two years, a separate application must be filed for each two-year increment. A separate application must be filed for each structure being restored, renovated, improved or developed.

RULE 3. PROJECT DOCUMENTATION

The property owner must submit the following to the Department of Commerce as part of his application.

- (a) Proof of ownership of the structure;
- (b) Legal property description;
- (c) Copy of the tax invoice on the structure from the Parish Assessor for the year prior to commencement of the project; and
- (d) Copy of the certification or application for certification if the structure is or is pending being designated as a certified historic structure.

RULE 4. LOCAL GOVERNING AUTHORITIES MUST CERTIFY APPROVAL

Approval of the exemption must be certified by each local governing authority.

Upon receipt of the application, the local governing authority shall notify each tax recipient body affected by the contract for a limited exemption and shall make available to each body the application and all supporting documents.

Before notifying the board of its approval or disapproval of the application, the local governing authority shall conduct a public hearing. Each affected tax recipient body shall be given written notice of the hearing at least 10 days prior to such hearing. After such hearing, the local governing authority shall determine whether to approve or disapprove the application.

The local governing authority shall, within 60 days after receipt of the application from the Department of Commerce, file with the department a statement of its decision to approve or disapprove the application, the reasons therefor, and any supporting documents.

RULE 5. LOCAL GOVERNING AUTHORITIES MUST CERTIFY STRUCTURE IS LOCATED IN QUALIFYING AREA

The parish or municipal governing authority shall certify that the property on which the expansion, restoration, improvement or development is being made is located within an established downtown, historic, or economic development district, whether established by a local governing authority or in accordance with law. This certification shall be submitted to the Department of Commerce with its decision to approve or disapprove.

RULE 6. LOCAL GOVERNING AUTHORITY SHALL CERTIFY COMMERCIAL USAGE

The local governing authority shall determine whether the applicant's land usage meets the definition of "commercial property" based on their zoning ordinance, land use plan, downtown or economic revitalization plan, or any other development code and shall certify that the property meets their criteria. This certification shall be submitted to the Department of Commerce along with their recommendation.

RULE 7. ASSESSED PROPERTY

The Board of Commerce and Industry will not consider for tax exemption any expansion, restoration, improvement or development project if substantial completion occurred prior to October 15, 1982.

Under no circumstances will the Board of Commerce and Industry consider an application for abatement on any project for expansion, restoration, improvement or development once ad valorem taxes have been paid on the basis of an assessed valuation which reflects the improvements made by the project.

RULE 8. CERTIFIED HISTORIC STRUCTURE

The expansion, restoration, improvement or development of a certified historic structure shall also be required to meet any requirements for eligibility for federal historic preservation tax incentives, including but not limited to P. L. 97-34 and P. L. 97-248. The property owner must submit a copy of the National Park Service document designating the expansion, restoration, improvement or development of the structure as a "certified rehabilitation." This document must be submitted to verify eligibility for the limited tax exemption of the Restoration Tax Abatement Program.

RULE 9. EFFECTIVE DATE OF CONTRACT

The owner of the existing structure or structures shall carefully document the beginning date of the effective use of the structure, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially completed, whichever occurs first. The Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contract, which shall be December 31 of the year in which effective use of the structure began or construction was essentially complete, whichever was sooner.

As the assessment date for Orleans Parish is August 1, the effective date of contract for a structure located in Orleans Parish shall be July 31 of the applicable year.

RULE 10. AFFIDAVIT OF FINAL COST

Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form.

RULE 11. PROPERTY MUST BE REPORTED TO PARISH ASSESSOR AS REQUIRED BY LAW

The property owner agrees to file annually with the assessor of the parish in which the structure is located any taxpayer's report required by law on forms furnished by the assessor in order that the exempted property may be separately listed on the assessment rolls. Notwithstanding the fact, taxes will be collected on the exempt property during the period of exemption at the assessed valuation of the property the year prior to the commencement of the expansion, restoration, improvement, or development of the property.

RULE 12. CONTRACT CAN BE TRANSFERRED

If the property for which the limited exemption has been granted is sold, the limited exemption may be transferred for the remainder of its terms to the new owner, provided such transfer is

approved by the local governing authority, the governor and the board.

RULE 13. VIOLATION OF RULES OR DOCUMENTS

On the board's initiative or whenever a written complaint or violation of terms of the tax exemption rules or contract is received, the assistant secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or other pertinent records or other information from the contractee. If the investigation substantiates a violation, he may present the subject contract to the board for formal cancellation.

Robert Paul Adams
Director

RULE

**Department of Commerce
Office of Commerce and Industry
Division of Financial Programs Administration**

The Louisiana Board of Commerce and Industry adopted the following amendments to its rules regarding the Sales and Use Tax Exemption on Energy Conservation property as authorized by R.S. 47:305.31. The amendments are:

RULE 7. QUALIFYING PROJECTS

(a) No application will be considered for exemption by the Board of Commerce and Industry unless the total energy saved per year is projected to be greater than thirty billion BTU's under Rule 3(a) or the project will permit the use of an alternate substance as fuel or feedstock under Rule 3(b).

(b) The project must be completed and in operation within four years after the application is filed.

RULE 8. TIME LIMITS FOR FILING OF APPLICATIONS

(a) An application for exemption shall be filed with the Office of Commerce and Industry on the form prescribed at least 60 days prior to any purchases of materials, machinery or equipment for qualifying projects.

(b) After approval by the Board of Commerce and Industry, the effective date of the exemption shall be the date the application was received in the Office of Commerce and Industry.

(c) A cutoff date for processing applications to be considered for exemption is four weeks prior to the board meeting.

RULE 9. ISSUANCE OF CERTIFICATE OF EXEMPTION

Approval by the Board of Commerce and Industry shall be part of the application. Upon approval of the application by the Board of Commerce and Industry, a notification shall be sent to the Department of Revenue and Taxation which shall issue a Certificate of Exemption to the applicant.

RULE 10. SALES TAX REFUND

The certificate of exemption will formally notify the applicant of the action of the Board of Commerce and Industry in approving the tax exemption on the specific project, but will not authorize the applicant to make tax-free purchases from vendors. The tax exemption will be effected through issuance of tax refunds by the Department of Revenue and Taxation.

Refunds will be secured by the filing of affidavits for each calendar month with the Department of Revenue and Taxation, Sales Tax Section, which must include the following:

(1) A listing of purchases, made during the month, of movable property that is intended to be used as "energy conservation property" in the approved project. The listing must include a brief description of each item, the name of the vendor, date of the sale, sales price and the amount of four percent state sales tax paid. The items included in the listing must have been purchased by the owner of the project, or by a builder or other party that has

contracted with the owner to provide materials and services for the project.

(2) A certification that the materials included in the listing are reasonably expected to qualify upon completion of the project as "energy conservation", as the term is defined in the statute.

(3) A certification that the sales/use tax has actually been paid on the items included in the listing.

The affidavits may be filed on official Department of Revenue and Taxation "Claim for Refund" forms or on other forms prepared by the applicant. After the Department of Revenue and Taxation has verified the information on the application, a refund check will be issued for the amount of state sales and use tax paid.

Robert Paul Adams
Director

RULE

Department of Culture, Recreation and Tourism Office of State Parks

The Department of Culture, Recreation and Tourism, Office of State Parks, adopted the following rules pertaining to boundary designation and property posting for lands administered by the Office of State Parks to become effective March 1, 1985. This action is authorized by L.R.S. 56:1684 and 56:1687(1), (2), and (3), and further authorized pursuant to Act 157 of the 1984 Regular Session of the Louisiana Legislature.

Rules

The procedures and requirements described herein shall be used for the purpose of establishing the boundaries of the areas on which the enforcement authority of the Office of State Parks may be exercised pursuant to R.S. 56:1688(c). Notwithstanding any provisions of the law to the contrary, posting in accordance with such requirements shall be construed as being in compliance with the posting requirements of state law and local ordinances for the purpose of defining the crime of trespass and shall not constitute an affirmative defense to a charge of trespass in violation of such law or ordinances on lands under the jurisdiction and control of the Office of State Parks.

SECTION 16. BOUNDARY DESIGNATION/PROPERTY POSTING

R 16.1 Effective January 1, 1985, all lands under the jurisdiction of the Office of State Parks shall be posted and for the purpose of defining trespass and to provide for the enforcement of rules and regulations of the Office of State Parks and laws of the State of Louisiana the following definitions are adopted:

R 16.1.1 "Posted Property" shall mean any real immovable property including but not limited to lands, water, marsh areas or other such property administered by the Office of State Parks for the purpose of delineating boundaries, limiting use and access, preventing unlawful trespass and providing for jurisdiction for the enforcement of agency law enforcement authority. Physical and visual markings and signs shall be designated herein which shall determine the method for establishing the limits of such "posted property."

R 16.1.2 "Developed Property" shall mean areas administered by the Office of State Parks which are operated in whole or part for public use and benefit.

R 16.1.3 "Undeveloped Property" shall mean areas administered by the Office of State Parks which are not operated for public use and benefit. Such areas are usually acquired for future use and development by the agency.

R 16.2 Criteria for posting and establishing boundaries.

R 16.2.1 Developed property shall be designated as posted property when the following conditions have been met:

The Office of State Parks shall place or cause to be placed

and maintain signs along the boundaries of such property, which sign shall be written in the English language and shall contain the following wording: "POSTED," the characters of which shall be at least four inches in height; followed by the words: "Office of State Parks," the characters of which shall be at least one inch in height; followed by the words: "Do Not Enter Except At Public Access Points," the characters of which shall be at least one-half inch in height.

The color of such signs shall be yellow background overprinted in black characters.

The Office of State Parks shall place and maintain such signs along the boundary of all developed property at intervals of not more than one-eighth mile. Such signs shall face in a direction so as to be visible before entering upon State Parks property.

Such signs shall be placed on trees, posts or other supports at a distance of at least three feet above ground level and not more than 10 feet above ground level.

Public access points to developed areas shall be clearly identified with entrance signs or other obvious means of establishing public entry.

R 16.2.2 Undeveloped property shall be designated as posted property when the following conditions have been met:

The Office of State Parks shall place or cause to be placed and maintain signs along the boundaries of such property, which sign shall be written in the English language and shall contain the following wording: "POSTED," the characters of which shall be at least four inches in height; followed by the words: "NO HUNTING, NO TRESPASSING, Office of State Parks," the characters of which shall be at least one inch in height.

The color of such signs shall be yellow background overprinted in black characters.

The Office of State Parks shall place and maintain such signs along the boundary of all undeveloped property at intervals of not more than one-eighth mile. Such signs shall face in a direction so as to be visible before entering upon State Parks property.

Such signs shall be placed on trees, posts or other supports at a distance of at least three feet above ground level and not more than 10 feet above ground level.

R 16.2.3 In areas such as marsh lands or where boundaries occur over water bodies, signs shall be placed at major points of ingress to the area.

R 16.3 Penalties

R 16.3.1 Any person entering any such area as herein posted except at designated public access points or unless possessing written permits or permission from authorized agents of State Parks, shall be cited for criminal trespass violations and shall be subject to fines for each such violation of not less than \$15 nor more than \$250 (L.R.S. 56:1689).

R 16.3.2 Any person who removes, destroys or willfully damages any posted signs as herein described or relocates such signs from its original location shall be subject to fines for each such violation of not less than \$15 or more than \$250 (L.R.S. 56:1689).

Noelle LeBlanc
Secretary

RULE

Board of Elementary and Secondary Education

Notice is hereby given that the Board of Elementary and Secondary Education, pursuant to notice of intent published on November 20, 1984 and under the authority contained in Louisiana State Constitution (1974), Article VIII, Section 3; Act 455 of

the Regular Session; amended by Act 800 of the 1979 Regular session, adopted as policy, the rule listed below:

Rule 3.01.70.v(22)

The Board changed scores required on the National Teacher Examinations Area Examinations for initial certification in Louisiana in four teaching areas and rounded all scores required on the Area Examination to the nearest score reported by tests publisher as recommended by the State Department of Education. (See November, 1984 issue of *Louisiana Register* for area scores.)

James V. Soileau
Executive Director

RULE

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security shall implement the following policy as mandated by Act 259 of the 1984 Regular Session of the Louisiana Legislature.

RULE

Effective March 1, 1985, the Title XIX State Plan, Attachment 3.1-A, Item 12a, pages 1, and Attachment 4.19-B, Item 12a, pages 2,4, and 5 will be amended to reflect that vendor payment will be made to pharmacies for prescriptions by dentists for drugs covered by the program for eligible recipients.

Implementation is subject to approval by the Health Care Financing Administration (HCFA) as required for all Title XIX policy changes. If disapproved by HCFA, the policy prior to this amendment remains in effect.

Sandra L. Robinson, M.D., M.P.H.
Secretary and State Health Officer

RULE

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, hereafter referred to as the agency, shall make available to persons who are eligible for Medicaid benefits under Title XIX, inpatient hospital services, outpatient hospital services, and all other services incident to professional treatment provided by a licensed dentist when the treatment and service is otherwise authorized and included in the Title XIX State Plan for medical and dental assistance when provided by a physician or any other licensed practitioner of the healing arts, provided that the dental health care shall be within the scope of dental professional practice as defined by R.S. 37:751 et seq.

This change is mandated by Act 259 of the 1984 Session of the Louisiana Legislature.

RULE

Effective March 1, 1985, the following sections of Title XIX State Plan will be amended:

(1) Attachment 4.19-B, Item 6, pages 2 and 3 will include a 6d as follows:

Dental Services

I. Methods of Payment

Dentists will be reimbursed under the same methodology used to reimburse physician providers.

II. Standards for Payment

A. Reimbursement is limited to dentists who are licensed by the state and who engage in the practice of their profession in

accordance with all rules and regulations set forth by the Louisiana State Board of Dentistry.

B. To be reimbursed for services, a provider must have on file with the Office of Family Security, a valid provider enrollment form.

C. Reimbursement will be limited to those services involving diseases or conditions involving the head and neck commonly accepted as being within the scope of the practitioners' training and expertise.

D. Providers of services must submit a properly executed claim form for each individual recipient treated.

E. The claim form must be signed and dated by the provider as certification that all billed services have been completed as of that date.

(2) Attachment 3.1-A, Item 6, will include a new page 2, Item 6d, as follows:

Dental Services

The Office of Family Security makes payment to dentists for their services under the following conditions:

(1) Reimbursement is limited to dentists who are licensed by the state and who engage in the practice of their profession in accordance with all rules and regulations set forth by the Louisiana State Board of Dentistry.

(2) Reimbursement will be limited to those services involving diseases or conditions involving the head and neck commonly accepted as being within the scope of the practitioners' training and expertise.

(3) Attachment 3.1-A, Page 2, will be amended to show that the services of dentists will be reimbursed under Title XIX, with limitations. Said services shall include inpatient hospital services, outpatient hospital services, and all other services incident to professional treatment provided by a licensed dentist when the treatment and service is otherwise authorized and included in the Title XIX State Plan for medical and dental assistance when provided by a physician or any other licensed practitioner.

Implementation is subject to approval by the Health Care Financing Administration (HCFA) as required for all Title XIX policy changes. If disapproved by HCFA, the policy prior to this amendment remains in effect.

Sandra L. Robinson, M.D., M.P.H.
Secretary and State Health Officer

RULE

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, shall increase the allowable monthly income limit for Long Term Care and Home and Community Based services applicants/recipients.

RULE

Effective March 1, 1985, the maximum allowable monthly income limit (CAP) rate for Long Term Care and Home and Community Based services eligibility for an individual will be increased from \$942 to \$975. For a couple occupying the same room in a long term care facility, the double rate of \$1,950 will apply.

Implementation of this rule is dependent on the approval of the Health Care Financing Administration (HCFA). Disapproval of the change by HCFA will automatically cancel the provisions of this proposed rule and current policy will remain in effect.

Emergency rulemaking has been invoked to implement this policy effective January 1, 1985. The emergency rule was published in the December 20, 1984, *Louisiana Register* (Volume 10,

Number 12). This action was necessary to remain in compliance with Federal Regulation 42 CFR 435.1005, which sets the maximum income limit, before deductions, at 300 percent of the Supplemental Security Income (SSI) payment. The monthly SSI payment will be increased by \$11 to \$325 on January 1, 1985, in accordance with a notice in the *Federal Register*, Volume 49, Number 212, pages 43775, published October 31, 1984.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, shall implement the following Rule in the Title XIX Medical Assistance Program.

RULE

Effective March 1, 1985, the Title XIX State Plan, Attachment 4.19-D, Page 122 will be amended to read as follows:

1. General

All providers who elect to participate in the Title XIX Program shall be subject to audit. A sufficient representative sample of each type of long term care provider will be audited each year to insure the fiscal integrity of the Louisiana Title XIX Program.

Auditing of long term care providers is a contracted service and the contractor will be responsible for developing a method for selecting the providers to be audited. State approval of the selection criteria and the providers selected are required. The state reserves the right to designate specific homes to be audited.

The audits will be full scope, on-site audits conducted in accordance with generally accepted auditing standards. Audits will generally follow procedures outlined in the Audit Program. The purpose of the audit is to verify that only allowable costs have been included in the cost report and that these costs have been allocated properly to reflect program expenditures.

At the conclusion of the audit, the auditor will submit to the state agency an audit report of his findings. The audit report will contain the auditor's opinion as to whether, in all material respects, the cost report complies with all applicable state and federal regulations.

The provider will be furnished a copy of the finalized audit report and will be allowed an opportunity to question any adjustments with which he does not agree.

The agency is responsible for reporting any audit findings which result in overpayments on HCFA-64 no later than the second quarter following the quarter in which the final overpayment was determined.

The state agency shall maintain for a period of five years a provider file which will include a copy of the cost report and for the years audited, a copy of the audit report.

Implementation of this rule is dependent on the approval of the Health Care Financing Administration (HCFA). Disapproval of the change by HCFA will automatically cancel the provisions of this rule and current policy will remain in effect.

Emergency rulemaking has been invoked to implement this policy effective November 9, 1984. The emergency rule was published in the December 20, 1984, *Louisiana Register* (Volume 10, Number 12). This action was necessary to avoid federal sanctions.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

RULE

Department of Health and Human Resources Office of Preventive and Public Health Services

Effective February 20, 1985, the Department of Health and Human Resources, Office of Preventive and Public Health Services, Food and Drug Control Unit, in order to implement the provisions of LSA R.S. 40:601 et seq. is adopting this regulation to amend the Food Regulations of the Louisiana Food, Drug and Cosmetic Regulations, dated September, 1968 (the "Red Book"). This regulation will provide for a definition for bottled water, and shall exclude sparkling water or any soda water product. Sparkling water, or any soda water product labels, must still be approved in accordance with General Regulations for the registration of food products pursuant to LSA R.S. 40:627. §§2.110 of the Louisiana Food, Drug and Cosmetic Regulations are hereby amended, as follows:

2.110 Definitions

3. Bottled Water. The term "bottled water" means water that is sealed in bottles or other containers and intended for human consumption. Bottled water includes spring water, artesian water, Purified Water and drinking water, but does not include mineral water, sparkling water or any soda water products.

Sandra L. Robinson, M.D., M.P.H.,
Secretary and State Health Officer

RULE

Department of Health and Human Resources Office of Preventive and Public Health Services

The Department of Health and Human Resources, Office of Preventive and Public Health Services adopts the policies and procedures used in operation of the State Hemophilia Program in accordance with the Administrative Procedure Act L.R.S. 46:950-970. These policies and procedures specifically cover eligibility criteria for services, procedures for collection of third-party payments and establishes the guidelines for and responsibilities of the Hemophilia Advisory Committee.

I. ELIGIBILITY

To be eligible for the Program a client has to reside in Louisiana and have medically diagnosed hemophilia, as defined in Louisiana R.S. 40:1299.5, and must have a medical evaluation at least once annually at the Louisiana Comprehensive Hemophilia Care Center.

II. COLLECTIONS

Insurance carriers, Medicare and Medicaid are charged by the program for the blood products and medical supplies (syringes and needles). Costs are determined by charges made to the program for the blood products and medical supplies, plus an administrative fee for dispensing, shipping and delivery by the state. Amount paid is considered full payment of charges.

III. HEMOPHILIA ADVISORY COMMITTEE

1. The Hemophilia Advisory Committee shall be composed of not more than 17 members made up of such citizens who are knowledgeable of and/or have an interest in hemophilia and related bleeding disorders. The membership shall reflect a geographic cross section of the State of Louisiana.

2. Vacancies on the committee shall be filled by the secretary, Department of Health and Human Resources, under the provisions of R.S. 36:254 B(2), from nominees submitted by the assistant secretary, Office of Preventive and Public Health Services.

3. The committee chairman shall be appointed by the sec-

retary of the Department of Health and Human Resources in accordance with the provisions of R.S. 36:254 B(2).

4. The committee shall advise the Office of Preventive and Public Health Services and its Division of Personal Health Services of the Department of Health and Human Resources in the implementation of R.S. 40:1299.5.

5. The committee shall adopt necessary rules to govern its operations and procedures including provisions for removal of inactive members.

6. The committee shall meet as often as necessary to conduct its business in a timely fashion but meetings shall be held at least quarterly.

7. The meeting site shall be determined by the committee.

8. Travel expenses of the committee to the committee meetings shall be provided in the budget of the Louisiana State Hemophilia Program. Expenses for such travel shall be kept to a minimum.

Reimbursement of expenses shall be governed by the provisions of the State Travel Regulations (PPM 49) as implemented by the Department of Health and Human Resources (Policy 77-1306-1).

9. The Committee shall:

a. Advise in developing standards for the implementation of R.S. 40:1299.5.

b. Advise in establishing criteria for eligibility for participation in the State of Louisiana's Hemophilia Program.

c. Advise the Office of Preventive and Public Health Services and its Division of Personal Health Services of the Department of Health and Human Resources in the preparation of an annual budget for the operation of the State of Louisiana's Hemophilia Program.

d. Advise and participate in instituting and maintaining educational programs among physicians, dentists, hospitals, public health units and departments, schools, and the public concerning hemophilia, including dissemination of information and the conducting of educational programs, concerning the methods of care and treatment of persons suffering from hemophilia and other bleeding disorders.

e. Advise and participate in monitoring the use of blood and blood products by those Louisiana citizens who are participants in the Louisiana Hemophilia Program.

f. Advise and participate in monitoring the Office of Preventive and Public Health Services in the operation of the Louisiana Hemophilia Comprehensive Care Center.

g. Advise the Department of Health and Human Resources and its Office of Preventive and Public Health Services regarding the promulgation of rules and regulations necessary to effectuate the Louisiana Hemophilia Program.

10. The director of the Division of Personal Health Services shall be an ex-officio member of the committee without voting privileges and shall be the principal liaison between the committee and the Office of Preventive and Public Health Services.

Sandra L. Robinson, M.D., M.P.H.
Secretary and State Health Officer

RULE

Department of Health and Human Resources Office of Preventive and Public Health Services

The Department of Health and Human Resources, Office of Preventive and Public Health Services, adopts the following corrections and minor additions to the Louisiana Sanitary Code which was adopted on March 20, 1984, pursuant to LSA-R.S.40:4.

Chapter 3, The Control of Rabies

§3:001 is amended to delete the definition for "Dog."

§3:002 is amended and reenacted as follows:

§3:002 No person shall own, keep or have in his custody a dog or cat over 3 months of age that has not been vaccinated against rabies by a licensed veterinarian. Every owner of a dog or cat shall cause said animal to be vaccinated at three months of age and said animal shall be revaccinated each year thereafter; or prove that the dog or cat was vaccinated at one year of age or older with a vaccine which, according to the 1984 Compendium of Animal Rabies Vaccines, prepared by The National Association of State Public Health Veterinarians, Inc., confers a three year duration of rabies immunity. In the latter case the owner shall then be required to revaccinate the dog or cat at least every three years thereafter.

§3:003 is amended and reenacted as follows:

§3:003 When any dog or cat bites a human being, said animal shall be confined (as described in Section 3:007) for a minimum of 10 days following the bite, or said animal shall be killed and the head submitted immediately to a laboratory of the Louisiana Department of Health and Human Resources for examination for rabies. Any dog or cat that develops any symptoms during the 10 day observation period shall be reported immediately to the local health authority and provided such symptoms are compatible with rabies as determined by a licensed veterinarian or the local health authority representative, the animal shall be killed and the head submitted to a laboratory of the Louisiana Department of Health and Human Resources for examination.

§3:004 is amended and reenacted as follows:

§3:004 When bitten by a rabid animal, unvaccinated dogs and cats shall be destroyed immediately or, if the owner is unwilling to have this done, the unvaccinated animal shall be confined (as described in Section 3:007) for six months and the animal shall be vaccinated one month before being released. Dogs and cats that are currently vaccinated shall be revaccinated immediately and confined (as described in Section 3:007) for 90 days.

§3:007 is enacted as follows:

§3:007 When confinement is required, the owner, veterinarian, animal shelter or other custodian of the animal shall confine said animal in a cage, on a leash, or in another manner such that the animal cannot contact any person or other animal.

Chapter 6, Food, Drug, and Cosmetics

Amend and reenact §6:056 as follows:

§6:056 Inadequately drained areas that may contribute contamination to food products through seepage or food-borne filth and by providing a breeding place for insects or microorganisms.

If the plant grounds are bordered by grounds of the kind described in §§6:053-6:055 of this Chapter which are not under the operator's control, then care must be exercised in the plant through inspection, extermination or other means in order to eliminate pests, dirt and other filth that may be a source of food contamination.

Amend and reenact §6:130 as follows:

§6:130 BULK PLACARD REQUIREMENTS: Bulk food that has been salvaged shall have a placard prominently displayed immediately adjacent to such bulk display. Such placard shall be in easily legible bold face print or type of such color contrast that it may be easily read and shall be labelled according to Section 6:129 of this Code.

Chapter 7, Milk and Dairy

§7:001 is amended and reenacted to change "minimum" to

“maximum” in the definition of Low Fat Cottage Cheese as follows:

LOW FAT COTTAGE CHEESE* is the same as Cottage Cheese except that it contains 0.5 percent to 2.0 percent butterfat by weight and a maximum of 82.5 percent moisture. The label must bear the phrase “contains not more than 2 percent butterfat.”

§7:094 is amended and reenacted to change “Grade B” to “Grade A” as follows:

§7:094 Grade A PASTEURIZED MILK: Grade A pasteurized milk is Grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in milk plant conforming with all of the sections of sanitation in this Chapter. In all cases milk shall show efficient pasteurization as evidenced by satisfactory phosphatase test. At no time after pasteurization and until delivery shall milk have a bacterial plate count exceeding 20,000 per milliliter or a coliform count exceeding 10 per milliliter in more than one of the last four samples.

§7:119 is amended and reenacted as follows:

§7:119 Country butter shall comply with all the provisions for labeling butter and, in addition, shall carry the words “Pasteurized Country Butter” if the product has been pasteurized, or the words “Raw Country Butter” if the product has been manufactured from raw milk or cream. The words shall be displayed in bold face type in such a way that these words are equally large and legible as any other portion of the label.

§7:144-1(5) is amended and reenacted as follows:

(5) have scorched particle content not greater than DISC B (15.0 mg.);

§7:144-3(5) is amended and reenacted as follows:

(5) have scorched particle content not greater than DISC B (15.0 mg.);

§7:145-1(5) is amended and reenacted as follows:

(5) have scorched particle content not greater than DISC C (22.5 mg.);

§7:145-2(5) is amended and reenacted as follows:

(5) have scorched particle content not greater than DISC C (22.5 mg.).

Chapter 9, Seafood

§9:015 is amended and reenacted to change “cement” to “concrete” as follows:

§9:015 Floors shall be constructed of concrete, tile, glazed brick, or other impervious construction to facilitate cleaning. Drainage of all water therefrom shall be complete and rapid.

§9:017 is amended and reenacted to change “cement” to “concrete” as follows:

§9:017 Cleaning, skinning, shucking, picking or peeling benches shall be of concrete, non-toxic and non-corrosive metal, or other materials approved by the state health officer, and shall be cleaned thoroughly at the end of each day’s operation. Walls immediately adjacent to such benches shall be of smooth hard material to a height of three feet above said benches and so constructed as to be easily and thoroughly cleaned.

Chapter 12, Water Supplies

§12:018 is amended and reenacted to insert “not” as follows:

§12:018 CONNECTIONS TO PUBLIC WATER SUPPLY: Inhabited premises and buildings located within 300 feet of an approved public water supply shall be connected with such supply, provided that the property owner is legally entitled to make such

a connection, and has not been given permission to use water from some other source by the state health officer.

Chapter 14, Plumbing

Table 14:034 is amended and reenacted to add the following:

NONMETALLIC PIPING	ASTM
PB Plastic Pipe for hot/cold water distribution	D3309-83
PB Plastic Insert Fittings	F845-84

§14:057-2 is amended and reenacted to change “sanitary sewers” to “manholes” as follows:

§14:057-2 LARGER PIPES: For underground piping over 10 inches, manholes shall be provided and located at every change in direction and at intervals of not more than 150 feet.

Table 14:098 is amended and reenacted to add “45” as follows:

Type of Building or Occupancy	Lavatories
Office Buildings and Public Buildings	Over 125 - Add 1 for each 45 additional persons

§14:113-1 is amended and reenacted to add “plastic” as follows:

MATERIAL

§14:113-1 WATER DISTRIBUTING PIPE, TUBING AND FITTINGS: Materials for waster distributing pipes and tubing shall be of brass, copper, plastic, cast iron, wrought iron, open hearth iron, or steel, with appropriate approved fittings. All cast iron pipe and fittings shall be coal-tar enamel coated. All threaded ferrous pipe and fittings shall be galvanized (zinc coated) or cement lined. When used underground in soil known to be corrosive, all wrought ferrous pipe and fittings shall be coal tar enamel coated, and the threaded joints shall be coated and wrapped after installation.

Chapter 16, Campsites

The definition for “Disposal Site” in §16:001 is amended and reenacted to change “Department of Natural Resources” to “Department of Environmental Quality” as follows:

DISPOSAL SITE is a place or site in or on any camp where refuse materials are routinely disposed of by incineration, landfill, compost, or other disposal method approved by the Louisiana Department of Environmental Quality.

§16:037 is amended and reenacted to change “Department of Natural Resources” to “Department of Environmental Quality” as follows:

Garbage and Refuse

§16:037 Garbage and refuse shall be handled and disposed of in accordance with the requirements of the Louisiana Department of Environmental Quality.

Chapter 18, Jails, Prisons and Other Institutions of Detention or Incarceration

§18:015 is deleted.

Chapter 19, Hospitals

§19:016 is amended and reenacted to change “Department of Natural Resources” to “Department of Environmental Quality” as follows:

§19:016 Sewage shall be disposed of in accordance with Chapter XIII of this Code and with the Environmental Protection Agency

(EPA) and Louisiana Department of Environmental Quality (DEQ) hazardous waste regulations.

§19:017 is amended and reenacted to change "DNR" to "DEQ" as follows:

§19:017 Garbage and trash shall be stored and disposed of in accordance with Chapter XIII of this Code and with DEQ regulations. Compactors, dumpsters and other equipment shall be maintained in a sanitary condition.

§19:024 is amended and reenacted to change "DNR" to "DEQ" as follows:

Laboratory

§19:024 Microbiological cultures shall be disposed of in an incinerator approved by the Air Quality Division of the DEQ or sterilized prior to disposal. Smoking and eating are not allowed in laboratory areas. Laboratories, especially horizontal work surfaces, shall be cleaned and disinfected at the end of each work day.

§19:207 is amended and reenacted to change "DNR" to "DEQ" as follows:

Radiation Control

§19:207 All equipment and handled materials providing a source of radiation and disposal of radioactive waste shall be shielded as required by the Nuclear Division of DEQ's Office of Environmental Affairs. All radiation equipment operators shall be provided with the proper clothing and equipped with an approved radiation monitoring device. Certificates of registration shall be obtained from DEQ's Nuclear Control Board and available for review.

Chapter 22, Retail Food Markets

§22:034 is amended and reenacted as follows:

§22:034 When the facility is used for both cleaning and handwashing, a potable water supply of at least 20 gallons shall be provided. When the facility is used for handwashing only, a potable water supply of at least five gallons shall be provided.

§22:035 is amended and reenacted as follows:

§22:035 Vehicles shall include a waste tank that is in compliance with Chapter XXIII, Section 23:121 on Mobile Food Units.

Chapter 23, Eating and Drinking Establishments

§23:080-2 is amended and reenacted as follows:

§23:080-2 Where garbage or refuse is burned on the premises, it shall be done by incineration in accordance with the rules and regulations of the Department of Environment Quality. Areas around incineration facilities shall be clean and orderly.

Chapter 24, Artificial Swimming Pools and Natural or Semi-Artificial Swimming or Bathing Places

§24:009 is amended and reenacted to change "cement" to "concrete" as follows:

§24:009 GENERAL CONSTRUCTION: The pool walls shall be vertical for a distance of four feet down from the top except where steps enter the pool. The walls and floor shall be constructed with light colored tile and concrete, or other impervious material. The surfaces shall be smooth and permit easy cleaning. The top edge of the pool wall shall be designed to provide a satisfactory handhold for swimmers.

§24:013 is amended and reenacted to change "pool" to "bathing" as follows:

§24:013 PLUMBING FIXTURES: One water closet and one urinal shall be provided for each 60 males or fraction thereof. One

water closet shall be provided for each 40 females or fraction thereof. Female urinals, if provided, may be used in the same proportion as for men above. One lavatory with hot and cold water, under pressure delivered through a mixing faucet and soap shall be provided for each 60 patrons or fraction thereof. Circular foot-operated lavatories, serving several persons at one time, may be used in some situations, such as in schools. One shower shall be provided for each 40 persons or fraction thereof. One drinking fountain shall be provided for each 100 persons or fraction thereof. Number of persons shall be calculated on the basis of bathing load as described in §24:020. (An equal distribution of males and females will be assumed unless otherwise indicated.)

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

RULE

Department of Labor Office of Employment Security

In accordance with the Administrative Procedure Act, R.S. 49:950 et. seq., notice is hereby given that the Department of Labor, Office of Employment Security has revised the following regulation:

Regulation 37. Types of Employment

For the purposes of R.S. 23:1601(1):

Regular Employment is employment of an individual on a regular basis with a reasonable expectation of continuance in that employment.

Full-Time Employment is employment which requires the individual's presence for the major portion of the normal workday, week, or month. Full-time employment is that employment which normally provides an individual with the major portion of his earnings.

Interim Employment is employment performed by individuals who are on temporary layoff or are otherwise separated from their full-time regular employment and expect to return to their full-time regular employment within a reasonable time.

Part-Time Employment is employment which requires an individual's presence less than the normal workday, week, or month and is normally used to supplement income from full-time work.

George Whitfield
Administrator

RULE

Department of Public Safety and Corrections Corrections Services

DEPARTMENT REGULATION NUMBER 30-14

ADULT SERVICES

PLACEMENT AND TRANSFER OF OFFENDERS:

Selection Criteria

1. PURPOSE: The purpose of this regulation is to establish selection criteria to be followed in placement and transfer of adult offenders to the various units within the Department of Public Safety and Corrections, Corrections Services.

2. RESPONSIBILITY: The assistant secretary for Adult Services, wardens and classification personnel of adult institutions are responsible for the implementation of this regulation. They shall ensure that necessary information and instructions are furnished to all affected employees and offenders.

3. LEGAL REFERENCES: R.S. 15:824, 15:832, 15:893.1, 15:1062

4. GENERAL: A comprehensive selection process for placement and transfer of offenders within the Department of Public Safety and Corrections, Corrections Services, is essential in order to fulfill the purposes and goals of the various institutions. Offenders should be able to benefit from the programs offered at the institution to which they are being assigned. The selection criteria outlined below should be considered the outside limits of acceptability. Other factors such as adjustment potential, as determined by psychological evaluation, excessiveness of the criminal records and observable behavior should also be considered in the selection process. The secretary retains the right to make such assignments as he, in his sole discretion, deems appropriate.

5. PROCEDURE:

A) All placements or transfers will be approved by the secretary or by his designated representative.

B) Only the secretary, or in his absence, his designated representative, has the authority to waive any of the eligibility requirements listed below and then only for good cause.

C) When inmates are transferred from a work training facility or Louisiana Correctional and Industrial School (LCIS) to Adult Reception and Diagnostic Center (ARDC) for disciplinary reasons, their security class should be increased to no more than medium security unless the instant rule violation report, which resulted in the transfer, was so serious as to warrant a maximum security staffing.

6. DEFINITIONS: "Earliest release eligibility date" means the earliest date on which an offender is legally *eligible* for release, even if actual release is predicated on a future decision of the department or of the Parole Board.

7. SELECTION CRITERIA:

A) Louisiana Correctional and Industrial School (LCIS)

* (1) Only first offenders are eligible.

(2) Offenders found guilty of escape or attempted escape by a court or institutional disciplinary board within the past seven years are ineligible.

(3) Persons who are currently under and/or who have demonstrated a need for intensive medical treatment (physically or psychologically) are ineligible. At the time treatment has been completed, and such termination of services has been documented by competent medical staff, persons may then be considered as eligible for transfer.

(4) Persons who have demonstrated an overt-aggressive pattern of homosexual behavior, to the extent that it would disrupt the smooth daily operation of the institution, are ineligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

(5) Persons who have a balance of time extending beyond eight years remaining to serve on their sentence prior to their earliest release eligibility date are ineligible.

(6) Persons serving a life sentence will not be eligible unless there is a demonstrated need by the institution for the skill of the offender. Such an offender must meet all other requirements.

(7) Persons who have demonstrated a consistent pattern of poor institutional adjustment and/or have a poor institutional conduct record are not eligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

(8) Persons who are young in age should be given priority over the older first offenders who satisfy all other requirements.

(9) When bed space is not available for all offenders meeting the criteria in numbers 1 through 8 above, priority will be given to those offenders convicted of offenses other than:

(a) Aggravated, forcible or simple rape or an attempt to commit these crimes;

(b) Carnal knowledge of a juvenile;
(c) Aggravated crime against nature;
(d) Aggravated arson;
(e) Aggravated kidnapping;
(f) Armed robbery or attempted armed robbery;
(g) Distribution or possession with intent to distribute any controlled dangerous substance (with the exception of marijuana offenses);

(h) Possession of any drug listed in Schedule I, Section A or B, or in Schedule II of the Controlled Dangerous Substance Law (R.S. 40:964);

(i) Murder or attempted murder (First and Second Degree); and

(j) R.S. 15:529.1 (Habitual Offender Law).

B) Dixon Correctional Institute (DCI), Hunt Correctional Center (HCC), Wade Correctional Center (WCC), Washington Correctional Institute (WCI)

(1) Persons with a history of institutional behavior which reflects an assaultive personality are ineligible. A person's criminal history may also be considered in cases where a maximum security placement appears necessary and there is no institutional behavior to evaluate.

(2) Persons presently serving sentences for the commission of the following crimes are ineligible:

(a) Aggravated, forcible, or simple rape;

(b) Attempted aggravated rape;

(c) Attempted forcible rape;

(d) Aggravated crime against nature;

(e) Murder (First or Second degree);

(f) Aggravated arson;

(g) Armed robbery (Second or subsequent offense); and

(h) Aggravated kidnapping.

(NOTE: Persons convicted of the above may be considered for transfer upon recommendation of the Warden of LSP after serving a minimum of five years of their sentence.)

(3) Persons who are currently under and/or have demonstrated a need for extensive and/or intensive medical treatment (physically or psychologically) are ineligible. At the time treatment has been completed, and such termination of service has been documented by competent medical staff, persons may then be considered as eligible for transfer.

(4) Offenders who have demonstrated an overt-aggressive pattern of homosexual behavior, to the extent that it would disrupt the smooth daily operation of the institution, are ineligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

(5) Persons who have a balance of time extending beyond 10 years remaining to serve on their sentence prior to their earliest release eligibility date are ineligible.

(6) Persons serving life sentences will not be eligible unless there is a demonstrated need by the institution for the skill of the offender. Such an offender must meet all other requirements.

(7) Persons who have demonstrated a pattern of poor institutional adjustment and/or have a poor institutional conduct record are not eligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

C) Woodworth Forestry Camp

(1) Any offender who is transferred to Woodworth Forestry Camp must meet the criteria for assignment to Work Training Facility/North (Camp Beauregard).

(2) Offenders currently housed at Work Training Facility/North will be given first preference.

(3) Since offenders at Woodworth Forestry Camp will be allowed a quarterly furlough, only offenders who qualify for fur-

* May not be waived (R.S. 15:1062)

loughs (See Department Regulation No. 30-7) may be considered for transfer.

D) Work Training Facility/North (Camp Beauregard) and Work Training Facility/South (Jackson Barracks) (See Department Regulation No. 30-14 A for Work Release Criteria)

(1) Offenders having detainers or warrants for pending *felony charges* are ineligible. This does not apply to detainers for traffic violations or for court costs.

(2) Persons presently serving sentences for the commission of the following offenses are ineligible:

*(a) Aggravated, forcible, or simple rape or of an attempt to commit these crimes;

*(b) Carnal knowledge of a juvenile;

*(c) Aggravated crime against nature;

*(d) Aggravated arson;

*(e) Murder (First or Second degree)

*(f) Distribution of any controlled dangerous substance (with the exception of marijuana offenses);

*(g) Armed robbery;

*(h) Aggravated kidnapping;

*(i) R.S. 15:529.1 (Habitual Offender Law)

*(j) Indecent behavior with a juvenile; and

*(k) Incest

*(3) Persons who have escaped and/or have abetted an escape and/or have attempted to escape within the last seven years are ineligible.

*(4) Persons who are currently under and/or who have demonstrated a need for intensive medical treatment (physically or psychologically) are ineligible. At the time treatment has been completed, and such termination of services has been documented by competent medical staff, persons may then be considered as eligible for transfer.

*(5) Persons who have demonstrated an overt-aggressive pattern of homosexual behavior, to the extent that it would disrupt the smooth daily operation of the institution, are ineligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

*(6) Persons having a balance of time extending beyond five years to the earliest release eligibility date are ineligible.

(7) Persons who have demonstrated a consistent pattern of poor institutional adjustment and/or have a poor institutional conduct record are not eligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

*(8) Persons with a history of criminal activity which reflects an assaultive (violent) personality are ineligible. This includes both arrest and/or institutional records.

E) Sheriff or Police Maintenance

(1) The offender must be specifically requested by the sheriff or chief of police.

(2) The sheriff or the chief of police and the department must enter into a written contract which conforms with the requirements set forth in R.S. 15:832(D).

(3) The offender must be domiciled in, or sentenced from, the parish which is requesting him, unless specifically exempted from this requirement by the secretary of Public Safety and Corrections.

(4) Offenders who have been found guilty of escape or attempted escape by a court or institutional disciplinary board in the last seven years are ineligible.

(5) Persons who are currently under and/or who have demonstrated a need for intensive medical treatment (physically or psychologically) are ineligible. At the time treatment has been completed, and such termination of services has been docu-

* May not be waived (R.S. 15:893.1)

mented by competent medical staff, persons may then be considered as eligible for transfer.

(6) Persons who have demonstrated an overt-aggressive pattern of homosexual behavior, to the extent that it would disrupt the smooth daily operation of the institution, are ineligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

(7) Persons serving life sentences will not be eligible unless there is a demonstrated need by the institution for the skill of the offender. Such an offender must meet all other requirements.

(8) Persons presently serving sentences for the commission of the following offenses are ineligible:

(a) Aggravated, forcible, or simple rape or of an attempt to commit these crimes.

(b) Carnal knowledge of a juvenile.

(c) Aggravated crime against nature.

(d) Aggravated arson.

(e) Murder or attempted murder (first and second degree).

(f) Distribution or possession with intent to distribute any controlled dangerous substance—(with the exception of marijuana offenses).

(g) Possession of any drug listed in Schedule I, Section A or B, or in Schedule II of the Controlled Dangerous Substance Law (R.S. 40-964).

(h) Armed robbery or attempted armed robbery.

(i) Aggravated kidnapping.

(j) R.S. 15:529.1 (Habitual Offender Law).

(k) Indecent behavior with a juvenile.

(l) Incest.

(9) Offenders having detainers or warrants for pending *felony charges* are ineligible. This does not apply to detainers for traffic violations or for court costs.

(10) Offenders on maintenance programs will be assigned to the appropriate probation and parole district supervisor for monitoring purposes.

F) State Police Barracks

(1) Offender must be specifically requested by state police.

(2) Offenders found guilty of escape or attempted escape by a court or institution disciplinary board within the past seven years are ineligible.

(3) Persons who are currently under and/or who have demonstrated a need for intensive medical treatment (physically or psychologically) are ineligible. At the time treatment has been completed, and such termination of services has been documented by competent medical staff, persons may then be considered as eligible for transfer.

(4) Persons who have demonstrated an overt-aggressive pattern of homosexual behavior, to the extent that it would disrupt the smooth daily operation of the institution, are ineligible. Evidence must be documented and of a firsthand rather than of a hearsay nature.

(5) Persons serving life sentences will not be eligible unless there is a demonstrated need by the institution for the skill of the offender. Such an offender must meet all other requirements.

8. PROTECTION: Before transferring an offender to protective status at Wade Correctional Center, the warden at the institution of assignment must certify, in writing, to the Office of Adult Services, the reasons as to why adequate protection cannot be provided at said institution or any other unit within the Department of Public Safety and Corrections, Corrections Services. Upon receipt of the warden's assessment, the administrator of Classification at headquarters will review and certify to the assis-

tant secretary for Adults why the offender needs to be protected and should be placed in protective status.

9. DETAINERS:

A) Detainers for traffic violations, court costs, criminal neglect of family and fines will not disqualify an inmate for assignment to any facility for which he is otherwise eligible. However, all other misdemeanor detainers shall serve to disqualify maintenance candidates only.

B) A detainer for a felony which a conviction could result in a sentence that would disqualify the inmate from assignment to a certain security class should serve to disqualify the inmate from that assignment, in fact.

C) A detainer for a concurrent sentence which is shorter than the sentence which the inmate is serving within the Department of Public Safety and Corrections, Corrections Services, should be disregarded unless the sentence itself changes the inmate's security class.

10. ESCAPES:

A) An escape other than the returning late from a pass from any Department of Public Safety and Corrections, Corrections Services' facility shall result in assignment to at least one higher security class;

B) A documented aggravated escape from a department facility or any penal institution within the past seven years should require the classification of an inmate as maximum security; and

C) A documented history of non-aggravated escapes totaling more than two would result in classification of an inmate as maximum security and as a high escape risk.

11. CANCELLATION: This regulation supercedes Department Regulation No. 30-14 dated January 20, 1984, and will not operate to require the transfer of any offender who was transferred to a facility for which he does not now qualify, provided he was transferred to that facility prior to February 20, 1985.

C. Paul Phelps
Secretary

RULE

Department of Revenue and Taxation Income and Corporation Franchise Taxes Section

Corporation Franchise Tax Regulations

Article 47:601. Imposition of tax

Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all corporations, joint stock companies or association, or other business organizations organized under the laws of the State of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as "domestic corporations," for the right granted by the laws of this state to exist as such an organization and on both domestic and foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the State of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties, and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities, and the imposition of the same duties, restrictions, penalties, and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege, or the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties, and interest, where applicable, which would be imposed on a domestic corporation.

Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of R.S. 12:41 are subject to and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

A. The power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law;

B. Without limiting the grant of power contained in "A" above, every corporation shall have the authority to:

(1) have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument;

(2) have perpetual existence, unless a limited period of duration is stated in its articles of incorporation;

(3) sue and be sued in its corporate name;

(4) in any legal manner to acquire, hold, use, and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles;

(5) in any legal manner to acquire, hold, vote, and use, alienate and encumber, and to deal in and with, shares, memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities;

(6) make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by hypothecation of any kind of property;

(7) lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments;

(8) conduct business and exercise its powers in this state and elsewhere as may be permitted by law;

(9) elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and benefit plans for any or all of its directors, officers, and employees; and establish stock bonus plans, stock option plans, and plans for the offer and sale of any or all of its unissued shares, or of shares

purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf; such plans (a) may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto, and (b) may provide for the payment of the price of such shares in installments;

(10) make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation;

(11) provide indemnity and insurance pursuant to R.S. 12:83;

(12) make donations for the public welfare, or for charitable, scientific, educational, or civic purposes; and

(13) in time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

Thus, the mere ownership of property within this state, or an interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

The tax imposed by this Section shall be at the rate prescribed in R.S. 47:601 for each \$1,000, or a major fraction thereof, on the amount of its capital stock, determined as provided in R.S. 47:604, its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the amount of such capital stock, surplus, and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers, and immunities within this state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.

The accrual, payment, and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

In the case of any domestic or foreign corporation subject to the tax herein imposed, the tax shall not be less than the minimum tax provided in R.S. 47:601.

Article 47:602. Determination of taxable capital

A. Taxable Capital

Every corporation subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers, and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607, and the rules and regulations issued thereunder by the secretary of Revenue and Taxation.

B. Holding Corporation Deduction

Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the State of Louisiana may deduct from its total taxable base, determined as provided in Subsection A hereof and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in Subsection A hereof.

C. Public Utility Holding Corporation Deductions

Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602A, R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606B. The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606B. In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

Article 47:603 Borrowed capital

A. General

As used in this Chapter, "borrowed capital" means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date.

All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification, or limitation contained in the statute, must be included in the total taxable base. No amount of indebtedness of a corporation may be excluded from borrowed capital except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

In the case of amounts owed by a corporation to a creditor who does not meet the definition of an "affiliated corporation" contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Determination of the one-year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined by any date the debt is renewed or refinanced. The entire amount of long-term debt not having a maturity date of less than one year, which was not paid within the one-year period, constitutes borrowed capital, even though it may constitute the current liability for payment on the long-term debt.

The fact that indebtedness which had a maturity date of more than one year from the date it was incurred, was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital.

For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, the following shall apply: With respect to any indebtedness which was extended, renewed, or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed, or refinanced indebtedness was incurred. All debt ex-

tended, renewed, or refinanced shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, that date. In instances of debts which are extended, renewed, or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be construed to be new indebtedness and the one-year controlling factor will be measured from the date that the new debt is incurred.

For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, with respect to the amount due on a mortgage on real estate purchased subject to the mortgage, the date the indebtedness was originally incurred shall be the date the property subject to the mortgage was acquired by the corporation.

In the case of amounts owed by a corporation to a creditor who meets the definition of an "affiliated corporation" contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through (a) stock ownership, (b) directorate control, or (c) any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation. It is not necessary that control exist between the corporations but only that policy be influenced substantially. Any indebtedness between such corporations constitutes borrowed capital to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products, or services furnished to a corporation for which indebtedness is incurred, except as provided in this subpart with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; in the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.

To illustrate this principle, assume:

- Corporation A - Parent of B, C, D, and E
- Corporation B - Nonoperating, funds-flow conduit, owning no stock in C, D, or E
- Corporation C - Other Corporation
- Corporation D - Other Corporation
- Corporation E - Other Corporation

Any funds furnished by the parent A to either B, C, D, or E constitute either a contribution to capital or an advance which must be included in the taxable base of the receiving corporation.

Any funds supplied by D or E to C, whether or not channeled through A or B, would constitute borrowed capital to C, and the indebtedness must be included in the taxable base. In the absence of a formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A. In all such financing arrangements, the multiple transfers of funds are held to constitute capital substantially used to carry on each taxpayer's business.

The amount that normal trading-account indebtedness bears to capitalization of a debtor determines to what extent said indebtedness constitutes borrowed capital substantially used to finance or carry on the business of the debtor. Due consideration should also be given to the debtor's ability to have incurred a similar amount of indebtedness, equally payable as to terms and periods of time.

In the case of equally demandable and payable indebtedness of the same type between two corporations, wherein each is indebted to the other, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

B. Exclusions from Borrowed Capital

(1) Federal, state, and local taxes

R.S. 47:603 provides that an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to accruals of federal, state, and local taxes, the only amounts which may be excluded are the tax accruals determined to be due to the taxing authority or taxes due and not delinquent for more than thirty days. In the case of reserves for taxes, only so much of the reserve as represents the additional liability due at the taxpayer's year-end for taxes incurred during the accrual period may be excluded. Any amount of the reserve balance in excess of the amount additionally due for the accrual period shall be included in the taxable base, since the excess does not constitute a reserve for a definitely fixed liability. This "additional amount due" is determined by subtracting the taxpayer's tax deposits during the year from the total liability for the period. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in the taxable base. Any taxes which are due and are delinquent more than thirty days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

(2) Voluntary deposits

The liability of a taxpayer to a depositor created as the result of advances, credits, or sums of money having been voluntarily left on deposit shall not constitute borrowed capital if:

- (a) said moneys have been voluntarily left on deposit to facilitate the transaction of business between the parties, and
- (b) said moneys have been segregated by the taxpayer and are not otherwise used in the conduct of its business.

Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose has an effect on the amount of such liability which shall be excluded from borrowed capital.

(3) Deposits with trustees

The principal amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account may be excluded from the indebtedness which would otherwise constitute borrowed capital if such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be excluded from borrowed capital.

(4) Receiverships, bankruptcies, and reorganizations

In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of the petition for receivership, bankruptcy, or reorga-

nization under the bankruptcy law, after such allowance or approval by the court of the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval, to the extent that they are permitted to make such payments under the terms of the receivership, bankruptcy, or reorganization proceedings.

Article 47:604. Capital stock

For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the secretary of Revenue and Taxation to reflect the true value of the stock. In no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange, except as provided in the following paragraph.

In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least 80 percent of the total voting power of all voting stock and at least 80 percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares, and any certificates or options convertible into shares.

Article 47:605. Surplus and undivided profits

A. Determination of value

For the purpose of determining the tax imposed by R.S. 47:601, there are statutory limitations on both the maximum and minimum amounts which shall be included in the taxable base with respect to surplus and undivided profits. The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accrual of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

Entries to the books of any corporation to record the de-

crease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

In any instance in which an asset is required to be included in the property factor under the provisions of R.S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra account, such as, but not limited to, an account to record unrealized gain from an installment sale, all such contra accounts shall be included in the taxable base, except to the extent such contra accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605A and the regulations issued under Article 47:605A (1), (2), (3), and (4). See Article 47:606A (2) for required adjustments to assets with respect to any contra account or reserve which is not included in the taxable base.

The minimum value under the statute is subject to examination and revision by the secretary of Revenue and Taxation. The recorded book value of surplus and undivided profits may be increased, but not in excess of cost, as the result of such examination to the extent found necessary by the secretary to reflect the true value of surplus and undivided profits. The secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer. A taxpayer may, in his own discretion, reflect values in excess of cost; that option is not extended to the secretary in any examination of recorded cost.

In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept, the secretary of Revenue and Taxation shall, except as provided in the following paragraph, construe cost of any asset to be fair market value of the asset received in exchange therefor.

Exception to the rules stated above will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136, and 138.

There must be included in the franchise taxable base determined in the manner heretofore described, all reserves other than those for:

(1) definitely fixed liabilities;

(2) reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayer;

(3) bad debts; and

(4) other established valuation reserves.

No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is partially or fully funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Deferred federal income tax accounts may be netted in determining the amount of reserve to be included in the taxable base. Reserves for fixed liabilities shall be included in the taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

In addition to the four classifications of reserves which may be excluded from the taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from the taxable base.

B. Treatment of deficit. Blank.

Article 47:606. Allocation of taxable capital.

A. General allocation formula

Every corporation subject to the tax imposed by this chapter must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding capital stock, surplus and undivided profits, and borrowed capital by the ratio obtained through the arithmetical average of (1) the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and (2) the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used.

(1) Net sales and other revenue

Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factor. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue factor since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute "other revenue" so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

(a) Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer.

[1] Transportation by taxpayer or by public carrier

Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

[2] Transportation by purchaser

Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

[3] Sales to a pipeline company

The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

[4] Transportation of natural resources by a public carrier pipeline

Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier, that is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases

possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B, and C all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B. Texas by public carrier pipeline:

(i) If X Refinery receives all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(ii) If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly.

To further illustrate, consider the incident of the three different taxpayers, A, B, and C, in Texas, selling to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. The same rules governing the problems set forth above are applicable.

(iii) If A sells to X Refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

(iv) If A sells to X, B to Y, and C to Z, with X, Y, and Z receiving a portion of their purchases in Louisiana, in Mississippi, and in Alabama, that portion received by X, Y, and Z in Louisiana must be attributed to Louisiana by A, B, and C.

[5] Storage of property after purchase

In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of a temporary nature.

In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of transportation to another, or by natural conditions, the place of such storage is of no significance.

(b) Revenue from air transportation

All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

(c) Revenue from transportation for others through pipelines

Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state, total revenues from the transportation shall be attributed to Louisiana.

In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner:

[1] Crude petroleum and liquid petroleum products

Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported times the total number of miles transported both within and without Louisiana.

[2] Natural gas

Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet of such gas transported times the total number of miles such gas transported both within and without Louisiana.

[3] Other commodities

Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any method deemed reasonable.

Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular kind or type of revenue received.

(d) Revenue derived from transportation other than by aircraft or pipeline

Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

(1) In the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

(2) In the case of transportation of liquid commodities, the

transportation of one barrel of the commodity a distance of one mile;

(3) In the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile;

(4) In the case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for calculating total transportation charges for a distance of one mile shall be used. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

In the case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the secretary of Revenue and Taxation may require the use of any alternate method deemed reasonable.

Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular type of revenue received.

(e) Revenue from services other than from transportation

Revenue derived from services other than from transportation shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(1) The ratio that salaries and wages paid to personnel performing such services within Louisiana bears to total salaries and wages for personnel performing such services both within and without Louisiana; and

(2) The ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

(f) Rents and royalties from immovable or corporeal movable property

Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental

agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

(g) Interest on customers' notes and accounts

Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were received by the purchaser or services rendered. For purposes of this section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

(h) Other interest and dividends

Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

"Used in connection with the taxpayer's business" is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

"Commercial domicile" is in that state where management decisions are implemented which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of Board of Directors' meetings is not presumed to create commercial domicile at the location.

Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606B and the regulations issued thereunder.

(i) Royalties or similar revenue from the use of patents, trademarks, secret processes, and other similar intangible rights royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consid-

eration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

(j) Revenue from a parent or subsidiary corporation

Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606B and the regulations issued thereunder.

(k) All other revenues

All revenues which are not specifically described in R.S. 47:606A(1), items (a) through (j) of this section, shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

For purposes of this chapter, revenues from partnerships shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

[1] The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R. S. 47:606A(1) and subparts thereunder; and

[2] The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606A(2) and subparts thereunder.

For purposes of this chapter, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on.

(2) Property and assets

For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the secretary of Revenue and Taxation when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed

in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer.

Specific rules as contained in the governing statute prescribe the state to which any asset will be allocated. Those rules are as follows:

(a) Cash on hand

Cash on hand shall be allocated to the state in which the cash is physically located.

(b) Cash in banks and temporary investments

Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commercial domicile of the taxpayer is located.

(c) Trade accounts and trade notes receivable

Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

(d) Investments in and advances to a parent or subsidiary

Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606B and the regulations issued thereunder.

(e) Notes and accounts other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary

Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See Article 47:606A(1)(h) relative to "business situs" and "commercial domicile."

(f) Stocks and bonds other than temporary cash investments and investments in or advances to a parent or subsidiary corporation

Stocks and bonds other than temporary cash investments and investments in or advances to a parent or subsidiary corporation shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is located. See Article 47:606A(1)(h) relative to "business situs" and "commercial domicile."

(g) Immovable and corporeal movable property

Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not

limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

[1] The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles.

[2] The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles.

[3] The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles.

[4] The value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles.

[5] The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles.

[6] The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles.

[7] The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles.

[8] The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles.

[9] The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

[10] The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

[11] The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

[12] The value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

[a] In the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

[b] In the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

[c] In the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

[13] The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of nav-

igable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

[14] The value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of 200 pounds.

[15] The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

[16] All other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state.

In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the secretary of Revenue and Taxation may require the allocation of the value of the property on the basis of any method deemed reasonable.

(h) All other assets

All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

[1] The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R. S. 47:606A(1) and subparts thereunder; and

[2] The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606A(2) and subparts thereunder. See Article 47:606A(1)(k) for the definition of a partnership.

B. Allocation of Intercompany Items

Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.

A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations for purposes of application of this subsection, whether such control is documented by formal directives from the owner of such stock or not.

Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

(1) The filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the minimum tax on preferential items of income; or

(2) The requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

(3) The requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

(4) The participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

(5) The filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

(6) The presence on its Board of Directors of a majority of members who are directors, officers, or employees of the corporation owning more than 50 percent of its stock.

In the case of a corporation which owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

For purposes of this subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606A and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property

The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

Article 47:607. Railroad corporations. Blank.

Article 47:608. Exemptions

A. General

Corporations organized for the purposes described in subparts 1 through 15 of this article are fully exempt from the payment of Louisiana Corporation Franchise Tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income, and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax, federal, state, or local, or whether or not they may be specifically exempted from all taxes under the laws of the state in which they were organized, chartered, or domiciled.

A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in Article 47:608B(1)(b) and (c) as limited by Article 47:608B(1)(i) and (ii), must file a verified application for exemption with the secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the secretary may deem necessary from any particular applicant, the following:

- (1) character of the organization,
- (2) purpose for which organized,
- (3) its actual activities,
- (4) ownership of stock in the corporation,
- (5) the source of its income,
- (6) the disposition of its income,
- (7) whether or not any of its income is credited to surplus, and if so, the intended future use of the retained amounts,
- (8) whether any of its income may inure to the benefit of any shareholder or individual,
- (9) a copy of the charter or articles of incorporation,
- (10) bylaws of the organization,
- (11) the latest statement of the assets, liabilities, receipts, and disbursements,
- (12) any other facts relating to its operations which affect its right to exemption from the tax, and
- (13) a copy of the ruling or determination letter issued by the federal Internal Revenue Service.

The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of the section for which the exemption is sought.

Once the secretary has issued a ruling or determination letter than an organization, except those prescribed in Article 47:608B(1)(b) and (c) as limited by Article 47:608B(1)(i) and (ii), meets the exemption requirements, there is no mandatory provision that it make a return or any further showing that it meets the specified requirements unless it changes the character of its organization or operations. The secretary reserves the right to review any exemption granted, and may require the filing of whatever information is deemed necessary to permit proper evaluation of the exempt status.

No exemption will be granted to a corporation, other than those described in Article 47:608B(1)(b) and (c) as limited by Article 47:608B(1)(i) and (ii), organized and operated for the purpose of carrying on a trade or business for profit, even though its entire income may be contributed or distributed to another organization or organizations which are themselves exempt from the tax.

An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

B. Exempt Corporations

- (1) Labor, agricultural, or horticultural organizations

Labor, agricultural, or horticultural organizations which are exempt under this provision are those corporations which have:

- (a) no net income inuring to the benefit of any stockholder or member and are educational or instructive in character, and have as their objects the betterment of conditions of those engaged in

such pursuits, or improvements of the grade of their respective occupations; or

(b) at least 75 percent of the beneficial ownership held by or for the benefit of members, or the spouses of members of a family, and at least 80 percent of total gross income is from the production, harvesting, and preparation for market of products produced by the corporation; or

(c) at least 80 percent of total gross income of the corporation derived from the production, harvesting, and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed \$500,000 for the previous year.

For purposes of this subsection, "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, excluding minerals, or raising livestock, poultry, fish, or crawfish.

Thus, the following types of organizations (but not limited thereto) which meet the requirements of (a) above, will be deemed to be exempt from the tax:

[1] an organization engaged in the promotion of artificial insemination of livestock;

[2] a nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce;

[3] a nonprofit organization of persons engaged in raising fish (or crawfish) as a cashcrop on farms that were formed to encourage better and more economical methods of fish farming and to promote the interest of its members; or

[4] parish fairs and like organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

Corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in Article 47:608(B)(1)(b) and (c), subject to the following limitations:

(i) Any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products or horticultural products produced by it and that has at least 80 percent of its gross income from such pursuits is exempt from corporation franchise tax, but only if 75 percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this paragraph, a single family shall consist of brothers, sisters, spouses, ancestors, and lineal descendants, including those legally adopted.

(ii) Any corporation engaged in the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from corporation franchise tax, but only if:

a. at least 80 percent of its income is from such activity, and

b. total gross income of the corporation for the previous year did not exceed \$500,000.

(2) Mutual savings banks, national banking corporations and banking corporations organized under the laws of Louisiana, and building and loan associations

(a) Mutual savings banks, national banking corporations, and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

(b) Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt.

Banking corporations, other than those described in (a) and (b) above, organized under the laws of a state other than the state of Louisiana are not exempt from the tax.

(3) Fraternal beneficiary societies, orders, or associations operating under the lodge system

Fraternal beneficiary societies, orders, or associations are exempt from tax only if operated under the "lodge system" or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters, or the like. In order to be exempt, it is necessary that the organization have an established system for the payment of life, sick, accident, or other benefits to its members or their dependents.

(4) Cemetery companies

Cemetery companies are exempt from the corporation franchise tax if:

(a) they are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale, or they are not operated for profit;

(b) they are not permitted by their charter to engage in any business not necessarily incident to burial purposes; and

(c) no part of their net earnings inures to the benefit of any private shareholder or individual.

For purposes of this subsection, a nonprofit corporation engaged in the operation of a crematory, which otherwise meets the exemption qualifications set forth herein, will be deemed to be an exempt cemetery company.

Such companies may issue preferred stock entitling the holders to dividends at a fixed rate not exceeding eight percent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefor are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

(5) Community chests, funds, or foundations

(a) Organizational and operational tests

[1] In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

[2] The term "exempt purpose or purposes" as used in this section means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in paragraph (d) of this section.

(b) Organizational test

[1] In general

(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as "its articles") as defined in subparagraph [2] of this paragraph:

a. limit the purposes of such organization to one or more exempt purposes; and

b. do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes," within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles

stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes," such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph [5] of this paragraph for rules relating to construction of terms).

(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles "to engage in manufacturing business," or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes" within the meaning of R.S. 47:608(5).

(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(v) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

[2] Articles of organization

For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

[3] Authorization of legislative or political activities

An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

- (i) to devote more than an insubstantial part of its activities attempting to influence legislation by propaganda,
- (ii) to directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office, or
- (iii) to have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c) (3) of this section.

The terms used in subdivisions (i), (ii), and (iii) of this subparagraph shall have the meanings provided in paragraph (c)[3] of this section.

[4] Distribution of assets on dissolution

An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for

a public purpose, or would be distributed by a court to another organization to be used in such manner as the court decides will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles of incorporation or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

[5] Construction of terms

The law of the state in which an organization is created shall be controlling in interpreting the terms of its articles. However, any organization which contends that such terms have, under state law, a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state Attorney General, or other evidence of applicable state law.

[6] Applicability of organization test

A determination by the Secretary that an organization as described in R.S. 47:608(5) and exempt under R.S. 47:608(5) will not be granted the exemption unless such organization meets the organizational test prescribed by this paragraph. If an organization has been determined by the Secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this paragraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption, is not required to amend its articles of organization to conform to the rules of this paragraph.

(c) Operational test

[1] Primary activities

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

[2] Distribution of earnings

An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

[3] "Action" organizations

(i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

- a. contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or
- b. advocates the adoption or rejection of legislation. The term "legislation," as used in this subdivision, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Ac-

tivities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(iv) An organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(v) An "action" organization, described in subdivision (ii) or (iv) of this subparagraph, though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

(d) Exempt purposes

[1] In general

(i) An organization may be exempt as an organization described in R.S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes:

(a) religious,

(b) charitable,

(c) scientific,

(d) literary,

(e) educational, or

(f) prevention of cruelty to children or animals.

(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.

(iii) If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational," an exemption will not be denied if, in fact, it is "charitable."

[2] Charitable defined

The term "charitable" as used in R.S. 47:608(5) in its generally accepted legal sense is not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes; or

(i) to lessen neighborhood tension,

(ii) to eliminate prejudice and discrimination,

(iii) to defend human and civil rights secured by law, or
(iv) to combat community deterioration and juvenile delinquency.

The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinions or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under R.S. 47:608(5) so long as it is not an "action" organization of any one of the types described in paragraph (c) [3] of this section.

[3] Educational defined

(i) In general

The term "educational," as used in R.S. 47:608(5), relates to:

a. the instruction or training of the individual for the purpose of improving or developing his capabilities, or

b. the instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) Examples of educational organizations

The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example (3). An organization which presents a course of instruction by means of correspondence or through the use of television or radio.

Example (4). Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

[4] Scientific defined

(i) Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subparagraph [1] (ii) of this paragraph). Therefore, the term "scientific," as used in R.S. 47:608(5), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific," and the nature of particular research depends upon the purpose which it serves. For research to be "scientific" within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on such research being classified as "fundamental" or "basic," as contrasted with "applied" or "practical."

(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial industrial op-

erations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

(iii) Scientific research will be regarded as carried on in the public interest:

a. if the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis;

b. if such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political subdivision thereof; or

c. if such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

1. scientific research carried on for the purpose of aiding in the scientific education of college or university students;

2. scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

3. scientific research carried on for the purpose of discovering a cure for a disease; or

4. scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision c. will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

(iv) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a "scientific" organization, if:

a. such organization will perform research only for persons who are (directly or indirectly) its creators and who are not described in R.S. 47:608(5), or

b. such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be used to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of subdivision (iii) of this subparagraph) if it is carried on for a person described in subdivision (iii)b of this subparagraph or if it is scientific research described in subdivision (iii)c of this subparagraph.

(v) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such

research (see paragraph (e) of this section, relating to organizations carrying on a trade or business).

(e) Organizations carrying on trade or business

[1] In general

In general, an organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5), even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

(6) Business leagues, chambers of commerce, real estate boards, and boards of trade

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not a business league since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from tax.

(7) Civic leagues and local associations of employees

(a) Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting in some manner the common good and general welfare of people in the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterment and social improvements. A "social welfare" organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" set forth in paragraph (d)[2] of Article 47:608B(5) and is not an "action" organization as set forth in paragraph (c)[3] thereof.

The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this section even though it is an "action" organization described in Article

47:608B(5)(c)[3](ii) or (iv) if it otherwise qualifies under this section.

(b) Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

[1] membership of such an association be limited to the employees of a designated person or persons in a particular municipality;

[2] the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes;

[3] its activities are confined to a particular community, place, or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character; and

[4] no substantial part of the activities of the association is carrying on propaganda or otherwise attempting to influence legislation.

(8) Social clubs

The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive the club of its exemption.

(9) Local benevolent life insurance associations, mutual ditch or irrigation companies, mutual cooperative or telephone companies, and like organizations

In order to be exempt under the provision of R.S. 47:608(9), an organization of the type specified must receive at least 85 percent of its income from amounts collected from members for the sole purpose of meeting losses and expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of insurance and maintains investments from which more than 15 percent of its income is derived, it is not entitled to an exemption. Although it may make advance assessments for the sole purpose of meeting future losses and expenses, an organization may be entitled to the exemption provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

The phrase "of a purely local character" applies only to benevolent life insurance associations and organizations exempt on the ground that they are organizations similar to a benevolent life insurance association, and not to the other organizations specified in R.S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

(10) Insurance corporations

Insurance companies which pay or which are required to pay a premium tax under the provisions of Title 22 of the Louisi-

ana Revised Statutes of 1950 are exempt from the corporation franchise tax.

(11) Farmers' and fruitgrowers' cooperatives

Farmers' cooperative marketing associations engaged in the marketing of farm products for farmers, fruitgrowers, livestock growers, dairymen, etc. and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

An association which has capital stock will not for such reason be denied exemption (i) if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation on the value of the consideration for which the stock was issued, and (ii) if substantially all of such stock (with the exception noted below) is owned by producers who market their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association—because of a constitutional restriction or prohibition or other reason beyond the control of the association—is unable to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who

shares in the profits of a farmers' cooperative marketing association and is entitled to participate in the management of the association must be regarded as a member of such association.

Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruitgrowers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term "supplies and equipment" includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this paragraph. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed 15 percent of the value of all its purchases.

In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

To be exempt, an association must not only be organized but actually operated in the manner of and for the purposes specified in R.S. 47:608(11).

Cooperative organizations engaged in activities dissimilar from those of farmers, fruitgrowers, and the like, are not exempt.

(12) Corporations organized to finance crop operations

A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R.S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this paragraph.

(13) Corporations organized for the exclusive purpose of holding title to property

Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

(a) the entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for:

- [1] religious purposes,
- [2] charitable purposes,
- [3] scientific purposes,
- [4] literary purposes, or
- [5] educational purposes, and

(b) no part of the net earnings inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under (a), above, whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

Corporations whose articles of incorporation or bylaws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property, and turning over the entire amount of its income, after expenses, to the specified types of organizations are not exempt.

(14) Voluntary employees' beneficiary associations

(a) In general, the exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

- [1] the organization is an association of employees;
- [2] membership of the employees in the association is voluntary;

[3] the organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents;

[4] no part of the net earnings of the organization inures, other than by payment of the benefits described in subparagraph [3] above, to the benefit of any private shareholder or individual; and

[5] at least 85 percent of the income of the organization consists of amounts collected from members for the sole purpose of such payments of benefits and meeting expenses.

(b) Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14). For purposes of paragraph (a) of this section:

[1] Association of employees

(i) In general, an organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, one industry, or the members of one labor union. Although membership in such an association need not be offered to all the employees of a common working unit, membership must be offered to all of the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as a requirement that members need a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this subdivision. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of subdivision (ii) of this subparagraph) or who are not members of the common working unit, provided that these individuals constitute no more than ten percent of the total membership of the association.

(ii) Meaning of "employee"

a. The term "employee" has reference to the legal and bona fide relationship of employer and employee.

b. The term "employee" also includes:

1. An individual who would otherwise qualify for membership under (a) of this subdivision, but for the fact that he is retired or on leave of absence;

2. An individual who would otherwise qualify under (a) of this subdivision, but subsequent to the time he qualifies for membership he becomes temporarily unemployed. The term "temporary unemployment" means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under (a)

of this subdivision if, during a period of temporary unemployment, he performs services as an independent contractor or for another employer; or

3. An individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the usual common law rules applicable in determining the employer-employee relationship.

[2] Explanation of voluntary association

An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective-bargaining agreement which validly requires membership in the association.

[3] Life, sick, accident, or other benefits

In general, a voluntary employees' beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or noncash benefits.

(i) Life benefits

The term "life benefits" includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. "Life benefits" may be payable to any designated beneficiary of a member.

(ii) Sick and accident benefits

A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of members or their dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he expends because of illness or injury, or for premiums which he pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form, such as benefits in the nature of clinical care, services by visiting nurses, and transportation furnished for medical care.

(iii) Other benefits

The term "other benefits" includes only benefits furnished to members or their dependents which are similar to life, sick, and accident benefits. A benefit is similar to a life, sick, or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered "other benefits" since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are "other benefits" since they protect the employee in the event of interruption of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not "other benefits" since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term "other benefits" does not include the furnishing of automobile or fire insurance, or the furnishing of scholarships to the members' dependents.

[4] Inurement to the benefit of any private shareholder or individual

No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual other than through the payment of benefits described in subparagraph [3] of this paragraph. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of subparagraph [3] of this paragraph even though the benefit is of the type described in subparagraph [3]. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement if such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed received unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

[5] Meaning of the term "income"

The requirement of R.S. 47:608(14) that 85 percent of the income of a voluntary employees' beneficiary association consist of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in subparagraph [3] of this paragraph (including meeting the expenses of the association) assures that not more than a limited amount (15 percent) of an association's income is from sources such as investments, selling goods, and performing services, which are foreign to what must be the principal source of the association's income, i.e., the employees. Therefore, the term "income" as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax-exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term "income" does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as dues, qualifying the member to receive an allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such a member. However, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contrib-

uted to the association by the employer of the members are not considered gifts or donations.

[6] Record-keeping requirements

In addition to such other records which may be required, every organization described in R.S. 47:608(4) must maintain records indicating the amount of benefits paid by such organization to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amount of each member's contribution.

A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

(15) Teachers' retirement fund associations

Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

(a) they are of a purely local character whose activities are confined to a particular community, place, or district, irrespective of political subdivisions, but if the activities are limited only by the borders of a state, it cannot be considered to be purely local in character;

(b) its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members, and income from investments; and

(c) no part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

Article 47:609. Accrual, payment, and reporting of tax

The corporation franchise tax imposed by this Chapter accrues on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the Secretary of Revenue and Taxation on or before the fifteenth day of the fourth month following the month in which the tax accrues; in the case of a calendar year taxpayer, the tax accrues on January 1 and is payable to the Secretary on or before May 15. For purposes of this paragraph, "fiscal or calendar year" shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the Secretary of Revenue and Taxation, which shall be signed by a duly authorized official of the corporation.

Whenever the Secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already accrued until the end of the new accounting period shall be determined by multiplying the ratio that the number of such months bears to twelve, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

In the case of a mere change in name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

For provisions relating to newly taxable corporations, see R.S. 47:611.

For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

In the case of mergers which have an effective time and date of twelve o'clock midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the assets of the merged corporation with its assets in computing the ratios of property and assets for the purpose of determining the amount of tax due for the year following the date of the merger.

If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

Article 47:611. Newly taxable corporations

Every corporation shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for that accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period's closing.

In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

Article 47:612. Extension of time for filing return and paying the tax

When such application for an extension of time within which to file the report required by this Chapter has been filed, the Secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax return with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the Secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the Secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

Article 47:613. Fiscal year; accounting period

"Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of a taxpayer that, in keeping its books, regularly uses a 52- to 53-week period permitted under R.S. 47:91F, the Secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provisions of this Chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, such 52- or 53-week accounting period shall be treated:

- (1) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period, or
- (2) as ending with the last day of the calendar month end-

ing nearest to the last day of such taxable period, as the case may be.

However, no fiscal year will be recognized unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

Once an accounting period has been established, no change from that period shall be made without the approval of the Secretary of Revenue and Taxation.

Article 47:614. Cost of collection. Blank.

Article 47:615. Disposition of collections. Blank.

Article 47:616. Franchise taxes by local governments prohibited. Blank.

Article 47:617. Refunds and credits

In the case of an overpayment of corporation franchise tax for any accounting period, the amount of the overpayment may be either refunded to the taxpayer or credited to the taxpayer's account in satisfaction of existing or future liabilities. Any amount actually refunded shall bear interest at the rate of 15 percent per annum computed from 90 days after the filing date of the final return upon which the overpayment was made, or from 90 days after the due date of the return, whichever is the later, to the date on which the refund was made.

Amounts of overpayments which are credited to taxpayer's accounts shall bear no interest.

Shirley McNamara
Secretary

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission Board of Seafood Promotion and Marketing

Bylaws

ARTICLE I

Board Office

1. The specific location of the principal office of the Louisiana Seafood Promotion and Marketing Board as a part of the office of the Secretary of the Department of Wildlife and Fisheries shall be in Baton Rouge, Louisiana as established by Title 56 of the Louisiana Revised Statutes.

2. The board, at its discretion, may from time to time, hold meetings at any other location within the State of Louisiana after proper notice.

ARTICLE II

Regular Meetings

1. The regular meetings of the board shall be as set at any regular or special meeting by resolution adopted by a majority of the members present in person.

Special meetings

1. Special meetings of the board may be called by the chairman, at his discretion, and shall be called by the chairman upon written request of any six members. The notice of each special meeting shall state the purpose for which it is called, and only those matters shall be considered that have been included in the call, unless a quorum of the board agrees to take up other matters.

2. The chairman shall cause written notices of the time and place of special meetings to be mailed, or hand delivered, to each member, at the addresses as they appear in the records of the board, at least three days before the day on which the meeting is to be held, or shall communicate the notice of such meetings to the members by telegram or telephone not later than 48 hours before the meeting is to be held.

ARTICLE III

Quorum-Minutes

1. The attendance of six members at any meeting shall constitute a quorum for the transaction of all business.

2. A tentative draft of the minutes of each meeting shall be submitted to each board member within 15 days after such meeting.

3. Final minutes will be available to board members not later than the next regular meeting.

ARTICLE IV

Election of Officers and Appointments

1. Officers shall be elected annually at the regular meeting of the board in December, at which the members shall elect, from among their own number, a chairman, a vice-chairman, and a secretary-treasurer to hold office for one year, or until their successors are elected. The board shall not be bound by any particular order of succession in the nomination of member for election to office.

2. In case a vacancy shall occur among the elected officers, due to death, resignation, or other cause, an election shall be held, at a regular or special meeting, to fill the vacant office for the unexpired portion of the term.

3. Within the terms of their respective appointments, any member elected to one of the above offices who shall have served in such office for one term, shall be eligible to succeed himself.

ARTICLE V

Duties of the Chairman

The powers and duties of the chairman shall be:

1. To preside as chairman at all meetings of the board, with the right to vote on all questions.

2. To see that the laws of the state, pertaining to the purposes and functions of the board, the Ordinances of the board and its policies are faithfully observed and executed.

3. To call special meetings of the board, at his discretion, or upon the written request of six members.

4. To establish committees and appoint members thereof, at his discretion, as he deems necessary to carry out the business of the board.

5. To serve as an ex-officio member of all committees.

6. To perform such other duties as are usually incumbent upon the chairman of the Seafood Promotion and Marketing Board.

ARTICLE VI

Duties of the Vice-Chairman

Whenever the chairman is absent from any regularly scheduled meeting, his duties shall be performed by the vice-chairman. Whenever the chairman is absent from a special meeting called by him, upon his own initiative, or upon written request of six board members, his duties shall be performed by the vice-chairman. The vice-chairman may not assume the duties of the chairman for the purpose of calling a special meeting when the chairman is temporarily absent from the state, or when the chairman is temporarily incapacitated through illness, or otherwise, unless the chairman or the other five members, direct the vice-chairman to assume the office of chairman for the purpose of calling such special meeting.

Whenever the chairman's absence from the state, or his incapacity due to illness, prevents him from handling routine, but necessary board business, at times other than at board meetings, such business shall be handled by the vice-chairman.

ARTICLE VII

Duties of Secretary-Treasurer

To serve as Chairman of Annual Report Committee.

To perform such other duties that are usually incumbent on

the secretary-treasurer of the Seafood Promotion and Marketing Board.

ARTICLE VIII

Board Committees

The following named committees shall be permanent standing committee. All members shall be appointed by the chairman and shall serve at his pleasure. Additional committees may be added by a majority vote of the board members at a regular or special meeting.

Standing Committees:

- Funding
- Brochures
- Annual Report
- Research and Review
- Poster
- Public Hearing

ARTICLE IX

Order of Business

The secretary of the board shall prepare and submit to the board an agenda covering the items of business to be considered and acted upon at each meeting of the board. The board may consider such matters as may properly be brought before it. The order of business may be altered by the board at its discretion.

ARTICLE X

Rules of Order

Robert's Rules of Order shall be the parliamentary authority for all matters of procedures of this board not otherwise covered in these bylaws.

ARTICLE XI

Amendment of Bylaws

These bylaws may be altered or amended at any regular meeting of the board by a majority vote of the board members present at the meeting. However, no such alteration or amendment shall be considered unless (a) notice of the intention to alter or amend the bylaws shall have been given in writing at a previous meeting of the board, and (b) a draft of the proposed alteration or amendment shall have been sent to each member of the board at least 48 hours in advance of the meeting at which the action of such alteration or amendment is to be taken.

ARTICLE XII

The election of the chairman, vice-chairman and secretary-treasurer will be held at the December meeting. The new officers will then take office at the next regularly scheduled meeting. Officers may succeed themselves.

ARTICLE XIII

Any board member missing three consecutive meetings without a valid excuse, will be disqualified to serve. The board at a regular meeting shall determine if a member's absences are excusable, and if not, the member shall be disqualified as a member of the board by a majority vote of the members present.

J. Burton Angelle
Secretary

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The following resolution was adopted by the Louisiana Wildlife and Fisheries Commission at its regular meeting held in Baton Rouge, Louisiana, January 16, 1985.

WHEREAS, the existence of high populations of channel catfish in certain areas of Southeastern Louisiana is well documented, and

WHEREAS, fish population data from these areas show that

the vast majority of channel catfish are less than 11" total length, and

WHEREAS, biological data indicate that channel catfish in these areas are stunted, relatively short for their age, and frequently found to be sexually mature well below 11" total length, and

WHEREAS, Commercial fishermen in these areas have developed markets for "short" catfish and whose catch of channel catfish is largely dependent on channel catfish that are shorter than 11" minimum total length, and

WHEREAS, the minimum length of 11" has been removed on channel catfish in these areas since 1981 and no detrimental effects have been observed, and

WHEREAS, Act 273 of the 1984 Louisiana Legislature authorizes the Louisiana Wildlife and Fisheries Commission to suspend or reduce by resolution the legal size limit on channel catfish in those areas of the state where biological data indicates that such a suspension or reduction in the size limit would not be detrimental to the resource.

THEREFORE BE IT RESOLVED, the Louisiana Wildlife and Fisheries Commission hereby suspends, for a five-year period from January 1, 1985 to January 1, 1990, the minimum size length limit on channel catfish in that portion of Southeastern Louisiana, containing Lac des Allemands, Lake Salvador, Lake Cataouatche, Lake Maurepas, the western portion of Lake Pontchartrain and associated bayous and streams, excluding the Mississippi River and Bayou LaFourche, herein described as: west and south of the west descending bank of the Mississippi River from the Gulf of Mexico to the Huey P. Long bridge; north and west of Highway 90 from Huey P. Long bridge to Causeway Boulevard; west of the Lake Pontchartrain Causeway from U.S. Highway 90 to Louisiana Highway 22; south and east of Louisiana Highway 22 to U.S. Highway 61 at Sorrento; north of U.S. 61 from Sorrento to Louisiana Highway 20; east of Louisiana Highway 20 to the east descending bank of Bayou LaFourche at Thibodaux; east of the east descending bank of Bayou LaFourche to Louisiana Highway 1 at Leeville; east and north of Louisiana Highway 1 from Leeville, to the Gulf of Mexico; north of the Gulf of Mexico from Grand Isle to the west descending bank of the Mississippi River.

J. Burton Angelle
Secretary

Notices of Intent

NOTICE OF INTENT

Department of Agriculture Office of Agricultural and Environmental Sciences

Louisiana Apiary Law

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and R.S. 3:2303, notice is hereby given that the commissioner of agriculture intends to adopt the following rules and regulations setting forth the requirements for apiaries and other persons interested in the apiary industry in this state. These rules will provide for the registration of honeybees

and beekeeping equipment, the inspection of same prior to sale or movement, and prevent the introduction and spread of all contagious and infectious diseases of bees and all other pests of bees which are considered detrimental to the apiary industry in the State of Louisiana.

Title 7
AGRICULTURE AND ANIMALS
Part XXI. Diseases of Animals
Chapter 119. Louisiana Apiary Law

§11901. Definitions

Agent or specialist means an authorized representative of the state entomologist and/or the Louisiana Department of Agriculture.

Apiary or yard means the assembly of one or more colonies of bees at a single location.

Beekeeper means an individual, firm, or corporation who owns or has charge of one or more colonies of bees.

Certificate of Inspection means a document issued after inspection for the sale or movement of bees and/or regulated articles.

Colony, colony of bees, or hives means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and at times many drones; including brood, combs, honey, and the receptacles inhabited by the bees.

Comb package means a package of bees shipped or moved on a comb containing honey and/or brood, with or without a queen.

Combless package means a package of bees shipped or moved without comb, with or without a queen.

Commissioner means the commissioner of agriculture.

Department means the Louisiana Department of Agriculture.

Disease or Pest means any infectious condition of bees which is detrimental to the honey bee industry, such as American Foulbrood, European Foulbrood, Nosema, Acarine Disease, Varroa Mite, and so forth.

Frame means a wooden or plastic case for holding honeycomb.

Nucleus means bees, brood, combs, and honey in or inhabiting a small hive or portion of a standard hive or other dwelling place.

Permit means a document issued for registration of colonies of bees. The following are classes of permits which will be issued:

1. Class A permits are for resident beekeepers.
2. Class B permits are for non-resident beekeepers.

Person means an individual, firm, corporation, or other legal entity.

Quarantined area means any area of the state designated by the state entomologist as having regulated articles which are or may be infested by a disease or pest, which presents a danger to other colonies of bees.

Queen means a fully developed female bee, capable of being fertilized.

Regulated articles means colonies of bees, nuclei, comb or combless packages of bees, queens, used or second-hand beekeeping fixtures or equipment, and anything that has been used in operating an apiary.

State Entomologist means the entomologist of the Louisiana Department of Agriculture.

Super means a standard frame hive body (all depths).

§11903. Annual Registration

A. On or before October 1 of each year, or prior to bringing any honeybees or beekeeping equipment into the state, every beekeeper shall register with the commissioner every colony or

apiary in his possession or under his control, on a form to be furnished by the commissioner.

B. Beekeepers will be designated as a resident (Class A) or non-resident (Class B) permit holders.

C. A fee shall accompany the application for registration. The amount of the fee will be based upon the number of colonies owned or under the control of the applicant as follows:

Number of Colonies	Class A Permit	Class B Permit
1 to 25	\$ 2	\$ 8
26 to 100	5	20
101 to 300	10	40
301 to 500	15	60

D. Permits issued for registration shall not allow the holder to sell bees or regulated articles as is provided for with a certificate of inspection.

E. Failure to register colonies of bees in the State of Louisiana is a violation of this part.

§11905. Authority of Agents or Specialists to Enter Premises

A. Agents or specialists of the department are authorized and shall be allowed entrance onto any property or premises in the State of Louisiana for the purpose of inspecting any honeybees or beekeeping equipment when there is probable cause to conclude that the bees or beekeeping equipment is infected with any contagious or infectious diseases or other pests or to ascertain whether such bees may have been or are being transported in violation of the apiary law.

B. No person shall interfere with agents or specialists who are making such inspections on properties or premises.

§11907. Applications for Inspection

A. Beekeepers who desire certificates of inspection authorizing the sale or movement of bees and/or regulated articles shall make application for inspection by February 1 of each year on a form that will be furnished by the department and shall give the location of each and every apiary or yard owned or controlled or from which bees and/or regulated articles are to be moved or shipped by the applicant.

B. A map showing the location of each and every apiary or yard must accompany the application for inspection. Each apiarist shall notify the department if the location of an apiary or yard changes after the application has been submitted.

§11909. Issuance and Use of Certificates of Inspection

A. Certificates of inspection shall not be issued by the department except to cover the shipment or movement of bees and/or regulated articles from a yard or yards that are not under quarantine and have been inspected at least once each year (prior to the shipment or movement of bees therefrom) and found free of American Foulbrood infection, and other diseases found have been effectively controlled.

B. Certificates of inspection shall not be issued to cover the shipment or movement of bees and/or regulated articles from an area that has been quarantined on account of American Foulbrood infection until it has been determined by state entomologist that the American Foulbrood infestation has been destroyed. If any apiary or yard of bees has four percent or less American Foulbrood infestation, as noted below, the infected colony(s) shall be burned immediately and no quarantine imposed; however, a second inspection shall be made within 21-30 days to insure control of the disease. Where a second inspection is required, colonies shall not be moved except by special permission of the state entomologist.

Colonies in apiary or yard	AFB Infected Colony
1-25	1
26-50	2
51-75	3
75 or more	4

If over four percent of the colonies, but not more than four colonies, in an apiary or yard are found to be infested with American Foulbrood, the colonies shall be burned immediately and the apiary or yard shall be placed under a 21 to 30 day quarantine, during such time no drugs will be allowed to be fed to the bees. If after 21 to 30 days, an inspection shows that the apiary or yard is found free from American Foulbrood infestation, the quarantine shall be lifted. However, if American Foulbrood is again found, an additional 21 to 30 days quarantine period shall be enforced and infested colonies shall be burned immediately. An additional 60 day quarantine shall be enforced on any quarantined apiary or yard found to be treated with drugs to mask the infection.

C. Certificates of inspection shall be issued to cover the shipment or movement of bees and/or regulated articles into other states only with the approval of the proper officials of the state of destination.

D. Certificates of inspection issued by the department shall be used by beekeepers only to cover the shipment or movement of bees and/or regulated articles from a yard or yards designated by the state entomologist or his agents.

§11911. Movement of Bees and/or Regulated Articles into Louisiana and the Power to Prevent the Introduction of Contagious and/or Infectious Diseases or Pests

A. Queens and/or combless packages of bees purchased by mail orders may be shipped into Louisiana only when accompanied by certificate of inspection signed by the state entomologist, state apiary inspector, or similar official of the state or country of such bees' origins. The certificate shall certify to the apparent freedom of the bees from contagious or infectious diseases and/or pests and shall be based upon an actual inspection of the bees during the current inspection season.

B. Honeybees and used or second-hand beekeeping equipment may be shipped into the state by a person possessing a current Class A permit, but only when accompanied by certificate of inspection signed by the state entomologist, state apiary inspector, or similar official of the state or country of such bees' origin. The certificate shall certify to the apparent freedom of the bees from contagious or infectious diseases and pests and shall be based upon an actual inspection of the bees to be shipped or moved within a period of 60 days preceding the date of shipment.

C. Combless honeybees may be shipped into the state by a person possessing a current Class B permit, but only when accompanied by a certificate of inspection signed by the state entomologist, state apiary inspector, or similar official of the state or country of such bees' origin. The certificate shall certify to the apparent freedom of the bees from contagious or infectious diseases and shall be based upon actual inspection of the bees to be shipped or moved within a period of 60 days preceding the date of shipment. The shipment of other regulated articles into Louisiana by Class B permit holders is prohibited.

D. When honeybees are to be shipped or moved into the state from other states or countries where no official state apiary inspector or state entomologist is available, the commissioner may permit the shipping into Louisiana of such bees upon presentation of suitable evidence showing the bees to be free from disease.

