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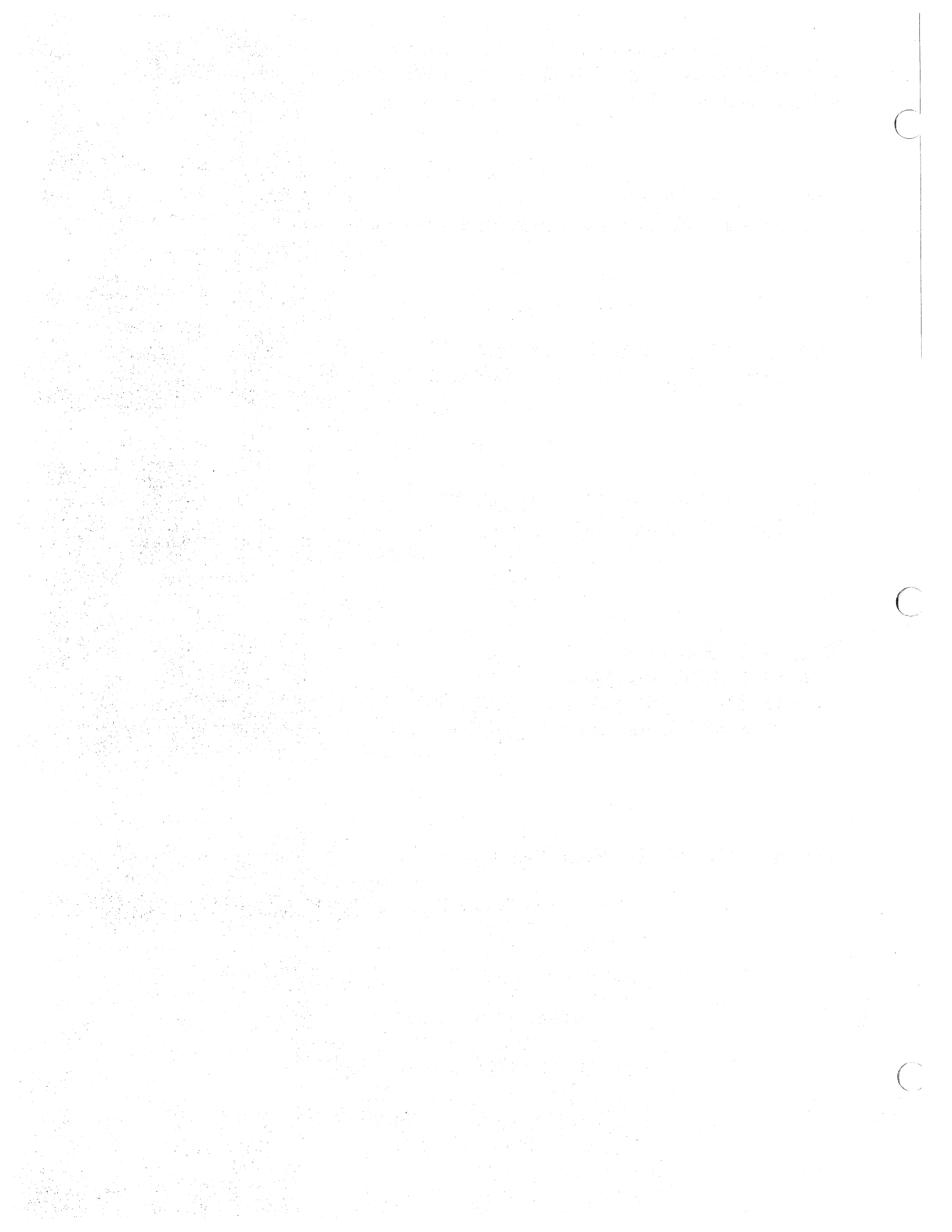
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This public document was published at a total cost of \$2,273.04. 1,025 copies of this document were published in this monthly printing at a cost of \$4,273.04. The total cost of all printings of this document including reprints is \$2,273.04. This document was published by Moran Printing, Inc., 5425 Florida Blvd., Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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EXECUTIVE ORDERS

EXECUTIVE ORDER EWE 95-1

Allocation of Bond

WHEREAS: pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order EWE 92-47 establishing (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1995 (the "1995 ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1995 Ceiling, and (iii) a system of central record keeping for such allocations; and

WHEREAS: the Industrial Development Board of the City of Bastrop, Louisiana, Parish of DeSoto has requested an allocation from the 1995 ceiling for the purpose of providing funds for the financing, acquiring, constructing and installing a pollution control project at the paper mill in Bastrop, Louisiana; and

WHEREAS: the governor has determined that the project serves a crucial need and provides a benefit to the State of Louisiana and the Parish of Desoto; and

WHEREAS: it is the intent of the governor of the state of Louisiana that this executive order, to the extent inconsistent with the provisions of executive order EWE 92-47, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1995 ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$2,400,000	Industrial Development Board, City of Bastrop	Bastrop Mill

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: The allocation granted hereby shall be valid and in full force and effect through March 27, 1995, provided that such bonds are delivered to the initial purchasers thereof on or before March 27, 1995.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this executive order, to the extent

conflicting with the provisions of Executive Order EWE 92-47, supercedes and prevails over the provisions of such executive order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: This executive order shall be effective upon signature of the governor.

