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Executive Orders

EXECUTIVE ORDER EWE-78-16

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 1st day of November, A.D. 1978.

Edwin Edwards
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

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

Requirements for Sweet Potato Dealer's Certificate Permit

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

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

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

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

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

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

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

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

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

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

Richard Carlton, State Entomologist
Office of Agricultural and Environmental Sciences

DECLARATION OF EMERGENCY

Department of Corrections Office of the Secretary

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

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

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

Regulation 30-7

Inmate Furloughs and Temporary Releases

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

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

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

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

5. Definitions.

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

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

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

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

6. Procedures.

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

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

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

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

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

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

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

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

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

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

6. Armed robbery.

7. Attempted armed robbery.

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

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

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

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

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

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

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

8. Length and frequency of furloughs.

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

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

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

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

9. Administrative requirements.

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

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

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

C. Paul Phelps, Secretary
Department of Corrections

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

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

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

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

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

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

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

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

Calcasieu Lake Oyster Season

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

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

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

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

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

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

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

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

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

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

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

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

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

Rules

RULES

Department of Agriculture Office of Agricultural and Environmental Sciences

Supplement to the Sweet-potato Weevil Quarantine and Regulation

III. Quarantined areas.

1. In the United States.

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

2. In Louisiana.

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

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

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

Caddo Parish—all of Wards 6 and 7;

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

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

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

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

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

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

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

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

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

RULES

Department of Agriculture Dairy Stabilization Board

General Provisions

LAC 2-17:1 Definitions

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

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

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

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

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

“Board” means the Louisiana Dairy Stabilization Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedural Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§3.17.1 Permit the filing of briefs by interested persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LAC 2-17:6-10 Reserved

Substantive Provisions

LAC 2-17:11 Volume Discounts

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

Fluid Milk Products

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

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

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

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

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

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

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

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

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

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

Frozen Desserts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Obligations of Licensees Delinquent Accounts

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

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

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

Assessments

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

Purchasing of Stock

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

Books and Records

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

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

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

LAC 2-17:13 Sales Practices

Disruptive Trade Practices

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

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

Pricing of Dairy Products

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

Discrimination

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

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

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

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

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