E. The commissioner may inspect any honeybees or beekeeping equipment being shipped into this state, even if the honeybees or beekeeping equipment are accompanied by a certificate of inspection issued by another state. If an inspection of honey-

bees or beekeeping equipment accompanied by a certificate of another state reveals the presence of contagious or infectious disease, the commissioner may declare a moratorium on this state's recognition of any certificate of inspection issued by that state until the commissioner determines that the standards of inspection of that state are adequate to ensure the health and safety of Louisiana honeybees at least equal to the standards established by this state.

F. If the state entomologist, or his agents, or specialists find any honeybees or regulated articles infected with or exposed to contagious or infectious diseases, he may require the destruction, treatment, or disinfection of such infected or exposed bees or beekeeping equipment.

G. If the state entomologist, or his agents or specialists find that any honeybees or regulated articles have been brought into the state in violation of this part, he may require the removal of the honeybees or beekeeping equipment from the state.

H. Except as otherwise permitted in this Section, the movement or shipment into this state of colonies of bees, nuclei, comb package of bees, or used or second-hand beekeeping equipment is prohibited.

I. All hives shall have removable tops and frames allowing inspection at all depths.

§11913. Requirements Covering the Movement into Louisiana of Supers and Frames Used in Shipping Honey to Points In or Out of the State

Under special permit issued by the state entomologist, Class A permit holders of Louisiana may ship honey supers filled with frames and honey to points outside the state and/or move or ship the same back into Louisiana provided: (A) each super bears a brand or label containing the name and address of the shipper; (B) all shipments are free of bees and are transported under bee proof enclosures; (C) upon receipt of such supers, frames and/or honey into the state, the state entomologist shall be advised of same, indicating the number of supers and frames and name and address of co-signer. All such equipment shall be subject to inspection by agents of the department.

§11915. Authority to Establish Quarantine Area

A. The state entomologist has authority to designate any area of the state as a quarantine area when he determines that diseases and/or pests in that area constitutes a danger to other colonies of bees.

B. To establish a quarantine area, the state entomologist shall publish in the *Louisiana Register* a notice of quarantine which details a finding or findings of danger to the health and welfare of bee colonies, geographical area of quarantine, the date the quarantine is to begin, and the objective(s) of the quarantine.

C. The shipment or movement of regulated articles from any quarantine area of Louisiana is prohibited until such time that the quarantine has been lifted, or by special written permission from state entomologist.

D. The state entomologist shall have full authority to control, eradicate, or prevent the introduction, spread, and dissimulation of any and all contagious and infectious disease of bees and all other pest of bees.

E. The state entomologist may cancel or terminate a quarantine by publication of a notice in the *Louisiana Register*.

§11917. Eradication Measures

A. All colonies of bees infected with American Foulbrood shall be destroyed by burning the frames, bees, and combs in the presence of or by an agent or specialist of the department. Hive bodies and top and bottom boards saved from infected colonies shall be moved from the yard during the burning process or by a time prescribed by agents or specialists of the department and are to be scorched or properly treated to remove possible sources of

reinfestation before re-use. Failure to adhere to this requirement shall result in destruction of all infected equipment including hive bodies, top and bottom boards.

B. Nuclei exposed to American Foulbrood infection by the transfer of combs with brood or bees from an infected colony or yard shall be destroyed by burning.

C. Any apiary or yard suspected of being infected with American Foulbrood shall be reported to the department.

D. All colonies of bees found infected with European Foulbrood shall be requeened within 30 days after infection is found. European Foulbrood found in excess of four percent upon second inspection shall be quarantined until the disease is under control.

E. All other bee diseases and/or pests found that are considered detrimental to the honeybee industry shall be treated as prescribed by the state entomologist or his designee for the control of same.

§11919. Penalties and Adjudicatory Proceedings

A. Whenever the commissioner has any reason to believe that a violation of these regulations has occurred, an adjudicatory hearing will be held to make a determination with respect to the suspected violation.

B. Upon any directive of the commissioner, the state entomologist shall give written notice to the person suspected of the violation, such notice to comply with the requirements of the Administrative Procedure Act, at least five days prior to the date set for such adjudicatory hearing.

C. The commissioner shall designate a hearing officer to preside at all adjudicatory proceedings.

D. At any such adjudicatory hearing, the person suspected of a violation of these regulations shall be accorded all of the rights set forth in the Administrative Procedure Act.

E. Whenever the commissioner makes a determination from the proceedings of the adjudicatory hearing that any violation of R.S. 3:2301 et seq., or these regulations has occurred, the commissioner may impose a monetary fine.

F. The commissioner may impose a penalty of up to \$500 for each violation of R.S. 3:2301 et seq., or these regulations which is proven in any adjudicatory hearing.

G. Each separate day on which a violation occurs shall be considered a separate violation.

H. Any person may appeal any action taken by the commissioner to impose a monetary penalty by (1) applying for a rehearing under the procedures provided in the Administrative Procedure Act, or (2) applying for judicial review of the commissioner's determination, under either the Administrative Procedure Act or other applicable laws.

The Louisiana Department of Agriculture will conduct a public hearing on Wednesday, March 6, 1985, beginning at 10 a.m., in the conference room at 12055 Airline Highway, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views, or arguments orally or in writing, at the public hearing prior to final action being taken by the commissioner with regard to the adoption of rules and regulations. The Louisiana Department of Agriculture will accept comments from any interested person through Wednesday, March 20, 1985. All inquiries should be sent to Ervin Johnson, Louisiana Department of Agriculture, Box 44153, Capitol Station, Baton Rouge, LA 70804.

Bob Odom
Commissioner

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Regulation of Apiaries

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

The adoption of these regulations will produce no additional costs or savings to the state or local governmental units.

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

There will be no effect on the revenue collections of the state or local governmental units. All registration fees, inspection fees, and penalties are mandated by law.

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

There will be no additional costs or economic benefits which will directly affect persons or non-governmental units. All registration fees, inspection fees, and penalties were mandated and set by legislation.

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

These rules and regulations will have no effect on competition and employment.

Richard Allen
Assistant Commissioner

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Commerce Auctioneer Licensing Board

The Louisiana Auctioneers Licensing Board adopted the following rules and regulations at its regular meeting on December 13, 1984.

RULE 1

Description of Organization

The Louisiana Auctioneer Licensing Board (hereafter referred to as board) is created by virtue of Louisiana R.S. 37:3111; and is created as an agency of the state government in the Department of Commerce. No member of the board shall be held liable as an individual in any suit against the board. Statutes relating thereto are found in R.S. 37:3111, et seq., of the Louisiana Statutes.

Number

The board shall be composed of seven persons, consisting of the chairman and vice-chairman, and five of whom shall be auctioneers, one selected from each Public Service Commission district, and two of whom shall be consumers from the public-at-large, all appointed by the governor. Each appointee shall be a citizen of the United States of America and a resident of Louisiana and at least 30 years of age. The initial auctioneer members shall not be required to be licensed but shall obtain a license within a reasonable time after appointment; each subsequent member shall be a licensed auctioneer.

Election and Term of Office

The chairman and vice-chairman shall hold office as board members so long as they hold their respective positions as elective officers of the board. Each appointed member shall serve at the pleasure of the governor for a term concurrent to the term of office of the governor appointing him, except that each member shall serve until his successor has been appointed and begins serving. Each appointment by the governor shall be submitted to the Senate for confirmation. No appointee shall serve more than two consecutive terms. In the event of the death, resignation, or disability of a member of the board, the governor shall fill the vacancy by

appointing a qualified person for the remainder of the unexpired term.

Oath

Each member of the board shall receive a certificate of appointment from the governor, and before beginning his term of office, shall file with the secretary of state his written oath or affirmation for faithful discharge of his official duty.

Salaries

Members of the board may receive a per diem or compensation when actually attending a meeting of the board or any of its committees and for time spent on behalf of the board on official business. Additionally, members may be reimbursed for actual and necessary travel, incidental, and clerical expenses incurred in carrying out the provisions of this Chapter when and if funds are available from the board's funds.

RULE 2

General Course and Method of Operations

The board shall be domiciled in Baton Rouge, LA, but shall be authorized to meet elsewhere in the state.

Chairman and Vice-Chairman of the Board

The chairman, or in his absence, the vice-chairman or in the absence of both of them, the chairman chosen by the members present, shall preside at all meetings of the board. The chairman shall be the chief executive officer of the board, and subject to the direction and under the supervision of the board, shall have general charge of the business affairs and property of the board and control of its officers. The chairman shall preside at all meetings of the members, shall appoint members of all committees created by the by-laws or by resolution of the board. He shall be an ex-officio member of all standing committees and other committees created by the by-laws or by resolution of the board.

Meetings of the Board

The board shall meet quarterly at regular meetings each year. A special meeting may be held at such time and place as specified by the executive secretary on call of the chairman or four members. The executive secretary shall give written notice of all meetings to the members of the board and the interested public.

Special Meetings

Special meetings of the board may be called by the chairman or at the request of any four members. The persons authorized to call such a special meeting may fix any place within the State of Louisiana.

Notice of any special meeting shall be given by mail, posted at least five days prior to such a meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid.

Quorum of the Board

Four members of the board constitute a quorum for all purposes including the granting or issuance of licenses and the rule-making and adjudicative functions of the board.

Manner of Acting

The act of the majority of the board members present at a meeting at which a quorum is present shall be the act of the board.

RULE 3

Order of Business/Rules of Order

Board Meetings/Order of Business

The order of business at all meetings of board members shall be:

1. Call to order
2. Reading of the minutes of the previous meeting
3. Reports of members
4. Consideration of financial statements and reports
5. Consideration of unfinished business
6. Consideration of new and miscellaneous business
7. Adjournment

Rules of Order

Except as otherwise provided in the articles of incorporation or these by-laws, the latest edition of "Robert's Rules of Order" as revised from time to time, shall determine procedure in all meetings of the members and the board.

RULE 4

General Scope of Responsibilities

Duties

The business and affairs of the board shall be managed by its board members.

The board shall perform the following duties:

1. Examine each applicant desiring to be licensed as an auctioneer in the State of Louisiana.
2. Administer a written examination for licensing at least four times each year in the City of Baton Rouge.
3. Adopt rules and regulations to govern auctioneers in the State of Louisiana.
4. Issue, suspend, modify or revoke licenses to do business in the State of Louisiana.
5. Report to the attorney general of the State of Louisiana all persons violating the provisions of this Chapter.
6. Report annually, no later than March 1, to the governor, the secretary of the department and the legislature on its activities.
7. Adopt its official seal.
8. Furnish, upon request, a copy of Louisiana auction laws, and also an accurate list of those states having reciprocity with Louisiana.

Authorities

The board is authorized and shall do the following:

1. Adopt and enforce rules and regulations, by-laws, and rules of professional conduct as the board may deem necessary and proper to regulate auctions under its jurisdiction in the State of Louisiana, to provide for the efficient operation of the board, and otherwise to discharge its duties and powers under this Chapter.
2. Prescribe and adopt regulations, standards, procedures and policies governing the manner and conditions under which credit shall be given by the board for participation in a program of continuing education, as the board may consider necessary and appropriate to maintain the highest standards of proficiency as an auctioneer in the State of Louisiana.
3. Authorize any member of the board to make any affidavit necessary to the issuance of any injunction or other legal process authorized under this Chapter of rules and regulations of the board.
4. Authorize and issue subpoenas to require attendance and testimony and the production of documents for the purpose of enforcing the laws relative to auctions and securing evidence of violations thereof.
5. Maintain a current list of licensed auctioneers.
6. Select its officers annually.

The board is authorized and may do the following:

1. Appoint a qualified executive secretary.
2. Employ clerical assistance necessary to carry out the administrative work of the board.
3. Employ legal counsel to carry out the provisions of this Chapter, provided that the fees of such counsel and the costs of all proceedings, except criminal prosecutions, are paid by the board from its own funds.
4. Incur all necessary and proper expenses.

The chairman and executive secretary of the board, or in their absence, any other member of the board, may administer oaths in the taking of testimony upon any matter appertaining to the duties and powers of the board.

RULE 5

Official Seal

The official seal of the Louisiana Auctioneer Licensing Board shall be as follows:

The board shall have a seal which shall be in the form of a circle with the words "State of Louisiana" together with the words "Louisiana Auctioneers Licensing Board" inscribed thereon. Upon manufacture, said seal shall be impressed in the margin of these by-laws.

RULE 6

License for Auctioneer
Qualifications of Applicant

The board shall base determination of satisfactory minimum qualifications for licensing as follows:

1. Be of good moral character.
2. Be a citizen of the United States and a resident of the State of Louisiana.
3. Be at least 18 years of age.
4. Has completed one of the following:
 - a. Completed a series of studies at a school of auctioneering licensed or approved by the board;
 - b. Completed an apprenticeship of one year working with and under an auctioneer duly licensed in the State of Louisiana.

An owner or operator of an auction business for one year or more in any state of the United States may be appointed as a deputy or agent to a Louisiana licensed auctioneer prior to taking the auctioneer's test.

An applicant for licensing shall fill out and file with the board an application form provided by the board. The form shall require relevant information about the applicant's character, knowledge and experience in application of that knowledge. Among the data required on the application form, the applicant shall submit the following information:

1. Education background;
2. Previous occupational experience in the auction business;
3. Three references, including their business addresses, who attest to the applicant's reputation and adherence to ethical standards.

If, in the opinion of the board, the applicant provides inadequate information to allow the board to ascertain whether the applicant satisfies the qualifications for licensing, the applicant shall be required to provide additional information for purposes of the application or may be required to present himself for an interview for this purpose.

Licensing Procedure

Applications for license required to be obtained under provision of the board's enabling act shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the board and furnished to such applicants. The applications shall contain such information as the board deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license applied for.

The board shall require the following in an application:

1. Applicant's residential address.
2. Applicant's business address.
3. Applicant's telephone number.
4. State and parish in which applicant is a qualified voter, with a notarized copy of voter registration attached.
5. Surety bond in the amount of \$5,000 in favor of the governor of the State of Louisiana.
6. Cashier's check, money order or cash - no checks will be accepted - in the amount of \$225 for all fees covered in the initial licensing procedure.
7. Oath of office as a Louisiana Auctioneer.

8. Irrevocable consent (if applicable).

Availability of Applications and Apprentice License

Applications and all other pertinent forms are available at the Department of Commerce, Louisiana Auctioneers Licensing Board, Box 94185, Baton Rouge, LA 70804-9185, or will be mailed upon request of person seeking to be licensed as an auctioneer or as an apprentice auctioneer.

Change of Address

All licensees shall notify the board in writing of each change of address.

Examination Procedure

The board shall determine the scope, form and content of the examinations for licensure which shall be written and shall include questions on Louisiana auction law and sound business practices.

The board shall issue a numbered license to an applicant who meets the requirements of this Chapter, passes satisfactorily the examination administered by the board and pays the fee to be a licensed auctioneer.

The board shall give examinations for license on the following dates: fourth Thursday in January, April, July and August, of each year. Individual examinations are not permitted.

An applicant failing in an examination may be examined again upon filing a new application and the payment of the re-examination fee of \$40 fixed by this Chapter.

The board within 10 days and in writing shall notify any applicant who is denied licensing of the reason therefor. Within 15 days after receipt of notice, such applicant may make written request to the board that his or her examination be regraded and reviewed by the board. Upon regrading and review of the examinee's examination, the examinee will be advised in writing of the decision of the board. If it is determined by the board that the examination remain in the failure status, the examinee may at his or her discretion, request a formal hearing with regard to the failing status of his or her examination grade. A formal hearing shall then be conducted under the Administrative Procedure Act.

An individual who fails to pass two successive examinations is not eligible to take another examination until the expiration of one year from the date of his most recent failure, at which time he shall complete and file a new application, bond and fee with the board.

All auctioneer license examinations are confidential tests. They are designed and administered under conditions established to protect the security of the tests. Neither the current forms nor the previous forms of the tests are available for purchase or inspection.

License Renewal and Penalty

A license shall expire annually on the date of issuance, unless renewed by payment of the required renewal fee at least 30 days prior to its expiration. The board shall notify the auctioneer of the need for renewal at the latest known address at least 60 days in advance of the expiration. If a license is not timely renewed, it shall be deemed to have lapsed and be invalid. The delinquent auctioneer shall apply again for initial licensure.

The board shall issue the same number for the renewed license as that number issued for the original license.

Fee

The board shall assess the following schedule of fees, which shall not be refundable:

- | | |
|---------------------------------------|-------|
| 1. Application fee | \$ 50 |
| 2. Examination fee | \$ 75 |
| 3. Reexamination fee | \$ 40 |
| 4. Initial license fee | \$100 |
| 5. Annual renewal license fee | \$100 |
| 6. Restoration fee of a license | \$ 40 |

- 7. Replacement fee of a lost, destroyed or mutilated license \$ 25
- 8. Delinquency for renewal \$ 50
- 9. Apprentice fee \$ 50
- 10. Annual certification of a licensed auctioneering school or a school offering auctioneering courses \$300

All fees shall be paid by certified check or money order made payable to the board.

Reciprocity and Licensure Without Examination

A person holding a license to engage in auctions issued to him by a proper authority of a state, territory or possession of the United States of America or the District of Columbia having licensing requirements comparable to Louisiana and who in the opinion of the board otherwise meets the requirements of this Chapter may upon application be licensed without further examination.

Nothing in this Section shall prevent the conduct of an auction in this state by any non-resident auctioneer from another state if such auctioneer is duly licensed by such other state and the other state through reciprocity permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in such other state without being required to obtain a license in such other state. The license fee applicable to a non-resident auctioneer from another state which does not permit an auctioneer who is a resident of this state and who is duly licensed in this state to conduct auctions in the other state without being required to obtain a license in such other state shall be of the same amount that such other state charges auctioneers who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in such other states.

Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other state and temporarily present in this state shall conduct an auction in this state unless he acts in association with an auctioneer duly licensed in this state if the state in which the non-resident auctioneer is licensed requires such an association with an auctioneer licensed in that state before an auctioneer duly licensed in Louisiana may conduct an auction in that state.

Every non-resident applicant for a license under this Chapter shall file with the board as part of the application for a license a written irrevocable consent that any cause of action growing out of any transaction subject to this Section may be commenced against the licensee in the proper court of any parish of this state in which the cause of action may arise or in which the plaintiff may reside by a service of process upon the board as the licensee's agent and stipulating and agreeing that such service has been made upon the person according to the laws of this or any other state. Such instrument shall be in such form and supported by such additional information as the board may by rule require.

All individuals making application for an auctioneer license per reciprocal agreement shall submit with their application a letter of certification from the state board or commission of their state of domicile, certifying that they are duly licensed in said state, stating their residency, date of issuance, expiration date and license number.

Apprentice Auctioneer Bond

Before entering upon the discharge of his duties, an apprentice auctioneer shall execute his bond with security in the sum of \$2,500 in favor of the governor of the state conditioned for the faithful performance of all duties required by law toward all persons who may employ him as an apprentice auctioneer and for all sums belonging to other persons which he receives in his official capacity.

Apprentice Licensees Supervisor

An apprentice license is valid only while the licensee has a

licensed auctioneer who serves as the licensee's supervisor. No apprentice auctioneer may enter into an agreement to conduct an auction without the express approval of his supervisor. Upon termination of such association, the auctioneer-supervisor shall immediately fill out the form obtained from the Louisiana Auctioneers Licensing Board showing the date of termination and return same to the board for cancellation.

Causes for Non-Issuance, Suspension, Revocation or Restrictions; Fines; Reinstatement

The board may refuse to issue or may suspend, revoke or impose probationary or other restrictions of any license issued under this Chapter for any of the following causes:

1. Conviction of a felony or entry of a plea of guilty or nolo contendere to a felony charge under the laws of the United States of America or of any state.
2. Deceit or perjury in obtaining any certificate or license issued under this Chapter.
3. Providing false testimony before the board.
4. Efforts to deceive or defraud the public.
5. Incompetency or gross negligence.
6. Rendering, submitting, subscribing or verifying false, deceptive, misleading or unfounded opinions or reports.
7. The refusal of the licensing authority of another state to issue or renew a license, permit or certificate in that state or the revocation or suspension of or other restriction imposed on a license, permit or certificate issued by such licensing authority.
8. Aiding or abetting a person to evade the provisions of this Chapter or knowingly combining or conspiring with an unlicensed person or acting as an agent, partner, associate or otherwise, of an unlicensed person with intent to evade provisions of this Chapter.
9. Violation of any provision of this Chapter or any rules or regulations of the board or rules of conduct promulgated by the board.

The board may, as a probationary condition or as a condition of the reinstatement of any license suspended or revoked hereunder, require the holder to pay all costs of the board proceedings, including investigators', stenographers' and attorneys' fees.

Four concurring votes of the board shall be required for the revocation of any license. Four concurring votes shall be required for suspension of any license or the imposition of costs or fines in excess of \$500.

Any certificate or license suspended, revoked or otherwise restricted by the board may be reinstated by majority vote of the board.

RULE 7

Cease and Desist Order and Injunctive Relief

In addition to or in lieu of the criminal penalties and administrative sanctions provided in this Chapter, the board is empowered to issue an order to any person or firm engaged in any activity, conduct or practice constituting a violation of any provision of this Chapter directing such person or firm to cease and desist from such activity, conduct or practice. Such order shall be issued in the name of the State of Louisiana under the official seal of the board.

Upon a proper showing by the board that such person or firm has engaged in any activity, conduct or practice prescribed by this Chapter, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after hearing commanding the cessation of the unlawful activity, conduct or practices complained of, all without the necessity of the board having to give bond as usually required in such cases. A

temporary restraining order, preliminary injunction or permanent injunction issued hereunder shall not be subject to being released upon bond.

If the person or firm to whom the board directs a cease and desist order does not cease and desist the prescribed activity, conduct or practice within 10 days from service of such cease and desist order by certified mail, the board may cause to issue in any court of competent jurisdiction and proper venue a writ of injunction enjoining such person or firm from engaging in any activity, conduct or practice by this Chapter.

RULE 8

Violations and Penalties

Any person who engages in auctions without a valid license violates this Chapter.

Any person who willfully violates any provisions of this Chapter or any rules and regulations adopted under its authority shall be fined for each offense not more than \$500 or imprisoned not more than six months, or both.

RULE 9

Responsibilities of Licensed Auctioneer Required by the Board

The auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, over his signature, issue a closing statement to the sellers.

All advertising of an auction sale must be made in the name of the licensee who shall bear responsibility of the sale to the seller, general public and auctioneer board. The current license number must be published.

A licensee shall conduct his professional activities in a professional manner that will reflect credit upon himself, the auction profession and auctioneers. Unprofessional conduct includes but is not limited to the following:

a. Failure of a licensee to account to and pay over all monies and tangible personal property coming into his possession which belong to others including buyers at auction as well as consignors no later than 30 days from the date that the obligation arises to remit or deliver the said monies or tangible personal property.

b. A licensee's payment of compensation in money or other valuable things to any person other than a licensee for the rendering of any service or the doing of any of the acts by this Act forbidden to be rendered or performed by other than licensees.

RULE 10

Fund of the Board

There is hereby created a special fund designated as the Louisiana Auctioneers Licensing Board Fund. The fund shall be audited by a firm of certified public accountants and maintained and controlled by the board. All fees paid to the board and any other revenues shall be deposited in said fund.

RULE 11

Adoption of rules

The adoption of any rule or regulation, guideline, substantive procedure or code of conduct shall be subject to the provisions of the Administrative Procedure Act.

RULE 12

Fiscal Year

The fiscal year of the board shall end on June 30th of each year hereafter.

RULE 13

By-Laws

By-laws of the board may be adopted, amended or repealed by the members of the board at a regular meeting or a special meeting.

RULE 14

Transfer of Boards, Commissions, Departments and Agencies to the Department of Commerce

The following agencies, as defined by R.S. 36:3, are transferred to and shall be within the Department of Commerce, as provided in R.S. 36:803:

Louisiana Auctioneers Licensing Board (R.S. 37:3101 - 37:3105 and R.S. 37:3111 - 37:3123)

Section 6. Chapter 7 of Title 5 of the Louisiana Revised Statutes of 1950, comprised of R.S. 5:361 through 5:368, inclusive is hereby repealed in its entirety.

Section 3. R.S. 5:4 and R.S. 37:3114(E) are hereby specifically repealed in their entirety.

Written comments will be received through 4:30 p.m., Wednesday, March 6, 1985, by the Louisiana Auctioneers Licensing Board, Box 94185, Baton Rouge, LA 70804-9185.

Keith Babb
Chairman

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Rules of Auctioneer Licensing Board

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

Act 780 of 1984 transferred the funding for the Louisiana Auctioneer Licensing Board from state general funds to self-generated funds raised from licensing and other fees charged by the board. These rules implement the provisions of this Act, but otherwise have no additional fiscal impact.

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

As a result of Act 780, general fund collections are reduced by some \$13,000 since fees collected will no longer be deposited there. Self-generated revenues for the board's use are increased by an estimated \$26,000. The gain in excess of the general fund loss is due to a higher fee structure permitted by the Act and implemented by these rules.

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

In some cases the fees permitted by Act 780 and implemented by these rules are increased by as much as 100 percent from prior levels. These increases will be an additional cost to persons obtaining licenses from the board.

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

The higher fees are not expected to have any impact on competition or employment.

Pat Smith
Administrative Assistant

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Commerce Board of Examiners for Interior Designers

The Louisiana State Board of Examiners of Interior Designers advertises its intent to adopt rules pertaining to the operation and governing of the board and the examination and licensing of interior designers in the State of Louisiana, as provided for by Act 227 of the 1984 Regular Session of the Louisiana Legislature.

RULE 1

Composition and Operation of Board

1.1 NAME

The name of this board shall be the Louisiana State Board of Examiners for Interior Designers, hereafter called the "board," as provided for by Act 227 of the 1984 Regular Legislative Session, hereafter called the "Act."

1.2 MEMBERSHIP

All appointments to membership on the board shall be made by the governor of the State of Louisiana as provided for by the Act.

1.3 MEETINGS

The board shall have at least two meetings per year for the purpose of examining candidates for registration as interior designers. The board may hold such other meetings and hearings as required for the proper performance of its duties under the Act so long as it does not exceed six meetings a year.

1.4 ORDER OF BUSINESS

The order of business at any meeting shall be established by the chairman and conducted in accordance with *Robert's Rules of Order*.

1.5 EXPENSES OF THE BOARD

Members of the board shall receive no compensation for their services but shall receive the same per diem and mileage as is provided by law for the members of the legislature for each day the board conducts business.

1.6 FINANCIAL OPERATION OF THE BOARD

Payments out of the board's fund shall be made only upon orders of the board. Members of the board shall receive no compensation for their services but shall receive the same per diem and mileage as is provided by law for the members of the legislature for each day the board conducts business.

1.7 QUORUM

A quorum of the board as stated by the Act shall consist of four members of the board, of which a majority vote is required for the approval of any decision.

1.8 SUB-COMMITTEES

The chairman shall appoint members to sub-committees as needed to fulfill the duties of the board.

1.9 STAFF

The board may, at its discretion, employ an executive assistant, legal counsel, and such other assistants and clerical staff as it deems necessary.

RULE 2

Officers of Board and Their Duties

2.1 CHAIRMAN

The chairman shall exercise general supervision of the board's affairs, shall preside at all meetings when present, shall appoint any committees within the board, shall sign all vouchers, and shall perform all other duties pertaining to the office as deemed necessary and appropriate.

2.2 VICE-CHAIRMAN

The vice-chairman shall perform the duties of the chairman in his absence or other duties assigned by the chairman.

2.3 SECRETARY

The secretary shall be an administrative officer of the board. He shall act as its recording and corresponding secretary and may have custody of and shall safeguard and keep in good order all property and records of the board which the chairman deems necessary and appropriate; cause written minutes of every meeting of the board to be kept in a book of minutes; keep its seal and affix it to such instruments as require it; sign all instruments and matters that require attest and approval of the board; act as treasurer and receive and deposit all funds to the credit of the "Interior Design Fund;" attest all itemized vouchers approved by the chairman for

payment of expenses of the board; make such reports to the governor and legislature as provided for by law or as requested by same; and keep the records and books of account of the board's financial affairs and any other duties as directed by the board.

RULE 3

Fees and Charges

3.1 FEES AND CHARGES

All fees and charges must be made by cashier's check or money order. The following fees and charges have been established:

1. Initial Registration and Examination Fee \$150
2. Annual Renewal Fee \$ 50
3. Renewal of Expired License \$ 75
4. Replacing Lost Certificate \$ 10
5. Restoration of Revoked or Suspended License \$ 75

NOTE: The fees and charges may be amended by the board in accordance to the Act and rules of the board.

RULE 4

Certificates of Registration - Issuance and Reinstatement

4.1 CERTIFICATES OF REGISTRATION

Certificates of registration issued by the board shall run to and include December 31 of the calendar year following their issue. The initial registration fee (payable by cashier's check or money order) of \$150 should be submitted with the application to the board. Certificates must be renewed annually for the following calendar year, by the payment of a fee of \$50; provided that any approved applicant who has paid the initial registration fee of the preceding calendar year shall not be required to pay the renewal fee until December 31 of the next succeeding calendar year. Certificates not renewed by December 31 shall become invalid.

4.2 REINSTATEMENT OF CERTIFICATES

When a certificate has become invalid through failure to renew by December 31, it may be reinstated by the board at any time during the remainder of the following calendar year on payment of the renewal fee (\$50), plus a late penalty renewal fee of \$25. In case of failure to reinstate within one year from the date of expiration, the certificate cannot be renewed or reissued except by a new application approved by the board and payment of the registration fee.

4.3 LOST OR DESTROYED CERTIFICATES

Lost or destroyed certificates may be replaced on presentation of a sworn statement giving the circumstances surrounding the loss or destruction thereof, together with a fee of \$10. Such replaced certificate shall be marked "Duplicate."

RULE 5

Examination and Registration

5.1 QUALIFICATIONS FOR REGISTRATION

To be eligible for the examination, an applicant shall submit satisfactory evidence of having successfully completed at least four years of study at the high school level, plus one or more of the following:

1. Four years of professional education in the field of interior design at the post-secondary level. Post-secondary shall include, but not be limited to colleges or universities.
2. Six years of professional experience working in the field of interior design.
3. Four years as an educator in the field of interior design.

The board shall determine whether or not an applicant's professional education and experience in the field of interior design is sufficient to establish eligibility for the examination.

5.2 APPLICATION PROCEDURE

Application must be made to the board on application forms

obtained from the State Board of Examiners for Interior Design and required fees filed. Application forms may be obtained by calling 504/342-5388 or writing to: State Board of Examiners for Interior Design, Box 94185, Baton Rouge, LA 70804-9185.

5.3 RECIPROCAL REGISTRATION

Persons providing evidence of registration or licensing in another state, whose requirements for registration are equivalent to Louisiana's requirements and who extend the same privilege to those registered in Louisiana, may become registered by the board upon payment by such person of the initial registration fee.

5.4 EXAMINATION

The examination for purposes of the Act shall be the National Council for Interior Design Qualification (NCIDQ) Examination, which shall be held at least twice a year in the State of Louisiana. Application forms for said examinations may be obtained by contacting the board. The applicant must pass both the "written" and "design" portions of the examination and submit proof of passage to the board.

5.5 SEAL

An applicant for licensing who complies with all requirements established therefor, including the successful completion of an examination where applicable, shall be issued a certificate by the board to evidence such licensing. Each holder of a license shall secure a seal of such design as is prescribed in the rules of the board. All drawings, renderings, or specifications prepared by the holder or under his supervision shall be imprinted with his seal.

RULE 6

Revocation or Suspension of Certificate

6.1 AUTHORITY OF BOARD TO SUSPEND OR REVOKE

The board may suspend for a definite period or revoke any certificate of registration on grounds that a registrant fraudulently or deceitfully obtained same.

6.2 PROCEDURE FOR SUSPENSION OR REVOCATION

Upon receipt of notice of any alleged violations of this Chapter, or any rule or regulation adopted by the board, the board shall institute a preliminary investigation. If warranted by the investigation, the board shall duly notify the alleged violator and schedule a timely hearing for the resolution of the alleged violation. If following such hearing the board reasonably finds that a violation of the rule or of the rules or regulations promulgated by the board has occurred, the board shall take such disciplinary action that it may in its discretion choose to exercise in keeping with its delegated authority.

6.3 APPEAL PROCESS

Any person aggrieved by any disciplinary action of the board shall have the right to a rehearing by the board if written application for a rehearing is made to the board within 15 days after the adverse disciplinary action. If such person is aggrieved further by a decision or action by the board on rehearing, such person may appeal the decision or action of the board to the district court in the parish in which he is domiciled. The written petition for a rehearing in district court shall be made within 30 days after written notice sent to the person of the action or decision of the board on rehearing.

6.4 ENFORCEMENT OF BOARD'S DECISIONS

The board may apply to any court which has jurisdiction for an order enjoining or restraining the continuance of the alleged unlawful act.

RULE 7

Severability

7.1 SEVERABILITY

If any provision or item of the rules of the board or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of the rules of the board which can be given effect without the invalid provisions, items or appli-

cations, and to this end the provisions of the rules of the board are hereby declared severable.

Interested persons may submit written comments on the proposed rules until 4:30 p.m., February 25, 1985, at the following address: Mr. Dan Bouligny, Chairman, Louisiana State Board of Examiners of Interior Designers, Box 94185, Baton Rouge, LA 70804-9185.

Dan Bouligny
Chairman

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Rules of Board of Examiners of Interior Designers

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

There will be no impact on the State General Fund. The board will collect approximately \$45,000 in the first year and \$16,000 in subsequent years in fees charged in connection with issuing licenses, giving examinations, etc. The rules implement the maximum fee schedule allowed by law.

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

Costs associated with the operation of the board will be paid from revenues collected from fees, licenses, etc. Since the board has not yet prepared staffing plans, no estimate of staff costs is available. Costs associated with the required meetings of the board are estimated to be \$1,500 per year.

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

The costs would be to interior designers for issuance of license, renewal of license, possibly delinquent fee, possibly restoration fee, or any other incidental fees as required by law.

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

Implementation of these rules is not expected to have any significant impact on competition or employment. However, the licensing procedure will prevent persons who cannot or will not obtain a license from using the title of "interior designer" in the practice of his business.

Ron Faucheux
Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Commerce Racing Commission

The Louisiana State Racing Commission hereby gives notice in accordance with law that it intends to amend rule LAC 35:1805 [formerly LAC 11-6:57 et seq.] relative to exclusions and ejections of certain persons from race tracks in Louisiana. §1805. Categories of Persons to Exclude or Eject

A. This rule is adopted and is to be applied pursuant to R.S. 4:191-197 and, in particular, R.S. 4:192-193.

B. Any person of the following categories may be excluded or ejected from a race track, race meeting, race or licensed establishment or association.

1. Who are not of age.

2. Who have been convicted of a felony under the laws of the United States, this state or any other state or country, or any crime or offense involving moral turpitude.

3. Who are career or professional offenders as defined by

regulations of the commission. A career or professional offender is defined as a person who has been held in violation of the rules of racing for six or more times.

4. Who are of notorious or unsavory reputation or whose presence, in the opinion of the commission, would be inimical to the State of Louisiana and its citizens or to the track, meeting, race, or licensed establishment, or both.

5. Who have had a license or permit refused, suspended or withdrawn under R.S. 4:150 or R.S. 4:152.

6. Whose action or inaction on a race track would disrupt, interfere or hinder the orderly conduct of the business of horse racing.

7. Whose conduct at a race track in Louisiana or elsewhere is or has been improper, obnoxious, unbecoming or detrimental to the best interest of racing.

The office of the Racing Commission will be open from 9 a.m. to 4 p.m., and interested parties may contact either Tom Trenchard or Alan J. LeVasseur, at (504) 568-5870, at this time, holidays and weekends excluded, for a copy of this rule. All interested persons may submit written comments relative to this rule through March 7, 1985, to 320 North Carrollton Avenue, Second Floor, Suite 2-B, New Orleans, LA 70119.

Albert M. Stall
Chairman

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: LAC 35:1805**

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

There are no implementation costs to this agency.

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

There are no effects on revenue collections.

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

The benefits are to the horsemen, patrons, racing associations and the commission by keeping the rule in line with the statutes to avoid misinterpretation or possible conflict.

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

There is no effect on competition nor employment.

Albert M. Stall
Chairman

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Culture, Recreation and Tourism
Office of State Museum**

The Office of the State Museum proposes to revise the Loan Policy of the Board of Directors of the Louisiana State Museum. The revision pertains to clarification of eligible facilities requesting loans of Museum Collection artifacts, procedures and cost in relation to such loans. A copy of the proposed revised Loan Policy is available for public inspection at the Louisiana State Museum, 751 Chartres Street, New Orleans, LA.

Interested parties may submit written comments on the proposed rules before 5:00 p.m., February 28, 1985 to: Robert R. Macdonald, Assistant Secretary, Office of State Museum, Department of Culture, Recreation and Tourism, Box 2458, New Orleans, LA 70176-2458.

Mrs. Noelle LeBlanc
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Loan Policy**

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

There will be no additional estimated costs or savings in FY 1984-85 to the Office of State Museum (or local governmental units) as a result of adopting these rules being that the cost can be absorbed in the Office of State Museum's existing budget; however, State Museum estimates that an additional \$4,500 in State General Funds will be required in subsequent years as a result of State Museum covering the expenses relating to matting, framing, etc. for other official offices of the governor.

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

Adoption of these proposed revisions will have no effect on revenue collections of state or local governmental units.

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

There will be no additional costs or benefits to directly affected persons or nongovernmental groups as a result of adopting the proposed revisions being that eligible officials and agencies are required to provide for associated expenses under existing rules.

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

There will be no effect on competition and employment as a result of adopting these rules.

Noelle LeBlanc
Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Board of Elementary and Secondary Education
Environmental Science**

In accordance with the Louisiana Revised Statutes 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education directed that Environmental Science be made one of the units of science acceptable to meet graduation requirements, effective 1986-87.

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Environmental Science**

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

There will be no implementation cost or savings to state or local governmental units.

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

There will be no estimated effect on revenue collections of state or local governmental units.

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

There is no estimated cost and/or economics benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Joseph F. Kyle
Deputy Superintendent

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

High School Credit for Elementary Students

In accordance with the Louisiana Revised Statutes 49:950 et. seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved an amendment to Bulletin 741, policy 2.102.01 regarding high school credit for elementary students by adding the following in procedural blocks:

“The school system may grant credit on either a letter grade or a Pass or Fail (P/F) basis, provided there is consistency statewide. The course title, year taken, P/F (Pass or Fail) or the letter grade and unit of credit shall be entered on the certificate of High School Credits (transcripts). H.S.C. (High School Credit) must be indicated in the remarks column.”

“Credit shall be granted on a Pass or Fail (P/F) basis only. The course title, year taken, P/F (Pass or Fail), and unit of credit earned shall be entered on the Certificate of High School Credits (transcript). C.E. (Credit Examination) must be indicated in the remarks column.”

“Credit or Credit Examinations may be given in the following subjects: Computer Literacy, Computer Science I-II, English I-IV, Advanced Mathematics, Algebra I-II, Calculus, Geometry, Trigonometry, and Typewriting I. Additionally, credit may be given in all courses listed in the Program of Studies in Foreign Languages, Science, and Social Studies. Exceptions may be made by the Bureau of Secondary Education, State Department of Education upon the request of the local superintendent.”

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: High School Credit for Elementary Students

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

There will be no estimated cost or savings to either the state or local governmental units.

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.

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

Students will benefit from this rule in that they will be able to take advantage of more high school subjects by receiving credit for some courses taken in the elementary grades, and there is no cost or economic benefit as a result of this proposal.

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

No additional employees will be required as a result of this change.

Joseph F. Kyle,
Deputy Superintendent
For Management and Finance

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Non-Public School Standards

In accordance with the Louisiana Revised Statutes 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the Standards for Approval of Non-Public Schools with the exception of the standard on the elementary summer school requirements for removal of deficiencies. (Copies of the Standards may be seen at the office of the *Louisiana Register* and the Board offices.)

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules**

**Rule Title: Standards for Approval of
Non-Public Schools**

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

There will be no implementation cost or savings to state or local governmental units.

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

There will be no estimated effect on revenue collections of state or local governmental units.

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

There is no estimated cost and/or economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Joseph F. Kyle
Deputy Superintendent

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education Non-Resident Fees for Vocational Technical Students

In accordance with the Louisiana Revised Statutes 49:950 et. seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted out-of-state tuition fees for students in post-secondary vocational technical schools to be effective January 1, 1985 as follows: (Adopted as an Emergency Rule, December, 1984, see January, 1985 issue of *Louisiana Register*.)

ENROLLMENT AND FEES FOR NON-RESIDENTS

1. Louisiana residents will be given preference in enrollment in the vocational technical schools operated by the State of Louisiana.

2. Persons (parents of minors) who have not been a resident of Louisiana for the previous 12 months will be charged a non-refundable registration fee of \$100 plus tuition upon enrollment.

3. In determining residency, the enrollee must document his current residence by the presentation of any one of the following:

- a) Louisiana Driver's License
- b) Louisiana Vehicle Registration
- c) Louisiana Voters Registration
- d) Louisiana Income Tax Return showing tax paid
- e) Other similar documentation acceptable to the school director, and also,

Certification of prior residency on the Application for Enrollment.

4. Military personnel and their dependents stationed in Louisiana under Active Duty orders are deemed to be Louisiana residents for enrollment and fee purposes.

5. Part-time tuition of \$50 per month shall be charged all non-residents. Part-time shall include instructional programs of fewer than six hours of coursework per day comprising fewer than 30 hours per week of classroom study. Part-time courses of instruction shall also include all extension programs which are offered in the evening, or on weekends, or totaling less than 150 hours and designed to upgrade skills or knowledge.

6. The tuition for instructional training of less than one month will be pro-rated based upon 20 days a month.

7. The tuition for all instructional programs not part-time shall be \$100 per month.

8. Non-residents enrolled prior to January 1, 1985 shall continue to pay \$30 per month tuition until completion of present enrollment or otherwise dropped.

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Non-Resident Fees for Vo-Tech Students

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

There is no anticipated increase in cost to implement this proposed action.

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

The state will collect approximately \$5,000 more in fees this fiscal year and approximately \$15,000 more in fees for fiscal year 1985-86.

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

Non-residents of Louisiana would be the only group affected. They would be required to show proof of residency and pay the appropriate fees.

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

There will be no effect on employment and little effect on competition. All of the proprietary schools charge more now than the state schools would charge if this action is approved.

James V. Soileau
Executive Director

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Performance Standards for Grades Two, Three, Four, and Five

In accordance with the Louisiana Revised Statutes 49:950 et. seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education set a cut-off score of 75 percent for the Basic Skills Test for grades two, three, four, and five.

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Performance Standards for Grades Two, Three, Four, and Five

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

It is estimated that \$13,409,320 will be needed in 1985-86 to provide remediation to eligible second, third, fourth and fifth grade students based upon a 75 percent performance standard on the Basic Skills Test at those grades. The effect of the rule change lowering performance standards at the fourth grade from the 1983-84 level of 80 percent to 75 percent is projected to result in 3,158 fewer remediation units for a cost savings at that grade level of \$827,396; however, the implementation of fifth grade testing as required by law will result in an overall increase in 1985-86 remediation costs of \$4.5 million over the 1984-85 level. At a performance standard of 75 percent, it is anticipated that 6.6 percent of second grade students (5,491 remediation units); 14 percent of third grade students (11,068 remediation units); 16 percent of fourth grade students (12,634 remediation units); and 29 percent of fifth grade students (21,518 remediation units) will need remediation during the 1985-86 school year. Funding of these 50,711 units at the 1985-86 requested level of approximately \$262 per unit will require \$13,306,820. In addition, \$90,000 will be

needed to conduct the mandated state evaluation and \$12,500 will be needed for operating expenses for a total state remediation cost of \$13,409.320.

The actual test administration costs for grades two through five were provided in the 1984-85 State Department of Education budget at a total cost of \$1,150,000.

Any remediation costs in excess of the state funded amounts due to variance in size, structure and eligible students in individual local school systems would be borne by each local system.

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

No impact on state revenues will result. Local school systems will receive state funding to provide remediation services.

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

Students who are identified as being eligible for remediation will benefit from the program by being assisted at an early age to overcome the educational deficiencies as identified on the State Basic Skills Test.

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

Local school systems will have the option of employing additional personnel either full-time or part-time to implement the program. Additional teachers will need to be employed in some systems.

Joseph F. Kyle
Deputy Superintendent
For Management and Finance

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Proficiency Examinations

In accordance with the Louisiana Revised Statutes 49:950 et. seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved an amendment to Bulletin 741, policy 2.102.05 regarding Proficiency Examinations by adding the following procedural block:

“Proficiency Examinations may be given in the following subjects: Computer Literacy, Computer Science I-II, English I-IV, Advanced Mathematics, Algebra I-II, Calculus, Geometry, Trigonometry, and Typewriting I. Additionally, credit may be given in all courses listed in the Program of Studies in Foreign Languages, Science and Social Studies. Exceptions may be made by the Bureau of Secondary Education, State Department of Education, upon the request of the local superintendent.”

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Proficiency Examinations

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

There will be no estimated cost or savings to either the state or local governmental units.

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

Students will benefit from this rule in that they will be able to take advantage of more high school subjects by receiving credit for some courses taken in the eighth grade and there is no effect on revenue collections of state or local governmental units.

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

Students will benefit from this rule in that they will be able to take advantage of more high school subjects by receiving credit for some courses taken in the eighth grade and there is no cost or economic benefit as a result of this proposal.

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

No additional employees will be required as a result of that rule.

Joseph F. Kyle,
Deputy Superintendent
For Management and Finance

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Systems Accreditation

In accordance with the Louisiana Revised Statutes 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the Systems Accreditation document submitted by the department as an amendment to Bulletin 741 as follows:
Classification Categories

School systems shall be classified according to the following categories based upon the fifth year on-site visitation:
ACCREDITED

The programs offered by the school system are in compliance with the policies and standards of the State Board of Elementary and Secondary Education (SBESE).
ACCREDITED PROVISIONALLY

One or more programs offered by the school system has deficiencies in standards other than those stated in the probational category, and the system is being advised and requested to make corrections. Improvement is expected prior to the next school year.
ACCREDITED PROBABLY

One or more programs offered by the school has major deficiencies in one or more of the following areas:

a) There are member(s) of the professional staff not holding valid Louisiana certificate(s).

b) The school system does not offer a curriculum to meet graduation requirements or a balanced elementary curriculum as prescribed in this bulletin.

c) The school system has a student who is currently enrolled in a special education program and whose last individual evaluation occurred three or more years ago.

d) The school system has an identified exceptional student who does not have a current Individualized Education Program (IEP).

e) The school system does not adhere to and implement the various sections of the Revised Statutes of Louisiana as they affect the health and safety of the students and staff. (These include fire prevention and drills, provisions for a healthful environment, and safety regulations for transportation.)

f) The physical facilities do not conform to the current federal, state, and local building fire, safety, and health codes.

g) If deficiencies are cited, after being accredited provisionally for one year, the system shall be accredited probationally. UNACCREDITED

If deficiencies are cited, after being accredited probationally for one year, the system shall be unaccredited.

Procedure Block:

A school system's accreditation status may be altered (either upgraded or downgraded) based upon either the on-site verification of the implementation of the action plan and/or the on-site verification of the Annual School and System Report.