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 26th day of January, 1995.

Edwin Edwards
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9502#009

EXECUTIVE ORDER EWE 95-2

Allocation of Bond

WHEREAS: pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order EWE 92-47 establishing (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1995 (the "1995 ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1995 Ceiling, and (iii) a system of central record keeping for such allocations; and

WHEREAS: the Lafayette Public Trust Financing Authority has requested an allocation from the 1995 ceiling for the purpose of financing mortgage loans for first time homebuyers throughout the City and in the Parish of Lafayette in accordance with the provisions of Section 143 of the Internal Revenue Code of 1986, as amended; and

WHEREAS: the governor has determined that the project serves a crucial need and provides a benefit to the State of Louisiana and the Parish of Lafayette; and

WHEREAS: it is the intent of the governor of the state of Louisiana that this executive order, to the extent inconsistent with the provisions of executive order EWE 92-47, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1995 ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$15,000,000	Lafayette Public Trust Financing Agency	Single Family Mortgage Revenue Bonds

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: The allocation granted hereby shall be valid and in full force and effect through March 27, 1995, provided that such bonds are delivered to the initial purchasers thereof on or before March 27, 1995.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this executive order, to the extent conflicting with the provisions of Executive Order EWE 92-47, supercedes and prevails over the provisions of such executive order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: This executive order shall be effective upon signature of the governor.

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 26th day of January, 1995.

Edwin Edwards
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9502#010

EXECUTIVE ORDER EWE 95-3

Allocation of Bond

WHEREAS: pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order EWE 92-47 establishing (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1995 (the "1995 ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1995 Ceiling, and (iii) a system of central record keeping for such allocations; and

WHEREAS: the Denham Springs/Livingston Housing and Mortgage Authority has requested an allocation from the 1995 ceiling for the purpose of financing mortgage loans for first time homebuyers throughout the City and the Parish of Livingston in accordance with the provisions of Section 143 of the Internal Revenue Code of 1986, as amended; and

WHEREAS: the governor has determined that the project serves a crucial need and provides a benefit to the State of Louisiana and the Parish of Livingston; and

WHEREAS: it is the intent of the governor of the state of Louisiana that this executive order, to the extent inconsistent with the provisions of executive order EWE 92-47, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1995 ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$10,000,000	Denham Springs/ Livingston Housing and Mortgage Finance Authority	Single Family Mortgage Revenue Bonds

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: The allocation granted hereby shall be valid and in full force and effect through March 27, 1995, provided that such bonds are delivered to the initial purchasers thereof on or before March 27, 1995.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this executive order, to the extent conflicting with the provisions of Executive Order EWE 92-47, supercedes and prevails over the provisions of such executive order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: This executive order shall be effective upon signature of the governor.

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 26th day of January, 1995.

Edwin Edwards
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9502#011

EXECUTIVE ORDER EWE 95-4

Advancement of Disadvantaged African-American Males

WHEREAS: House Concurrent Resolution Number 17 of the 1994 Regular Session requested the governor to create a commission to address disadvantaged black males; and

WHEREAS: all citizens of Louisiana should have the opportunity to lead healthy and productive lives; and

WHEREAS: historical disenfranchisement, discrimination, inadequate education and skill levels, damaged self-esteem, and thwarted aspirations have often undermined the chances of poor African-American males to compete successfully in the labor market; and

WHEREAS: the unemployment rate for African-American males has been a persistent problem for more than 20 years and contributes to a disproportionately high percentage of unemployment in Louisiana; and

WHEREAS: African-American males represent only 22 percent of the state's school population, but account for 41 percent of out-of-school suspensions and 29 percent of dropouts; and

WHEREAS: only nine percent of the number of students attending Louisiana's four-year colleges and universities are black males; and

WHEREAS: African-American males have experienced a decrease in life span and are at a higher risk for AIDS, hypertension, and alcohol, drug, and tobacco use; and

WHEREAS: forty-two percent of all murder victims in 1992 were African-American males under the age of 30; and

NOW, THEREFORE, I, EDWIN W. EDWARDS, Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby establish a Governor's Commission for the Advancement of Disadvantaged African-American Males to study the education and the economic and health survival of black males in Louisiana and do hereby order and direct as follows:

SECTION 1: The Governor's Commission for the Advancement of Disadvantaged African-American Males shall consist of such number members as shall be chosen by the governor from elected officials; civic and community leaders; and representatives of the employment, criminal justice, education, and health communities.