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Systems Accreditation**

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

Since the Department has been piloting different aspects of accreditation for the past five years and these pilotings have been budgeted, the actual accreditation will be the same as the pilotings and no additional costs are anticipated.

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

There will be no additional monies required for the programs, so there will be no effect on collections either on a state or local basis.

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

There will be no costs to affected persons or non-governmental groups.

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

The program should impact the local schools by improving the quality of education offered to students. No additional employees are required.

Joseph F. Kyle
Deputy Superintendent
For Management and Finance

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Three Elective Credits Permitted
for English as a Second Language

In accordance with the Louisiana Revised Statutes 49:950 et. seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved an amendment to Bulletin 741 (2.195.04) to allow three elective credits for English as a Second Language to be counted toward elective graduation requirements for limited English speaking students, effective with the 1985-86 school year.

Interested persons may comment on the proposed policy change and/or additions, in writing, until 4:30 p.m., April 10, 1985

at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

James V. Soileau
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Three elective credits permitted
for English as a Second Language**

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

There are no estimated implementation costs.

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

There is no effect on revenue collection.

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

This will benefit some limited English speaking students in that they may avoid additional time in school because of the lack of sufficient credits to graduate.

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

There is no effect on competition and employment.

James V. Soileau
Executive Director

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Board of River Port Pilot Commissioners
For the Port of New Orleans**

**DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED
IN THE PROPOSED DRUG POLICY**

The Board of River Port Pilot Commissioners for the Port of New Orleans has determined that no policies or procedures presently exist for monitoring and disciplining drug use among pilots operating in their area. The potential for vessel collisions and other catastrophic incidents is significant enough to warrant precautionary measures to protect the population, environment, and vessel traffic in Louisiana. In the interest of ensuring safe navigation, the Board of Commissioners has promulgated a set of 12 rules and a statement of the policies of underlying the rules, designed to prevent the dangerous use of drugs among pilots. The pilots will be periodically subjected to scientific testing for the presence of drugs or drug residue, through urinalysis. If it is determined by the Board of Commissioners, after a hearing, that the pilot is a user of controlled dangerous substances, the Board of Commissioners may recommend to the governor that the pilots licenses be suspended or revoked.

Any inquiries regarding the proposed drug policy for the Board of River Port Pilot Commissioners for the Port of New Orleans may be directed to the office of their attorney, whose name and address is given below, Monday through Friday between 9 a.m. and 5 p.m. Verbal inquiries will be heard by appointment, provided that they are accompanied by a written statement of inquiry. Julia E. Taylor, Law Office of Joseph W. Nelkin, 2008 I.T.M. Building, New Orleans, LA 70130, (504) 581-7452.

Julia E. Taylor
Attorney

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Drug Policy**

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

There will be no estimated costs or savings to state or local governmental units as a result of adopting these proposed rules being that these rules do not affect state or local governmental units.

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

There will be no estimated effect on revenue collections of state or local governmental units as a result of adopting the proposed rules.

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

For each group of 10 pilots tested, the anticipated cost to the Pilots' Association will be about \$435. Each pilot may verify the test result by subsequent testing at a cost of \$40, which he must bear individually. The annual cost to the association is expected to be about \$15,040.

The economic benefit will go to the scientific testing agency for laboratory work performed on a case by case basis.

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

There will be no effect on competition and employment.

Julia E. Taylor
Attorney

Mark C. Drennen
Legislative Fiscal Officer

**NOTICE OF INTENT
Office of the Governor
Department of Veterans Affairs**

The Louisiana Department of Veterans Affairs intends to publish an amendment to a rule previously published pertaining to the War Veterans Home Eligibility Requirements and Residents Care and Maintenance Fees. This would amend (upon publishing) rule number 8-B as published in the January 20, 1985, issue of the *Louisiana Register*.

War Veterans Home

Proposed amendment:

8. SECTION B. For Nursing Care III, intermediate level care residents, the following rule will apply when computing care and maintenance fees. Residents will retain the first \$60 per month, to be used for personal expenses. The remaining income will be applied to care and maintenance fee until maximum care cost is reached.

Interested persons may submit comments to this proposed amendment to Cleo C. Yarbrough, Executive Director, Department of Veterans Affairs, Box 94095, Capitol Station, Baton Rouge, LA 70804 (504/922-0458).

Cleo C. Yarbrough
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: War Veterans Home Collection of Care and Maintenance Fees**

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

This action requires no staffing increases or other costs of implementation.

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

Collection of Care and Maintenance Fees from certain veteran residents at the War Veterans Home should increase Self-Generated Funds. This will not be a significant amount, and is not precisely quantifiable because of variances in ability to pay by individual residents and number of these residents in the home at any given time.

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

The maximum impact for an individual resident would be \$40 per month less that the patient could retain.

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

There will be no effect on employment or competition.

Cleo C. Yarbrough
Executive Director

Mark C. Drennen
Legislative Fiscal Officer

**NOTICE OF INTENT
Office of the Governor
Office of Elderly Affairs**

In accordance with Louisiana Revised Statutes 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs intends to adopt the Louisiana State Plan on Aging for fiscal years 1984 through 1987. This action is necessary to comply with the provisions of Subsection 954 concerning the filing and taking effect of rules.

On February 4, 1985, the Office of Elderly Affairs adopted the State Plan on Aging as an emergency rule under the provisions of LA R.S. 49:953B.

Questions concerning the adoption of the State Plan on Aging should be directed to: Mrs. Betty Johnson, Planning Analyst III, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Mrs. Johnson is the person designated to respond to questions concerning the State Plan.

Sandra C. Adams
Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: State Plan on Aging Adoption**

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

There will be no implementation costs or savings to state or 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 NON-GOVERNMENTAL GROUPS - (Summary)

The adoption of the State Plan on Aging as a rule will not have a direct affect on any person or non-governmental group.

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

There will be no effect on competition and employment.

Sandra C. Adams
Director

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT
Office of the Governor
Office of Elderly Affairs

In accordance with L.R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs intends to amend the Louisiana State Plan on Aging for the period beginning October 1, 1983 and ending September 30, 1987. The purpose of the amendment is to consolidate five existing planning and service areas, including those whose boundaries are coterminous with the following parishes: East Carroll, Franklin, Richland, Jackson, and Union. The effective date of the proposed amendment is July 1, 1985.

A public hearing on the proposed amendment to the Louisiana State Plan on Aging will be held at the Rayville Civic Center located on Louisa Street in Rayville, Louisiana on Monday, February 25, 1985, beginning at 9 a.m. To obtain information concerning this amendment to the State Plan on Aging, please write Mrs. Betty Johnson, Planning Analyst III, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374.

Written comments concerning the proposed action may also be submitted to the same address.

Sandra C. Adams
Director

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: State Plan Amendment

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
There will be no implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
Revenue collections will not be affected by this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)
The Parish Councils on Aging in each of the affected parishes will no longer receive funds for activities associated with developing and implementing the area plans for the development of a comprehensive service delivery system in their respective parishes. However, the area agency administrative funds originally allocated to the individual parish councils on aging will now be allocated to the new area agency which will now serve the parishes of East Carroll, Franklin, Jackson, Richland, and Union.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)
There will be no effect on competition and employment.

Sandra C. Adams
Director

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT
Office of the Governor
Office of Minority Business Enterprises

In accordance with the Louisiana Minority Business Enterprise Act of 1984 (L.R.S. 39:1951 - 1969 and 39:1981 - 1991)

and the provision of the Administrative Procedure Act, R.S. 49:950-970 as amended, the Office of Minority Business Enterprises proposes to adopt policies, rules and regulations relative to the Minority Business Enterprise Program, to be effective April 20, 1985. These regulations are both substantive and technical in nature, and are intended to specify the procedures for certification and qualifications for a minority business enterprise; to provide for the effect of certification as it relates to minority set-asides and minority preferences; to establish procedures for setting and attaining of annual goals for minority business participation in state procurement activities; to provide for set-aside awards requiring exclusive minority business participation; to establish procedures for monitoring of agency and institutional contracts with minority business enterprises; and to establish penalties for interference with minority business participation and for noncompliance by minority business enterprises with the policies, procedures and rules of the Minority Business Enterprise Program.

These regulations shall apply to all state departments, boards or commissions, or educational institutions, created by the Legislature or Executive Order within the executive branch of state government pursuant to Title 36, operating from funds appropriated, dedicated or self-sustaining; federal funds; or funds generated from any other source. These regulations will not apply to agencies of the judicial or legislative branches of state government, except to the extent that procurement or public works activities for these branches is performed by an executive branch agency.

Copies of the draft rules are available from the Office of Minority Business Enterprises, and may be obtained through telephone (504-342-6491; LINC 421-6491) or written requests. To facilitate the taking of oral comments, a public hearing on the proposed rules will be held at 2 p.m., March 6, 1985 in the Division of Administration Committee Room located on the third floor of the Capitol Annex Building, 900 Riverside Mall, Baton Rouge, LA. The contact person for the public hearing shall be Joseph Shorter, Executive Director of the Office of Minority Business Enterprises. Written comments on the proposed rules will be accepted through March 15, 1985, and should be addressed to Joseph Shorter, Executive Director, Office of Minority Business Enterprises, Box 94095, Baton Rouge, LA 70804-9095.

Joseph Shorter, III
Executive Director

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Minority Business Enterprise Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
The first year implementation costs for these regulations should not exceed \$10,000. These funds will be required for production and distribution of the forms required to establish and monitor plans and the goals set by affected agencies.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
The proposed rules will not effect revenue collections of the state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)

The proposed regulations are designed to provide economic benefits to minority business enterprises seeking to do business with the state.

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

The proposed rules will increase employment in the minority business community.

Joseph Shorter
Executive Director

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Board of Electrolysis Examiners

The Louisiana State Board of Electrolysis Examiners proposes to adopt the following operating rules and regulations.

Rule 1. Source of Authority: Title

The rules and regulations herein contained constitute, comprise and shall be known as the "rules and regulations of the State Board of Electrolysis Examiners." These rules and regulations are adopted and promulgated pursuant to the authority granted to, and imposed upon the said board under the provisions of Louisiana Revised Statutes, Title 37, Sections 37:3051 through 3077.

Rule 2. General Definitions

There is incorporated herein by reference all of the definitions set forth and contained in R.S. 37:3051 and R.S. 49:951. The following words and terms, when used in these rules and regulations, shall have the following meaning unless the text hereof or the definitions contained in the above-cited statutes clearly indicate otherwise.

A. *Electrology* means the art and practice of removing hair from the normal skin of the body by the application of an electric current to the hair papilla by means of a needle or needles so as to cause growth inactivity of the hair papilla and thus permanently remove hair.

B. *Electrolysis* means the process by which hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle or needles being inserted into the hair follicle, whether the process employs direct electric current or short wave alternating electric current.

C. *Electrologist* means any person who for compensation practices electrolysis for the permanent removal of hair, except a physician licensed to practice medicine who performs electrolysis in his practice or a person who engages, on behalf of a manufacturer or distributor, solely in demonstrating the use of any machine or other article for the purpose of sale, without charge to the person who is the subject of the demonstration.

D. *Board* means the State Board of Electrolysis Examiners.

Rule 3. Exceptions and Rights

A. The provisions of these rules and regulations shall not authorize the use of roentgen rays and radium for diagnostic and therapeutic purposes or the use of electricity for surgical purposes, including cauterization, removal of warts, moles, or skin deformities of any kind.

B. Electrolysis treatment shall not be performed in areas of high bacterial colonization, such as the ear canals and nostrils, nor shall treatment be performed on moles or to remove eyelashes, except in special instances after consultation with a physician.

C. A health history shall be completed on each patient prior to any treatment. No patient with a history of diabetes and no cardiac patient with a pacemaker shall be treated without the consent of a physician. Persons suspected of having a communicable disease shall not be treated without first having been examined by a physician.

D. Techniques of sterilization of needles shall be the same as is used in hospitals, using pressure heat or any other sterilization of needles deemed appropriate by the board.

E. A practitioner beginning electrology after July 1, 1983, shall neither conduct nor allow any other business or trade to be conducted in the office suites, treatment rooms, reception or waiting rooms used for his or her practice. These same restrictions are in effect for any practitioner who relocates after July 1, 1983 regardless of the date his practice of electrology began. (cf Act 942 - 1984 Legislative Session amending RS 37:3052).

Rule 4. Board Composition, Conflict Provision and Reimbursement.

A. The State Board of Electrolysis Examiners is created within the Department of Health and Human Resources. It shall be composed of five members, all to be appointed by the governor to serve at his pleasure. Four members shall be licensed electrologists who have been engaged in the practice of electrology for at least the five years prior to their appointment. Of these four, two members shall be appointed from a list of five names submitted to the governor by the Louisiana Electrologist Association and two members shall be appointed from a list of five names submitted to him by the Registered Electrologist Association of Louisiana. (Act 942 - 1984 Legislative Session). One member shall be appointed from a list of three physicians licensed to practice in this state and recommended by the Louisiana State Medical Society. If the governor determines that the nominees of the Louisiana Electrologist Association or of the Registered Electrologist Association of Louisiana or of the Louisiana State Medical Society are not suitable, he may decline to appoint from such list submitted and shall call upon the association or the society to nominate an additional list of persons. He may repeat such call until a list containing a qualified person or persons meeting his approval is submitted. Members of the board shall be residents of this state.

B. A vacancy occurring in the membership of the board shall be filled for the unexpired term in the manner provided in Subsection A of this Section for appointment.

C. No member of the board shall have any direct or indirect financial interest in the manufacture or sale of equipment or supplies used in the practice of electrology, nor shall any member have any connection with the management or ownership of a school of electrology.

D. Each member of the board shall receive a per diem fixed by the board at not more than \$50 per day for each day in actual attendance at its meetings. Each member shall be reimbursed for his actual travel, clerical, and incidental expenses necessarily incurred while engaged in the discharge of his official duties as determined by the board. The per diem and expenses shall be paid out of the moneys credited to the board as provided by R.S. 37:3062(B).

Rule 5. Organization of Board, Quorum, Meetings, Records.

A. Within 14 days after the appointment of its initial members, the board shall hold a meeting for the purpose of organization and shall elect from its membership a chairman, a vice-chairman, and a secretary-treasurer. Officers shall be elected for terms of one year, or until the successor of each is elected. Thereafter, the board shall annually and in like manner elect its officers.

B. The board shall hold regular meetings at least once in each year for the purpose of examining applicants and at any other time the board or its chairman deems necessary, at a time and place designated by the chairman. Special meetings may be called by the chairman upon giving at least 72 hours notice thereof by registered or certified mail to the post office address of each member of the board and of persons who previously have indicated that they have business before the board.

C. A majority of the total membership of the board shall constitute a quorum for the transaction of business, including the granting, suspending, or revoking of a certificate or license to practice electrology.

D. The board shall keep a record of its proceedings, and a register of all applicants for certificates or licenses, which shall contain the name and location of the institution which granted the applicant a diploma, the date granted, and information as to whether a license has been granted or refused. The record and register shall be prima facie evidence of all matters recorded therein.

Rule 6. General Powers and Duties

A. The board shall be the sole and exclusive authority in the state to issue licenses to practice electrolysis and to administer the provisions of R.S. 37:3061, et seq.

B. The board shall have authority to examine for, grant, deny, approve, revoke, suspend and renew the licenses of electrologists and shall review applications for licenses of electrologists at least once each calendar year. It may conduct hearings on charges for the revocation or suspension of a license.

C. The board is authorized to promulgate such rules and regulations as are necessary and reasonable for the enforcement of RS 37:3051 et seq. for the establishment, operation, and approval of any electrology schools and electrology apprenticeship programs in Louisiana, and for requiring each school of electrology and electrology apprenticeship program to establish and maintain in force a bond to be determined by the board, but not to exceed the sum of \$10,000 in favor of the state, with surety by a corporate bonding company authorized to do business in this state.

D. The board is authorized to issue licenses to approved schools. No school may operate without a license issued by the board. The fee for such license shall be \$500 payable at the time the school makes application for a license. The annual renewal fee shall be \$300 which shall be due on or before July 1 of each year. Each license for an electrology school in this state shall be renewed on or before July of each year upon application therefor accompanied by the renewal fee prescribed in R.S. 37:3072(A).

E. The board shall initiate an action for the prosecution of any person who violates any provision of this Chapter and may apply to any court having jurisdiction for an injunction to restrain and enjoin violations thereof. It shall keep a record of all proceedings relating thereto.

F. The board is authorized to employ counsel to carry out the provisions of this Chapter, if the fees of the counsel and the costs of all proceedings, except criminal prosecutions, are paid by the board out of the moneys credited to the board.

Rule 7. Licensure of Electrologists and Instructors

A. No person shall engage or attempt to engage in the practice of electrology in the state who does not hold a valid license issued by the board in accordance with the provisions of this Chapter.

B. The board shall license as an electrologist and issue an appropriate certificate to any person who files with it a verified application therefor, accompanied by the application fee required by this Part, together with evidence, verified by oath and satisfactory to the board, that he is at least 18 years of age; is of good moral character; is a resident of this state and has been a resident of this state for 30 days immediately prior to the time of application; has graduated from an accredited high school; after high school graduation has successfully completed a course in electrolysis in a school of electrology which maintains the standards established and approved by the board or that he has completed a like number of hours in the subject areas specified in an apprenticeship program approved by the board; at the time of certification, is free of any infectious disease; and has passed an examination given and

graded by the board which shall consist of a written examination and a practical demonstration of abilities, and has paid any other fees required by the Statute. Each such school of electrology and each such electrology apprenticeship program shall include at least 450 hours of clinical experience, 150 hours of lectures on insertion techniques, modalities, healing and regrowth problems, and office management. Each applicant shall provide his subject for the practical demonstration. Within 10 days after each examination the official in charge shall deliver the question and answer papers to the board. The board shall examine and rate the answers and shall transmit an official report to each applicant for license, stating the rating of the candidate in each subject and whether or not the board approves the candidate for a license. If a candidate fails one or more parts of an examination, he may take the parts in which he has failed in a subsequent examination. If after two attempts the examination is not satisfactorily completed, the candidate thereafter shall be required to repeat and take the entire examination.

C. The board may license any person as an instructor of electrology who has practiced as an electrologist for at least seven years and has completed such other specified training as shall be required by the board for teaching electrology.

D. After investigation of the applicant and other evidence submitted, the board shall notify each applicant that the application and evidence submitted for consideration is satisfactory and accepted, or unsatisfactory and rejected. If an application is rejected, the notice shall state the reasons for the rejection.

E. The examination shall be given annually at such time and place and under such supervision as the board determines, and specifically at such other times as in the opinion of the board the number of applicants warrants. The board shall designate the date, time and place of examination and shall give public notice thereof and, in addition, shall notify each person who has made application for examination to the board.

Rule 8. Examination Requirements for Electrologists

A. All applications for the state board examination must be received by the board at least 30 days prior to the date of said examination.

B. An applicant must pass all parts of the state board examination within two years of his first examination date.

Rule 9. Requirements for Licensure of Schools of Electrolysis.

A. Each applicant for a license to conduct a school of electrolysis shall submit the following to the board:

1. a fully-completed written application form
2. the required application fee, and
3. a surety bond approved by board in the amount of \$1,000.00 per student, or \$10,000.00 per school (whichever amount is greater) in favor of the State of Louisiana.

B. Before a school license can be renewed, proof of an up-to-date bond must be submitted.

C. The following documents must be submitted prior to approval of a license for any school:

1. a detailed projected floor plan
2. a copy of the planned school curriculum
3. a true copy of the student contract used
4. a true copy of the student's permission to receive electrolysis treatment
5. a true copy of the school manual
6. names and qualifications of the instructors and lecturers in accordance with the board regulations.

D. Every electrolysis office and electrolysis school shall be open for inspection to any board member or any investigator of the board during regular business hours.

E. When an inspection of an electrolysis office or electrolysis school is made by a member or investigator of the board, the

owner or person in charge shall sign an inspection slip. Any violations shall be corrected within three months.

F. No licensed electrologist shall refer to or permit any reference to his or her license in advertising or promoting any method of hair removal other than electrolysis.

Rule 10. Sanitary Requirements for Offices and Schools

A. Every electrolysis office and school shall be adequately lighted, well ventilated and kept in a clean and sanitary condition at all times.

B. All instruments shall be kept clean and sterilized with a medically approved method as prescribed by the board. Before use upon a patient, each electrolysis needle and forceps shall be first wiped clean with a 70 percent alcohol solution, and then be sterilized by one of the following methods:

1. Saturated steam, 250°, 15 Psi, 30 minutes
2. Dry heat, 380°, 60 minutes
3. Glass bead sterilizer, 475° - 500°, 30 seconds.

C. Every electrologist, instructor or student must wash his or her hands immediately prior to the treating of the patient, and must rewash his or her hands if for any reason the treatment is interrupted.

D. Clean tissues, paper towels or freshly laundered towels shall be used for each patient. Before any patient is permitted to recline in a chair or on a table, said object shall be covered with a clean professional size towel or drape or a clean professional type tissue.

E. The skin area to be treated must first be cleaned with water and surgical soap, such as Septasol, or liquid antiseptics, such as Zephirin Chloride (1:750 or 1:500), or Betadine or any other form of approved cleanser for the skin.

F. Areas of the body not to be treated are the mucous membranes, inclusive of the vermilion border of the lip and the external auditory canal of the ear, the areola of the breast, and the tissues of the nostrils. Conditions of the skin not to be treated are warts, moles, cutaneous papillomas (skin Tags), any type skin eruption, ingrown eyelashes, eyelids, vascular spider (spider nevus) and any type of infected or inflamed areas.

G. A professional lamp will be focused on the treatment area at all times.

H. Every patient must be treated on a professional treatment table or chair, which shall be used for the purpose of electrolysis treatment only. The exception to the preceding is if the patient is physically handicapped, the patient may be treated in a wheel chair or stretcher.

I. Professional type forceps shall be used in the treatment of patients.

J. All treatment shall be given in privacy within an enclosed area.

K. The electrolysis treatment room shall be provided with a separate entrance leading directly from the exterior of the house or which can be reached from the entrance of the house without passing through any part of the living quarters.

L. The treatment room shall be closed from adjacent rooms by walls or doors. During treatment, such doors shall remain closed.

M. Every such office shall have hand-washing facilities with hot and cold water in the treatment room or an adjacent room which can be reached without passing through any part of the living quarters.

N. No electrologist, instructor or student shall treat a person who is infected with impetigo, any contagious disease, skin malignancy, or any disease dangerous to the public.

O. No electrologist, instructor, or student shall treat a diabetic patient nor anyone wearing a pacemaker without the written authorization of the patient's physician.

P. Before treatments are instituted, the electrologist, in-

structor, or student must explain the following matters to the patient:

1. the procedure
2. treatment
3. after-care treatment
4. possible effects of treatment
5. treatment fee

Q. Smoking is prohibited by electrologists, instructors, or students, lecturers or patients during treatment.

R. All electrologists, instructors, and students shall wear appropriate clothing, with clean fingernails, and white uniform, or white smock or white laboratory jackets.

S. A complete case history of each patient's electrolysis treatment shall be maintained, which shall include the following data:

1. name, address, telephone number, sex and date of birth of the patient
2. types of hair and of skin, if other than normal
3. patient's medical history and physical condition
4. date of each treatment
5. area of treatment
6. patient's reaction to treatment
7. skin reaction to treatment
8. duration of treatment
9. setting of equipment for area being treated
10. allergies
11. have attached any letters or other data concerning the patient.

T. Every electrologist shall display his or her license and renewal certificate in a conspicuous place in his or her principal office. Every electrologist who maintains more than one office shall display in a conspicuous place in every branch office a certified statement of registration provided by the board.

Rule 11. Addition Requirements for Schools

A. Every school shall prominently display its license near the entrance. Licensure of the school is for one location only. Each location must apply separately.

B. Every school shall furnish to each student upon enrollment a true signed copy of the school contract and a copy of the school manual text covering the complete school curriculum as approved by the board. The school shall also furnish at the time of enrollment a copy of the statutes and rules and regulations governing electrologists.

C. Within 10 days after each student's enrollment, every school shall furnish the board with

1. The name, address, date of enrollment, telephone number and specification of day or evening class of each student, recorded on the school's stationery.

2. A certificate signed by a licensed physician stating that the student is free of contagious or communicable disease.

3. A statement signed by the student stating that he or she has received a copy of the statutes and the rules and regulations governing electrologists and is cognizant of the fact that in order to qualify for a state board diploma or its equivalent, one must have attained the age of 18 years.

4. A signed copy of the student's permission to receive electrolysis treatment, and any restrictions thereof.

D. Every school shall provide each student with a separate locker for the student's clothes and effects.

E. School quarters shall be large enough to accommodate the student body, lecturers and practical demonstrations and shall have proper and sufficient equipment for practical work.

F. The school shall have available for the use of students, several types of machines for electrolysis.

G. Every school shall provide and maintain adequate

professional and necessary modern equipment for the student body. A list of equipment shall be submitted to the board for its approval and any additions or subtractions from this list must be reported to the state board.

H. Only FCC approved type of epilators which conform to Federal Food and Drug Administration rules and regulations shall be used by each school or apprenticeship programs in training students. H-1 electronic tweezers or non-needle methods are prohibited within the practice or teaching of electrolysis schools and apprenticeship programs.

I. Every school shall maintain one complete set of reference books for each 12 students enrolled. These reference books must be approved by the board.

J. Every school shall keep a daily record of the attendance of every student and record of the time devoted by every student to each subject of study; shall establish credits and shall hold examinations before issuing diplomas. These records or any part of the information contained therein shall be available to any member or investigator of the board at any time upon request. Each school shall submit to the board in writing every three months a record of the time completed by every student in practical and theoretical work. (The first day of January, April, July and October.)

K. No practical work may be done by students except within the school premises and under direct supervision of a licensed instructor. Hours of credit shall be given to a student for time spent as a patient in the ratio of one hour practical credit for every two hours spent as a patient.

L. Every school shall maintain regular class hours with a daily schedule, which shall be submitted to the board for approval.

M. Each group of 12 students or less engaged in practical work simultaneously shall have at least one licensed instructor in attendance at all times, and necessary equipment will be provided at all times for each student.

N. No school shall directly or indirectly accept any remuneration or make any charge for services rendered by its students at said school for practice work but a school may make a reasonable nominal charge to cover expenses of equipment and materials used.

O. A school may advertise as such but shall not in any way hold itself out as an electrolysis office.

P. No school premises shall be used for the private practice of electrolysis.

Q. Any student who leaves a school for any reason shall be reimbursed according to the school contract.

R. No student shall be an instructor for another student.

S. No student, upon graduation from school and pending the state board examination, may engage in the practice of electrolysis other than on the school premises until fully licensed.

T. Every school shall provide the student with an office, properly equipped, and with enough space for the student to properly take a history in confidence, and in private.

Rule 12. Additional requirements for electrolysis office suites, treatment rooms, reception or waiting rooms wherein the electrolysis practice relocates after July 1, 1983 or begins operation after that date. (cf Act 942 - 1984 Legislative Session amending R.S. 37:3052).

A. Every electrolysis office shall have a separate entrance, away from other businesses or residential rooms.

B. Separate toilet facilities must be made available, without entering other businesses or residential rooms.

C. Separate facilities for hand washing shall be provided separate from other business or residential facilities.

D. Every office shall be provided with such instruments, implements, or equipment that are pertinent to the practice of electrolysis.

E. Every office of electrolysis shall be subject to public health standards for treating patients.

F. All devices, instruments, and epilators shall conform to the Federal Food and Drug Administration rules and regulations relating to such devices as amended, May 29, 1976, and shall be F.C.C. (Federal Communication Commission) approved.

Rule 13. Regulations for Apprenticeship Programs.

A. Every person wishing to supervise and instruct a student under an apprenticeship program must petition the board for approval. The petition for approval must show that:

1. the petitioner is a licensed electrologist;
2. the petitioner has practiced as an electrologist for at least seven years and meets the qualifications set forth for instructors by the board;
3. the petitioner resides in Louisiana.

B. Each supervisor or instructor of an apprenticeship program must offer the same number of hours of training in clinical experience and lectures on insertion techniques, modalities, healing, and regrowth problems, and office management, as specified in Rule 7. of these rules and regulations.

C. Each supervisor of an electrologist apprentice shall furnish the apprentice with a signed copy of the contract, a copy of the text to be used and a copy of the statutes, rules and regulations governing electrologists.

D. Within 10 days after commencement of an apprenticeship program, each supervisor shall furnish the board with:

1. the name, address, date of enrollment, telephone number, and specification of approximate time of day the apprentice will be working with the supervisor;
2. a certificate signed by a licensed physician stating that the apprentice is free of contagious or communicable diseases;
3. a statement signed by the apprentice that he has received a copy of the statutes and rules and regulations governing electrologists, and is cognizant of the fact that in order to qualify for a state board license, one must have a high school diploma and must have attained the age of 18 years;
4. a signed copy of the apprentice's permission to receive electrolysis treatment, and any restrictions thereof;
5. a daily record of the apprentice's attendance, and a record of the time devoted to each subject of study shall be kept. These records shall be available for inspection to any member or investigator of the board at any time upon request.

E. Each supervisor or instructor must file reports of attendance and training of each apprentice every three months (the first day of January, April, July and October). Said reports must be signed by the supervisor and countersigned by the apprentice.

F. No person shall supervise more than one electrologist apprentice at any one time.

G. No practical work may be done by an apprentice except under the direct supervision of his supervisor or instructor.

Rule 14. Curriculum Regulations for Electrolysis Schools

All electrolysis schools shall maintain the following course of studies for their students.

A. Every school teaching electrolysis shall maintain a course of study of not less than 600 hours, extending over a period of not less than six months. Each course shall include 150 hours of academic study and 450 hours of practical training.

B. No student shall devote more than five days a week and no more than six hours a day to formal training in electrolysis (including practical training).

C. The 450 hours of practical training shall involve epilation whereby the licensed instructor demonstrates how to proceed on each area to be treated, namely the legs, body, arms, face (including hair line and eyebrow shaping) and all other areas not specifically prohibited in Rule 3 (B) and/or Rule 10 (F).

D. The 150 hours of academic study shall include the following:

1. Histology and Hair and Skin structure (emphasis on hair and skin structure)	35
2. Bacteriology, Sterilization and Hygiene (Basic fundamentals)	35
3. Electricity (principles of electricity, its effects and uses)	20
4. Basic Dermatology	20
5. Physiology (emphasis on endocrinology)	15
6. Equipment (approved electrolysis machines and necessary equipment for an electrolysis office)	10
7. Professional conduct and office management	15
TOTAL	150 hours

Rule 15. Suspension or Revocation of License

A. After notice and an opportunity for hearing, the board may suspend or revoke any license or certificate issued to any electrologist for any of the following causes:

1. conviction of a crime;
2. fraud, deceit, or perjury in obtaining a diploma or certificate of licensure;
3. habitual drunkenness;
4. habitual use of morphine, opium, cocaine, or other drugs having similar effect;
5. deceiving or defrauding or attempting to deceive or defraud the public;
6. obtaining or attempting to obtain payment for electrolic services by fraud, deceit, or perjury;
7. incompetency, gross negligence, or gross misconduct in professional activities;
8. intentional violation of federal, state, or municipal laws or regulations relative to contagious and infectious diseases or other public health matters.

B. Nothing in this Section shall be construed to prevent a licensed practitioner from mailing education material to his patients or the dissemination of educational material approved by electrolysis societies or associations and the board.

Rule 16. Complaints and Hearing Procedure.

A. Registration of complaints.

1. Any person, public officer, association, or the board, may prefer charges against any licensee for due cause.
2. Such charges shall be in writing, signed, and shall be submitted to the board.

B. Hearing procedures.

1. The board, or any person or persons appointed by it for the said purpose, shall hold a preliminary hearing to determine whether a formal hearing on the charges is necessary.
2. The board may dismiss the charges and take no action thereon, by preliminary hearing, in which event the charges and the order dismissing the charge shall be filed with the board.
3. If the board or the person or persons thus appointed by it decide that the charges shall be heard, the board shall designate a hearing officer to determine the charges and set a time and place for a formal hearing.
4. A copy of the charges together with notice of the time and place of the formal hearing, shall be served on the accused at least 10 days before the date fixed for the hearing.
5. Where personal service cannot be effected and such fact is certified on oath by any person duly authorized to make legal service, the board shall cause to be published twice in each of two successive weeks, a notice of the formal hearing in a newspaper published in the parish in which the accused was last known to re-

side, and, on or before the date of the first publication, a copy of the charges and of such notice shall be mailed to the accused at his last known address.

6. When publication of the notice is necessary, the date of the formal hearing shall be not less than 10 days after the last day of publication of the notice.

7. Upon the conclusion of the formal hearing the board may revoke the license of the accused, or suspend such license for a fixed period, or reprimand, or take other disciplinary action, or dismiss the charges.

8. An order of suspension made by the board may contain such provisions as to reinstatement of the license as the board shall direct.

9. The board, in its discretion, may direct a rehearing or take additional evidence, and may rescind or affirm the prior determination after such rehearing, but nothing in this subdivision shall preclude appropriate relief under and pursuant to the laws of the state providing for the review of administrative determination by the courts of the state, as specifically outlined in Title 49:959 of the state statutes.

C. Conduct of Formal Hearings

1. At any formal hearing conducted pursuant to these rules, any party to the proceedings may appear personally and with counsel and shall be given the opportunity to produce evidence and witnesses and to cross-examine witnesses.

2. At any formal hearing conducted pursuant to these rules, if a party shall appear without counsel, the board or person(s) designated as hearing officers or hearing officer shall advise such party of his right to be represented by counsel; and that, if he desires to proceed without counsel, he may call witnesses, cross-examine witnesses, and produce evidence in his behalf.

3. Appearances shall be noted on the official record of formal hearings.

4. The board or designated hearing officer may grant adjournments upon request of any party to the proceedings, provided that an adjournment shall not be for any indefinite period of time, but shall be set down for a certain day.

5. If an adjournment is requested in advance of the formal hearing date, such request shall be submitted to the board in writing, and shall specify the reason for such request.

6. In considering an application for adjournment of a formal hearing the board or hearing officer shall consider whether the purpose of the formal hearing will be affected or defeated by the granting of such adjournment.

7. The board or designated hearing officer shall issue subpoenas and subpoena duces tecum upon request of any party to the proceedings of any formal hearing set down by the board. No subpoena shall be issued until the party who wishes to subpoena the witnesses first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him for contempt. It shall be the duty of the judge to hear the application and, if satisfactory proof is made, to issue an attachment, directed to

some proper office, for the arrest of such person and, upon his being brought before him, to proceed to hearing of the case; and upon such hearing, the judge shall have the power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

8. The board or hearing officer shall not be bound by the rules of evidence in the conduct of a formal hearing, but the determination and recommendations of the hearing officer shall be founded upon sufficient legal evidence to sustain it.

9. Upon the conclusion of a formal hearing, the board shall take such action upon such written findings and determinations as it deems proper, and shall execute an order in writing carrying such findings and determination into effect. When in an adjudication proceeding a majority of the officials of the board who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the formal hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

10. The order of the board may include the assessment of civil penalties as provided by law. A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with the Section.

11. The record, minutes and evidence of a formal hearing shall be made available to all parties for examination at the office of the board, or at such place as the board may direct. Copies of the minutes may be purchased at the rate per page covering the cost thereof.

Rule 17. Fees

A. The board shall fix and collect uniform fees, which shall not exceed the following amounts for each type of fee, and which shall not be refundable:

- 1. Application fee for license to practice electrology \$150
- 2. For issuing duplicate of certificate of license 10
- 3. Application for certificate of annual renewal of license to practice electrology 75
- 4. Application fee for license of electrology school 500
- 5. Application for certificate of annual renewal license of an electrologist school 300
- 6. Delinquency fee 25

B. All fees received by the board and all fines collected un-

der the provisions of these rules shall be transmitted to the state treasurer, who shall place them in a special fund to the credit of the State Board of Electrolysis Examiners. The board shall have authority to expend the moneys in said fund for the operating expenses of the board and for other expenses incurred in the administration and enforcement of this Chapter.

Rule 18. Renewal of License

A. Each license to practice electrology in this state shall be renewed annually on or before December 1 of each year, upon application therefor, accompanied by the renewal fee prescribed in R.S. 37:3072 (A).

B. When any electrologist or electrolysis school licensed hereunder fails to register and pay the annual registration fee within 30 days after the registration fee becomes due, the license or certificate of such person or school shall be revoked automatically at the expiration of 30 days after the registration was required, without further notice or hearing. However, any person or school whose license or certificate is automatically revoked as provided herein may make application in writing to the board for the reinstatement of such license or certificate and, upon good cause being shown, the board in its discretion may reinstate such license or certificate upon payment of all past due renewal fees and the payment of an additional sum of \$50.

Rule 19. Penalty

Whoever violates any provision of this Chapter, upon conviction shall be fined not less than \$100 or more than \$500, or be imprisoned for not more than six months, or both. Each day of violation shall constitute a separate offense.

Rule 20. Grandfather Clause

Any person who has been practicing electrolysis as an electrologist in this state prior to July 1, 1979 shall be eligible to be licensed upon application therefor and payment of the license fee fixed hereafter, but without examination.

Interested persons may submit written comments to the following address: Patricia D. Sibille, Chairperson, Box 14797 Department 169, Baton Rouge, LA 70898-4797. Ms. Sibille is the person responsible for replying to inquiries regarding this proposed rule. Additional copies may be obtained by written request to the above address.

Patricia D. Sibille
Chairperson

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: Adoptions of Amended Rules and Regulations

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

This rule implements the provisions of Act 942 of the 1984 Regular Session of the Legislature. The number of board members is being increased from three to five, all of which will be appointed by the Governor.

The estimated cost per year is \$334 for 1984-85 and \$668 for subsequent years. This estimate is based on additional per diem and travel costs for two additional board members. It is assumed that four meetings will be held per year. Expenses of the board are financed from self-generated revenues.

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 NON-GOVERNMENTAL GROUPS - (Summary)

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This rule implements the provisions of Act 942 relative to the prohibition against the conduct of any other business on the premises by a practitioner of electrology. This prohibition will now be applied only to practitioners established after July 1, 1983, or to those established prior to that date who move to a different location.

Patricia D. Sibille
Chairperson

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Human Resources
Board of Examiners of Psychologists**

The Board of Examiners of Psychologists intends to repeal the following rules:

1) In telephone directories in the yellow pages under the listing of "Psychologists," no businesses will be listed except as they are subordinate to the name of a licensed psychologist who may indicate his business association.

2) Any public presentation of a business name as psychology or any derivative of the term such as psychologist or psychological is in violation of the law unless services to clients are rendered by a licensed psychologist or under the supervision of a licensed psychologist.

3) Candidates for licensure may apply as soon as they receive their Ph.D. degrees. During the two-years supervised period intervening before the receipt of the license, the board will act as consultant to the applicant. The board will serve to advise the applicant regarding any questions he might have as to the adequacy of his supervised experience in meeting the requirements for licensure.

4) All applicants for licensure and re-licensure must provide a statement describing the extent and nature of their supervised experience. A statement must be provided by the supervisor of the nature, character and extent of the supervision he is providing.

5) Psychologists licensed by the board will submit along with their application for renewal a summary report listing the names, the degrees, job titles, level of training, nature of work, and setting of work of those persons doing psychological work for whom they assume supervisory responsibilities. The board reserves the authority to interpret the adequacy of supervision which is being assumed by any licensed psychologist and to advise the psychologist of the board's assessment of the reasonableness and propriety of the supervisory arrangements with those persons for whom he is responsible.

6) With respect to the implementation of the law authorizing the establishment of special education centers and the designation of "other competent authorities" for evaluation and recommendations for placement in the school system of handicapped or exceptional children, the board affirms that there shall be no other definition of the psychologist in the special education center than that provided in the licensing law, namely, that such persons should be a licensed psychologist or working under the direct supervision of a licensed psychologist.

7) Any psychologist licensed by the board that does not

respond promptly to the certified letter reminding the licensee that his license has expired will be dropped from the directory and will not be entitled to practice psychology in Louisiana until the license is renewed according to the provisions of the licensing law.

8) The cutting score on the written examination for a clear pass is at the twenty-fifth percentile or greater on National norms and that scores less than the twenty-fifth percentile will be considered by the board in relation to all other available information.

9) Applications for reciprocity can be considered only from psychologists who received their licenses from other states while residents of those states and were actively engaged in the conduct of psychology during that period of residence.

Interested persons may comment on the repeal of listed rules in writing at the following address: Louisiana State Board of Examiners of Psychologists, Box 14782, Baton Rouge, LA 70898.

Gregory K. Gormanous, Ph.D.
Chairman

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Repeal of Rules**

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

There will be no costs or savings to local or state governmental units.

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

There will be no effect on revenue collections.

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

There will be neither costs nor economic benefits.

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

The repeal of these rules should impact neither competition nor employment.

Gregory K. Gormanous, Ph.D.
Chairman

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the following change in the Food Stamp Program as mandated by federal regulations as published in the *Federal Register*, Vol. 49, No. 242, Friday, December 14, 1984, pp. 48677-48681.

PROPOSED RULE

Effective February 1, 1985, use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other federal assistance programs, or federally assisted State programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, state or federal law enforcement officials, upon

their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

Emergency rulemaking was invoked to implement this policy effective February 1, 1985. The emergency rule was published in the February 20, 1985 *Louisiana Register* (Volume 11, Number 2).

Interested persons may submit comments to the following address: Marjorie T. Stewart, assistant secretary, Office of Family Security, Box 44065, Baton Rouge, LA 70804. She is the person responsible for responding to inquiries regarding the proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985, in the Louisiana State Library at 9:30 a.m.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Disclosure of Information

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

The estimated cost is \$84.00 in FY 84-85 (\$42.00 State and \$42 Federal funds).

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

There is no effect on revenue collections.

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

There are no costs or economic benefits to directly affected persons or non-governmental groups.

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

There is no effect on competition and employment.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the following change in the Food Stamp Program as mandated by federal regulations as published in the *Federal Register*, Vol. 49, No. 242, Friday, December 14, 1984, pp. 48677-48681.

PROPOSED RULE

Effective April 1, 1985, moneys withheld from assistance from another program, for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements shall be included as income in the Food Stamp Program.

The Office of Family Security (OFS) shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefit under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) is decreased due to intentional noncompliance, the OFS shall identify that portion of the decrease which is a penalty. The penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional violation.

(2) The OFS shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

Emergency rulemaking was invoked to implement this policy effective April 1, 1985. The Emergency Rule was published in the February 20, 1985 *Louisiana Register* (Volume 11, Number 2).

Interested persons may submit comments to the following address: Marjorie T. Stewart, assistant secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana, 70804. She is the person responsible for responding to inquiries regarding the proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985 in the Louisiana State Library at 9:30 a.m.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Failure to Comply with Other Programs

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

The cost is \$100 in FY 84-85 (\$50 in state funds and \$50 federal funds)

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

There is no effect on revenue collections.

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

When a recipient intentionally fails to comply with requirements of an assistance payments program (SSI, AFDC, General Assistance, etc.), the Office of Family Security will ensure that no increase in Food Stamp benefits occurs as a result of any decrease in other benefits caused by such failure to comply.

Approximately 502 AFDC cases currently in recoupment status could have their Food Stamp benefits decreased. Adjustments to these 502 AFDC cases will be made on a case-by-case basis at the next redetermination or other necessary case action. Also, approximately 23 cases each month after the

their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

Emergency rulemaking was invoked to implement this policy effective February 1, 1985. The emergency rule was published in the February 20, 1985 *Louisiana Register* (Volume 11, Number 2).

Interested persons may submit comments to the following address: Marjorie T. Stewart, assistant secretary, Office of Family Security, Box 44065, Baton Rouge, LA 70804. She is the person responsible for responding to inquiries regarding the proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985, in the Louisiana State Library at 9:30 a.m.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Disclosure of Information

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

The estimated cost is \$84.00 in FY 84-85 (\$42.00 State and \$42 Federal funds).

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

There is no effect on revenue collections.

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

There are no costs or economic benefits to directly affected persons or non-governmental groups.

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

There is no effect on competition and employment.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the following change in the Food Stamp Program as mandated by federal regulations as published in the *Federal Register*, Vol. 49, No. 242, Friday, December 14, 1984, pp. 48677-48681.

PROPOSED RULE

Effective April 1, 1985, moneys withheld from assistance from another program, for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements shall be included as income in the Food Stamp Program.

The Office of Family Security (OFS) shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefit under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) is decreased due to intentional noncompliance, the OFS shall identify that portion of the decrease which is a penalty. The penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional violation.

(2) The OFS shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

Emergency rulemaking was invoked to implement this policy effective April 1, 1985. The Emergency Rule was published in the February 20, 1985 *Louisiana Register* (Volume 11, Number 2).

Interested persons may submit comments to the following address: Marjorie T. Stewart, assistant secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana, 70804. She is the person responsible for responding to inquiries regarding the proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985 in the Louisiana State Library at 9:30 a.m.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Failure to Comply with Other Programs

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

The cost is \$100 in FY 84-85 (\$50 in state funds and \$50 federal funds)

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

There is no effect on revenue collections.

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

When a recipient intentionally fails to comply with requirements of an assistance payments program (SSI, AFDC, General Assistance, etc.), the Office of Family Security will ensure that no increase in Food Stamp benefits occurs as a result of any decrease in other benefits caused by such failure to comply.

Approximately 502 AFDC cases currently in recoupment status could have their Food Stamp benefits decreased. Adjustments to these 502 AFDC cases will be made on a case-by-case basis at the next redetermination or other necessary case action. Also, approximately 23 cases each month after the

effective date of this rule will not have their Food Stamp benefits increased following reductions in AFDC benefits due to intentional failure to comply.

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

There is no effect on competition and employment.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the following rule in the Title XIX Medical Assistance Program.

PROPOSED RULE

The following policy contained in the Rule effective September 1, 1984, published in the *Louisiana Register*, on September 20, 1984, Volume 10, Number 9, page 659 will be rescinded:

Effective September 1, 1984, the Medical Assistance Program hereby amends the policy regarding the number of therapeutic leave days which are reimbursable under Title XIX for residents of ICFs/H from the current limit of 25 days per recipient per calendar year to 45 days per recipient per fiscal year where permitted by the recipient's plan of care. For the fiscal year 1984-85, the 45-day limitation will begin on September 1, 1984. For subsequent fiscal years, the 45-day limitation will be recomputed each July 1. Leave days for the following purposes shall be excluded from the annual 45-day limitation per recipient:

1. Special Olympics
2. Roadrunner sponsored events
3. Louisiana planned conferences
4. Trial discharge leaves—limited to 15 days per occurrence

The above exclusions shall be applicable to all Title XIX ICF/H recipients effective September 1, 1984. When absences for the above purposes exceed the limit, additional days may only be reimbursed under Title XIX if included in the total number of therapeutic leave days claimed for the ICF/H recipient within the recipient's allotment of leave days.

The Medical Assistance Program hereby implements policy regarding the number of therapeutic days which are reimbursable under Title XIX for residents of ICFs/H to read as follows:

The number of therapeutic leave days which are reimbursable under Title XIX for residents of ICFs/H are limited to 45 days per recipient per fiscal year where permitted by the recipient's plan of care. The use of paid leave days is limited to 14-day intervals per temporary absence per recipient, when permitted by the recipient's plan of care. Leaves of absence such as visits with relatives or friends, Special Olympics, Roadrunner sponsored events, Louisiana planned conferences, trial discharges, camp, and other temporary absences, excluding elopement days and hospitalizations, must be included in the recipient's plan of care.

A leave of absence is defined as any temporary absence from a facility, including but not limited to 45 days, and shall not exceed 14-day intervals per recipient per fiscal year, and is indicated in the recipient's plan of care. A leave of absence that is longer than 14 consecutive days, for whatever the reason, shall result in ineligibility for recipients eligible under the special income level. A recipient is eligible under the special income level if his/her income would make him/her ineligible for SSI benefits if the recipient was not institutionalized.

Leave days for the following purposes shall be excluded from the annual 45-day limitation but still limited to 14-day intervals per recipient and shall be included in the written plan of care:

1. Special Olympics
2. Roadrunner sponsored events
3. Louisiana planned conferences
4. Trial discharge leaves—14 days per occurrence.

Leave days under the 45-day limit include visits with relatives or friends, camp days and elopement days. Hospitalization for treatment of an acute condition is limited to 15 days per recipient per calendar year.

For the fiscal year 1984-85, the 45-day limitation began September 1, 1984. For subsequent fiscal years, the 45-day limitation which must not exceed 14-day increments will be recomputed each July 1.

Implementation of this rule is dependent on the approval of the Health Care Financing Administration (HCFA). Disapproval of the change by HCFA will automatically cancel the provisions of this Rule and current policy will remain in effect.

Emergency rulemaking has been invoked to implement this policy effective January 1, 1985. The emergency rule is being published simultaneously with this notice of intent.

The emergency rule was necessary to include changes/clarifications required by HCFA in a letter addressed to the assistant secretary of the Office of Family Security dated December 5, 1984.

Interested persons may submit written comments to the following address: Marjorie T. Stewart, Assistant Secretary, Box 44065, Baton Rouge, LA 70804. She is the person responsible for responding to inquiries regarding this proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985, in the Louisiana State Library Auditorium, 760 Riverside, Baton Rouge, LA beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Leave Days for Recipients in ICFs/H

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

No costs are involved as the number of paid leave days is not changed. This rule only limits the use of paid leave days to 14-day intervals per temporary absence per recipient.

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

There will be no effect on revenue collections.

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

The proposed change will benefit recipients in ICFs/H by providing an equitable leave day policy.

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

No effect on competition and employment is anticipated as a result of this proposed rule change.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security proposes to implement the following amendment in the State Plan for the Low Income Home Energy Assistance Program.

PROPOSED RULE

The Low Income Home Energy Assistance Program State Plan, Page 2, second paragraph of Item C.2. Assurances/Certifications will be amended to read as follows:

Eligible households shall receive two payments annually; one to assist with heating costs, and one to assist with cooling costs. Walk-in applicants may apply for assistance at the local parish Offices of Family Security. In order to qualify for low income energy assistance a person must be a citizen or lawfully admitted alien.

This provision was adopted as an emergency rule on November 27, 1984, to permit the agency to issue an energy payment for heating costs to eligible households earlier than February, 1985, and, thereby be more responsive to the health and welfare of low income households.

The Emergency Rule was published in the December 20, 1984, *Louisiana Register* (Volume 10, Number 12). Interested persons may submit written comments to the following address: Marjorie T. Stewart, assistant secretary, Office of Family Security, Box 44065, Baton Rouge, LA 70804. She is the person responsible for responding to inquiries regarding this proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985, in the Louisiana State Library Auditorium, 760 Riverside, Baton Rouge, LA, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Low Income Home Energy Assistance Program

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

No implementation costs are involved. This proposed rule allows the agency needed flexibility in the issuance of energy assistance payments rather than the previously designated months of August and February.

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

There are no effects on revenue collections.

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

Eligible recipients will continue to receive energy assistance payments; one to assist with home heating costs, and one to assist with home cooling costs.

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

There are no effects on competition and employment.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the following rule in Title XIX Medical Assistance Program.

PROPOSED RULE

Effective May 1, 1985, the disability criteria used by the Social Security Administration (SSA) in determining disability for the Supplemental Security Income (SSI) Program shall be applied in the SSI related Medicaid Programs. An SSA / SSI disability decision takes precedence over any contrary State disability determination. This means that a decision by the OFS Medical Services Review Team (MSRT) that an individual meets SSI disability criteria is invalidated by an SSI decision that the individual is not eligible for disability-related SSI benefits. Conversely, an MSRT decision that an individual does not meet SSI disability criteria is invalidated by an SSI decision that the individual is eligible for disability related SSI.

Implementation is subject to approval by the Health Care Financing Administration (HCFA) as required for all Title XIX policy changes. If disapproved by HCFA, the policy prior to this proposed amendment remains in effect.

Interested persons may submit written comments to the following address: Marjorie T. Stewart, assistant secretary, Box 44065, Baton Rouge, LA 70804. She is the person responsible for responding to inquiries regarding this proposed rule. A copy of the proposed rule and its fiscal and economic impact statement is available for review in each local Office of Family Security.

A public hearing on the proposed rule will be held on March 6, 1985, in the Louisiana State Library Auditorium, 760 Riverside, Baton Rouge, LA beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Dr. Sandra L. Robinson, M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: SSA/SSI Disability Determinations

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

It is estimated that 252 individuals receiving medical services at an average monthly cost of \$1,842.44 in Intermediate Care Facilities I, II and Intermediate Care Facilities for the Handicapped will not be eligible for Title XIX benefits. Estimated savings to the agency will be as follows:

	FY 84-85 (1 mth.)	FY 85-86	FY 86-87
Federal	(\$ 299,238)	(\$3,770,398)	(\$3,919,606)
State	(\$ 165,057)	(\$2,079,716)	(\$2,223,014)
Total	\$ 464,295	\$5,850,114	\$6,142,620

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

Federal financial participation under Title XIX will no longer be available for 252 individuals now receiving nursing home care. Therefore, federal revenues will be reduced by \$299,238 in 1984-85, \$3,770,398 in 1985-86 and \$3,919,606 in 1986-87.

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

It is estimated that 252 persons will no longer be eligi-

ble for Medicaid when this measure is implemented. Those facilities providing care to these persons will lose a number of their residents.

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

There will be no effect on competition and employment.

Marjorie T. Stewart
Assistant Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Management and Finance Division of Policy, Planning and Evaluation

The Department of Health and Human Resources, Office of Management and Finance, Division of Policy, Planning and Evaluation, proposes to adopt the following policies and guidelines effective April 20, 1985 for the review of applications to establish new home health agencies. The promulgation of such policies and guidelines is mandated by LRS 40:2009.34 as enacted by Act 347 of the 1984 Regular Session of the Louisiana Legislature.

Rule

HOME HEALTH SERVICES

Definition/Description

Home health care is that component of comprehensive health care in which health services are provided to individuals and families in their places of residence for the purpose of restoring health or maximizing the level of independence, while minimizing the effects of disability and illness, including terminal illness. Services appropriate to the needs of the individual patient and family are planned, coordinated, and made available by public or private providers organized for the delivery of home health care through the use of employed staff, contractual arrangements, or a combination of the two patterns.

Health services provided include, but are not limited to, the following:

- skilled nursing
- home health aide
- speech therapy and audiology
- physical therapy
- nutrition
- respiratory therapy
- occupational therapy
- medical social work
- medical supplies
- durable medical equipment

The home health agency providing medical services maintains a plan for home health services for each patient in conformance with the patient's plan of treatment as prescribed by his/her physician. Such agencies provide care to patients with a wide range of diagnoses and at all levels of dependence, including those completely bed-ridden and those needing to be fed. Persons or groups in need of home health services include elderly persons whose activities are limited by physical and/or mental deterioration; persons who suffer irreversible mental or physical impairments, and persons with or recuperating from a wide range of acute medical problems such as injuries, infections, diseases, and complications of pregnancy.

Advantages

Home health care provides an increased range of options for the provider, the community and the individual. Services are focused on the individual in need of care, rather than on groups, allowing for economy in the use of professional and other staff. The largest expenditure in home health care is for personal care and supportive services.

Studies have shown that patients generally respond more rapidly and fully to care in the home. At a lower cost than a hospitalization, the home health patient generally has an improved outcome in terms of early discharge from care; is less often institutionalized; and has increased contentment, improved mental functioning and increased social activity.

Alternatives to Institutionalization

A health care system should provide an array of services which provide care without institutionalization, and which match an individual's needs to the appropriate service available. Some of the possible alternatives to institutionalization are adult day care centers, subsidized housing complexes with health services, homemakers, and home health services. There is convincing evidence that such services may not only postpone but often prevent more costly institutionalization.

Care at home, through a home health agency, is the most desirable alternative and should be considered first. It should be noted, however, that home care is not a viable alternative to institutionalization for all patients. The environment at home may be inappropriate, the family may be unable to handle the responsibility, or the patient may not have a family. Some patients require the sheltered support of an institution. In the natural order of things, however, institutionalization should be an alternative to home health care.

Act 347 of the 1984 Regular Session of the Legislature

Act 347 amends and reenacts R.S. 40:2009.34 relative to home health care agencies, to require the secretary of the Department of Health and Human Resources to promulgate rules to require approval by the agency responsible for the implementation of Section 1122 of the Social Security Act as a condition for licensure. Such approval will be required for the first licensing of all home health agencies not in existence as of April 20, 1985.

Utilization

The benefits of home health care over institutional care have been documented in preceding paragraphs; however, underutilization of home health agencies can lead to lower quality of care and a proliferation of underutilized agencies is undesirable as an alternative to institutionalization. Optimal utilization of each home health agency should take into account the following factors:

1. The number of direct service staff available to provide home health services.
2. The number of home health visits/services which can be delivered by each direct service staff member per day.
3. The number of days available for the provision of such services.
4. The average length of time used for each visit.

Area of Analysis

The area of analysis for home health agencies is defined as the health planning district in which the agency or proposed agency is located.

Resource Goals

1. Applicant shall project a caseload of 30 patients or more and shall provide a list of physicians with referral agreements with the proposed agency.
2. Home health services shall be available at least eight hours a day five days a week and shall be available on an emergency basis 24 hours a day seven days a week. Home health services shall be available to an individual in need within five days, contingent upon the patient's condition and the physician's recommendation.
3. A proposal to provide home health services shall indicate that the proposed agency will meet licensing requirements and Medicare certification criteria.

The Department of Health and Human Resources, Division of Licensing and Certification, shall deny licensure to any home

health agency which does not receive a favorable recommendation from the Department's Division of Policy, Planning and Evaluation as a result of the applicant's failing to meet the criteria stated in the resource goals.

Should the party seeking licensure desire to appeal, he must respond in writing to the Division of Licensing and Certification not more than 30 days after the date of notification of non-licensure in order to request a fair hearing or he forfeits his right of appeal. The hearing shall conform to rules set forth in the Louisiana Administrative Procedure Act.

PROCEDURES

Definitions

1. *Department of Health and Human Resources (DHHR)*: the designated planning agency responsible for performing the functions of Section 1122, P. L. 93-641, as amended by P. L. 96-79, and Act 347 of the 1984 regular session of the Louisiana Legislature.

2. *Division of Policy, Planning and Evaluation (DPPE), Bureau of Health Planning*: the division and bureau within the Louisiana DHHR designated to carry out the provisions of Section 1122, P. L. 93-641, as amended and Act 347 of 1984.

3. *Division of Licensing and Certification (DLC)*: that division of the Department of Health and Human Resources charged with the responsibility of carrying out licensure and certification functions for the State of Louisiana.

4. *Need Certification*: a need certification will be granted to an applicant Home Health Agency if, after analysis based on specified criteria, there is a decision that a need for the services of said agency exists. Such certification is a condition of licensure for all new home health service agencies.

5. *Person*: an individual, a trust or estate, a partnership, a corporation (including associations, joint-stock companies, and insurance companies), a state, or a political subdivision or instrumentality of a state (including a municipal corporation).

6. *Home Health Agency*: a public or private organization, or subdivision thereof, whether free-standing or hospital-based, which is primarily engaged in the provision of skilled nursing services and at least one additional therapeutic health service in the place of residence used as a patient's home.

REVIEWING AGENCIES

Division of Policy, Planning and Evaluation
200 Lafayette Street, Suite 406
Baton Rouge, LA 70801

Division of Licensing and Certification
333 Laurel Street, Room 610
Baton Rouge, LA 70804

Any other agency deemed appropriate by Division of Policy, Planning and Evaluation.

Facilities Included

All agencies offering home health services, which are seeking licensure for the first time, will be required to undergo a need certification review and receive approval in order to obtain a license to operate in Louisiana. Home health agencies to be established under the auspices of a health care facility are also subject to review under Section 1122 of the Social Security Act, if federal reimbursement of a capital expenditure is desired.

Review Procedures

A. Notification

1. Applicants representing health care facilities seeking federal reimbursement of capital expenditures to establish or expand home health agencies should refer to Section 1122 Policies and Guidelines.

2. Any person, agency, or organization which proposes to establish a home health agency should submit a request in writing to DPPE for review under Act 347. If the contact person for the

project changes at any time during the review procedure, it is incumbent upon the applicant to notify DPPE of such a change.

3. DPPE will promptly send to the applicant the necessary application. The application should be completed and returned to DPPE in triplicate.

4. Within 15 days of receipt of an application, DPPE shall review the application for completeness. The application is considered complete for review purposes as of the date on which all required information is received.

—If DPPE fails to notify the applicant within 15 days that additional information is needed, the application is considered complete as of the date received.

—If additional information is requested by DPPE (within 15 days), and subsequently received, the application is considered complete as of the date on which the required information is received.

—If additional information is requested by DPPE within 15 days, the applicant must provide the required information within 90 days or the application will be considered withdrawn.

—Each time additional information is received, DPPE has 15 days from the date of receipt to respond.

5. When DPPE determines that the application is complete, DPPE shall notify the applicant in writing that the period for review has begun. The review period shall not exceed 60 days from the date that the application is declared complete.

6. If additional information is submitted after the review period has begun, DPPE will again confer and deem the application information complete or incomplete. If the additional information is allowed, the timetable must be adjusted so that DPPE has 60 days for project review after the receipt of the additional or new information.

7. When the application is determined complete by the DPPE, the DPPE shall issue a press release of its receipt of the completed application through local newspapers and public information channels. Publications to be used in required press releases should include the state journal, the major urban newspaper in the affected area, the local newspaper in the impacted area of analysis of the projects as specified by the applicant.

8. DPPE shall send copies of the application to the Division of Licensing and Certification (DLC) for review and comments regarding compliance with licensing and Medicare certification standards.

9. On the third Wednesday of each month at 10 a.m., the director of Policy, Planning and Evaluation (or his designee) shall conduct a public hearing at division headquarters. The purpose of this hearing will be to receive written (in duplicate) and oral comments on applications having been declared complete by the division. Oral presentations shall be limited to an amount of time to be specified by the individual in charge of the hearing at the time of the hearing. The same amount of time will be allowed to those in favor and those opposed to the application. Comments shall be accepted on only those applications which have not previously been reviewed at public hearing.

Applications determined complete by DPPE by the last day of the month will be scheduled for the next month's public hearing. Agendas for each public hearing shall be available to interested parties by the fifth day of the month of the public hearing.

10. The DPPE, after having consulted with and taken into consideration public comments and the comments of DLC, shall provide written notification to the proponent and to DLC that:

- the application has been determined to be in conformity with the criteria, standards and plans;
- the application has been determined not to be in conformity with the criteria, standards and plans; or
- the failure of the DPPE to provide notice of conformity or nonconformity at the end of the 60 day review period shall not

result in an automatic finding of conformity but will allow the applicant to seek a determination by suit for mandamus.

Notification is deemed to be given upon the date of mailing of such notification by DPPE.

11. Copies of the findings of the DPPE shall also be publicized through local newspapers and public information channels and sent to interested parties and professional organizations who request such notification.

General Criteria for Need Certification Reviews

In making recommendations concerning home health agency applications reviewed under LRS 40:2009.34, DPPE shall consider, but not be limited to, the following criteria:

- I. The relationship of the proposal to the State Health Plan.
- II. The relationship of the proposal to the long range development plan (if any) of the person proposing such services.
- III. The need of the population in the area of analysis for such services.
 - A. Delineation of the area of analysis for the proposal (the definition of "area of analysis" will be governed by the State Health Plan's definition).
 - B. The current and projected availability of similar facilities and services within the area of analysis, including but not limited to, the number and distribution of such facilities and services.
 - C. Accessibility of the target population to existing and proposed facilities and services. (This would include physical and financial accessibility.)
 - D. Current and projected measures of utilization of existing facilities and services.
 - E. Proportion of the population aged 65 and over in the area of analysis and projections of the growth of this population.
 - F. Various other projections of need.
- IV. The availability or potential availability of less costly or more effective alternatives to the proposal.
- V. The immediate and long term financial feasibility of the proposal.
- VI. The relationship of the proposed services to the existing health care system of the area of analysis. For example, documentation of coordination and/or linkage agreements between the applicant and existing or planned health care institutions and/or providers within the area of analysis.
- VII. The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the proposed services and the availability of alternative uses of such resources for the provision of other health services.
 - A. Current and projected availability of physicians, nursing and therapeutic personnel, and management personnel in the area of analysis.
 - B. Adequacy of proposed staffing according to required standards.
- VIII. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary and/or support services.
- IX. In the case of a new agency, the applicant must specify the site where the agency will be located in addition to a legal property description of the site and must present evidence of ownership or option to acquire such site or show evidence of proposed lease agreement.
- X. The applicant shall provide disclosure of those natural persons who are registered agents, directors, officers and principal shareholders of the corporation proposing to offer the services.
- XI. The probable impact of the project on the cost of health services within the area of analysis.
- XII. Support or opposition of the project by the local com-

munity, including health related agencies and professional organizations.

Interested persons may submit written comments to the following address: Joseph Ross, Administrator, Division of Policy, Planning and Evaluation, 200 Lafayette Street, Suite 406, Baton Rouge, LA 70801. He is responsible for responding to inquiries regarding the proposed rule.

Public Hearings are scheduled as follows:

March 4, 10 a.m., State Department of Insurance Building, Plaza Floor Hearing Room, 950 N. Fifth Street, Baton Rouge, LA.

March 5, 10 a.m., Orleans Parish OFS, Second Floor Auditorium, 2601 Tulane Avenue, New Orleans, LA. March 5, 10 a.m., State Office Building, Fourth Floor Conference Room, 122 St. John Street, Monroe, LA.

March 6, 10 a.m., State Office Building, OFS Conference Room, 1000-A Plantation Road, Thibodaux, LA. March 6, 10 a.m., State Office Building, Room 205, 1525 Fairfield Avenue, Shreveport, LA.

March 7, 10 a.m., State Office Building, First Floor Conference Room, 302 Jefferson Street, Lafayette, LA. March 7, 10 a.m., State Office Building, Second Floor Conference Room (OFS), 900 Murray Street, Alexandria, LA.

March 8, 10 a.m., St. Tammany Parish OFS, Bogue Falaya Plaza Shopping Center, Covington, LA. March 8, 10 a.m., Calcasieu Parish OFS, Second Floor, 710 Ryan Street, Lake Charles, LA.

At the public hearings, all interested persons will have the opportunity to provide recommendations on the proposed Rule, orally or in writing. Written comments will be accepted by Joseph Ross at the address above through March 15, 1985.

Sandra L. Robinson, M.D., M.P.H.
Secretary and State Health Officer

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Policies and Guidelines to Implement Act 347 of 1984

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

Estimated costs for implementation of this rule are \$51,702 for 1985-86 and \$54,817 for 1986-87. There will be no additional costs for 1984-85. Estimates include salaries for one professional and one clerical, plus travel, office equipment and word processing capability. The Division of Policy, Planning and Evaluation (DHHR) estimates that 120 to 130 applications per year for home health agencies will be subjected to full review as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)

No effect is predicted as a direct result of the implementation of the policies and guidelines.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)

No costs or benefits are predicted as a direct result of the implementation of the policies and guidelines.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)

No effects are predicted as a direct result of implementation of the policies and guidelines.

Sandra L. Robinson, M.D.
Secretary and State Health Officer

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Human Resources Office of Management And Finance Division of Policy, Planning and Evaluation

The Department of Health and Human Resources, Office of Management and Finance, Division of Policy Planning and Evaluation, Bureau of Health Planning and Development proposes to adopt the following changes to the policies and guidelines for Section 1122 capital expenditure reviews to be effective April 20, 1985. The proposed changes will be made to the rule published in Volume 9, Number 11 of the *Louisiana Register*, November 20, 1983.

The proposed changes are the result of Executive Order EWE 84-13 dated August 1, 1984, Public Law 93-641, as amended by Public Law 96-79, and Public Law 92-603.

PROPOSED RULE

The following policies and guidelines are adapted from the federal regulations (42 C.F.R. 100.101 et seq.) which are relative to Section 1122 of the Social Security Act.

Introduction

Section 1122 of the Social Security Act, as amended by Public Law 92-603, requires that a person who proposes to make a capital expenditure by or on behalf of a health care facility obtain prior approval by a designated planning agency in order to be reimbursed by Medicare and Medicaid for costs related to the capital expenditure. The purpose of the provision is to assure that federal funds are not used to support unnecessary capital expenditures by health care facilities.

For purposes of Section 1122, the term "health care facility" includes hospitals, psychiatric hospitals, rehabilitation facilities, tuberculosis hospitals, home health agencies, skilled nursing facilities, kidney disease treatment centers (including free-standing hemodialysis units), intermediate care facilities, and ambulatory surgical facilities. Physicians' offices are excluded.

The state agency designated to carry out Section 1122 provisions in Louisiana is the Department of Health and Human Resources. The Division of Policy, Planning and Evaluation, of the Department of Health and Human Resources, will submit applications to other agencies for review, as deemed necessary.

Applications are to be submitted to: Division of Policy, Planning and Evaluation, 200 Lafayette Street, Suite 406, Baton Rouge, LA 70801, (504) 342-2001.

Definitions

1. *Ambulatory Surgical Facility*: a facility which is not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include offices of private physicians or dentists, whether for individual or group practice.

2. *Approval*: a finding of conformity, which is a recommendation by the state agency to DHHS that a proposal is in conformity with the criteria, standards, and plans under which the proposal was reviewed.

3. *Change in Bed Capacity*: any increase or decrease in the licensed bed capacity of a health care facility.

4. *Complete Date*: The date on which all of the information and materials required for a complete application are received by DPPE. "Deemed complete" refers to the complete date; "declared complete" refers to date of notification of completeness.

5. *Department of Health and Human Resources (DHHR)*: the designated planning agency responsible for performing the functions of Section 1122 in Louisiana.

6. *DHHS*: United States Department of Health and Human Services.

7. *Disapproval*: a finding of non-conformity, which is a

recommendation by the state agency to DHHS that a proposal is not in conformity with the criteria, standards, and plans under which the proposal was reviewed, and that federal reimbursements related to the expenditure should be withheld from federal payments.

8. *Division of Policy, Planning and Evaluation (DPPE), Bureau of Health Planning*: the division and bureau within the Louisiana DHHR designated to carry out the provisions of Section 1122.

9. *Home Health Agency*: a public or private organization, or subdivision thereof, which is primarily engaged in the provision of skilled nursing services and at least one additional therapeutic health service in the place of residence used as a patient's home.

10. *Health Planning District*: For purposes of Section 1122 review, there are nine Health Planning Districts which are the defined service areas for certain proposed or existing health care facilities.

11. *Hospital*: an institution which is engaged in providing to inpatients (or to inpatients and outpatients) by or under the supervision of physicians, diagnostic and therapeutic medical services for the treatment and care of injured, disabled, sick or pregnant persons; the term does not include psychiatric hospitals, tuberculosis hospitals, or rehabilitation facilities.

12. *Notification*: as used in this document, notification is deemed by federal interpretation to be given on the date on which a decision is mailed by DPPE or a hearing officer. This includes declarations of completeness or incompleteness, findings of conformity or non-conformity, and appeal decisions.

13. *Nursing Home*: a long term care facility which provides, in addition to food and shelter, professional attendant and nursing care, 24 hours a day, to the chronically ill, convalescent, disabled, and elderly, with a full range of complementary services (therapeutic, dietary, social, etc.).

14. *Person*: an individual, a trust or estate, a partnership, a corporation (including associations, joint-stock companies, and insurance companies), a state or a political subdivision or instrumentality of a state (including a municipal corporation).

15. *Psychiatric Hospital*: an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

16. *Rehabilitation Facility*: an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services provided under professional supervision.

17. *Review Period*: For full reviews, a period of at least 60 days, but not more than 90 days, from the "complete date"; for expedited reviews, a period of not more than 30 days from the "complete date."

18. *Service Area*: The area of analysis for a proposal; the State Health Plan defines "service area" for each particular type of service.

19. *State Health Plan*: A long range plan prepared by the State Health Planning and Development Agency (Division of Policy, Planning and Evaluation) and adopted by the Statewide Health Coordinating Council for the state, specifying the health goals considered appropriate by the agency, state health officials, and other experts.

20. *Substantial Change in Service*: a capital expenditure which results in the addition of a clinically related service (i.e., diagnostic, curative, or rehabilitative) not previously provided in the facility, or the termination of such a service previously provided.

21. *Timely Notice*: as required by Section 1122 regulations, timely notice is given when a complete application is re-

ceived by DPPE at least 60 days prior to the incurrence of an obligation.

22. *Tuberculosis Hospital*: an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

Expenditures and changes subject to review

Capital expenditures subject to review are those which are not properly chargeable as expenses of operation and maintenance, and which

- (1) exceed \$600,000 or
- (2) change the bed capacity of the facility or
- (3) substantially change the services of the facility.

Questions regarding appropriateness of review should be directed to DPPE (in writing) for an official determination.

In determining the total amount of capital expenditure, DPPE shall consider the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the construction, acquisition, improvement, expansion or replacement of the plant and equipment relative to the expenditure.

Proposals for the acquisition of facilities or equipment by lease or comparable arrangement, or through donation, may be subject to review under Section 1122. When a corporation owning a facility or a Section 1122 approval for a proposed facility, intends to sell or transfer over 25 percent of its stock, the corporation shall notify DPPE of the stock transaction.

A substantial site change for a previously approved project is subject to full review. The current need (and other criteria) for the proposal will be re-evaluated in terms of the new site.

A change in 1122 approved services or a "reclassification" of 1122 approved beds which constitutes a change in services, with or without a capital expenditure, is subject to a full review.

Section 1122 findings of conformity (approvals) can neither be sold nor transferred. A stock transaction of a corporation whose only or major asset is the Section 1122 finding of conformity shall be considered a transfer of the finding of conformity, which is prohibited. Such a transaction shall make the approval invalid.

A lease for an approved, unconstructed facility shall not be considered for review. Upon construction of the facility, the proposed lease shall be subject to review.

For previously approved projects, prior to actual construction of the facility, a change in the legal entity of the holder of the approval shall be considered a change in the capital expenditure, and such change shall be subject to full review. The applicant must relinquish the original Section 1122 approval before DPPE will consider the new application.

A capital expenditure for which the obligation is incurred by or on behalf of a health care facility after December 31, 1972 is subject to review under these provisions.

Public Law 98-369 provides that the valuation of an asset after a change of ownership shall be the lesser of the allowable acquisition cost of such asset to the first owner of record on or after June 1, 1984, or the acquisition cost of such asset to the new owner. This will affect the establishment of an appropriate allowance for depreciation and interest in capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a health care facility which has undergone a change of ownership.

Alternatives to Full Review Process

Under the following circumstances, DPPE may elect not to conduct a full review.

Election Not to Review

The DPPE may elect not to review a capital expenditure which is proposed for an emergency situation. The option to "elect not to review" shall only be used to exempt from review emergency situations as defined below:

Emergency: an unforeseen occurrence, condition, mischance or perplexing contingency or complication of circumstances bringing with it destruction or injury of life or property (movable and immovable) or the imminent threat of such destruction or injury, or as the result of an order from any judicial body having jurisdiction therein to take any immediate action which requires construction, repair or acquisition of property or equipment, where the unforeseen occurrence, condition or mischance or perplexing contingency or complication of circumstances or court order will not permit a health care facility the time necessary for an application for full review under Section 1122.

An applicant proposing such an expenditure may submit a written request to DPPE for an "elect not to review." DPPE will review the information in the request, request additional information if necessary, and determine the appropriateness of the request. If DPPE elects not to review the proposal, the applicant and DHHS will be notified. If DPPE determines that a review will be conducted, the applicant will be notified and provided with the appropriate application forms.

Expedited Review

The DPPE may elect to conduct an expedited review of a proposed capital expenditure which is subject to review under Section 1122. In order to be considered for an expedited review, the project (1) must not be a discrete part of a larger capital expenditure or phased project, (2) must be related to a Section 1122 approved facility, service, or equipment, and (3) must meet one of the following criteria:

1. Replacement or modification of equipment with an expenditure in excess of \$600,000.
2. Sale of an existing facility with no change in beds or service.
3. Lease (or discontinuance of a lease) of an approved existing facility with no change in beds or services.
4. Renovation of an existing facility up to \$1,000,000 which does not result in a change in existing beds or services.
5. A cost overrun on an initially approved project, not to exceed 25 percent of the originally approved cost.
6. Addition of non-medical equipment or purchase of land.
7. Addition of a new service (which does not constitute a substantial change in services) in an existing facility which will not exceed \$600,000.
8. Incorporation, reorganization, merger, consolidation, or other changes in the person owning a health care facility with Section 1122 approval.
9. A site change which is not substantial (i.e. adjacent to the originally proposed site, with the same zoning, and within the same parish).
10. A reduction in approved beds or a discontinuance of an approved service.

An applicant proposing a capital expenditure which may qualify for an expedited review must submit a written request to DPPE. DPPE will review the request, determine whether a full review or an expedited review will be conducted, and send the appropriate application forms to the applicant.

Pre-application conference

At any time prior to submitting an application, an applicant may request a formal conference with DPPE to discuss the proposed project. A mutually acceptable meeting time will be established between the applicant and the agency.

Review Procedures

Applicants may request application forms in writing or by telephone from DPPE. The DPPE will promptly provide the applicant with the appropriate forms and a copy of the policies and guidelines. A pre-application appointment may be requested, to

be scheduled at a time which is mutually acceptable to the applicant and the agency.

Applications must be submitted on 8½ × 11" paper in triplicate (original and two copies), except as specified in the section of this document entitled *Procedures for Requests for Adjustments to Long Term Care Resource Goals*. The contact person specified on the application will be the only person to whom DPPE sends notification in matters relative to the status of the application during the review process. If the contact person (or his address) changes at any time during the review process, the applicant shall notify DPPE in writing.

1. EXPEDITED REVIEW PROCEDURES

Within 15 days of receipt of an application for an expedited review, DPPE shall review the application for completeness. The application is deemed complete for review purposes as of the date on which all required information is received.

—If DPPE fails to notify the applicant within 15 days that additional information is required, the application is deemed complete as of the date received.

—After an application is submitted, each time the applicant submits additional information subsequent to the date the original application was submitted, but prior to the application being declared complete, DPPE shall have 15 days from the date the most recent information was submitted to declare the application complete or incomplete.

—If additional information is requested by DPPE (within 15 days), and subsequently received, the application is deemed complete as of the date on which the required information is received.

—If additional information is requested by DPPE within 15 days, the applicant must provide the required information within 90 days or the application will be deemed withdrawn.

—Each time additional information is received, DPPE has 15 days from the date of receipt to respond as to whether the additional information completes the application.

The date of completeness is the date on which the 30 day review begins. The applicant may not incur an obligation sooner than 60 days from the "complete date"; failure to provide 60 days timely notice may subject the applicant to a penalty if the project is subsequently approved. If approval is granted prior to the end of the review period, an obligation may be incurred at that point.

A longer review period will be permitted only when requested by DPPE and agreed to by the applicant. An applicant may not request an extension of the review period, but may withdraw (in writing) an application at any time prior to the notification of the decision by DPPE.

If additional information is received by DPPE after an application has been declared complete, DPPE will review the information to determine if it significantly changes the application. If the application is significantly changed, DPPE will again review the application for completeness (within 15 days), determine the appropriateness of the review and re-set the review period from the date the new information was received.

When an application for an expedited review is declared complete by DPPE, press releases shall be issued, through local newspapers and public information channels, relative to the receipt of the complete application.

The DPPE shall conduct a review of the application within the specified time limits and provide written notification to the applicant of the decision that:

a. The proposal is in conformity with the criteria, standards, and plans in effect (a certificate shall accompany the notification) or

b. The proposal is not in conformity with the criteria, standards, and plans in effect (reasons for non-conformity shall be

specified). Notification shall be submitted to DHHS, on the appropriate form, with a copy to the applicant.

Failure of DPPE to provide notification by the end of the review period shall have the effect of an approval. The date of mailing shall be considered the date of notification.

A finding of conformity or non-conformity with respect to an application shall be publicized by DPPE through press releases, and made available to interested parties and organizations. In the case of a negative finding, a fair hearing will be offered to the applicant. (Refer to Appeal Procedures).

2. FULL REVIEW PROCEDURES

Within 15 days of receipt of an application for a full review, DPPE shall review the application for completeness. The application is deemed complete for review purposes as of the date on which all required information is received.

—If DPPE fails to notify the applicant within 15 days that additional information is needed, the application is deemed complete as of the date received.

—After an application is submitted, each time the applicant submits additional information subsequent to the date the original application is submitted, but prior to the application being declared complete, DPPE shall have 15 days from the date the most recent information is submitted to declare the application complete or incomplete.

—If additional information is requested by DPPE (within 15 days), and subsequently received, the application is deemed complete as of the date on which the required information is received.

—If additional information is requested by DPPE within 15 days, the applicant must provide the required information within 90 days or the application will be deemed withdrawn.

—Each time additional information is received, DPPE has 15 days from the date of receipt to respond as to whether that additional information completes the application.

The date of completeness is the date on which the review period begins. The review period will be no less than 60 days, and will not exceed 90 days, as determined by the applicant's obligation date. The applicant may not incur an obligation sooner than 60 days from the "complete date"; failure to provide 60 days timely notice may subject the applicant to a penalty if the project is subsequently approved. If the approval is granted prior to the end of the review period, an obligation may be incurred at that point.

A longer review period will be permitted only when requested by DPPE and agreed to by the applicant. An applicant may not request an extension of the review period, but may withdraw (in writing) an application at any time prior to the notification of the decision by DPPE.

If additional information is received by DPPE after an application has been declared complete, DPPE will review the information to determine if it significantly changes the application (i.e. change in site, project costs, project description, financial arrangements, etc.). If the application is significantly changed, DPPE will again review the application for completeness (within 15 days) and re-set the review period for a full review, from the date the new information was received.

When an application for a full review is declared complete by DPPE, press releases shall be issued, through local newspapers and public information channels, relative to receipt of the complete applications and the time and place of the public hearing.

DPPE shall conduct a public hearing on the third Wednesday of each month, at 10 a.m., to accept comments regarding applications which have been reviewed and declared complete in the previous month. The hearing shall be conducted by the director of DPPE (or his designee), who will determine at the time of the hearing the amount of time to be allowed for oral testimony. Written comments will also be accepted at public hearings. Comments

will only be accepted for projects which are on the agenda for the hearing.

Applications will be scheduled for public hearing in the first month after the month in which the application was reviewed and declared complete. Agendas for each public hearing shall be made available to interested parties and organizations by the fifth day of the month of the public hearing.

When an application is declared complete, a copy is submitted to DHHR-Division of Licensing and Certification, for review and comments, and to any other agency deemed appropriate by DPPE (i.e. OMR, OMH, OHD), or required by the State Health Plan. Failure of any agency other than DPPE to comment timely on an application will not affect the finding reached by DPPE.

Letters of support or opposition received by DPPE shall become part of the project file, and shall be taken into consideration in the decision to approve or disapprove the proposal.

DPPE shall conduct a review of the application within the specified time limits and provide written notification to the applicant of the decision that:

a. The proposal is in conformity with the criteria, standards, and plans in effect (a certificate shall accompany the notification) or

b. The proposal is not in conformity with the criteria, standards, and plans in effect (reasons for non-conformity shall be specified).

Notification shall also be submitted to DHHS, on the appropriate form, with a copy to the applicant.

Failure of DPPE to provide notification to the applicant by the end of the review period shall have the effect of an approval. The date of mailing shall be considered the date of notification.

A finding of conformity or non-conformity with respect to an application shall be publicized by DPPE through press releases, and shall be made available to interested parties and organizations. In the case of a negative finding, a fair hearing will be offered to the applicant. (Refer to Appeal Procedures)

Reconsideration by DPPE

When DPPE and DHHS determine that a proposal is not in conformity and that costs related to the capital expenditure shall not be included in determining federal reimbursement, the applicant may request a reconsideration by DPPE. It shall be the responsibility of DPPE to determine if an application is a request for a reconsideration or a new application. A reconsideration may be requested in the form of a revised application, if one of the following criteria are met:

a. there has been a substantial change, since the previous DPPE finding, in existing or proposed health facilities or services, of the type proposed, in the service area;

b. there has been a substantial change, since the previous DPPE finding, in the need for health facilities or services, of the type proposed, in the service area;

c. at least three years have elapsed since the date of the previous negative finding of DPPE.

If the proposal is reconsidered by DPPE and found to be in conformity, DPPE shall notify the applicant and DHHS. In determining future payments under Title XVIII and Title XIX, expenses related to the capital expenditure will be included. However, such expenses will be included only for payments following the date of notification by DPPE to DHHS of the reconsideration.

Negative Recommendation

When a proposal is found by DPPE to be in non-conformity, DHHS ordinarily excludes certain expenses related to the expenditure in determining federal reimbursement to be made under Title XVIII and Title XIX. However, if DHHS determines that one of the following conditions exists, such expenses shall be included in federal reimbursement.

a. The exclusion of costs for the proposal would discourage the operation or expansion of a health care facility which has demonstrated capacity or providing comprehensive health services efficiently, effectively, and economically.

b. The exclusion of costs for the proposal would otherwise be inconsistent with the effective organization and delivery of health services.

c. The exclusion of costs for the proposal would be inconsistent with the effective administration of Title XVIII and/or Title XIX.

For additional information, refer to 42 C.F.R. §100.108.

Failure to Provide Timely Notice

When DPPE determines that an applicant incurred an obligation for a proposed expenditure without providing 60 days timely notice, DPPE shall send written notification to the applicant, to DHHS, and to any other agency deemed appropriate, that timely notice was not provided. DHHS will make a determination as to whether a penalty should be imposed, and will notify the applicant and DPPE.

Evidence of Obligation/Expiration of Approval

Evidence of an obligation to make a capital expenditure must be received by DPPE within one year of the approval of the project (unless a six month extension has been granted), or the approval will expire.

The following documents are acceptable as evidence of an obligation for the specified types of proposals:

1. Construction projects.

A construction contract, enforceable under Louisiana law and duly executed by the appropriate parties is required. A construction contract must obligate a party to cause the capital asset to be constructed including provisions for:

a. The commencement of construction by a date specified in the contract; (the applicant shall submit a sworn affidavit from the contractor within 10 days after construction begins showing that the construction has in fact begun, and copies of construction progress reports. If documentation is not submitted in a timely manner, DPPE will presume that the contract is not an enforceable obligation and consider the finding of conformity expired.)

b. Vertical construction date (to be no later than six months after the date on which the construction contract was signed).

c. Substantial completion of construction by a specified date; (the applicant shall submit a sworn affidavit from the contractor indicating substantial completion of the project, within 10 days of the substantial completion date shown in the contract, and copies of construction progress reports. If documentation is not submitted in a timely manner, DPPE will presume that the contract is not an enforceable obligation, and consider the finding of conformity expired).

2. Acquisition of a facility without financing.

The Act of Cash Sale shall be submitted.

3. Acquisition of a facility with financing.

A copy of the loan agreement shall be submitted. Loan guarantees and loan commitments do not meet requirements for evidence of obligation for such transactions.

4. Lease of a facility.

A copy of the legally executed lease shall be submitted.

5. A formal internal commitment of funds by a facility (or organization) for a force account expenditure.

Documentation shall be submitted from a financial institution verifying that a specific separate account (with funds equivalent to the amount of the proposed expenditure) has been designated for the project. In the case of a state-owned facility, an appropriation is considered a force account expenditure.

6. Donated property.

Documentation including the date on which the gift is com-

pleted, in accordance with applicable Louisiana law, shall be submitted.

As provided in the regulations, the one year approval period may be extended for up to six months at the discretion of DPPE, upon request of the applicant, if one of the following conditions exist:

1. Delays have occurred which are beyond the control of the applicant, such as delays by review bodies, or delays in obtaining financing due to substantially greater interest rates than those projected in the application.

2. Refusal of an extension would be detrimental to the best interests of the community involved.

Procedures for Requests for Adjustment to Long Term Care Resource Goals

The applicant shall complete the appropriate section of the application form to identify the reason for which an adjustment is requested. The applicant shall be responsible for submitting evidence and documentation to substantiate the request for an adjustment to the resource goals. Ten copies of the application shall be submitted to Division of Policy, Planning and Evaluation.

As soon as the application is declared complete, DPPE shall forward copies of the applications to the following committee members for review:

- 1) Assistant Secretary - Office of Family Security (DHHR)
- 2) Administrator - Licensing and Certification (DHHR)
- 3) Chairman - Statewide Health Coordinating Council (or the consumer designee of the Chairman, when the Chairman is a provider; this member shall always be a consumer)
- 4) Director - Bureau of Civil Rights (DHHR)
- 5) Ombudsman - Coordinator - Governor's Office of Elderly Affairs

The transmittal will include the date of the public hearing and the decision due date. DPPE shall also forward a summary of the public hearing comments to the committee members.

Each committee member will forward individual comments and recommendations to DPPE. Comments shall be received by DPPE at least five working days prior to the decision due date.

Criteria for Section 1122 Review

In reviewing projects under Section 1122, DPPE shall use the following criteria:

1. The relationship of the proposal to the State Health Plan.
2. The relationship of the proposal to the long range development plan (if any) of the facility.
3. The need of the service area population for the proposed facility/services.

NOTE: In reviewing the need for beds, all proposed beds shall be considered available as of one projected opening date for the project. DPPE does not recognize the concept of "phasing in" beds, whereby an applicant provides two or more opening dates.

a. Delineation of the service area for the proposal (the definition of "service area" will be governed by the State Health Plan's definition for each particular type of service or facility).

b. Current and projected availability of beds/services/facilities. (Data sources to be used include information compiled by the Bureau of Research and Information, DPPE, as published, and the middle population projections recognized by the State Planning Office as official projections.)

- 1) Number and distribution of similar facilities, services, or beds within the service area;
- 2) Bed to population ratio in the service area;
- 3) Comparison of bed to population ratio in the service area to that of other service areas in the state.

c. Physical accessibility of the target population to existing and proposed facilities/services.

d. Current and projected measures of utilization of existing facilities/services (i.e. occupancy or other appropriate utilization data).

e. Demographics of the service area for the proposal.

4. The availability or potential availability of less costly or more effective alternatives to the proposal.

5. The immediate and long-term financial feasibility of the proposal, and the availability of funds. (DPPE will consider the following: (1) for proposed expenditures exceeding \$6,000,000, documentation of net assets exceeding 25 percent of the proposed expenditure; and (2) a commitment for financing from a reputable lending institution, including effective date and duration of commitment, amount and terms of loan, approximate beginning and ending dates of loan, and amount and type of collateral pledged; or (3) documentation of available internal funds equivalent to the proposed expenditure.)

6. The relationship of the proposed facility/services to other health care providers in the service area; documentation of agreements between the applicant and other health care providers; the extent of cooperation with other facilities in the service area.

7. The relationship (including the organizational relationship) of the proposed services to ancillary or support services provided in the existing facility.

8. The availability of health manpower and management personnel for the provision of the proposed services, including:

a. Availability and projected availability of physicians, nurses, and other personnel within the service area.

b. The adequacy of proposed staffing according to required standards.

9. Special needs and circumstances:

a. health maintenance organizations;

b. biomedical and behavioral research projects for which local conditions offer special advantages, and which are designed to meet a national need;

c. facilities which provide a substantial amount of services or resources to non-residents of the service area or of adjacent service areas (i.e. medical and health professional schools, specialty centers, multi-disciplinary clinics).

10. The cost and methods of the proposed construction, including energy provision.

11. The probable impact of the project on the cost of health services within the facility and the service area.

12. Evidence of ownership or legally executed option to acquire the site.

13. Support or opposition to the proposal by the local community, including health related agencies and professional organizations.

Appeal Procedures

In findings of non-conformity, DPPE will grant the applicant an opportunity for a fair hearing with respect to the findings of DPPE.

The request for a hearing shall be accompanied by a filing fee of \$500. The request shall indicate which of the issues specified in this subsection the applicant wishes to raise, and shall set forth the allegations upon which the applicant relies. A mere general assertion that the capital expenditure is not consistent with standards, criteria, or plans, or that DPPE committed prejudicial error, will not be considered as complying with this subsection. The hearing officer may strike any portion of a request for hearing which does not comply with this subsection, or, in the alternative, may permit the applicant to make its request more specific. In the latter event, the hearing shall be commenced within 30 days of the filing of the amended request for hearing (or later, at the option of the

applicant). The filing of a request for hearing that is insufficiently specific shall not be deemed the filing of a request for hearing, but shall stop the running of the time period within which such a proper request must be filed for 15 days after the hearing officer determines that it is insufficiently specific.

The hearing shall begin within 30 days after receipt of the request for hearing (or later, at the option of the applicant), and shall be conducted by a hearing officer. Requests for extensions may be granted at the discretion of the hearing officer but shall not exceed 120 days from the date of notification of non-conformity; if the hearing is not finalized within this time, the findings of DPPE will be considered upheld.

Hearings shall be conducted by an agency or person, other than the DPPE, designated by the governor for that purpose; provided, that no person (or agency) who has taken part in any prior consideration of or action upon the proposed capital expenditure may conduct such hearing (except in the case of an appeal of a finding of non-conformity on an application which was remanded at a prior hearing for the purpose of re-reviewing the same application).

The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

The hearing shall be open to the public, but closed to television cameras, and shall be publicized through local newspapers and public information channels. The hearing officer shall have the authority to control the decorum of the hearing room.

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs may be admitted and given probative effect. The rules of privilege recognized by law shall be given effect. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

All evidence, including records and documents in the possession of DPPE of which it desires to avail itself, shall be offered and made part of the record, and all such documentary evidence may be received in the form of copies or excerpts.

Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the designated planning agency's specialized knowledge. The designated planning agency's experience, technical competence and specialized knowledge, which shall not be at issue at the hearing, may be utilized in the evaluation of the evidence.

A party may conduct cross-examinations required for a full and true disclosure of the facts. Cross-examination shall be limited to the issue of non-conformity of the standards, criteria and plans, and to the issue of adherence to procedures by DPPE. Questions concerning other unrelated applications shall not be allowed.

Pre-trial discovery is limited to the taking of depositions for the perpetuation of testimony of a witness who will not be available to testify at the time of the hearing.

The hearing officer shall have the power to sign and issue subpoenas, or to direct DPPE to do so, in order to require attendance and the testimony by witnesses and to require the production of books, papers and other documentary evidence. No subpoena shall be issued until the party (other than DPPE) who wishes to subpoena a witness first deposits with the hearing officer or DPPE a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S.

13:3671. DHHR may request issuance of subpoena without depositing said sum of money.

The person proposing the capital expenditure, DPPE and any other agency which reviewed the application, and other interested parties, including members of the public and representatives of consumers of health services, shall be permitted to give testimony and present arguments at the hearing without formally intervening. Such testimony and arguments shall be presented after the testimony of DPPE and the applicant may be presented, at the discretion of the hearing officer, at any other convenient time. When such testimony is presented, all parties may cross-examine the witness.

The scope of the fair hearing shall be as follows:

a. Hearings shall be limited to such of the following issues as raised by the applicant:

1. whether the findings for non-conformity of DPPE are supported by substantial evidence.

2. whether there was any prejudicial procedural error in the review of the proposed capital expenditure; or

3. whether there was an abuse of discretion by DPPE with regard to the review of the applicant's application.

b. The following issues shall not be considered at a hearing:

1. The correctness, adequacy, or appropriateness of the standards, criteria, or plans against which the proposed expenditure was measured; and

2. Whether the proposed expenditure is subject to review by the designated planning agency.

The fair hearing under Section 1122 is not a de novo hearing, and, therefore, shall be limited to facts and statistics used for the preparation of the application and the review of the application. Any changes in facts and/or statistics after the review and prior to the hearing are not admissible.

Unless the hearing officer, for good cause, orders otherwise, DPPE will proceed first with its case, followed by the applicant's case; nevertheless, the burden of proof shall be on the applicant, and the findings for non-conformity of DPPE shall be sustained unless unsupported by substantial evidence or unless the applicant establishes that it was the victim of abuse of discretion or a prejudicial procedural error. The DPPE shall be given the opportunity to elicit rebuttal testimony.

The record shall conform with the following:

The hearing officer shall admit, if offered, the following documents as constituting the record of the designated planning agency's decision.

1) The DPPE project file (including the complete application).

2) The standards, criteria, or plans against which the proposed expenditure was measured by DPPE.

3) The findings of non-conformity of DPPE and the findings or comments of any agency consulted by DPPE, which will normally be a part of the project file.

4) Minutes, transcripts, or other records of any public hearing or public meeting held by DPPE at which hearing or meeting the proposed expenditure was considered.

5) Any other documentary evidence considered by DPPE in making its findings.

A record of the fair hearing proceedings shall be maintained. Copies of such record together with copies of all documents received in evidence shall be available to the parties, provided that any party who requests copies of such material may be required to bear the costs thereof.

Hearings shall conclude on the last day fixed by the hearing officer for the submission of any brief or post-hearing memorandum. The hearing officer shall notify all parties, in writing or on

the record, of the day on which the hearing will conclude and of any changes thereto. As soon as practicable, but not more than 45 days after the conclusion of a hearing, the hearing officer shall send to the applicant, to DPPE, and any interested parties who participated in the hearing, and to other interested parties at the discretion of the hearing officer, his decision and the reasons for the decision. Such decision shall be publicized by DPPE through local newspapers and public information channels.

In the event that the hearing officer fails to provide notice as required above within 45 days after the conclusion of a hearing, such failure to provide notice shall have the effect of a finding of conformity. (The date of mailing is the date of notification, in compliance with the Interpretive Ruling issued by HHS on February 18, 1982.)

After rendering his decision, the hearing officer shall transmit the record of the hearing to DPPE.

Any decision of a hearing officer shall, to the extent that it reverses or revises the findings of non-conformity of DPPE, supersede the findings of DPPE. Because the findings of non-conformity of DPPE and a determination upholding that finding by the hearing officer are not final dispositions under Section 1122, the applicant is not entitled to judicial review. The applicant is entitled to seek reconsideration from DHHS in accordance with federal regulations.

To the extent that any decision of a hearing officer requires that DPPE take further action, such action shall be completed by such date as the hearing officer may specify. Failure of DPPE to complete such action by such date shall have the effect of a finding of conformity of the proposed capital expenditure.

An applicant who fails to have the notification of non-conformity reversed shall forfeit his filing fee.

ADDENDUM TO POLICIES AND GUIDELINES

I. Notice to Certain Persons Granted Notifications of Conformity (Approvals) Prior to April 20, 1985

If an applicant was granted a Section 1122 finding of conformity prior to April 20, 1985 and has incurred an obligation for the construction project but has not begun vertical construction within two years of the finding of conformity, such applicant will be notified that vertical construction must begin within six months of the date of notification, or the approval will be considered expired. Proof of vertical construction shall be established by submission of a sworn affidavit from the contractor within 10 days after vertical construction has begun, and copies of construction progress reports indicating that vertical construction has begun.

II. Notice to Persons Who Have Pending Applications

If the due date for an application is on or after the effective date of these policies and guidelines, and of the revised State Health Plan, the application will be reviewed in accordance with the new criteria and the procedures as outlined below.

After the moratorium is lifted, two types of projects will be reviewed and decisions rendered in the manner described below. Such projects are:

1. Applications declared complete prior to or during the moratorium for which an extension was requested and granted.

2. Applications declared complete prior to or during the moratorium and which the sole reason for the finding of non-conformity was the moratorium.

The following policies and procedures are applicable and are based on the assumption that the moratorium will be lifted April 20, 1985:

1. Applicants' whose applications were declared complete prior to or during the moratorium for which an extension was requested and granted shall have 10 days from the date the moratorium is lifted to update the existing application. It is the applicant's responsibility to review the existing application and to submit

appropriate information to update such application in accordance with the revised State Health Plan and Division of Policy, Planning and Evaluation, Section 1122 Policies and Guidelines published as a final rule in the April 20, 1985 issue of the *Louisiana Register*.

2. Applicants' whose applications were declared complete prior to or during the moratorium which the sole reason for the finding of non-conformity was the moratorium shall have 10 days from the date the moratorium is lifted to submit new applications. It is the applicant's responsibility to submit the application in accordance with the revised State Health Plan and Division of Policy, Planning and Evaluation, Section 1122 Policies and Guidelines published as a final rule in the April 20, 1985 issue of the *Louisiana Register*. All such applications declared complete on the tenth day of this period will be scheduled for public hearing on May 15, 1985.

3. It should be noted that any information received subsequent to this 10-day period provided for updating or submitting new applications will not be included in the staff analysis or considered when the decision is rendered. Decisions for applications described in 1 and 2 above will be rendered in the order the application was declared complete.

Site changes, addition or change in services or beds and other substantial changes shall not be considered by the Division of Policy, Planning and Evaluation as an update to existing applications but shall be considered as the submittal of a new application which shall not have a decision rendered within the order described above. The decision due dates for such applications shall be prescribed when such applications are deemed complete.

Applicants who fail to submit complete applications during this 10 days shall not have a decision rendered within the order of preference as described above. The decision due date for such applications shall be prescribed when such applications are deemed complete.

4. Any application declared complete as of March 18 will be reviewed and a decision rendered based on the current State Health Plan, with the moratorium still being a factor, as soon as administratively feasible after its public hearing.

5. Furthermore, it is recognized that there may be other applications pending when the moratorium is lifted. Such applications may need updating as a result of the revisions to the State Health Plan and Section 1122 Policies and Guidelines. Applicants who have submitted such applications shall have 10 days from the date the moratorium is lifted to update the existing applications. It is the applicant's responsibility to review the existing application and to submit appropriate information to update such application in accordance with the revised State Health Plan and Division of Policy, Planning and Evaluation, Section 1122 Policies and Guidelines published as a final rule in the April 20, 1985 issue of the *Louisiana Register*.

It should be noted that any information received subsequent to this 10-day period provided for updating existing application shall not be included in the staff analysis or considered when the decision is rendered. Decisions for these applications shall be rendered in accordance with the decision due dates as prescribed when such applications were deemed complete during the moratorium.

Interested persons may secure copies of the proposed policies and guidelines from Joseph Ross, Administrator, Division of Policy, Planning and Evaluation, Department of Health and Human Resources, 200 Lafayette Street, Suite 406, Baton Rouge, LA 70801. Written comments on the proposed changes should be directed to him at the same address to be received prior to March 15, 1985.

Public hearings have been scheduled as follows:

March 4, 10 a.m., State Department of Insurance Building,

Plaza Floor Hearing Room, 950 N. Fifth Street, Baton Rouge, LA.
 March 5, 10 a.m., Orleans Parish OFS, Second Floor Auditorium, 2601 Tulane Avenue, New Orleans, LA.
 March 6, 10 a.m., State Office Building, OFS Conference Room, 1000-A Plantation Road, Thibodaux, LA.
 March 6, 10 a.m., State Office Building, Room 205, 1525 Fairfield Avenue, Shreveport, LA.
 March 7, 10 a.m., State Office Building, First Floor Conference Room, 302 Jefferson Street, Lafayette, LA.
 March 7, 10 a.m., State Office Building, Second Floor Conference Room (OFS), 900 Murray Street, Alexandria, LA.
 March 8, 10 a.m., St. Tammany Parish OFS, Bogue Falaya Plaza Shopping Center, Covington, LA.
 March 8, 10 a.m., Calcasieu Parish OFS, Second Floor, 710 Ryan Street, Lake Charles, LA.

At the public hearings all interested persons will have the opportunity to provide recommendations on the proposed rule, orally or in writing. Written comments will be accepted by Joseph Ross at the address above through March 15, 1985.

Sandra L. Robinson, M.D., M.P.H.
 Secretary and State Health Officer

**Fiscal and Economic Impact Statement
 For Administrative Rules
 Rule Title: 1122 Policies and Guidelines**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
 No costs or savings are predicted as a direct result of changes in the policies and guidelines.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
 Increased revenue from the implementation of a \$500 appeal fee is estimated at \$7500 per year for each of FY 85-86, 86-87 and 87-88.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)
 No costs or benefits are predicted as a direct result of changes in the policies and guidelines.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)
 No effects are predicted as a direct result of changes in the policies and guidelines.

Sandra Robinson, M.D., M.P.H. Mark C. Drennen
 Secretary and State Health Officer Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Human Resources
 Office of Management and Finance
 Division of Policy, Planning and Evaluation**

The Department of Health and Human Resources, Office of Management and Finance, Division of Policy, Planning and Evaluation, proposes the following rule to adopt the 1985-1990 State Health Plan. The promulgation of such a Plan is mandated by Public Law 93-641 as amended by Public Law 96-79. This revision was also required by Executive Order 84-13.

PROPOSED RULE

Effective April 20, 1985, a revised State Health Plan for the period 1985 to 1990 will be adopted. A summary of the revisions

to the current State Health Plan, promulgated December 20, 1982, is as follows:

Redefinition of Service Areas

The proposed rule creates nine health facility service areas, to be called Health Planning Districts, by grouping parishes around the population centers they would logically use for medical care and by grouping Tangipahoa, Washington and St. Tammany parishes into a new district, Health Planning District 9.

**REVISIONS IN RESOURCE GOALS
 FOR SPECIFIC HEALTH FACILITIES**

I. General Hospital Beds

- A. Service Area - Health Planning District
- B. Bed Supply - 4.0/1000 population (H.P.D. 1-6 & 9) 4.26/1000 population (H.P.D. 7-8)
- C. Pop. Projection - five years subsequent to date application declared complete.
- D. Occupancy - 0-49 beds - 50 percent; 50-99 beds - 60 percent; 100-199 beds - 70 percent; 200+ - 75 percent.
 Adjustment: An existing general acute care hospital which has operated at a level of 10 percent or more above its optimal occupancy, as determined by bed size category, for a period of 12 consecutive months will be allowed to add a number of beds that would bring its occupancy down to the optimal occupancy level for its bed size. The occupancy rate for the 12 consecutive months shall be determined by Division of Policy, Planning and Evaluation from the four most recent quarters of data due to have been reported by the hospital to the Division of Licensing and Certification.

II. Long Term Care

- A. Service Area - Parish in which proposal is located.
- B. Bed Supply - No change.
- C. Pop. Projection - Anticipated opening date (year) of proposal (not to exceed two years from date application declared complete.)
- D. Occupancy - No change.
- E. Adjustment to Resource Goals -
 - 1. Inaccessibility to minority groups.
 - 2. Inaccessibility to overbedded areas.
 - 3. Inaccessibility due to poor quality of care.
- F. Applications for Proposals in Overbedded Areas - Committee to make recommendations and comments with regard to applications for proposals in parishes which are arithmetically determined to be in excess of 80 beds per 1,000 population age 65+.

III. Psychiatric Hospital Beds

- A. Service Area - Health Planning District
- B. Bed Supply - All levels of care 104.0/100,000 population.
- C. Pop. Projection - 5 years subsequent to date application declared complete.
- D. Occupancy - 0-49 beds - 50 percent; 50-99 beds - 60 percent; 100-199 beds - 70 percent; 200+ - 75 percent.

Adjustment: An existing general acute care hospital which has operated at a level of 10 percent or more above its optimal occupancy, as determined by bed size category, for a period of 12 consecutive months will be allowed to add a number of beds that would bring its occupancy down to the optimal occupancy level for its bed size. The occupancy rate for the 12 consecutive months shall be determined by Division of Policy, Planning and Evaluation from the four most recent quarters of data due to have been reported by the hospital to the Division of Licensing and Certification.

IV. Chemical Dependency Unit Beds

- A. Service Area - Health Planning District

B. Bed Supply - A benchmark of population 20.2/100,000 population.

C. Occupancy - 85 percent

V. Ambulatory Surgical Facilities

A. Service Area - Health Planning District

B. Utilization - 5.0 surgeries/workday (valid documentation specified).

C. Number of Workdays - 250 year

D. Location - No more than 10 road miles from acute-care general hospital.

E. Size of Facility - No fewer than two operating rooms.

VI. Comprehensive Physical Rehabilitation Facilities

A. Service Area - Health Planning District

B. Bed Supply - Less than .325 beds/1000 population.

C. Quality of Care - 1. A proposal to provide rehabilitation services as described in the State Health Plan shall indicate that the facility will meet licensing requirements and Medicare certification criteria as a hospital; 2. The proposal shall indicate that the hospital or rehabilitation unit of a general hospital will meet the criteria for exclusion from the Medicare prospective payment system (Criteria will be specified in SHP).

D. Occupancy - 0-49 - 50 percent; 50-99 - 60 percent; 100-199 - 70 percent; 200+ - 75 percent.

Adjustment: An existing rehabilitation hospital or rehabilitation unit of a general hospital which has operated at a level of 10 percent or more above its optimal occupancy, as determined by bed size category, for a period of 12 consecutive months will be allowed to add a number of beds that would bring its occupancy down to the optimal occupancy level for its bed size. The occupancy rate for the 12 consecutive months shall be determined by Division of Policy, Planning and Evaluation from the four most recent quarters of data due to have been reported by the hospital to the Division of Licensing and Certification.

VII. Home Health Agencies

a. Service Area - Health Planning District

B. Utilization - Projected caseload of 30 patients or over and a list of physicians with referral agreements with the proposed agency.

C. Quality of Care - Proposal shall indicate that proposed agency will meet licensing requirements and Medicare certification criteria.

Interested persons may acquire a copy of these revisions at the Division of Policy, Planning and Evaluation, 200 Lafayette Street, Suite 406, Baton Rouge, LA 70801. Written comments on the revisions may be addressed to Joseph Ross, Administrator, Division of Policy, Planning and Evaluation, 200 Lafayette Street, Suite 406, Baton Rouge, LA 70801.

Public hearings are scheduled as follows:

March 4, 10 a.m., State Department of Insurance Building, Plaza Floor Hearing Room, 950 N. Fifth Street, Baton Rouge, LA.

March 5, 10 a.m., Orleans Parish OFS, Second Floor Auditorium, 2601 Tulane Avenue, New Orleans, LA.

March 5, 10 a.m., State Office Building, Fourth Floor Conference Room, 122 St. John Street, Monroe, LA.

March 6, 10 a.m., State Office Building, OFS Conference Room, 1000-A Plantation Road, Thibodaux, LA.

March 6, 10 a.m., State Office Building, Room 205, 1525 Fairfield Avenue, Shreveport, LA.

March 7, 10 a.m., State Office Building, First Floor Conference Room, 302 Jefferson Street, Lafayette, LA.

March 7, 10 a.m., State Office Building, Second Floor Conference Room (OFS), 900 Murray Street, Alexandria, LA.

March 8, 10 a.m., St. Tammany Parish OFS, Bogue Falaya Plaza Shopping Center, Covington, LA.

March 8, 10 a.m., Calcasieu Parish OFS, Second Floor, 710 Ryan Street, Lake Charles, LA.

At the public hearings, all interested persons will have the opportunity to provide recommendations on the proposed rule, orally or in writing. Written comments will be accepted by Joseph Ross at the address above through March 15, 1985.

Sandra L. Robinson, M.D., M.P.H.
Secretary and State Health Officer

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: State Health Plan**

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

The costs of implementing this rule are estimated as follows: \$262,042 for FY 85-86, all of which is state; \$13,766,906 for FY 86-87, including \$5,135,263 state and \$8,631,643 federal; \$15,095,947 for FY 87-88, including \$5,626,680 state and \$9,469,267 federal. These estimates assume that additional nursing home beds involving Medicaid reimbursement will not be constructed until the second fiscal year after implementation and that hospital beds will not be constructed until the fourth year. They also assume that all beds approvable because of the new Health Plan will in fact be approved.

Cost estimates above include the increased costs of administering the provisions of the revised State Health Plan plus the cost of financing and constructing beds which are expected to be occupied by Medicaid patients.

Costs related to additional hospital bed construction are not included in the three year cost projections because it is assumed that a minimum of four years is needed to bring hospital beds on-line after an approval is issued. Costs related to additional nursing home beds include both capital and operating costs for an additional 1,854 beds in 1986-87 and 172 beds in 1987-88. Total federal and state costs for nursing home beds are \$13,520,744 in 1986-87 and \$14,832,812 in 1987-88.

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

State revenues from the sale of the revised Health Plan are estimated to be \$2,067 per year over the three year period starting in 1985-86.

Federal revenues will increase as a result of additional Medicaid expenditures for hospital and nursing home beds. Estimated revenues related to nursing home bed expenses will be \$8,631,643 in 1986-87 and \$9,469,267 in 1987-88.

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

The revisions to the State Health Plan will permit additional hospital and nursing home beds to be constructed. The estimated costs and benefits to developers and persons employed in (or because of) such facilities are unknown.

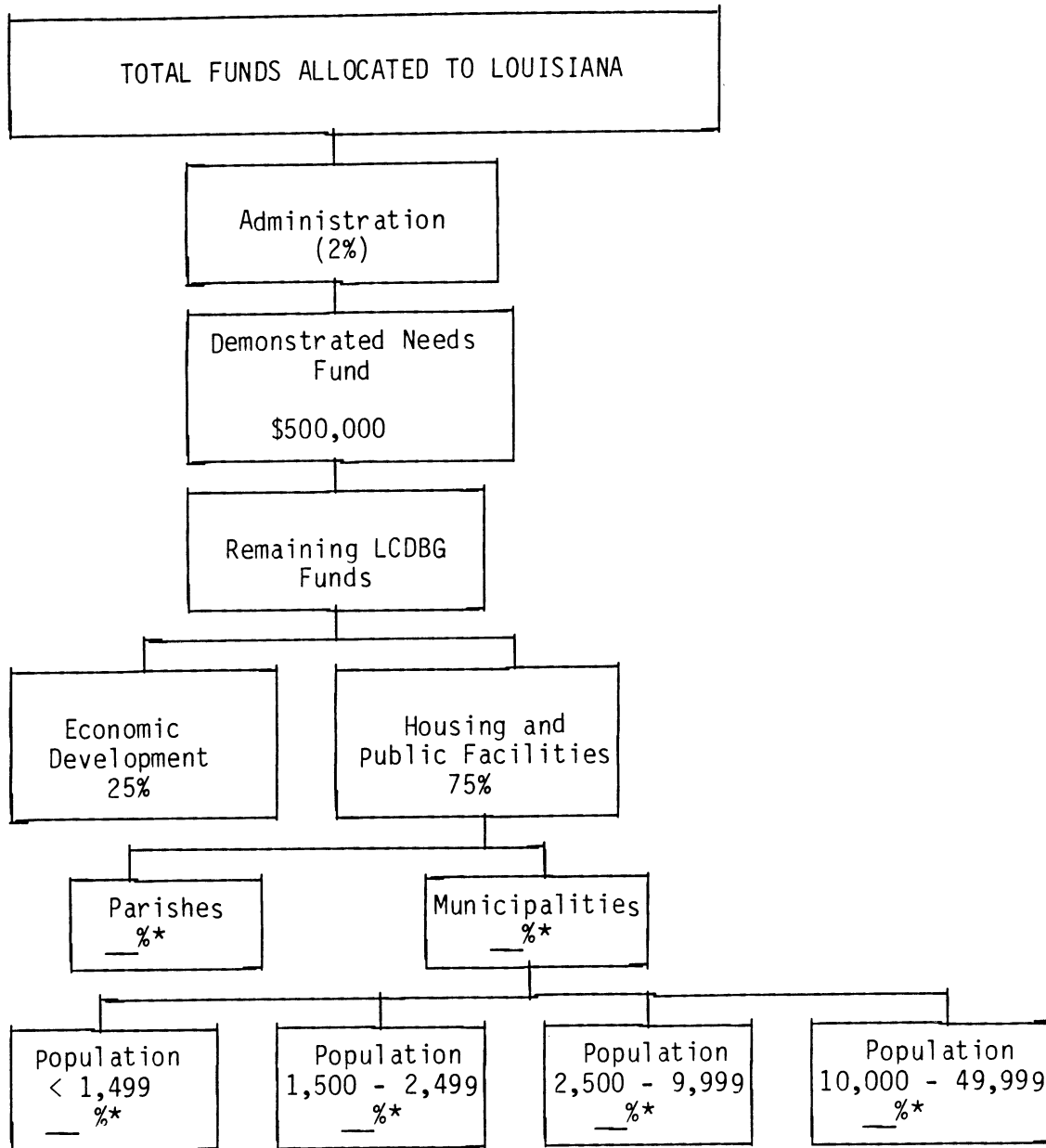
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)

The construction of additional health facilities will increase competition among providers and increase employment. New beds could be built by the public or private sector, although most will probably be in the private sector. Effects on competition and employment cannot be estimated.

Sandra Robinson
Secretary and State Health Officer

Mark C. Drennen
Legislative Fiscal Officer

FIGURE 1



* The percentage distribution among the population categories will be based upon the number of applications received and amount requested in each category. Half of the funds will be distributed based on percentage of applications received in each category and half on the basis of amount of funds requested in each category. The same procedure will be followed in further allocating monies for single and multi-purpose housing and public facilities in each population category.

licants which have participated in the Block Grant Program previously must have performed adequately. Performance and capacity determinations are made as of the deadline date the application is due to the state and may be the basis for rejecting an application from further consideration. In determining whether an applicant has performed adequately, the state will examine the applicant's performance in the following areas:

(a) Units of general local government will not be eligible to receive funding if past CDBG Programs awarded by HUD have not been closed out as of the deadline for receipt of LCDBG applications by the state.

(b) Units of general local government will not be eligible to receive funding if past LCDBG Programs awarded by the state have not met the following performance thresholds as of the deadline for submittal of the application.

(i) FY 1982 LCDBG recipients must have closed-out as of the deadline for receipt of LCDBG application by the state,

(ii) FY 1983 LCDBG and Job Bills recipients (excluding recipients of Economic Development grants) must have expended no less than 95 percent of the total grant amount,

(iii) FY 1984 LCDBG recipients (excluding recipients of Economic Development grants) must have expended no less than 75 percent of the total grant amount.

Performance thresholds (b) (ii) and (b) (iii) do not apply to economic development grants.

(c) Audit and monitoring findings made by the state or HUD must be cleared prior to the deadline for receipt of applications by the state.

The state is not responsible for notifying applicants as to their performance status regarding these prohibitions prior to submittal

of the application. The state may provide waivers to these prohibitions, if a waiver is requested in writing prior to the application deadline. There shall be no waiver granted if funds are due to HUD or the state unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

H. DEFINITION

For the purpose of the LCDBG Program or as used in the regulations, the term:

(a) *Unit of general local government* means any municipal or parish government of the State of Louisiana.

(b) *Low-moderate Income Persons* are defined as those having income within the Section 8 income limits as determined by the secretary of Housing and Urban Development. (See Appendices 1 and 2.)

(c) *Auxiliary Activities* means a minor activity which directly supports a major activity in one program area (housing, public facilities). Note: The state will make the final determination of the validity (soundness) of such actions in line with the program intent and funding levels.

(d) *Slums and Blight* is defined as in Act 590 of the 1970 Parish Redevelopment Act, Section Q-8. (See Appendix 3.)

III. Method of Selecting Grantees

The state will consider those factors which the secretary deems pertinent for selecting LCDBG recipients. Applications are required for all types of grants.

A. DATA

(1) *Low-Moderate Income*. The low-moderate income limits are defined as being within the Section 8 income limits as established by HUD. In order to determine the benefit of low-moderate income persons for a public facility project, the applicant must utilize either census data (if available) or conduct a local survey.

(a) *Census Data*. If 1980 census data on income is available by enumeration district, then the state will calculate the applicant's low and moderate income percentages. If the applicant chooses to utilize census data, the low-moderate income levels as shown in Appendix 2 will be followed. However, the applicant must request this data prior to submittal of the application.

(b) *Local Survey*. If the applicant chooses to conduct a local survey, the survey sheet in the FY 1985 application package must be used. Local surveys *must* be conducted for all housing activities.

The annual income limits for low-moderate income persons (regardless of family size) when conducting a survey are shown in Appendix 1. If the applicant chooses to determine low-moderate income based on family size, the following sliding scale *must* be used:

# OF PERSONS IN HOUSEHOLD	% OF PARISH/MSA* MEDIAN INCOME
1	50
2	64
3	72
4	80
5	85
6	90
7	95
8 or more	100

*MSA = Metropolitan Statistical Area

When a local survey, rather than census data, is used to determine the low/mod benefit, a random sample which is representative of the population of the entire target area must be taken. There are several methodologies available to insure that the sample is random and representative. The methodology used must be stated in your application; if you have questions on the method-

ology to use, you may contact Department of Urban and Community Affairs (DUCA) for assistance. The appropriate sample size varies with the total number of households in the target area, and is determined by using the following formula:

$$n = .9604 \times N \div (.0025N + .9579)$$

Where n = required number of households in sample

Where N = total number of occupied households in target area

If the situation arises where it must be determined as to whether or not the sample taken was indeed random, then standard statistical tests at the appropriate geographical level will be used.

Surveys conducted for housing activities must involve 100 percent of the total houses within the target area. Local surveys which have been conducted within 12 months prior to the application submittal date will be accepted, provided the survey conforms to current program requirements.

B. PROGRAM DESIGN

The program as a whole must principally benefit low and moderate income persons and directly address and have an impact on the applicant's needs. Each activity contained within such programs must meet one of the following two national objectives:

(1) *Principal benefit to low-moderate income persons*. At least 51 percent of the total persons benefiting must be individuals who are low to moderate income as defined in the final statement.

(2) *Elimination or prevention of slums and blight*. In order to claim that the proposed activity meets this objective the following must be met. An area must be delineated by the grantee which:

(a) meets the definition of slums and blight as defined in Act 570 of the 1970 Parish Redevelopment Act, Section Q-8 (See Appendix 3); and

(b) contains a substantial number of deteriorating or dilapidated buildings or improvements throughout the area delineated.

The grantee must describe in the application the area boundaries and the conditions of the area at the time of its designation and how the proposed activity will eliminate the conditions which qualify the area as slum/blight.

C. SINGLE PURPOSE GRANTS

(1) *Definition*. A single purpose grant provides funds for one need (water or sewer or housing, etc.,) consisting of an activity which may be supported by auxiliary activities. Single purpose economic development grants are for one project, consisting of one or more activities.

(2) *Specific Program Categories*. There will be three specific program categories:

- 1) Economic Development;
- 2) Public Facilities; and
- 3) Housing.

Each applicant will be reviewed against all other applicants in the same population category which are requesting funds in the same specific program category.

The criteria for reviewing each of the specific programs are as follows:

a) ECONOMIC DEVELOPMENT

The review of economic development projects will take the following criteria into consideration:

- (i) Number of permanent jobs created or retained.
- (ii) Private funds/public funds ratio.
- (iii) Percent of funds recaptured.
- (iv) Cost effectiveness (LCDBG cost per permanent job created or retained).
- (v) Benefit to low/moderate income persons (number and percent).
- (vi) Project feasibility (economic feasibility, soundness of

the "deal," risk, financial viability, and other factors deemed appropriate by the state).

(vii) Unemployment ratio in the area.

The following two requirements must be met by economic development applicants.

(i) A firm financial commitment from the private sector will be required upon submission of the application. The private funds/public funds ratio must not be less than 1:1.

Private funds must be in the form of a developer's cash or loan proceeds. Revenues from the sale of bonds may also be counted if the developer is liable under the term of the bond issue. Previously expended funds will not be counted as private funds for the purposes of this program. Nor will private funds include any grants from federal, state or other governmental programs or any recaptured funds.

(ii) If cost per job created or retained exceeds \$15,000 for the LCDBG monies, applications will not be considered for funding.

Although an application may be determined to be eligible, the state will make the final determination as to whether or not the proposed activity is viable in keeping with the objectives of the program.

For projects involving the recapture of economic development loans, the state may recapture up to 50 percent of the payback. The specific details of such recapture will be outlined in each contract between the state and the local governing body receiving an award. Recaptured economic development funds will be reallocated in accordance with DUCA's policy, then in effect, for the redistribution of such funds.

If an applicant submits an application for economic development in one funding cycle and that application is not selected for funding, the applicant may resubmit the application for consideration during a subsequent funding cycle. All resubmitted applications must be full and complete for each cycle applied under.

b) PUBLIC FACILITIES

The review of public facilities projects will take the following criteria into consideration:

(i) Severity of problem based on documentation provided by independent and appropriate sources from cognizant state or federal agencies.

(ii) Program Impact (degree to which problem will be remedied).

(iii) Cost effectiveness of solution proposed to remedy problem.

(iv) Benefit to low/moderate income persons (number and percent).

c) HOUSING

The review of housing projects will take the following criteria into consideration:

(i) Cost effectiveness (average amount required per rehabilitation unit).

(ii) Program Impact (degree to which problem will be remedied).

(iii) Benefit to low/moderate income persons (number and percent).

The state permits up to 10 percent of the rehabs to be located outside of the target area. Rental units which will be occupied by low-moderate income persons are eligible as long as the number of rental units to be treated does not exceed 10 percent of the total owner occupied units proposed for rehab. Ten percent of the total rehab monies may also be used for emergency repairs. All units, except the emergency rehabs, must be brought up to at least the Section 8 Existing Housing Quality Standards and HUD's Cost Effective Energy Conservation Standards.

The number of housing target areas cannot exceed three.

D. MULTI-PURPOSE GRANTS

(1) Definition. A multi-purpose grant provides funds for two or more needs and has major expenditures in more than one activity in one or more of the two program areas (housing and public facilities).

(2) Specific Program Categories. Multi-purpose grants will be selected on the same basis as the single purpose grants.

E. DEMONSTRATED NEEDS FUND

A \$500,000 reserve fund will be established to alleviate critical community needs and to fund innovative or pilot projects that have the potential to expand Louisiana communities cost effective utilization of the LCDBG Program. There will be three announcements for the acceptance of applications under the Demonstrated Needs Fund. If at the end of each announced acceptance date(s) monies remain, these monies will be transferred into the subsequent Demonstrated Needs Fund. If at the end of the third announcement monies remain, those monies may be transferred into the grant category deemed feasible or used in subsequent year funding for the Demonstrated Needs Fund.

(1) Criteria for Determining Eligibility

When a request for assistance is received, eligibility determinations will be based on the following criteria:

(a) Critical Need

(i) Severity of Problem - The need must be critical and must be verified by an appropriate authority (cognizant state or federal agencies) other than the applicant.

(ii) Need for Resources - Sufficient local, federal, or state resources are not available to meet the need. A signed certification from the chief elected official stating that no other monies are available must be included.

(iii) Eligible Activities - Activities proposed to remedy the documented need must be eligible under Section 105(a) of the Housing and Community Development Act of 1974, as amended (see Appendix 4).

(b) Innovation

The state may develop criteria and guidelines for innovation/demonstration projects which shall include specific criteria for award.

(c) National Objectives

All projects funded must either: 1) benefit low or moderate income persons or 2) eliminate or aid in the prevention of slums or blight.

(2) Proposal Requirements

Communities must request funds by submitting a written application to Secretary Dorothy M. Taylor, Box 94555, Baton Rouge, Louisiana 70804.

The application must include:

(1) A description of the proposed project;

(2) Certification that the funding criteria in Section E (1) have been met;

(3) How the proposed project and its funding will remedy the documented need; and,

(4) A detailed cost estimate signed by a licensed architect or engineer for the monies requested.

F. SUBMISSION REQUIREMENTS

Applications shall be submitted, in a form prescribed by the state, to the Department of Urban and Community Affairs and shall consist of the following:

(1) Community Development Plan. A description of the applicant's community development and housing needs, including those of low and moderate income persons; and a brief description of the applicant's community development and housing needs to be served by the proposed activity(ies).

(2) Program Narrative Statement. This shall consist of:

i. Identification of the national objective(s) that the activity will address.

ii. A description of each activity to be carried out with LCDBG assistance. A detailed cost estimate for each public facilities activity including information necessary for considering cost-effectiveness. If the proposed activity is dependent on other funds for completion, the source of funds and the status of the commitment must also be indicated.

iii. A statement describing the impact the activity will have on the problem area selected and the needs of low and moderate income persons, including information necessary for considering the program impact.

iv. A statement on the percent of funds requested that will benefit low and moderate income persons. The statement should indicate the total number of persons to be served and the number of such persons that meet the definition of low and moderate income, as defined by the state.

(3) Maps. A map of the local jurisdiction which identifies by project area:

i. census tracts and/or enumeration districts;

ii. location of areas with minorities, showing number and percent by census tracts and/or enumeration districts;

iii. location of areas with low and moderate income persons, showing number and percent by census tracts and/or enumeration districts;

iv. boundaries of areas in which the activities will be concentrated.

v. specific location of each activity.

(4) Program Schedule. Each applicant shall submit, in a format prescribed by the state, a listing of dates for major milestones for each activity to be funded.

(5) Title VI Compliance. All applicants shall submit, in a form prescribed by the state, evidence of compliance with Title VI of the Civil Rights Act of 1964. This enables the state to determine whether the benefits will be provided on a nondiscriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin.

(6) Certification of Assurances. The certification of assurances required by the state, relative to federal and state statutory requirements, shall be submitted by all applicants; this certification includes, but is not limited to, Title VI, Title VIII, and affirmatively furthering fair housing. In addition, each recipient should target at least 15 percent of all grant monies for minority enterprises; this is in accordance with the Louisiana Minority Business Enterprise Act. All assurances must be strictly adhered to; otherwise, the grant award will be subject to penalty.

(7) Certification To Minimize Displacement. The applicant must certify that it will minimize displacement as a result of activities assisted with LCDBG funds. In addition to minimizing displacement, the applicant must certify that when displacement occurs reasonable benefits will be provided to persons involuntarily and permanently displaced as a result of the LCDBG assistance to acquire or substantially rehabilitate property. This provision applies to all displacement with respect to residential and nonresidential property not governed by the Uniform Relocation Act.

(8) Certification to Promote Fair Housing Opportunities. Applicants are required to certify that as part of their efforts to further fair housing opportunities in their respective jurisdictions, they will conduct two fair housing seminars during the term of the grant. These seminars can be conducted in a community center or any other appropriate public building. The Department of Urban and Community Affairs will be available to provide technical assistance to recipients, if required.

(9) Certification Prohibiting Special Assessments. The ap-

plicant must submit a certification prohibiting the recovery of capital costs for public improvements financed in whole or part with LCDBG funds, through assessments against properties owned and occupied by low and moderate income persons. The prohibition applies also to any fees charged or assessed as a condition of obtaining access to the public improvements.

(10) Certification of Citizen Participation. Applicants shall provide adequate information to citizens about the Community Development Block Grant Program. Applicants shall provide citizens with an adequate opportunity to participate in the planning and assessment of the application for Community Development Block Grant Program funds. One public hearing must be held prior to application submittal in order to obtain the citizen's views on community development and housing needs. A notice must be published informing the populace of the public hearing. Citizens must be provided with the following information at the hearing:

a. The amount of funds available for proposed community development and housing activities;

b. The range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

c. The plans of the applicant for minimizing displacement of persons as a result of activities assisted with such funds and the benefits to be provided to persons actually displaced as a result of such activities.

d. If applicable, the applicant must provide citizens with information regarding the applicant's performance on prior LCDBG programs funded by the state.

A second notice must be published *after* the public hearing has been held but *before* the application is submitted. The second notice must inform citizens of the proposed objectives, proposed activities, the location of the proposed activities and the amounts to be used for each activity. Citizens must be given the opportunity to submit comments on the proposed application. The notice must further provide the location at which and hours when the application is available for review. The notice must state the submittal date of the application.

Applicants must submit notarized proofs of publication of each public notice.

(11) Local Survey Data. Those applicants who conduct a local survey to determine specific data required for the application must include one copy of all completed survey forms.

(12) Submission of Additional Data. Only that data received by the deadline established for applications will be considered in the selection process unless additional data is specifically requested, in writing, by the state. Unrequested material received after the deadline will not be considered as part of the application.

G. APPLICATION REVIEW PROCEDURE

(1) The application must be mailed or delivered prior to the deadline date that has been established by the state. The applicant must obtain a "Certificate of Mailing" from the post office, certifying the date mailed. The state may require the applicant to submit this Certificate of Mailing to document compliance with the deadline for mailing, if necessary.

(2) The application submission requirements must be complete.

(3) The funds requested must not exceed the amount of the invitation by the state.

(4) Review and notification. Applications will be reviewed. Following the review of all applications, the state will promptly notify the applicant of the actions taken with regard to its application.

(5) Criteria for conditional approval. The state may make a conditional approval; in which case the grant will be approved, but the obligation and utilization of funds is restricted. The reason for the conditional approval and the actions necessary to remove

the condition shall be specified. Failure to satisfy the condition may result in a termination of the grant. Conditional approval may be made:

- i. where local environmental reviews have not yet been completed;
- ii. where the requirements regarding the provision of flood or drainage facilities have not yet been satisfied;
- iii. to ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;
- iv. to ensure the project can be completed within estimated costs.

(6) Criteria for disapproval of an application. The state may disapprove an application if:

- i. Based on review of the application, it is determined that general administrative costs exceed seven percent of total public facilities cost or housing rehabilitation administrative costs exceed 12 percent of total housing costs.

- ii. Based on field review of the applicant's proposal or other information received, it is shown that the information was incorrect, and therefore the application was improperly reviewed and no longer warrants approval when compared with other applications.

- iii. On the basis of significant facts and data generally available and pertaining to community and housing needs and objectives, the state determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data. The data to be considered may be published data accessible to both the applicant and state such as census data, or other data available to both the applicant and state, such as recent local, areawide, or state comprehensive planning data.

- iv. Other resources necessary for the completion of the proposed activity are no longer available or will not be available within a reasonable period of time.

- v. The activities cannot be completed within the estimated costs or resources available to the applicant.

- vi. Any of the items identified under F. SUBMISSION REQUIREMENTS are not included in the application.

H. PROGRAM AMENDMENTS FOR LCDBG PROGRAM

The state may consider amendments if they are necessitated by actions beyond the control of the applicant. Recipients shall request prior state approval for all program amendments involving new activities or alteration of existing activities that will change the

scope, location, or objectives of the approved activities or beneficiaries.

(1) New or altered activities are considered in accordance with the criteria for selection applicable at the time the original application was reviewed.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) All amended activities must receive environmental clearance prior to construction.

State's Past Use of Funds

Federal regulations require the state to provide a description of the past use of funds within the final statement. The description includes FY 1982, FY 1983, and FY 1984 state-awarded grants. Appendix 5 provides:

- a. A description of the use of funds under each previous allocation;

- b. an assessment of the relationship of the use of funds to the community development objectives identified by the state in each prior final statement; and

- c. An assessment of the relationship of the use of funds to the requirements of Section 104 (b) (3) of the Act, as they existed at the time of the certification.

Administration

Rule for Policy Determination. In administering the program, while the state is cognizant of the intent of the program, certain unforeseeable circumstances may arise which may require the exercise of administrative discretion. The state reserves the right to exercise this discretion in either interpreting or establishing new policies.

Redistribution of Funds

Any monies awarded by the state that are later recaptured by or returned to the state will be reallocated in accordance with DUCA's policy, then in effect, for the redistribution of such funds. The sources of these funds may include, but not be limited to, program income, questioned costs, disallowed expenses, recaptured funds from loans, unallocated monies, previously awarded funds not spent by grant recipients, etc.

The monies as defined above will be placed in the Demonstrated Needs Fund and will be distributed in accordance with the regulations governing that fund. This policy will govern all such monies as defined herein from the FY 1982, FY 1983, FY 1984, and FY 1985 LCDBG Program years as well as subsequent funding cycles, until later amended.

APPENDIX 1

1984 Median Family Income
By Parish and MSA

<u>Parish</u>	<u>1984 Median Family Income</u>	<u>Low/Mod Income Limit</u>
Acadia	\$ 21,650	\$ 17,300
Allen	21,200	16,950
Ascension	See MSA - Baton Rouge	
Assumption	24,800	19,850
Avoyelles	16,200	12,950
Beauregard	23,500	18,800
Bienville	18,650	14,900
Bossier	See MSA - Shreveport	
Caddo	See MSA - Shreveport	
Calcasieu	See MSA - Lake Charles	
Caldwell	16,800	13,450
Cameron	27,800	22,250
Catahoula	17,000	13,600
Claiborne	19,500	15,600
Concordia	20,300	16,250
DeSoto	19,900	15,900
East Baton Rouge	See MSA - Baton Rouge	
East Carroll	16,200	12,950
East Feliciana	23,150	18,500
Evangeline	17,200	13,750
Franklin	16,200	12,950
Grant	21,000	16,800
Iberia	27,400	21,900
Iberville	24,700	19,750
Jackson	18,500	14,800
Jefferson	See MSA - New Orleans	
Jefferson Davis	23,900	19,100
Lafayette	See MSA - Lafayette	
Lafourche	See MSA - Houma-Thibodaux	
La Salle	20,300	16,250
Lincoln	22,300	17,850
Livingston	See MSA - Baton Rouge	
Madison	16,200	12,950
Morehouse	17,300	13,850
Natchitoches	17,900	14,300
Orleans	See MSA - New Orleans	
Ouachita	See MSA - Monroe	
Plaquemines	27,500	22,000
Pointe Coupee	21,300	17,050
Rapides	See MSA - Alexandria	
Red River	16,900	13,500
Richland	16,200	12,950

1984 Median Family Income
By Parish and MSA

Sabine	\$ 18,150	\$ 15,400
St. Bernard	See MSA - New Orleans	
St. Charles	See MSA - New Orleans	
St. Helena	16,200	12,950
St. James	29,150	23,300
St. John the Baptist	See MSA - New Orleans	
St. Landry	19,150	15,300
St. Martin	See MSA - Lafayette	
St. Mary	29,400	23,500
St. Tammany	See MSA - New Orleans	
Tangipahoa	20,150	16,100
Tensas	16,200	12,950
Terrebonne	See MSA - Houma-Thibodaux	
Union	18,700	14,950
Vermilion	23,500	18,800
Vernon	16,650	13,300
Washington	19,150	15,300
Webster	24,400	19,500
West Baton Rouge	See MSA - Baton Rouge	
West Carroll	16,200	12,950
West Feliciana	20,400	16,300
Winn	16,650	13,300

MSA - Metropolitan
Statistical Areas

MSA Alexandria, LA ¹	21,150	16,900
MSA Baton Rouge, LA ²	28,300	22,650
MSA Houma-Thibodaux, LA ³	28,400	22,700
MSA Lafayette, LA ⁴	30,200	24,150
MSA Lake Charles, LA ⁵	28,900	23,100
MSA Monroe, LA ⁶	22,700	18,150
MSA New Orleans, LA ⁷	27,500	22,000
MSA Shreveport, LA ⁸	25,700	20,550

¹ Includes Rapides Parish only.

² Includes East Baton Rouge, West Baton Rouge, Livingston, and Ascension Parishes.

³ Includes Terrebonne and Lafourche Parishes.

⁴ Includes St. Martin and Lafayette Parishes.

⁵ Includes Calcasieu Parish only.

⁶ Includes Ouachita Parish only.

⁷ Includes Jefferson, Orleans, St. Tammany, St. Bernard, St. John the Baptist and St. Charles Parishes.

⁸ Includes Caddo and Bossier Parishes.

Source: Section 8 Median Income Data, provided by HUD Area Office, March 1, 1984.

1984 Median Family Income
By Parish and MSA

Sabine	\$ 18,150	\$ 15,400
St. Bernard	See MSA - New Orleans	
St. Charles	See MSA - New Orleans	
St. Helena	16,200	12,950
St. James	29,150	23,300
St. John the Baptist	See MSA - New Orleans	
St. Landry	19,150	15,300
St. Martin	See MSA - Lafayette	
St. Mary	29,400	23,500
St. Tammany	See MSA - New Orleans	
Tangipahoa	20,150	16,100
Tensas	16,200	12,950
Terrebonne	See MSA - Houma-Thibodaux	
Union	18,700	14,950
Vermilion	23,500	18,800
Vernon	16,650	13,300
Washington	19,150	15,300
Webster	24,400	19,500
West Baton Rouge	See MSA - Baton Rouge	
West Carroll	16,200	12,950
West Feliciana	20,400	16,300
Winn	16,650	13,300

MSA - Metropolitan
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MSA Alexandria, LA ¹	21,150	16,900
MSA Baton Rouge, LA ²	28,300	22,650
MSA Houma-Thibodaux, LA ³	28,400	22,700
MSA Lafayette, LA ⁴	30,200	24,150
MSA Lake Charles, LA ⁵	28,900	23,100
MSA Monroe, LA ⁶	22,700	18,150
MSA New Orleans, LA ⁷	27,500	22,000
MSA Shreveport, LA ⁸	25,700	20,550

¹ Includes Rapides Parish only.

² Includes East Baton Rouge, West Baton Rouge, Livingston, and Ascension Parishes.

³ Includes Terrebonne and Lafourche Parishes.

⁴ Includes St. Martin and Lafayette Parishes.

⁵ Includes Calcasieu Parish only.

⁶ Includes Ouachita Parish only.

⁷ Includes Jefferson, Orleans, St. Tammany, St. Bernard, St. John the Baptist and St. Charles Parishes.

⁸ Includes Caddo and Bossier Parishes.

Source: Section 8 Median Income Data, provided by HUD Area Office, March 1, 1984.

APPENDIX 2

1980 Median Family Income
By Parish and MSA

Parish	1980 Median Family Income	LOW/MOD INCOME LIMIT	
		Families	Unrelated Individuals
Acadia	\$ 15,792	\$ 12,634	\$ 8,844
Allen	15,685	12,548	8,784
Ascension	21,572	17,258	12,080
Assumption	17,334	13,867	9,707
Avoyelles	11,987	9,590	6,713
Beauregard	17,417	13,934	9,754
Bienville	13,850	11,080	7,756
Bossier	See MSA - Shreveport		
Caddo	See MSA - Shreveport		
Calcasieu	See MSA - Lake Charles		
Caldwell	12,624	10,099	7,069
Cameron	20,562	16,450	11,515
Catahoula	12,770	10,216	7,151
Claiborne	14,538	11,630	8,141
Concordia	15,208	12,166	8,516
DeSoto	14,887	11,910	8,337
East Baton Rouge	See MSA - Baton Rouge		
East Carroll	10,388	8,310	5,817
East Feliciana	16,184	12,947	9,063
Evangeline	12,540	10,032	7,022
Franklin	11,937	9,550	6,685
Grant	See MSA - Alexandria		
Iberia	19,268	15,414	10,790
Iberville	17,340	13,872	9,710
Jackson	13,919	11,135	7,795
Jefferson	See MSA - New Orleans		
Jefferson Davis	17,657	14,126	9,888
Lafayette	See MSA - Lafayette		
Lafourche	19,947	15,958	11,170
LaSalle	15,250	12,200	8,540
Lincoln	16,660	13,328	9,330
Livingston	See MSA - Baton Rouge		
Madison	10,679	8,543	5,980
Morehouse	12,949	10,359	7,251
Natchitoches	13,343	10,674	7,472
Orleans	See MSA - New Orleans		
Ouachita	See MSA - Monroe		
Plaquemines	19,884	15,907	11,135
Pointe Coupee	14,913	11,930	8,351
Rapides	See MSA - Alexandria		
Red River	12,482	9,986	6,990
Richland	12,112	9,690	6,783
Sabine	13,519	10,815	7,571

1980 Median Family Income
By Parish and MSA

Parish	1980 Median Family Income	LOW/MOD INCOME LIMIT	
		Families	Unrelated Individuals
St. Bernard	See MSA - New Orleans		
St. Charles	\$ 23,223	\$ 18,578	\$ 13,005
St. Helena	11,370	9,096	6,367
St. James	21,044	16,835	11,785
St. John the Baptist	21,818	17,454	12,218
St. Landry	13,893	11,114	7,780
St. Martin	16,612	13,290	9,303
St. Mary	20,688	16,550	11,585
St. Tammany	See MSA - New Orleans		
Tangipahoa	14,315	11,452	8,016
Tensas	10,447	8,358	5,850
Terrebonne	20,918	16,734	11,714
Union	14,027	11,222	7,855
Vermilion	16,951	13,561	9,493
Vernon	12,951	10,361	7,253
Washington	13,641	10,913	7,639
Webster	See MSA - Shreveport		
West Baton Rouge	See MSA - Baton Rouge		
West Carroll	10,807	8,646	6,052
West Feliciana	14,289	11,431	8,002
Winn	12,445	9,956	6,969

MSA-Metropolitan
Statistical Areas

Alexandria, LA ¹	\$ 15,741	\$ 12,593	\$ 8,815
Baton Rouge, LA ²	21,301	17,041	11,929
Lafayette, LA ³	21,472	17,178	12,024
Lake Charles, LA ⁴	21,316	17,053	11,937
Monroe, LA ⁵	17,140	13,712	9,598
New Orleans, LA ⁶	19,196	15,357	10,750
Shreveport, LA ⁷	18,158	14,526	10,168

¹ Includes Rapides and Grant Parishes

² Includes East Baton Rouge, West Baton Rouge, Livingston and Ascension Parishes

³ Includes Lafayette Parish Only

⁴ Includes Calcasieu Parish Only

⁵ Includes Ouachita Parish Only

⁶ Includes Jefferson, Orleans, St. Bernard and St. Tammany Parishes

⁷ Includes Bossier, Caddo and Webster Parishes

Source: 1980 Census and Formula provided by U. S. Department of Housing and Urban Development.

APPENDIX 3

Act 590 of the 1970 Parish Redevelopment Act - Section Q-8

(8) "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or non-residential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open space, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or an area of open land which, because of its location and/or platting and planning development, for predominantly residential uses, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(i) "Blighted area" means an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; but if the area consists of any disaster area referred to in Subsection C (5), it shall constitute a "blighted area."

APPENDIX 4

Eligible Activities

Sec.105.(a) Activities assisted under this title may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) of build-

ings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(8) provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the state in which it is located) during any part of the 12-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 percentum of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph unless such unit of general local government used more

than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount.

(9) payment of the non-federal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title;

(10) payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation.

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in Section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

(14) activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under Section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of Section 101(c), and grants to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in Section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of comprehensive community-wide energy use strategy, which may include items such as—

(A) a description of energy use and projected demand by sector, by fuel type, and by geographic area;

(B) an analysis of the options available to the community to conserve scarce fuels and encourage use of renewable energy resources;

(C) an analysis of the manner in, and the extent to, which the community's neighborhood revitalization, housing, and economic development strategies will support its energy conservation strategy;

(D) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, land use planning and zoning, and traffic control, parking, and public transportation functions;

(E) a statement of the actions the community will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(F) appropriate provisions for energy emergencies;

(G) identification of the local governmental unit responsible for administering the energy use strategy;

(H) provision of a schedule for implementation of each element in the strategy; and

(I) a projection of the savings in scarce fossil fuel consumption and the development and use of renewable energy resources that will result from implementation of the energy use strategy;

(17) provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project; and

(18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937.

(b) Upon the request of the recipient of assistance under this Title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under Subsection (a)(4).

(c)(1) In any case in which an assisted activity described in paragraph (14) or (17) of Subsection (a) is identified as principally benefitting persons of low and moderate income, such activity shall—

(A) be carried out in a neighborhood consisting predominantly of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominantly by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2) In any case in which an assisted activity described in Subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (A) not less than 51 percent of the residents of such area are persons of low and moderate income; or (B) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income.

(3) Any assisted activity under this Title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

APPENDIX 5

Allocation of Funds in Relation to Category and National and State Objectives.

The following is a chart reflecting the allocation of LCDBG funds by category for FY's 1982, 1983 and 1984. A portion of the funds are currently unallocated as indicated, due to cancellation of some grants.

CATEGORY	FY 1982		FY 1983		FY 1984	
	\$	%	\$	%	\$	%
Prior Year Commitment	13,213,528	42.83	6,579,549	23.68	-0-	0.00
Economic Development	962,500	3.12	1,084,000	3.90	6,625,045	24.50
Housing	4,601,999	14.92	4,311,920	15.52	4,381,634*	16.20
Public Facilities	9,563,651	31.00	11,654,065	41.94	15,493,501*	57.30
Planning	196,767	.64	0	.00	-0-	0.00
Imminent Threat	1,713,300	5.55	2,089,520	7.52	-0-	0.00
Innovative Housing	0	.00	1,100,000	3.96	-0-	0.00
Administration	308,484	1.00	333,444	1.20	540,820	2.00
Unallocated	288,144	.94	634,502	2.28	-0-	0.00
TOTAL	30,848,373	100.00	27,787,000	100.00	27,041,000	100.00

* A set-aside of 15% for "Never Funded Communities" is included here.

The applicants selected for funding in FY's 1982, 1983 and 1984 were required to meet one or more of the national objectives. The national objectives for those years were:

1. Elimination of slums and blight and the prevention of blighting influences.
2. Elimination of conditions which are detrimental to health, safety, and public welfare.
3. Benefit to low-moderate income persons.

The following table is a breakdown of the total grants for FY's 1982, 1983 and 1984 as they apply to each national objective. Each recipient's administrative monies are not included.

NATIONAL OBJECTIVES AND FUNDING

National Objectiv	FY 1982		FY 1983		FY 1984	
	\$	%	\$	%	\$	%
Elimination of Slums & Blight	253,455	.89	109,714	.43	*	*
Conditions detrimental to health, safety, and public welfare	1,626,800	5.70	2,033,050	8.02	*	*
Benefit to low-mod	26,642,673	93.41	23,213,063	91.55	*	*
Total	28,522,928	100.00	25,355,827	100.00	27,041,000	100.00

* FY 1984 grants have not been awarded.

A state objective was also included to strengthen economic development through the creation of jobs, stimulation of private investment, and community revitalization. In 1982, \$1,242,878 was funded for economic development, excluding recipient administrative funds, to meet this state objective. FY 1983 funds of \$1,185,563 met this objective. The economic development grants also met the national objective of benefit to low and moderate income persons; therefore, the amounts of \$1,242,878 and \$1,185,563 are shown under the national objective for each year.

These regulations are to be effective on April 20, 1985, and are to remain in force until they are amended or rescinded. Anyone having comments should contact: Colby LaPlace, Assistant Secretary, Office of Planning and Technical Assistance, Department of Urban and Community Affairs, Box 94455, Baton Rouge, LA 70804.

Dorothy M. Taylor
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: (CDBG) Final Statement**

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

The Department of Urban and Community Affairs presently is expected to have the necessary matching funds in the Executive Budget recommendation for 1985-86. No additional costs are expected to state or local government as a result of these changes.

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

Approximately \$26.8 million in federal funds will be distributed to municipalities and parishes to support economic development, housing rehabilitation, and public facilities. Under the proposed rule changes 75 percent of the funds will be set-aside for funding housing and public facilities projects, 25 percent for economic development projects. There are no local matching requirements. The Dept. of Urban and Community Affairs may retain up to \$590,000 (2%) for administrative costs. The estimated impacts to local governments as a result of proposing that parishes compete against parishes and cities of similar population compete against each other will, under the rules, depend upon the number and dollar amount of applications received from these two levels of government. It is possible that funds available for distribution to units of local government may vary from the past if fewer applications of lower dollar amounts are received by the department. For instance, if fewer parishes apply than have in the past, fewer aggregate dollars may be reserved for parish applicants than previously.

Under the proposed rules, local governments may wish to apply for Secretary's Demonstrated Needs Funds (\$500,000 is proposed)—eligible recipients must have critical needs and projects which meet two national objectives. Surplus funds from previous grants will supplement this fund.

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

These funds will be awarded in accordance with selection criteria established in the LCDBG Final Statement. The program is designed to serve low to moderate income persons in local communities. Under the proposed rules the existing numerical point system for each criteria used in ranking ap-

plications will be eliminated. Any effect on the rating system will depend on the relative weight given to various criteria under the proposed rules. Implementation of the Secretary's Demonstrated Needs Fund is designed to address needs of communities with the critical needs—\$500,000 of the grant funds will be set-aside for grantees under the proposed rules.

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

Bids to contractors are awarded in accordance with OMB Circular A-102 and Louisiana bid laws. Grantee communities with an approved Section 3 Plan may give preference to contractors from their jurisdiction. Additionally, the proposed rules provide for a 15 percent set-aside of each recipient's grant funds for minority enterprises.

Clarence Cunningham
Undersecretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Urban and Community Affairs
Office of Planning and Technical Assistance**

**RENTAL REHABILITATION PROGRAM (RRP)
APPLICATION FOR
FY 1985**

Introduction

State and local governments in Louisiana, recognizing both the critical problems in the rental housing sector and the impending changes in rental assistance programs, join together in preparing this application for participation in HUD's Rental Rehabilitation Program. Under the direction of the Department of Urban and Community Affairs, recipient communities commit themselves towards producing more rental rehabilitation projects with less public funds and greater private sector involvement.

The difficulty private market forces have in meeting the rising demand for affordable rental housing has adversely affected the quality of life for many Louisianians, particularly low-income families with children.

In recognition of the situation cited above, state government and the towns and cities intend to develop new methods and find additional financial resources for promoting expanded rental housing opportunities. All parties involved in this endeavor realize that the time has ended when each could operate independently. Only through coordination of purpose and a union of governmental resources at the federal, state, and local levels can the private sector be induced to lend its weight toward addressing the critical need for additional rental housing. Furthermore, the changes in federal housing assistance policies and programs have not gone unnoticed here in Louisiana. All concerned share the feeling that the public will be better served if we adapt, and if possible, help shape the manner in which housing assistance is provided.

Encouraging the rehabilitation of rental housing within community centers is one of several development strategies of the State of Louisiana. The housing programs of the Department of Urban and Community Affairs dedicate their resources in developing a number of innovative techniques to support housing for low and moderate income citizens.

Specifically, Louisiana plans to meet the following four objectives through its participation in the Rental Rehabilitation Program. These are:

1. To increase the number and quality of affordable rental units for low and moderate income persons within targeted neighborhoods in several Louisiana communities.
2. To foster local innovation and flexibility in designing

rental rehabilitation strategies to best meet the individual needs and unique circumstances in the rehabilitation communities while maximizing the number and type of financial resources available at the local level. Particular attention will be placed on promoting rehabilitation activities by the private sector.

3. To establish a working relationship between HUD, and the Department of Urban and Community Affairs, local community development agencies and local housing authorities to best provide coordinated mechanisms for providing interest subsidies, housing assistance certificates or vouchers, CDBG funds, private sector resources, and technical assistance in pursuit of greater rental rehabilitation activity.

4. To acquire the experience necessary to eventually establish new organizational linkages and strategies that can best meet the inevitable changes in federal and state housing assistance policies and delivery systems.

As a result of participation in the Rental Rehab Program, the state expects all concerned to become more proficient in designing and administering state and local rental rehabilitation programs. Louisiana's participation will prepare state and local governments for administration of the Rental Rehabilitation Program in FY'85, to be run in tandem with the CDBG Program. Finally, the Rental Rehabilitation Program provides the perfect opportunity for all levels of government and organizations involved in housing rehabilitation to coordinate their expertise and resources in pursuit of safe and affordable housing for all of Louisiana.

Organizational Framework

Four entities comprise the organized delivery system for the Rental Rehab Program. They are the Department of Housing and Urban Development (HUD), the Department of Urban and Community Affairs (DUCA), local public housing authorities (PHA's), where appropriate, and the Community Development (CD) officials in the towns. Each has a separate and distinct role and each functions as an integral part of the housing program.

The Department of Urban and Community Affairs as the state applicant will serve as administrative coordinator of the Rental Rehab Program. The department has played an active role in a variety of community and economic development efforts, including housing assistance programs and public facility rehabilitation. Present plans include the state administration of CDBG programs in FY'85. The department will commit a portion of its regular staff and budget towards implementing, administering and providing technical assistance as required by the participating communities in running the Rental Rehabilitation Program. The management and administration of the LCDBG Program over the past two years have been efficiently and meticulously performed. Clearly, the department demonstrates experience, expertise, and commitment to a variety of community development programs and strategies. This experience is directly transferable to the administration of the Rental Rehabilitation Program.

Finally, community development agencies in the participating communities will be the primary organizations responsible for the design, packaging, and implementation of rental rehabilitation projects undertaken. This is in keeping with the principal that local governments can best make the decisions regarding a rental-rehabilitation strategy. The cooperative relationship already established between community development officials and the Department of Urban and Community Affairs will be enhanced while new organizations such as the local PHA's will be added to the relationship.

One of the goals of this application is to promote on-going communication and cooperation among all housing practitioners in the public and private sectors. The benefits of this endeavor will be to put the State of Louisiana in a position to design and effec-

tively administer any new housing policies and programs that will be enacted at the federal and state levels of government.

In addition, the Department of Urban and Community Affairs will be developing the capacity and experience necessary to integrate rental rehabilitation programs with other housing programs in order to accomplish a comprehensive housing assistance strategy at the state level.

I. Program Activities

In FY 1985 the state will administer \$736,000 towards the Rehabilitation Program which not only will rehabilitate a minimum of 148 units but will offer inestimable value in terms of increased expertise in the area of rental rehab.

As background, Section 511.50 of the April 30, 1984, regulations (effective May 24, 1984) provides that only those cities and urban counties which will not receive a direct allocation of funds from HUD or which are not in areas eligible for assistance under Title V of the Housing Act of 1949 as administered by the Farmers Home Administration may participate in a state-administered Rental Rehabilitation Program.

Therefore, only Baker, Bossier City, Houma, Kenner, Minden, New Iberia, Pineville, Ruston, Slidell, Sulphur, Thibodaux and West Monroe would be eligible to participate in a Louisiana-administered Rental Rehabilitation Program.

In FY 1984, the state received a firm commitment from seven communities that they would participate in the RRP. The proposed method for distributing the grant funds in FY'85 is to have the communities submit individual applications to the Department of Urban and Community Affairs. These applications will be reviewed for completeness and compliance with the federal and state regulations concerning the Rental Rehab Program. There are currently 12 eligible communities that could apply for FY 1985.

In the event that all 12 communities elect to participate in the program the grant ceiling will be dropped proportionally to allow complete participation by those communities that wish to apply. Should there be an excess of funds remaining as a result of communities not requesting the ceiling amount, their funds will be distributed between the other communities, on an equal basis, that express a need and can demonstrate their ability to increase the number of rental rehab units in their target area.

Each sub-recipient will have the responsibility for seeing that the regulations and guidelines concerning neighborhood selection, guaranteeing lower-income benefit, financial feasibility, and neighborhood preservation are met. The sub-recipients must also secure the aid of their local public housing authorities in order to properly administer the Section 8 certifications and vouchers. There must be a memorandum of understanding between the PHA and sub-recipient community including the applicable HUD requirements.

II. Neighborhood Selection

The state's Rental Rehab Program will be limited to those neighborhoods where the median income does not exceed 80 percent of the parish's median income.

All neighborhoods selected must be located in areas in which: (A) The rents are generally affordable to lower income families at the time of the selection of the neighborhood and (B) The character of the neighborhood indicates that the rents are not likely to increase at a rate significantly greater than the rate for rent increases that can reasonably be anticipated to occur in the market area for a five-year period following the selection of the neighborhoods.

The state will require that all neighborhoods selected have a minimum of 80 percent low/moderate income people residing in that area. This figure will be determined by on-site surveys conducted by the community and verified through on-site monitoring by the state.

Sub-recipients will be requested to provide a methodology of their particular neighborhood selection process. Sub-recipients must provide the state with facts concerning a description of the neighborhoods and its relationship to the selection criteria, the number of units to be rehabed, (both occupied and vacant), what the rents are and how they compare with fair market rents, vacancy rates, and average rehab cost per unit within the neighborhood.

III. Lower-income Benefit

The state proposes to achieve a 70 percent benefit standard for the following reasons:

(a) that the reduction is necessary to minimize displacement in rehabilitated projects and/or to provide a reasonable margin for error due to unforeseen changes in neighborhood rent, failure to complete rehab projects due to unanticipated circumstances or other reasonable contingencies, (b) that the 100 percent benefit standard cannot be achieved, and (c) that the public has been consulted regarding this inability.

The state will require each sub-recipient through their neighborhood income data, neighborhood selection criteria, or project selection criteria to demonstrate how they plan to use their available vouchers and/or certificates to achieve the 70 percent benefit level.

The state will ensure that only one certificate or voucher is issued for each \$5,000 of Rental Rehab funds.

IV. Use of Rental Rehabilitation Grants for Housing for Families

Through the state's monitoring of the Rental Rehab Program, the state will ensure that an equitable benefit of the Rental Rehab Program funds are being spent on housing designed for occupancy by families, including large families with children in accordance with the provisions of 511.10(k).

Also, any sub-recipient proposing to use less than 70 percent of its Rental Rehab Grant for the rehabilitation of units containing two or more bedrooms must explain to the state the reasons why.

The above will be closely monitored by the state through the use of survey forms and on-site verification of the information submitted by the community.

V. Use of Rental Rehabilitation Grants Occupied by Very Low-Income Families

The state, through its application requirements, will ensure that each sub-recipient will comply with the provisions of 511.10(1), which states that priority will be given to rehabilitation projects containing units with substandard conditions that are occupied by very low-income families.

VI. Selection of Proposals

The state will ensure through its adopted application package that each sub-recipient will have adopted procedures and standards governing their selections of each applicant.

These procedures must take into account those requirements as set forth in part 511.20 Program Description part (6).

The sub-recipient must at a minimum ensure the following:

(1) The project is located in an eligible neighborhood, it is substandard, and that at least 51 percent of the square footage is residential (except in the case of a duplex which is 50 percent).

(2) The level and commitment of private funds must be documented.

(3) The percentage of two or more bedroom units to be rehabed. There must be 70 percent of its total funds spent for units containing two or more bedrooms.

(4) The number of very low-income families assisted.

(5) The extent of displacement and its procedures for handling displaced persons.

(6) The minimum Rental Rehab funds for any given units will be \$600 or a combined total of \$1200 including private funds.

(7) The consideration of the impact of the project and the neighborhood preservation.

(8) The amount of owner equity in the project.

(9) The level and cost of the rehab proposed.

VII. Financial Feasibility

The state will require that the sub-recipient will use the most cost effective use of public subsidy that is available. The state will provide assistance as is necessary to get private lenders in the community involved in the program.

The state encourages sub-recipients to maximize non-federal revenue sources in each project.

The state will require in all applications information relative to type of financial subsidy, as well as letters from private financial institutions expressing an interest in the program.

VIII. Neighborhood Preservation

The state will require each sub-recipient to submit a statement in their application as to the proposed impact of the rental rehabilitation program as to how the program will effect the preservation of the neighborhood. The state anticipates that each sub-recipient's program will substantially benefit the neighborhood's overall quality.

IX. Schedule for Committing Rental Rehabilitation Grant Amounts

The state will ensure that at least 35 percent of the total \$736,000 is committed by the end of the third quarter following grant award and 100 percent is committed within 15 months of the execution of the grant agreement.

The state anticipates holding an application workshop for the Rental Rehabilitation Grant Program on February, 1985, with applications being here at DUCA on March 15, 1985.

Once applications are received, on-site visits will be scheduled in order to verify certain information contained in the application. The state anticipates awarding the Rental Rehab Grants on March 15, 1985.

X. Need for Rental Housing Assistance

Due to the poor housing stock in Louisiana, the state anticipates the full utilization of all 148 certificates and vouchers the program will generate. However, the state will require an explanation from each sub-recipient that does not utilize all vouchers and certificates they are eligible to receive under the Rental Rehab Program.

XI. Nondiscrimination and Equal Opportunity

In reviewing the Affirmative Marketing Component of the Rental Rehab Program, the state has elected to delegate to its sub-recipients the responsibilities of determining the details of their affirmative marketing procedures, with the state providing the "criteria" that sub-recipients must follow, rather than specifics of the procedures themselves.

The state will require that the narrative statement of sub-recipients should indicate that the applicant will implement procedures and requirements for the affirmative marketing of vacant units in rehabilitated projects in accordance with 511.10(M)(2) of the regulations.

Criteria for Sub-recipients Affirmative Marketing Component

a. Informing Public/Owners/Tenants

In setting out procedures, sub-recipients must indicate that they will inform the public, owners desiring to participate in the Rental Rehabilitation Program, and potential tenants about federal fair housing laws and about the sub-recipients' affirmative marketing policy. The sub-recipients must also indicate how they intend to accomplish this requirement.

There are a number of methods by which sub-recipients can inform the public, owners, and tenants of the sub-recipients' affir-

affirmative marketing policy and fair housing laws. The sub-recipients might:

1. Include a statement regarding its affirmative marketing policy and procedures in all media releases/reports informing the public about the program and include a copy of this statement and description of applicable fair housing laws in the information provided to owners and tenants.

2. Include the Equal Housing Opportunity logo, slogan, or statement in all newspaper and other media announcements regarding the program.

3. Announce its policy generally and discuss with owners and tenants directly its affirmative marketing policy procedures, and the fair housing laws.

Other methods may also be appropriate as long as they accomplish the objective of informing the public, owners, and tenants of the program.

b. Requirements and Practices for Owners

Sub-recipients must indicate what practices and procedures owners will be expected to carry out to meet the requirements. These might include use of commercial media to advertise vacant units; use of the Equal Housing Opportunity logo/slogan, or statement; displays for fair housing posters; use of community contacts, etc.

Commercial media may include newspaper, radio and T.V., brochures, leaflets or other printed material. Whenever possible, description is prepared by the applicant, commercial media can be identified by providing the names of newspapers or radio station, and community organizations can also be identified by name.

c. Special Outreach Efforts

Sub-recipients must state in their program description what procedures they will require owners to use to inform and solicit applications for vacant units from persons in the housing market who are least likely to apply for the rehabilitated housing without special outreach. In general, persons who are not of the race/ethnicity of the residents of the neighborhood(s) should be considered as persons least likely to apply.

Examples of outreach efforts may include the use of community organizations, churches, employment centers, fair housing groups, or housing counseling agencies, specifically chosen because they provide services to, or have as members, persons in the group or groups least likely to apply. Although not required, HUD recommends that, where possible, sub-recipients identify which racial/ethnic group in the population are least likely to apply for housing without special outreach, prior to deciding on what special outreach efforts to use, including which organizations might be contacted.

Rather than requiring that each owner undertake special outreach efforts, the sub-recipient may wish to require that owners contact the sub-recipient whenever a unit is about to be vacant and the sub-recipient may assume responsibility for carrying out these efforts. In this case, the sub-recipient should describe the procedures it will use.

Where sub-recipients require that PHAs be contacted for the referral of potential tenants eligible under the Section 8 Voucher/Certificate Programs, the sub-recipient should be advised to consider whether PHA referral alone is sufficient for meeting the affirmative marketing objectives. For example, if the racial/ethnic composition of the PHA's waiting list is primarily the same as present project tenants and/or neighborhood residents likely to apply without special outreach, other methods should also be used.

d. Recordkeeping

Sub-recipients should state in their program description what records will be kept: 1) to describe efforts taken by the sub-recipient and by the owners to affirmatively market units, and 2) for use in assessing the results of these affirmative marketing ac-

tions. These records should be sufficient to document procedures used by sub-recipients and owners to meet the affirmative marketing requirements.

In deciding on records to be kept for this purpose, sub-recipients should state that they will meet the racial, ethnic and gender characteristic recordkeeping requirements as contained in Section 511.71 concerning tenancy before and after rehabilitation, and relocation data for displaced households.

e. Assessment of affirmative marketing efforts

The sub-recipient must describe how it will assess the affirmative marketing efforts of owners, the result of those efforts, and what corrective actions will be taken where an owner fails to follow these affirmative marketing requirements.

While the specific details of the assessment process may not be established at the time the program description is submitted, sub-recipients should, at a minimum, indicate an awareness of the assessment procedures and the need to develop assessment criteria and data collection procedures which will be used to annually assess the affirmative marketing program.

The state shall require each sub-recipient to follow the above criteria for affirmative marketing in order to adequately ensure that the applicable nondiscrimination and equal opportunity portion of the sub-recipients rental rehab program is in compliance.

At a minimum, the following records will be kept:

- (1) Methods used to inform the owner and tenants of the affirmative marketing policy.

- (2) Copies of all advertisements, statements, brochures, etc., used to carry out the policy.

- (3) Letters and/or advertisements concerning individual vacancies should be retained.

- (4) Documentation taken by the owner to further affirmative marketing actions.

- (5) Records pertaining to the existing tenants which include racial, ethnic, and gender characteristics should be maintained for the units assisted.

- (6) Records pertaining to the type of racial, ethnic, and gender groups targeted for affirmative marketing.

- (7) Documentation of the sub-recipients' best forth effort to adequately ensure that affirmative marketing is pursued.

The state will assess the result of the sub-recipient's affirmative marketing effort through on-site monitoring of the sub-recipient's program. Lack of performance concerning the sub-recipient's affirmative marketing efforts will result in findings imposed by the state on the sub-recipient.

XII. Grantee organizational structure

The state has assigned its responsibility for administering the Rental Rehab Program to: Department of Urban and Community Affairs, Box 44455, 5790 Florida Boulevard, Baton Rouge, LA 70804, Phone: (504) 925-3756. The contact person responsible for administering the Rental Rehab Program for the state is Warren Gallaspy.

The administration funds to operate the State Rental Rehab Program will be drawn from the State FY 1985 LCDBG allocated funds.

Support staff as necessary will be solicited from the LCDBG/OPTA staff and DUCA's Office of Management and Finance staff (OMF).

The state is currently beginning its third year of operation of the LCDBG Program. Both the staff of OPTA and OMF are well versed in federal guidelines, rules, and regulations, and anticipates no obstacles in administering the state Rental Rehab Program.

XIII. PHA Participation

The selection of the PHA or PHAs to be utilized in the administration of their RRP will be determined by the sub-recipient. However, the state will require, upon application submission, that

a Memorandum of Understanding between the community and the selected PHA accompany the application.

It will be the responsibility of the communities to initiate a Memorandum of Understanding between themselves and the PHA which includes all applicable HUD regulations and guidelines to ensure the proper use of the available vouchers and certificates to achieve the specified level of lower income benefit.

XIV.

The state will mandate a ceiling of \$5,000 of RRP funds as the maximum amount for which one rental unit will be eligible.

XV. Need for Rental Rehab Funds

The state is requesting a total \$736,000 of Rental Rehab Funds for FY 1985.

XVI. Certification

The submission of the program description is authorized under the state and local law (as applicable), and the applicant possesses the legal authority to carry out the Rental Rehabilitation Program described therein, in accordance with the Rental Rehabilitation Program regulations.

If applicable, its lower-income benefits standard should be reduced to 70 percent, as provided by Section 511.10(a)(2) of the program regulations; this certification will be accompanied by an explanation of the reason why the reduced benefit standard is necessary, as provided in Section 511.10(a)(2) of the program regulations.

A written tenant assistance policy conforming to the requirements of Section 511.10(h)(2) of the program regulations had been adopted.

It will conduct and administer its rental rehabilitation program, in conformity with the requirements of Section 511.10(m) of the program regulations.

It will conduct and administer its rental rehabilitation program in accordance with the requirements of the Rental Rehabilitation Program Regulations.

Interested persons may submit written comments on this proposed rule to Colby LaPlace, Department of Urban and Community Affairs, Box 944455, Baton Rouge, LA 70804 (Telephone 925-3690).

J. W. Vaughn
Assistant Secretary

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Rental Rehabilitation Program

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

Since the program has no provisions for reimbursing state or local administrative costs, any implementation costs or workload increases will be borne by existing DUCA staff (at the state level), existing community development, or public housing authority staff at the local level.

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

Local units which are approved by DUCA will derive increased federal funds to perform rehabilitation of rental units. It is possible that improving the quality of rental housing in these communities will increase the local property tax base at some time in the future.

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

In fiscal year 1984-85, DUCA will administer \$786,200 in rental rehabilitation at the local level. Two groups will ben-

efit from the program—low to moderate income families living in units which are rehabilitated and the owners of the rental units. Eligible units may be rehabilitated for a maximum of \$10,000 of which 50 percent of the funds are provided by the local government by loan or grant to be matched equally (50 percent) by the owner of the rental unit. Additionally, families on Section 8 rental assistance which occupy a unit rehabilitated under this program ensure government subsidy for the qualification period of the family.

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

Employment in the private sector will be stimulated specifically in the home construction area. Approximately 50-60 new jobs will be created as a result of this program in fiscal year 1984-85. Federal and private sector dollars will be utilized in the purchase of construction materials under this program.

Dorothy M. Taylor
Secretary

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The following resolution was adopted by the Louisiana Wildlife and Fisheries Commission at its regular meeting held in Baton Rouge, LA January, 16, 1985

WHEREAS, the Wildlife and Fisheries Commission as per Title 34:851.24(F) shall prescribe the regulations pertaining to personal flotation devices to be used for each person on board every motorboat or vessel used upon all navigable waterways of the state; and

WHEREAS, the Wildlife and Fisheries Commission as per Title 34:851.24(G) shall prescribe the regulations pertaining to the number, size and type of fire extinguishers to be carried by each motorboat and vessel operating upon all navigable waterways of the state; and

WHEREAS, the Wildlife and Fisheries Commission shall prescribe proper standards for flame arrestors through Title 34 Sec. 851.24(H) and for ventilation requirements for boats of closed construction through Title 34 Sec. 851.24(I) on motorboats operating upon the waters of this state.

NOW THEREFORE BE IT RESOLVED that the Wildlife and Fisheries Commission does propose to adopt the federal regulations for personal flotation devices, fire extinguishers, flame arrestors and ventilation as follows.

The following rules and regulations have been adopted by the Wildlife and Fisheries Commission pursuant to Title 34 Sections 851.24(F)(1), 851.24(G) and 851.24(H).

I

In accordance with Title 34 Section 851.24(F)(1), the following definitions shall apply to the classification of personal flotation devices (P.F.D.).

A. P.F.D. Type I, a U.S. Coast Guard approved flotation device of the wearable design capable of turning most unconscious persons from a face down position without effort from its wearer. This device must provide a minimum buoyancy of 22 pounds in the adult size and a minimum of 11 pounds in the child size.

B. P.F.D. Type II, a U.S. Coast Guard approved wearable device designed to turn its wearer to a vertical or slightly backward position in the water. Its adult size shall provide a minimum buoyancy of 15 1/2 pounds, the medium child size shall provide a min-

imum of 11 pounds, and the infant and small child size shall provide a minimum buoyancy of seven pounds.

C. P.F.D. Type III, a U.S. Coast Guard approved wearable device designed so the wearers can place themselves in a vertical or slightly backward position. Its adult size shall provide a minimum buoyancy of 15 1/2 pounds, its medium child size shall provide a minimum of 11 pounds and the infant and small child size shall provide a minimum buoyancy of seven pounds.

D. P.F.D. Type IV, a U.S. Coast Guard approved device designed to be thrown to a person in the water and grasped, not worn. It shall provide a minimum of 15 1/2 pounds of buoyancy.

E. Regulations prescribed by the commission as to the type and number of personal flotation devices required on recreational boats while a watercraft is in use on the waters of this state are as follows:

1. Class A watercraft (less than 16 feet in length)

Shall carry at least one, type I, II, III or IV personal flotation device for each person on board. The P.F.D. must bear the U.S. Coast Guard approval number and must be of the appropriate sizes and serviceable.

2. Class I watercraft (16 feet to less than 26 feet in length)

Shall carry at least one serviceable, type I, II or III personal flotation device for each person on board and one serviceable type IV device. The P.F.D.'s must bear the U.S. Coast Guard approval number and must be of the appropriate sizes.

3. Class II watercraft (26 to less than 40 feet in length)

Shall carry at least one serviceable, type I, II or III personal flotation device for each person on board and one serviceable type IV device. The P.F.D.'s must bear the U.S. Coast Guard approval number and must be of the appropriate sizes.

4. Class III watercraft (40 and over)

Shall carry at least one serviceable, type I, II or III for each person on board and one serviceable type IV device. The P.F.D.'s must bear the U.S. Coast Guard approval number and must be of the appropriate size.

F. Every motorboat carrying passengers for hire upon the waters of this state must be equipped with serviceable U.S. Coast Guard approved type I or II personal flotation devices. The number of P.F.D.'s shall be equal to the number of persons being carried and of the appropriate size.

G. For the purpose of this part "serviceable" personal flotation devices shall mean capable of being properly worn with all straps, snaps, flotation bags, approval labels and limitation notices intact and in working condition.

II

In accordance with Title 34 Section 851.24(G) the commission prescribes the following regulations for fire extinguishers on motorboats.

A. All motorboats of closed construction shall carry the appropriate approved fire extinguisher according to its length.

1. Class A (under 16 feet in length)

At least one approved B-I or 5B type extinguisher.

2. Class I (16 to less than 26 feet in length)

At least one approved B-I or 5B type extinguisher.

3. Class II (26 to less than 40 feet in length)

At least two approved B-I or two 5B extinguishers or at least one approved B-II or one 6B extinguisher.

4. Class III (40 feet and above in length)

At least three approved B-I or 5B extinguishers or at least one approved B-I, 5B and one approved B-II or 6B extinguishers. When an approved fixed extinguishing system is installed one less B-I or 5B type extinguisher is required.

5. All open motorboats shall be required to carry the same approved fire extinguishers according to class, except that open motorboats of outboard design where the construction of such

motorboats will not permit the entrapment of explosive or flammable gases or vapors and less than 26 feet in length shall not require fire extinguishers.

6. For the purpose of this part, motorboats of closed construction shall mean any motorboat that has one or more of the following conditions.

1) Inboard engine;

2) Closed compartments under thwarts and seats wherein portable fuel tanks are stored;

3) Double bottoms not sealed to the hull or which are not completely filled with flotation materials;

4) Closed living spaces;

5) Closed storage compartments in which combustible or flammable material is stored;

6) Permanently installed fuel tanks.

7. The term "approved" for this part shall mean certified by the U.S. Coast Guard and bearing the U.S. Coast Guard approval number or UL (Underwriters Laboratory) seal listing its approval for marine use.

8. All fire extinguishers must be maintained in proper working order and fully charged.

III

The following regulations are prescribed by the commission pertaining to flame arrestors or backfire traps.

A. Every motorboat shall have the carburetor or carburetors of every engine (except outboard engines) using gasoline as fuel, equipped with a U.S. Coast Guard approved device so labeled and emplaced as to prevent danger of backfire.

IV

The following regulations are prescribed by the commission pertaining to the requirements of ventilation of boats of closed construction.

A. Every motorboat (except open boats) using as fuel any liquid of a volatile nature shall be equipped with a ventilation system consisting of at least two ventilation ducts fitted with cowls. One of the ducts must be designated as an exhaust duct and installed so as to extend to the lower portion of the bilge. Another is to be designated as the intake duct and be so installed to a point below the level of the carburetor air intake. This system will be acceptable as will any U.S. Coast Guard approved system, however either system must be maintained in proper working order.

Interested persons may submit written comments to: Colonel Ray Montet, Chief, Enforcement Division, Department of Wildlife and Fisheries, Box 15570, Baton Rouge, LA 70895.

J. Burton Angelle

Secretary

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Implementation of Federal Recreational Boating Safety Equipment Standards

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

None.

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

None.

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

None.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)
None.

Mary Mitchell
Chief Fiscal Officer

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

The following resolution was adopted by the Louisiana Wildlife and Fisheries Commission at its regular meeting held in Baton Rouge, LA, January 16, 1985.

Resolution to Set Dates for Annual Shrimp Meeting
WHEREAS, R.S. 56:497 provides all inshore shrimp seasons shall be set by the Wildlife and Fisheries Commission; and

WHEREAS, R.S. 56:497 also provides that the inshore spring shrimp season shall begin no later than May 25; and

WHEREAS, rules promulgated by the commission are subject to the Administrative Procedure Act and review and approval by the legislative oversight committee before such rules can be enacted.

NOW THEREFORE be it resolved that the Louisiana Wildlife and Fisheries Commission announces its intention to review all data and receive public input relative to setting of the 1985 spring shrimp season on April 30; and

BE IT FURTHER RESOLVED the Louisiana Wildlife and Fisheries Commission announces its intention to set on May 1, 1985, the opening dates for the 1985 spring shrimp season.

Interested persons may submit written comments to: Harry Schafer, Chief, Seafood Division, Department of Wildlife and Fisheries, Box 15570, Baton Rouge, LA 70895.

J. Burton Angelle
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: Mandatory Hunter Safety Certification

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

The mandatory Hunter Education bill will cost an additional \$60,000. This increase is projected due to increases in supplies, equipment and travel required to accomplish certification of participants.

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

None, funds are derived from excise taxes on firearms and are prorated back to the state on a 75 percent Federal 25 percent State matching basis. The 25 percent state funds are from Rockefeller Refuge funds.

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

None, The Hunter Safety course will be offered free of charge to participants.

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

None, no additional personnel will be hired. Increase in workloads will be offset by use of trained volunteers.

Mary Mitchell
Chief Fiscal Officer

Mark C. Drennen
Legislative Fiscal Officer

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Rockefeller Refuge**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
None.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
Not applicable.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)
Not applicable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)
Not applicable.

Mary Mitchell
Chief Fiscal Officer

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**A Resolution on Mandatory Hunter
Education Program**

Whereas, the Louisiana Wildlife and Fisheries Commission has recognized the need for firearms and hunter education for the hunters of Louisiana and requested a mandatory bill be enacted by the Louisiana Legislature; and

Whereas, the 1984 Louisiana Legislature passed Act 149 requiring mandatory hunter safety certification prior to purchase of a hunting license for anyone born on or after September 1, 1969; and

Whereas, the 1984 Legislature has mandated the Louisiana Wildlife and Fisheries Commission to adopt rules to regulate the mandatory firearms and hunter education program;

Therefore it be resolved that the Louisiana Wildlife and Fisheries Commission propose the following regulations.

1. The Louisiana Wildlife and Fisheries Commission shall be the sole authority for establishing minimum requirements for certification of students and volunteer instructors and for the overall administration of the hunter education program.

2. The Louisiana Department of Wildlife and Fisheries shall maintain a computer register of all students and instructors who have successfully met all requirements for certification.

3. Requirements for student certification shall be as follows:

- a. A minimum of six hours classroom instruction.
- b. Pass a written exam prepared by the Department.
- c. Demonstration of proficiency of hunting firearms under field conditions.

d. Upon successful completion of the requirements, students shall receive permanent credentials.

4. Requirements for volunteer instructor certification shall be as follows:

- a. A minimum of 12 hours classroom instruction.
- b. Pass a written exam prepared by the Department.
- c. Demonstration of proficiency of firearms through a field shooting exercise.

d. Upon successful completion, candidates as volunteers shall be certified for a two year period. Recertification shall be based on continued participation in the Louisiana Firearms and Hunter Education Program.

Interested persons may submit written comments to: Chester Carpenter, Hunter Safety Coordinator, Department of Wildlife and Fisheries, Box 15570, Baton Rouge, LA 70895.

J. Burton Angelle
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Shrimp Seasons Inside Waters**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
There will be no costs to implement this season as it will be handled along with other regular duties.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS - (Summary)
There will be an estimated 35,000 shrimp licenses sold. Using a median cost of \$20 per license, this would result in estimated revenue of \$700,000.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS - (Summary)
The costs to the affected groups would be the licensing fees of \$700,000.
The benefits are the estimated \$150 million annual value of shrimp at dockside.
The 1983 season yielded 77,260,000 pounds of heads-off shrimp valued at \$133.5 million.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT - (Summary)
Approximately 50,000 individuals are influenced by the annual shrimp seasons.

Mary Mitchell
Chief Fiscal Officer

Mark C. Drennen
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Resolution adopted by the Department of Wildlife and Fisheries at its regular meeting held in New Orleans, Wednesday, December 5, 1984.

WHEREAS, the Louisiana Department of Wildlife and Fisheries received the Rockefeller Wildlife Refuge under a conditional Deed of Donation in 1920; and

WHEREAS, the Deed of Donation has been revised by a Memorandum of Agreement between the Department of the Interior and the Louisiana Department of Wildlife and Fisheries effective the eighteenth day of April, 1983; and

WHEREAS, provisions of the original Deed of Donation and the Memorandum of Agreement permit recreational use of the area; and

WHEREAS, the Louisiana Department of Wildlife and Fisheries has been permitting sport fishing and other recreational use of the area for 25 years without interference with the wildlife management programs on the area; and

WHEREAS, numerous regulations have been adopted by the Louisiana Wildlife and Fisheries Commission to control public use of the wildlife refuge area; and

NOW, THEREFORE, BE IT RESOLVED, that the Louisi-

ana Wildlife and Fisheries Commission does hereby adopt the following rules and regulations to govern the use of the Rockefeller Wildlife Refuge for sport fishing and other recreational uses.

1. The visiting season on the Rockefeller Wildlife Refuge will extend from March 1 to December 1 throughout the refuge except those restricted areas designated to prohibit interference with research activities. Use of Humble Canal; Joseph Harbor Bayou; Headquarters Canal; East End Road and Locks; Union Producing Canal; Deep Lake; East End Boundary Canal; and Rollover Bayou shall be year-round. In addition to this access, sport fishermen shall be permitted to enter the Refuge from the Gulf side in East Constance Bayou, East Little Constance Bayou, Big Constance Bayou, Little Constance Bayou. Access through these bayous will be permitted only as far inland as the existing water control structures. The remainder of the refuge shall be restricted during the winter months and will be closed to all trespassing.

2. Use of the refuge will be allowed from one-half hour before official sunrise until official sunset. This includes access routes through the Refuge.

3. Overnight camping is prohibited.

4. Hunting, molesting or intentional disturbing of wildlife is prohibited.

5. Trawling on the refuge is prohibited. Trotlines, jug lines, trammel and gill nets and traps are prohibited. All commercial fishing is prohibited. One-hundred pounds of shrimp per boat per day is allowed during the inside open shrimp season as established by the Louisiana Wildlife and Fisheries Commission. Ten pounds of shrimp for bait purposes may be caught during the closed season. Shrimp can be harvested only by cast net or dip net on the refuge and only for sport fishing or home consumption use.

6. Crawfish may be harvested from the open portion of the refuge and 100 pounds per boat or vehicle is allowed per day. Set nets may be used but must be attended and removed from the refuge daily. No commercial harvest allowed.

7. Oysters may be harvested from the natural reefs. One gallon per boat per day is allowed and oysters must be opened at the reef and the shells returned to the reef.

8. The burning of the marshes is prohibited. Water control structures are not to be tampered with or altered by anyone other than employees of the Louisiana Department of Wildlife and Fisheries.

9. Bringing firearms, bows and arrows, liquor and controlled substance narcotics onto the Refuge is prohibited. All boats and vehicles are subject to search by all authorized employees of the Louisiana Department of Wildlife and Fisheries at anytime.

10. Boat travel on the Refuge will be maintained at a minimum and boats shall be operated so as to create a minimum of wave wash. Speed boat racing and water skiing is prohibited. Pulling boats over levees, dams or water control structures is prohibited.

11. No littering is allowed. Visitors must remove their litter or place in appropriate litter disposal sites.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the secretary is hereby authorized to publicize this change in regulations through the news media.

This is to certify that the above and foregoing is a true copy of the excerpt of the minutes of the meeting of the Department of Wildlife and Fisheries Commission held in New Orleans, LA, on Wednesday, December 5, 1984.

Interested persons may submit written comments to: Johnnie Tarver, Chief, Fur and Refugee Division, Department of Wildlife and Fisheries, Box 15570, Baton Rouge, LA 70895.

J. Burton Angelle
Secretary

Committee Reports

COMMITTEE REPORT

House of Representatives Committee on Commerce Oversight Review

The Committee on Commerce, Subcommittee on Executive Agency Oversight and Review pursuant to R.S. 49:968, met on January 23, 1985, and approved by a 7-0 vote the following rules proposed by the Department of Commerce, Office of Commerce and Industry:

1. Administration of Enterprise Zone Program
2. Industrial Ad Valorem Tax Exemption
3. Restoration Tax Abatement Program
4. Sales and Use Tax Exemption on Energy Conservation Property

The rules' notice of intent appeared in the December issue of the *Louisiana Register*. Please note the Subcommittee agreed to the Office's editorial change to Rule 22 of the enterprise zone program to refer to Rule 5 to which reference is necessary but was inadvertently omitted.

Eddie Doucet
Subcommittee Chairman

Potpourri

POTPOURRI

Department of Commerce Racing Commission

Meeting of the Louisiana State Racing Commission will be held on Thursday, February 21, 1985 at 9:30 a.m. in the "Queen Anne Room" of the Monteleone Hotel, 214 Rue Royale, New Orleans, LA 70140.

Patrick C. McGinity
Secretary

POTPOURRI

Department of Health and Human Resources Board of Embalmers and Funeral Directors

The Louisiana State Board of Embalmers and Funeral Directors will give a Funeral Director and the National Board exam on Tuesday, March 26, 1985 at Delgado Community College, 615 City Park Avenue, New Orleans.

Interested persons may obtain further information from the Louisiana State Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 483-4684.

Dawn Scardino
Administrative Assistant

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Department of Health and Human Resources Board of Veterinary Medicine

The National Veterinary Board Examination will be held on Tuesday, May 14, 1985, and the Clinical Competency Test (CCT) will be held on Wednesday, May 15, 1985, at the Louisiana State University School of Veterinary Medicine, LSU Campus, Baton Rouge, Louisiana.

The Louisiana State Board Veterinary Examination will be held on Saturday, May 25, 1985 and Sunday, May 26, 1985 at the Louisiana State University School of Veterinary Medicine, LSU Campus, Baton Rouge, Louisiana.

Interested persons may obtain an application and further information by contacting Ralph C. Cooper, Secretary-Treasurer, Louisiana Board of Veterinary Medicine, Box 15191, Baton Rouge, LA 70895-5191, (504) 925-9538.

Ralph C. Cooper, D.V.M.
Secretary-Treasurer

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Department of Natural Resources Fishermen's Gear Compensation Fund

In accordance with the provisions of the Fishermen's Gear Compensation Fund, Louisiana Revised Statutes 56:700.1 through 56:700.5, and in particular, Section 700.4 thereof; regulations adopted for the fund as published in the *Louisiana Register* on August 20, 1980; and also the rules of the Secretary of this Department, notice is hereby given that 54 completed claims, amounting to \$49,670.96, were received during the month of January, 1985. During the same month, 57 claims, amounting to \$45,833.94 were paid. The following is a list of the paid claims:

Claim No. 84-1482 Harold Dressendorfer	Claim No. 84-1512 Kenneth Adams, Jr.	Claim No. 84-1526 George Skinner
Claim No. 84-1554 Harold Dressendorfer	Claim No. 84-1563 Scott Pete	Claim No. 84-1564 Houston Trahan
Claim No. 84-1599 Mark Spears	Claim No. 84-1600 Kenneth Hooks, Sr.	Claim No. 84-1606 Houston Trahan
Claim No. 84-1607 Tony Billiot	Claim No. 84-1617 Bernard Webb	Claim No. 84-1634 Julius Moll
Claim No. 84-1639 Wilfred Nunez	Claim No. 84-1655 Philip Martinez, Jr.	Claim No. 84-1656 Houston Trahan
Claim No. 84-1676 Rufus DeRoche	Claim No. 84-1687 Ervin Hebert	Claim No. 84-1688 Kenneth Adams, Jr.
Claim No. 84-1690 Danny J. Robin	Claim No. 84-1698 Keith Trosclair	Claim No. 84-1699 Keith Trosclair
Claim No. 84-1725 Calvin Picou, Jr.	Claim No. 84-1737 Thomas Olander	Claim No. 84-1744 Ernest Campo
Claim No. 84-1745 Daniel Duhon	Claim No. 84-1753 Terry Alario	Claim No. 84-1758 Carlton Styron
Claim No. 84-1759 Carlton Styron	Claim No. 84-1778 Edward Otero, Jr.	Claim No. 84-1815 Leon Seghers
Claim No. 84-1824 Joseph Verdin	Claim No. 84-1825 Joseph Verdin	Claim No. 84-1826 Joseph Verdin
Claim No. 84-1827 Joseph Verdin	Claim No. 84-1829 Cleo Billiot	Claim No. 84-1861 Charles Verdin
Claim No. 84-1870 Colin Barrilleaux	Claim No. 84-1878 James Tisdale	Claim No. 84-1885 Frederick Baas, Sr.

Claim No. 84-1886 Bernard Rembert	Claim No. 84-1887 Ernest Wiseman	Claim No. 84-1888 Houston Trahan
Claim No. 84-1901 John Verdin, Jr.	Claim No. 84-1922 Houston Trahan	Claim No. 84-1929 Robert Graf
Claim No. 84-1932 Houston Trahan	Claim No. 84-1937 Gary Treuil	Claim No. 84-1960 Lazarus Gonzales
Claim No. 84-1961 Houston Trahan	Claim No. 84-1974 Gary Treuil	Claim No. 84-1978 Terry Fabre
Claim No. 84-1979 Terry Fabre	Claim No. 84-1980 Terry Fabre	Claim No. 84-1991 Kevin Boudreaux
Claim No. 84-2003 Clifford Matherne, Jr.	Claim No. 84-2009 Houston Trahan	Claim No. 84-2024 Houston Trahan

Public hearings to consider completed claims have been scheduled as follows:

Tuesday, March 5, 1985, at 10 a.m., in the L.S.U. Cooperative Extension Office, 511 Roussel Street, Houma, LA.:
CLAIM NO. 84-1575 (RESCHEDULED)

Raymond L. Hebert, of Houma, LA., while trawling on the vessel, "La Belle Cherie," in the Gulf of Mexico, southwest of Locust Bayou, at LORAN-C readings of 27,731.2 and 46,886.7, Terrebonne Parish, encountered a submerged pipe, on June 3, 1984, at approximately 10 a.m., causing loss of his trawl. Amount of Claim: \$732.50
CLAIM NO. 84-1630

Harry L. Rebardie, of Amelia, LA., while trawling on the vessel, "Foxy Lady," in the Gulf of Mexico, southeast of South Point, at LORAN-C readings of 27,563.3 and 46,924.4, St. Mary Parish, encountered a submerged piling, on May 11, 1984, at approximately 2 p.m., causing the loss of his 51 foot trawls, and damage to his outriggers. Amount of Claim: \$1,406.
CLAIM NO. 84-1813 (RESCHEDULED)

Louis Dusenbery, of Houma, LA., while trawling on the vessel, "Cajun Pride," in Terrebonne Bay, west of Caillou Island, Terrebonne Parish, encountered an unidentified submerged obstruction, on June 23, 1984, at approximately 1:30 p.m., causing loss of his 50 foot trawl. Amount of Claim: \$798.84
CLAIM NO. 84-1936

Ray J. Boudwin, Sr., of Houma, LA., while trawling on the vessel, "Lil People," in the Gulf of Mexico, south of Raccoon Point, at LORAN-C readings of 27,886.8 and 46,838.7, Terrebonne Parish, encountered an unidentified submerged obstruction, on August 31, 1984, at approximately 6:15 p.m., causing loss of his trawl. Amount of Claim: \$644.65
CLAIM NO. 84-2023

Joseph Dean, Jr., of Dulac, LA., while trawling on the vessel, "Miss Ileen," in Chandeleur Sound, northeast of Door Point, at LORAN-C readings of 29,284.5 and 47,043.2, St. Bernard Parish, encountered a submerged tank, on September 7, 1984 at approximately 9:30 a.m., causing damage to his vessel. Amount of Claim: \$5,000.
CLAIM NO. 84-2062

Adam J. Fitch, of Dulac, LA., while trawling on the vessel, "Viola B.," in the Gulf of Mexico, southeast of South Point, at approximate LORAN-C readings of 27,537.0 and 46,917.3, Iberia Parish, encountered an unidentified submerged obstruction on October 13, 1984, at approximately 4 p.m., causing loss of his two 45 foot trawls and tickler chain. Amount of Claim: \$1,535.
CLAIM NO. 84-2095

Percy Boudwin, Jr., of Houma, LA., while trawling on the vessel, "Pokey and Cheryl," in the Gulf of Mexico, 1 mile south of the Holly Beach Water Slide, at approximate LORAN-C readings of 26,613.0 and 46,979.0, Cameron Parish, encountered an unidentified submerged obstruction on October 9, 1984, at ap-

proximately 6:30 p.m., causing loss of his 40 foot trawl, doors, tickler chain, and lazy line. Amount of Claim: \$1,250.82
CLAIM NO. 84-2096

Percy Boudwin, Jr., of Houma, LA., while trawling on the vessel, "Pokey and Cheryl," in the Gulf of Mexico, west of Calcasieu Pass, at approximate LORAN-C readings of 26,652.3 and 46,978.5, Cameron Parish, encountered an unidentified submerged obstruction, on October 25, 1984, at approximately 10 a.m., causing loss of his 40 foot trawl and chain. Amount of Claim: \$834.
CLAIM NO. 84-2104

Percy Boudwin, Sr., of Houma, LA., while trawling on the vessel, "Sea Lady," in the Gulf of Mexico, west of Calcasieu Pass, at LORAN-C readings of 26,644.2 and 46,979.1, Cameron Parish, encountered an unidentified submerged obstruction on October 5, 1984, at approximately 10 a.m., causing loss of his 50 foot trawl and tickler chain. Amount of Claim: \$905.24
CLAIM NO. 84-2105

Percy Boudwin, Sr., of Houma, LA., while trawling on the vessel "Sea Lady," in the Gulf of Mexico, west of Calcasieu Pass, at LORAN-C readings of 26,643.0 and 46,979.3, Cameron Parish, encountered an unidentified submerged obstruction on October 6, 1984, at approximately 1 p.m., causing loss of his 50 foot trawl, and damage to his vessel. Amount of Claim: \$4,037.54
CLAIM NO. 84-2106

Percy Boudwin, Sr., of Houma, LA., while trawling on the vessel "Sea Lady," in the Gulf of Mexico, west of Calcasieu Pass, at LORAN-C readings of 26,600.0 and 46,978.0, Cameron Parish, encountered an unidentified submerged obstruction on October 10, 1984, at approximately 10 a.m., causing loss of his 16 foot trawl, boards, and bridle. Amount of Claim: \$685.82

Tuesday, March 5, 1985, at 1:30 p.m., in the L.S.U. Cooperative Extension Service Office, Greater Lafourche Port Commission Building, Highway 308, Galliano, LA.:
CLAIM NO. 83-1148 (RESCHEDULED)

Linton Gisclair, of Golden Meadow, LA., while trawling on the vessel, "Big Wade," in the Gulf of Mexico, south of South Point, at LORAN-C readings of 27,506.0 and 46,921.9, Iberia Parish, encountered an unidentified submerged obstruction on September 1, 1983, at approximately 10 a.m., causing loss of his 50 foot trawl. Amount of Claim: \$758.10
CLAIM NO. 84-1831 (RESCHEDULED)

Wayne Cheramie, of Grand Isle, LA., while trawling on the vessel, "Master Wayne II," in the Gulf of Mexico, east of Bay Champagne, at approximate LORAN-C readings of 28,416.0 and 46,837.0, Lafourche Parish, encountered an unidentified submerged obstruction on July 30, 1984, at approximately 2 p.m., causing loss of his 40 foot trawl. Amount of Claim: \$896.33
CLAIM NO. 84-1832

Elson A. Dufrene, of Cut Off, LA., while trawling on the vessel, "Misty Morn," in the Gulf of Mexico, out of Caminada Pass, at LORAN-C readings of 28,494.2 and 46,849.2, Jefferson Parish, encountered a submerged boat on August 1, 1984, at approximately 10:30 a.m., causing loss of his trawl. Amount of Claim: \$698.90
CLAIM NO. 84-1833

Elson A. Dufrene, of Cut Off, LA., while trawling on the vessel, "Misty Morn," in the Gulf of Mexico, off the center of Grand Isle, at LORAN-C readings of 28,532.7 and 46,855.3, Jefferson Parish, encountered an unidentified submerged obstruction on July 31, 1984, at approximately 8 a.m., causing damage to his trawl. Amount of Claim: \$255.40
CLAIM NO. 84-1866

Patterson C. Collins, Sr., of Lockport, LA., while trawling on the vessel, "P & M," in the Gulf of Mexico, south of Shell Keys,

at approximate LORAN-C readings of 27,433.0 and 46,910.5, Iberia Parish, encountered an unidentified submerged obstruction on August 13, 1984, at approximately 9:30 a.m., causing loss of his 50 foot trawl and boards. Amount of Claim: \$2,160.77
CLAIM NO. 84-1891 (RESCHEDULED)

Albert J. Verdin, Jr., of Grand Isle, LA., while trawling on the vessel, "Daddy's Pride," in the Gulf of Mexico, southeast of Barataria Pass, at approximate LORAN-C readings of 28,576.5 and 46,862.1, Jefferson Parish, encountered an unidentified submerged obstruction on July 10, 1984, at approximately 3 p.m., causing loss of his 50 foot balarina trawl. Amount of Claim: \$697.54
CLAIM NO. 84-1892 (RESCHEDULED)

Albert J. Verdin, Jr., of Grand Isle, LA., while trawling on the vessel, "Daddy's Pride," in the Gulf of Mexico, out of Barataria Pass, at approximate LORAN-C readings of 28,563.0 and 46,864.0, Jefferson Parish, encountered an unidentified submerged obstruction on July 21, 1984, at approximately 1:30 p.m., causing loss of his 50 foot trawl and boards. Amount of Claim: \$1,616.23
CLAIM NO. 84-1921 (RESCHEDULED)

Webb Cheramie, Jr., of Grand Isle, LA., while trawling on the vessel, "Master Wayne," in the Gulf of Mexico, west of Caminada Pass, at approximate LORAN-C readings of 28,457.5 and 46,845.0, Jefferson Parish, encountered an unidentified submerged obstruction on August 28, 1984, at approximately 2 a.m., causing loss of his 50 foot trawl. Amount of Claim: \$738.72
CLAIM NO. 84-1996

David and Noltay Richoux, of Cut Off, LA., while trawling on the vessel, "Lady Janet," in the Gulf of Mexico, east of Calcasieu Pass, at LORAN-C readings of 26,706.3 and 46,979.8, Cameron Parish, encountered an unidentified submerged obstruction on September 13, 1984, at approximately 3 p.m., causing loss of his two 65 foot trawls. Amount of Claim: \$1,969.33
CLAIM NO. 84-2097

John Wunstell, of Galliano, LA., while trawling on the vessel, "Guiding Star," in West Cote Blanche Bay, west of Point Marone, St. Mary Parish, encountered a submerged stump on October 18, 1984, at approximately 12 a.m., causing damage to his trawl. Amount of Claim: \$517.63
CLAIM NO. 84-2128

Eunice Johnfroe, of Galliano, LA., while trawling on the vessel, "Patty Marie," in the Gulf of Mexico, east of Belle Pass, at approximate LORAN-C readings of 28,370.5 and 46,830.4, Lafourche Parish, encountered an unidentified submerged obstruction on November 6, 1984, at approximately 11 a.m., causing loss of his 55 foot trawl, 18 foot test trawl, and boards. Amount of Claim: \$1,234.99
CLAIM NO. 84-1896

Tommy A. Kiff, of Galliano, LA., while trawling on the vessel, "Mr. Wayne, Jr.," in Timbalier Bay, west of Philo Brice Islands, Terrebonne Parish, encountered a submerged pipe on August 24, 1984, at approximately 1:30 p.m., causing damage to his 50 foot trawl. Amount of Claim: \$99.61
CLAIM NO. 84-1973

Abel J. Trosclair, of Galliano, LA., while trawling on the vessel, "Priscilla Anne," in Lake Pelto, northeast of Point Mast, Terrebonne Parish, encountered an unidentified submerged obstruction on September 3, 1984, at approximately 2 p.m., causing loss of his trawl. Amount of Claim: \$510.
CLAIM NO. 84-1986

John Lombas, of Golden Meadow, LA., while trawling on the vessel, "Capt. Kurt," in the Gulf of Mexico, west of Shell Keys, at LORAN-C readings of 27,448.1 and 46,921.5, Iberia Parish, encountered an unidentified submerged obstruction on Septem-

ber 15, 1984, at approximately 3 p.m., causing loss of his trawl. Amount of Claim: \$1,033.06
CLAIM NO. 84-2029

Alvin Charpentier, of Cut Off, LA., while trawling on the vessel, "Capt. Alvin," in the Gulf of Mexico, south of South Point, at LORAN-C readings of 27,492.1 and 46,919.5, Iberia Parish, encountered an unidentified submerged obstruction on September 26, 1984, at approximately 8:30 a.m., causing loss of his 60 foot balarina trawl and boards. Amount of Claim: \$2,550.21
CLAIM NO. 84-2053

Jimmy J. Gisclair, of Galliano, LA., while trawling on the vessel, "Patrick James," in the Gulf of Mexico, west of the Mermentau River, at LORAN-C readings of 26,761.4 and 46,979.4, Cameron Parish, encountered an unidentified submerged obstruction on October 13, 1984, at approximately 11:15 a.m., causing damage to his 50 foot trawl. Amount of Claim: \$450.60
CLAIM NO. 84-2123

Gary A. Borne, Sr., of Golden Meadow, LA., while trawling on the vessel, "Lady Lola," in the Gulf of Mexico, east of Pass Fourchon, at LORAN-C readings of 28,407.4 and 46,837.0, Lafourche Parish, encountered an unidentified submerged obstruction on October 15, 1984, at approximately 10:30 a.m., causing loss of his trawl. Amount of Claim: \$852.35
CLAIM NO. 84-2171

Mervin Ledet, Jr., of Lockport, LA., while trawling on the vessel, "Rudy Joe," in the Gulf of Mexico, southeast of South Point, at approximate LORAN-C readings of 27,563.3 and 46,917.3, Iberia Parish, encountered an unidentified submerged obstruction on November 5, 1984, at approximately 9 a.m., causing loss of his trawl. Amount of Claim: \$899.59
CLAIM NO. 84-2194

Ronald J. Cheramie, of Cut Off, LA., while trawling on the vessel, "Capt. Ronald," in Terrebonne Bay, Northwest of Terrebonne Island, Terrebonne Parish, encountered an unidentified submerged obstruction on October 22, 1984, causing loss of his trawl. Amount of Claim: \$989.23
CLAIM NO. 84-2220

James J. George, Sr., of Lockport, LA., while trawling on the vessel, "Mr. James," in Lake Pelto, northeast of Pt. Mast, Terrebonne Parish, encountered an unidentified submerged obstruction on November 5, 1984, at approximately 10:30 a.m., causing loss of his 55 foot balloon trawl. Amount of Claim: \$900.

Tuesday, March 12, 1985, at 1 p.m., in the Lafitte City Hall, Lafitte, LA.:
CLAIM No. 84-1592

Henry J. Fazende, of Barataria, LA., while trawling on the vessel, "Typhoon # 2," in Lake Salvadore, west of Bayou Villars, and south of Bayou Couba, St. Charles Parish, encountered an unidentified submerged obstruction on June 5, 1984, at approximately 10:30 a.m. causing loss of his 52 foot trawl and 16 foot try net. Amount of Claim: \$925.
CLAIM No. 84-1641

Herbert Schultz, Jr., of Lafitte, LA., while trawling on the vessel, "Lady Sarah," in East Bay, east of Burrwood, at LORAN-C readings of 28,851.1 and 46,773.8, Plaquemines Parish, encountered an unidentified submerged obstruction on June 6, 1984, at approximately 11 a.m., causing damage to his 68 foot trawl. Amount of Claim: \$250.
CLAIM No. 84-1703 (RESCHEDULED)

Henry J. Fazende, of Barataria, LA., while trawling on the vessel, "Typhoon # 2," in Breton Sound, north of Baptiste Collette Bayou at LORAN-C readings of 28,983.1 and 46,887.5, Plaquemines Parish, encountered an unidentified submerged obstruction on July 1, 1984, at approximately 10:30 a.m., causing loss of his 52 foot trawl and boards. Amount of Claim: \$1,105.

CLAIM No. 84-1791

James Terrio, Sr., of Lafitte, LA., while returning from fishing on the vessel, "My Girl Shirl," in the Barataria Waterway, between Mendicant Island and Beauregard Island, Jefferson Parish, encountered an unidentified metal obstruction on July 16, 1984, at approximately 4:30 p.m., causing damage to his vessel. Amount of Claim: \$1,316.10

CLAIM No. 84-1930

August E. Despoux, Jr., of Barataria, LA., while trawling on the vessel, "Theresa Anne," in Barataria Bay, northwest of Cat Bay, Plaquemines Parish, encountered an unidentified submerged obstruction on August 29, 1984, at approximately 10:30 p.m., causing damage to his vessel. Amount of Claim: \$1,043.03

CLAIM No. 84-2040

Nathan J. Creppel, of Venice, LA., while trawling on the vessel, "Pac Man," in the Gulf of Mexico, north of Delta Pass, at approximate LORAN-C readings of 29,051.0 and 46,861.5, Plaquemines Parish, encountered a submerged boat on October 7, 1984, at approximately 8 p.m., causing damage to his vessel. Amount of Claim: \$5,000.

CLAIM No. 84-2054

Derrell Belsome, of Lafitte, LA., while trawling on the vessel, "Black Knight," in Barataria Bay, northeast of St. Mary's Point, Jefferson Parish, encountered a submerged piling on October 11, 1984, at approximately 6 p.m., causing damage to his trawl and vessel. Amount of Claim: \$711.25

CLAIM No. 84-2067

James J. Arabie, of Lafitte, LA., while trawling on the vessel, "Lady Evelyn," in the Gulf of Mexico, south of Quatre Bayou Pass, at LORAN-C readings of 28,624.5 and 46,865.7, Plaquemines Parish, encountered an unidentified submerged obstruction on October 1, 1984, at approximately 9:30 a.m., causing damage to his 65 foot trawl. Amount of Claim: \$385.95

CLAIM No. 84-2074

Gary R. Erlinger, of Lafitte, LA., while trawling on the vessel, "LA-1515-BD," in the Gulf of Mexico, southeast of Pass A Loutre, at approximate LORAN-C readings of 29,101.0 and 46,812.5, Plaquemines Parish, encountered an unidentified submerged obstruction on October 19, 1984, at approximately 11:15 a.m., causing damage to his trawl. Amount of Claim: \$414.46

CLAIM NO. 84-2113

Herbert Schultz, Jr., of Lafitte, LA., while trawling on the vessel, "Lady Sarah," in the Gulf of Mexico, south of Quatre Bayou Pass, at approximate LORAN-C readings of 28,636.0 and 46,867.0, Plaquemines Parish, encountered an unidentified submerged obstruction. Amount of Claim: \$665.

CLAIM No. 84-2143

Derrell Belsome, of Lafitte, LA., while trawling on the vessel, "Black Knight," in Barataria Bay, east of Milligen Point, Jefferson Parish, encountered an unidentified submerged obstruction on November 6, 1984, at approximately 3:30 p.m., causing damage to his 60 foot trawl. Amount of Claim: \$238.70

CLAIM No. 84-2144

Derrell Belsome, of Lafitte, LA., while trawling on the vessel, "Black Knight," in Barataria Bay, east of Pelican Point, Jefferson Parish, encountered an unidentified submerged obstruction on November 12, 1984, at approximately 11:30 a.m., causing damage to his 60 foot trawl. Amount of Claim: \$405.41

CLAIM No. 84-2201

Joseph Rogers, Jr., of Lafitte, LA., while trawling on the vessel, "L and A," in the Gulf of Mexico, south of Barataria Pass, at approximate LORAN-C readings of 28,565.0 and 46,863.0, Jefferson Parish, encountered an unidentified submerged obstruction on November 6, 1984, at approximately 10 a.m., causing loss of his test trawl and boards. Amount of Claim: \$262.62

CLAIM No. 84-2202

Joseph Rogers, Jr., of Lafitte, LA., while trawling on the vessel, "L and A," in the Gulf of Mexico, south of Quatre Bayou Pass, at approximate LORAN-C readings of 28,629.0 and 46,871.3, Plaquemines Parish, encountered an unidentified submerged obstruction on November 6, 1984, at approximately 5 p.m., causing damage to his trawl. Amount of Claim: \$200.

CLAIM No. 84-2203

Joseph Rogers, Jr., of Lafitte, LA., while trawling on the vessel, "L and A," in the Gulf of Mexico, northwest of North Pass, at approximate LORAN-C readings of 29,098.5 and 46,836.8, Plaquemines Parish, encountered an unidentified submerged obstruction on November 15, 1984, at approximately 3 p.m., causing damage to his trawl and test boards. Amount of Claim: \$439.

CLAIM No. 84-2219

Robert E. Landry, of Gretna, LA., while trawling on the vessel, "LA-4521-AT," in the Gulf of Mexico, south of Barataria Pass, Jefferson Parish, encountered an unidentified submerged obstruction on October 3, 1984, at approximately 1:30 p.m., causing loss of his 50 foot trawl and 10 foot test trawl. Amount of Claim: \$475.

Wednesday, March 13, 1985, at 9 a.m., in the Police Jury Office, 8201 West Judge Perez Drive, in Chalmette, LA.:

CLAIM NO. 84-1728

Scott Pete, of New Orleans, LA., while trawling on the vessel, "Honkey Cat," in Johnson Bay, at the mouth of Johnson Bayou, St. Bernard Parish, encountered a submerged piling on August 13, 1984, at approximately 12:30 p.m., causing damage to his trawl. Amount of Claim: \$312.

CLAIM NO. 84-1729

Scott Pete, of New Orleans, LA., while trawling on the vessel, "Honkey Cat," in Lake Pontchartrain, 1 mile west of the north draw of the Causeway, St. Tammany Parish, encountered an unidentified submerged obstruction on July 8, 1984, at approximately 2 a.m., causing loss of his 53 foot trawl and boards. Amount of Claim: \$1,117.20

CLAIM NO. 84-1754

Craig Anthony Zimmer, of New Orleans, LA., while trawling on the vessel, "Crab Ass," in Lake Pontchartrain, east of the Causeway, at approximate LORAN-C readings of 28,679.0 and 47,047.2, Jefferson Parish, encountered an unidentified submerged obstruction on July 12, 1984, at approximately 4 p.m., causing loss of his 50 foot trawl. Amount of Claim: \$613.

CLAIM NO. 84-1773

Michael J. Russell, of New Orleans, LA., while trawling on the vessel, "Master Nicholas," in Lake Pontchartrain, west of Goose Point, at approximate LORAN-C readings of 28,773.0 and 47,071.2, St. Tammany Parish, encountered an unidentified submerged obstruction on July 14, 1984, at approximately 12 a.m., causing loss of his 50 foot trawl. Amount of Claim: \$590.

CLAIM NO. 84-1774

Michael J. Russell, of New Orleans, LA., while trawling on the vessel, "Master Nicholas," in Lake Pontchartrain, south of Green Point, at approximate LORAN-C readings of 28,760.0 and 47,076.0, St. Tammany Parish, encountered a submerged anchor on July 15, 1984, at approximately 6:30 a.m., causing damage to his 50 foot trawl. Amount of Claim: \$100.

CLAIM NO. 84-1958 (RESCHEDULED)

James E. Daspit, of Pearl River, LA., while trawling on the vessel, "Country Girl," in Lake Borgne, near Redfish Bayou, at approximate LORAN-C readings of 29,014.0 and 47,053.0, St. Bernard Parish, encountered an unidentified submerged obstruction on September 10, 1984, at approximately 1 p.m., causing damage to his vessel. Amount of Claim: \$760.

CLAIM NO. 84-1966

Barry Melerine, of Braithwaite, LA., while trawling on the vessel, "Lucky Lady," in Eloi Bay, north of Deadman Island, St. Bernard Parish, encountered a submerged pipe on September 12, 1984, at approximately 1:30 p.m., causing loss of his 45 foot trawl. Amount of Claim: \$484.92

CLAIM NO. 84-1970

Kenneth R. Adams, Jr., of New Orleans, LA., while trawling on the vessel, "Shanna Baby," in the Gulf of Mexico, northeast of Southeast Pass, Plaquemines Parish, encountered an unidentified submerged obstruction on September 10, 1984, at approximately 9:30 a.m., causing loss of his 16 foot test trawl and boards, 45 foot trawl, and related gear. Amount of Claim: \$1,291.

CLAIM NO. 84-1988

Opeo H. Frey, of New Orleans, LA., while trawling on the vessel, "South Wind," in Lake Borgne, southwest of Malheureux Point, at LORAN-C readings of 29,033.5 and 47,034.5, St. Bernard Parish, encountered an unidentified submerged obstruction on September 6, 1984, at approximately 1:30 p.m., causing loss of his 16 foot test trawl. Amount of Claim: \$248.

CLAIM NO. 84-2007

Leon E. Seghers, of New Orleans, LA., while trawling on the vessel, "Sea Demon," in The Rigolets, Orleans Parish, encountered a submerged barge on September 10, 1984, at approximately 1 a.m., causing loss of his two 12' by 16' wing nets and frames. Amount of Claim: \$850.

CLAIM NO. 84-2014

Harry L. Phillips, of St. Bernard, LA., while trawling on the vessel, "Buddy Boy," in Breton Sound, southeast of Coon Nest Island, St. Bernard Parish, encountered an unidentified submerged obstruction on August 20, 1984, at approximately 8 a.m., causing loss of his trawl. Amount of Claim: \$516.85

CLAIM NO. 84-2015

Harry L. Phillips, of St. Bernard, LA., while trawling on the vessel, "Buddy Boy," in Breton Sound, southeast of Grace Point, St. Bernard Parish, encountered an unidentified submerged obstruction on September 10, 1984, at approximately 1 p.m., causing the loss of his trawl. Amount of Claim: \$550.93

CLAIM NO. 84-2017

T. B. Rabalais, of Baton Rouge, LA., while trawling on the vessel, "Coon Asia," in Lake Pontchartrain, west of the Causeway, at approximate LORAN-C readings of 28,698.0 and 47,069.0, St. Tammany Parish, encountered a submerged rusty object on September 18, 1984, at approximately 5 p.m., causing loss of his trawl. Amount of Claim: \$475.

CLAIM NO. 84-2019

H. J. (Butch) Joffrion, of Slidell, LA., while trawling on the vessel, "Silky," in The Rigolets, north of Counterfeit Pass, Orleans Parish, encountered an unidentified submerged obstruction on October 4, 1984, at approximately 11 a.m., causing loss of his 45 foot trawl. Amount of Claim: \$585.

CLAIM NO. 84-2027

Joseph Parrett, of Chalmette, LA., while trawling on the vessel, "Mr. Schlitz," in Lake Pontchartrain, northwest of South Point, at LORAN-C readings of 28,799.6 and 47,055.0, Orleans Parish, encountered a submerged piling on October 8, 1984, at approximately 11 a.m., causing loss of his trawl. Amount of Claim: \$1,130.57

CLAIM NO. 84-2028

Roland Guidry, of Brusly, LA., while trawling on the vessel, "Miss Brina," in Vermillion Bay, southwest of Dead Cypress Point, encountered an unidentified submerged obstruction on October 8, 1984, at approximately 5:50 p.m., causing damage to his trawl. Amount of Claim: \$85.

CLAIM NO. 84-2071

Gary J. Trueil, of Metairie, LA., while trawling on the vessel, "Dawn Mist," in the Rigolets, east of Sawmill Pass, Orleans Parish, encountered a 12" by 12" creosote timber on September 20, 1984, at approximately 11 p.m., causing damage to his two wing nets. Amount of Claim: \$528.

CLAIM NO. 84-2075

Eugene J. Morales, Sr., of St. Bernard, LA., while trawling on the vessel, "Mark - Gene," in Black Bay, north of Snake Island, Plaquemines Parish, encountered an unidentified submerged obstruction on October 22, 1984, at approximately 9:30 a.m., causing loss of his trawl. Amount of Claim: \$551.85

CLAIM NO. 84-2076

Arthur J. Krantz, Jr., of New Orleans, LA., while trawling on the vessel, "Miss Lori Ann," in Lake Borgne, east of Alligator Point, at approximate LORAN-C readings of 28,903.0 and 47,025.8, St. Bernard Parish, encountered an unidentified submerged obstruction on October 22, 1984, at approximately 3 p.m., causing loss of his 50 foot trawl. Amount of Claim: \$668.

CLAIM No. 84-2083

Dennis J. Rojas, of Venice, LA., while trawling on the vessel, "Lady Doris," in Sandy Point Bay, south of Bayou Jacques, Plaquemines Parish, encountered a submerged barge on October 25, 1984, causing loss of his 45 foot trawl and tickler chain. Amount of Claim: \$544.

CLAIM No. 84-2091

Raymond Gilham, of Metairie, LA., while trawling on the vessel, "LA-2201-AP," in Lake Pontchartrain, northwest of the Lakefront Airport, at approximate LORAN-C readings of 28,687.5 and 47,034.6, Orleans Parish, encountered an unidentified submerged obstruction on October 30, 1984, at approximately 11 a.m., causing loss of his 50 foot trawl. Amount of Claim: \$473.

CLAIM No. 84-2099

Judy Casanova, of Violet, LA., while trawling on the vessel, "Judy Maria," in Lake Eloi, south of Bayou Eloi, St. Bernard Parish, encountered an oilfield tank on August 25, 1984, at approximately 9 a.m., causing loss of his 40 foot trawl and boards. Amount of Claim: \$811.48

CLAIM No. 84-2108

George Marrero, Jr., of St. Bernard, LA., while trawling on the vessel, "Capt. George," in Quarantine Bay, west of Fort Bayou, encountered a submerged boat on September 18, 1984, at approximately 7 a.m., causing loss of his 50 foot trawls, boards, shark tail and tickler chain. Amount of Claim: \$850.

CLAIM No. 84-2109

George Marrero, Jr., of St. Bernard, LA., while trawling on the vessel, "Capt. George," in Garden Island Bay, south of Redfish Bay, at approximate LORAN-C readings of 29,028.0 and 46,790.5, Plaquemines Parish, encountered a submerged cluster of pilings on October 30, 1984, at approximately 9 a.m., causing loss of his 50 foot trawl and tickler chain. Amount of Claim: \$670.

CLAIM No. 84-2110

Howard Dardar, of Belle Chasse, LA., while trawling on the vessel, "Master Timothy," in the Gulf of Mexico, in Block 69, Main Pass Area, Plaquemines Parish, encountered a submerged pipe and grating on October 25, 1984, at approximately 3 a.m., causing loss of his 55 foot trawl. Amount of Claim: \$795.

CLAIM No. 84-2114

James E. Daspit, of Pearl River, LA., while trawling on the vessel, "Country Girl," in Barataria Pass, south of Bayou Fifi, at approximate LORAN-C readings of 28,558.0 and 46,865.0, Jefferson Parish, encountered an unidentified submerged obstruction on November 5, 1984, at approximately 7 p.m., causing the loss of his two 50 foot balloon trawls. Amount of Claim: \$1,475.86

CLAIM No. 84-2115

Wilson Melerine, Jr., of Chalmette, LA., while trawling on the vessel, "Capt. Todd," in Black Bay, west of Mozambique Point, at approximate LORAN-C readings of 28,929.0 and 46,939.5, Plaquemines Parish, encountered a submerged truck tire on October 12, 1984, at approximately 11 a.m., causing damage to his trawl. Amount of Claim: \$110.

CLAIM No. 84-2127

Joseph Parrett, of Chalmette, LA., while trawling on the vessel, "Mr. Schlitz," in The Rigolets, at the mouth to Lake Borgne, Orleans Parish, encountered an unidentified submerged obstruction on October 29, 1984, at approximately 6 a.m., causing damage to his 50 foot trawl. Amount of Claim: \$417.74

CLAIM No. 84-2156

August M. Bertoniere, of Metairie, LA., while trawling on the vessel, "Princess," in Lake Pontchartrain, south of Goose Point, at approximate LORAN-C readings of 28,780.0, and 47,063.0, St. Tammany Parish, encountered a submerged piece of metal on November 8, 1984, at approximately 9:30 a.m., causing the loss of his trawl. Amount of Claim: \$500.

CLAIM No. 84-2169

Warren J. Thibodaux, of New Orleans, LA., while trawling on the vessel, "Honey Sucker," in the Gulf of Mexico, between Northeast and Southeast Passes, encountered an unidentified submerged obstruction on November 11, 1984, at approximately 9:30 a.m., causing loss of his 50 foot trawl and boards. Amount of Claim: \$1,658.70

CLAIM No. 84-2198

Joseph A. Holm, of New Orleans, LA., while trawling on the vessel, "Fatty Matty," in Bayou St. Denis, at the entrance to Barataria Bay, Jefferson Parish, encountered an unidentified submerged obstruction on November 10, 1984, at approximately 8 p.m., causing the loss of his wing net and frame. Amount of Claim: \$635.

CLAIM No. 84-2199

Joseph A. Holm, of New Orleans, LA., while trawling on the vessel, "Fatty Matty," in Lake Pontchartrain, west of the north hump, at approximate LORAN-C readings of 28,695.0 and 47,066.0, St. Tammany Parish, encountered an unidentified submerged obstruction on November 24, 1984, at approximately 8 a.m., causing the loss of his 50 foot trawl. Amount of Claim: \$685.

CLAIM No. 84-2200

Joseph A. Holm, of New Orleans, LA., while trawling on the vessel, "Fatty Matty," in Lake Pontchartrain, southwest of Goose Point, at approximate LORAN-C readings of 28,763.0 and 47,066.4, St. Tammany Parish, encountered an unidentified submerged obstruction on December 3, 1984, at approximately 3 p.m., causing the loss of his 50 foot trawl. Amount of Claim: \$758.

CLAIM No. 84-2218

Michael E. Gourgues, Sr., of New Orleans, LA., while trawling on the vessel, "Michael Jr.," in The Rigolets, east of Sawmill Pass, Orleans Parish, encountered an unidentified submerged obstruction on November 27, 1984, at approximately 11 a.m., causing the loss of his 50 foot trawl, boards, chain, and cable. Amount of Claim: \$1,347.80

Tuesday, March 19, 1985, at 9 a.m., in the Delcambre Town Hall, Delcambre, LA:

CLAIM NO. 84-1695

Ray Hession, of Sunset, LA., while trawling on the vessel, "Honey Bee," in the Gulf of Mexico, west of the Mermentau River, at approximately LORAN-C readings of 26,770.0 and 46,974.0, Cameron Parish, encountered an unidentified submerged obstruction, on June 27, 1984, at approximately 2 p.m., causing loss of his 40 foot flat net. Amount of Claim: \$416.

CLAIM NO. 84-1792

John J. Mialjevich, of Delcambre, LA., while trawling on the vessel "Tee John," in the Gulf of Mexico, south of Southwest Pass, at approximately LORAN-C readings of 27,351.7 and 46,942.4, Vermilion Parish, encountered a submerged cable, on July 13, 1984, causing loss of his trawl. Amount of Claim: \$102.69

CLAIM NO. 84-1795

John J. Mialjevich, of Delcambre, LA., while trawling on the vessel "Tee John," in the Gulf of Mexico, south of Southwest Pass, Vermilion Parish, encountered a submerged metal object, on July 24, 1984, at approximately 5:10 p.m., causing loss of his 50 foot trawl. Amount of Claim: \$79.22

CLAIM NO. 84-1877

Kenneth Shaw, of Delcambre, LA, while trawling on the vessel, "Mr. Pie," in the Gulf of Mexico, south of Southwest Pass, at LORAN-C readings of 27,374.6 and 46,936.9, Iberia Parish, encountered an unidentified submerged obstruction, on July 24, 1984, at approximately 12 p.m., causing loss of his two 35 foot trawls. Amount of Claim: \$450.

CLAIM NO. 84-1957

John J. Mialjevich, of Delcambre, LA, while trawling on the vessel "Tee John," in the Gulf of Mexico, Southwest Pass area, at approximately LORAN-C readings of 27,366.0 and 46,945.0, Vermilion Parish, encountered a submerged metal screen shaker, on September 7, 1984, at approximately 10 a.m., causing damage to his trawl. Amount of Claim: \$78.29

CLAIM NO. 84-1983

John J. Mialjevich, of Delcambre, LA, while trawling on the vessel "Tee John," in the Gulf of Mexico, Southwest Pass area, Vermilion Parish, encountered an unidentified submerged obstruction, on September 13, 1984, at approximately 8:30 p.m., causing damage to his trawl. Amount of Claim: \$109.29

CLAIM NO. 84-1985

John J. Mialjevich, of Delcambre, LA, while trawling on the vessel "Tee John," in the Gulf of Mexico, south of Southwest Pass, at LORAN-C readings of 27,358.2 and 46,942.2, Vermilion Parish, encountered a submerged metal chair, on September 15, 1984, at approximately 6:13 p.m., causing damage to his trawl. Amount of Claim: \$163.21

CLAIM NO. 84-2013

John J. Mialjevich, of Delcambre, LA, while trawling on the vessel "Tee John," in the Gulf of Mexico, out of Southwest Pass, at LORAN-C readings of 27,354.8 and 46,941.3, Vermilion Parish, encountered an unidentified submerged obstruction, on October 1, 1984, at approximately 4:38 p.m., causing loss of his trawl. Amount of Claim: \$782.33

CLAIM NO. 84-2242

Charles Landry, of Delcambre, LA, while trawling on the vessel, "Tara Love Hoke," in Vermilion Bay, near Beacon #16, Vermilion Parish, encountered a submerged pipeline, on December 17, 1984, at approximately 7 p.m., causing damage to his vessel. Amount of Claim: \$2,010.39

Tuesday, March 19, 1984, at 1:30 p.m., in the L.S.U. Co-operative Extension Office, Cameron Parish Courthouse, Cameron, LA:

CLAIM NO. 84-1623 (RESCHEDULED)

Michael E. Carinkas, of Surprise, Inc., of Mandeville, LA, while trawling on the vessel, "Surprise," in the Gulf of Mexico, south of Sabine Pass, at approximately LORAN-C readings of 26,371.0 and 46,965.5, Cameron Parish, encountered a submerged sunken barge, on June 12, 1984, at approximately 4:45 p.m., causing loss of his net. Amount of Claim: \$5,000.

CLAIM NO. 84-1919

Kevin Boudreaux, of Cameron, LA, while trawling on the vessel, "Wendy Lynn," in the Gulf of Mexico, west of the Mer-

mentau River, at LORAN-C readings of 26,764.8 and 46,980.1, Cameron Parish, encountered an unidentified submerged obstruction, on September 17, 1984, at approximately 7:15 a.m., causing loss of his 50 foot trawl. Amount of Claim: \$700.

CLAIM NO. 84-2043

Ashful Authement, of Cameron, LA, while trawling on the vessel, "Capt. Ashful," in the Gulf of Mexico, west of Calcasieu Pass, at approximately LORAN-C readings of 26,636.5 and 46,978.1, Cameron Parish, encountered a submerged sheet of steel, on September 27, 1984, causing damage to his 50 foot trawl. Amount of Claim: \$50.

CLAIM NO. 84-2045

Ashful Authement, of Cameron, LA, while trawling on the vessel, "Capt. Ashful," in the Gulf of Mexico, west of Calcasieu Pass, at approximately LORAN-C readings of 26,666.0 and 46,978.8, Cameron Parish, encountered a submerged piece of aluminum, on September 28, 1984, causing damage to his net. Amount of Claim: \$200.

CLAIM NO. 84-2046

Ashful Authement, of Cameron, LA, while trawling on the vessel, "Capt. Ashful," in the Gulf of Mexico, west of Calcasieu Pass, at approximately LORAN-C readings of 26,661.0 and 46,973.6, Cameron Parish, encountered an unidentified submerged obstruction, on September 21, 1984, causing loss of his 16 foot try net. Amount of Claim: \$120.

CLAIM NO. 84-2047

Ashful Authement, of Cameron, LA, while trawling on the vessel, "Capt. Ashful," in the Gulf of Mexico, west of Calcasieu Pass, at approximately LORAN-C readings of 26,666.0 and 46,978.8, Cameron Parish, encountered an unidentified submerged obstruction, on September 28, 1984, causing loss of his 16 foot try net. Amount of Claim: \$120.

CLAIM NO. 84-2068

Wallace L. Styron, Sr., of Cameron, LA, while trawling on the vessel, "Gambler," in the Gulf of Mexico, between Calcasieu Pass and the Mermentau River, at LORAN-C readings of 26,747.4 and 46,976.2, Cameron Parish, encountered an unidentified submerged obstruction, on October 5, 1984, at approximately 5 a.m., causing damage to his trawl. Amount of Claim: \$821.

CLAIM NO. 84-2088

Larry T. Boudoin, of Cameron, LA, while trawling on the vessel, "Wild Cajun," in Calcasieu Ship Channel, at the west fork of Oyster Bayou, Cameron Parish, encountered an unidentified submerged obstruction, on August 21, 1984, at approximately 2 p.m., causing loss of his 50 foot trawl and boards. Amount of Claim: \$1,182.09

Any written objections to these claims must be received by the close of business on March 1, 1985. Any person may submit evidence or make objections in person at the hearings. Written comments must be mailed to: B. Jim Porter, Secretary, Department of Natural Resources, Box 44124, Capitol Station, Baton Rouge, LA 70804.

B. Jim Porter
Secretary

POTPOURRI

Department of Natural Resources Office of Conservation Injection and Mining Division

Docket Number UIC 85-4

In accordance with the laws of the State of Louisiana, and with particular reference to the provisions of LRS 30:4, notice is hereby given that the commissioner of conservation will conduct a public hearing at 11 a.m., Tuesday, March 26, 1985, in the East Houma Branch of the Terrebonne Parish Library, located at 1311 Grand Caillou Road, Houma, LA.

At such hearing the commissioner of conservation or his designated representative will hear testimony relative to the application of Louisiana Pumping Service, Box 9061, Houma, LA 70361. The applicant intends to operate a commercial nonhazardous oilfield waste storage and treatment facility in Section 86, Township 19 South, Range 17 East, Terrebonne Parish, LA.

Prior to authorizing the use of this facility for treatment of nonhazardous oilfield waste, the commissioner of conservation must find that the applicant has met all the requirements of State-wide Order No. 29-B (August 1, 1943, as amended).

The application is available for inspection by notifying Carroll D. Wascom, Office of Conservation, Injection and Mining Division, Room 253 of the Natural Resources Building, 625 North 4th St., Baton Rouge, LA. Verbal information may be received by calling Mr. Wascom at 504/342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:45 p.m., April 2, 1985, at the Baton Rouge office. Comments should be directed to: Commissioner of Conservation, Box 44275, Baton Rouge, LA 70804-4275, Re: Docket No. UIC 85-4, Commercial Treatment Facility, Terrebonne Parish.

Herbert W. Thompson
Commissioner of Conservation

POTPOURRI

Department of Revenue and Taxation Tax Commission

The Louisiana Tax Commission will hold a public hearing on Wednesday, March 13, 1985, at 10 a.m., in the Tax Commission Hearing Room, 923 Executive Park Avenue, Baton Rouge, Louisiana.

The purpose of this hearing is to:

- 1) disclose the findings of the ratio study on commercial buildings;
- 2) announce the appraisal date for the 1986 reappraisal;
- 3) receive input/information for updating the Tax Commission Guidelines in 1985.

All persons wishing to be heard will be given a reasonable opportunity to make their presentations.

Jamar W. Adcock
Chairman

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