SECTION 2: The members of the Governor's Commission for the Advancement of Disadvantaged African-American Males shall serve at the pleasure of the governor without compensation or per diem.

SECTION 3: The secretaries of the Department of Economic Development, the Department of Health and Hospitals, the Department of Social Services, and the Department of Labor, the directors of minority and women's business enterprise, the Board of Elementary and Secondary Education, and the Board of Regents shall provide such physical facilities, staff, and services to the commission as are necessary for the commission to discharge its obligations effectively.

SECTION 4: The Governor's Commission for the Advancement of Disadvantaged African-American Males shall submit a preliminary report to the governor and the legislature

within the first six months of its existence and submit a published, final report to the governor and the legislature no later than March 1, 1996.

SECTION 5: The Governor's Commission for the Advancement of Disadvantaged African-American Males shall perform but not be limited to the following powers and duties:

1. overseeing and supervising four separate and distinct subcommittees devoted to solving problems and advancing recommendations exclusively pertinent to African-American males in the areas of unemployment, criminal justice, education, and health;

2. conducting research to determine the nature and extent of the problems concerning African-American males in the four targeted areas;

3. holding public hearings for the purpose of collecting data;

4. identifying existing federal, state, and local programs that address problems and solutions relevant to the targeted areas of study;

5. implementing appropriate new programs and/or demonstration projects;

6. developing and implementing community education and public awareness programs especially designed for African-American males;

7. developing strategies to improve the social condition of the African-American male;

8. reporting to the governor the activities, findings, and recommendations of the commission.

SECTION 6: All agencies, boards, and commissions are authorized and directed to cooperate with the charge of the commission.

SECTION 7: The provisions of this executive order are effective upon signature and shall remain in effect until amended, modified or rescinded 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 1st day of February, 1995.

Edwin Edwards
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9502#012

EMERGENCY RULES

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Forestry
Forestry Commission
and
Department of Revenue and Taxation
Tax Commission

Timber Stumpage Values (LAC 7:XXXIX.Chapter 201)

(Editor's Note: The following emergency rule, which appeared on pages 5 through 6 of the January 20, 1995 Louisiana Register, is being republished in its entirety to correct typographical errors.)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 3:4343, the commissioner of Agriculture and Forestry finds that this emergency rule is required so that timber severance tax computation and collection can be accomplished beginning in January, 1995. By law, these values are set annually in a meeting of the Louisiana Forestry Commission and the Louisiana Tax Commission on the second Monday in December. An imminent peril to public health, safety, and welfare would exist if tax revenues are not available for state and parish governmental entities.

The effective date of this emergency rule is January 1, 1995, and shall be in effect for 120 days or until the final rule take effect through the normal promulgation process, whichever occurs first.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 201. Timber Stumpage

§20101. Stumpage Values

The Forestry Commission, and the Tax Commission, as required by R.S. 3:4343, adopted the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1995:

1. Pine trees and timber	\$293.44/MBF	\$36.68/ton
2. Hardwood trees and timber	\$181.36/MBF	\$19.09/ton
3. Pine Chip and Saw	\$ 67.82/cord	\$25.12/ton
4. Pine pulpwood	\$ 24.35/cord	\$ 9.02/ton
5. Hardwood pulpwood	\$ 10.40/cord	\$ 3.65/ton

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, and the Louisiana Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 12:819 (December 1986), LR 13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January

1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6 (January 1992), LR 611 (May 1993), LR 20:12 (January 1994), LR 21: (January 1995).

Bob Odom, Commissioner
Agriculture and Forestry

Billy Weaver, Chairman
Forestry Commission

Malcolm B. Price, Chairman
Tax Commission

9502#007

DECLARATION OF EMERGENCY

Economic Development and Gaming Corporation

Casino Licensing and Suitability
(LAC 42:IX.Chapters 21—33)

The Board of Directors (hereinafter "board") for the Louisiana Economic Development and Gaming Corporation (hereinafter "LEDGC") adopted the following regulations by emergency at a board meeting conducted February 1, 1995. The regulations shall be effective until the board adopts its comprehensive set of regulations, but in no event longer than 120 days. The board declared the adoption of these regulations to be on an emergency basis in accordance with R.S. 4:620 and for the following reasons to wit:

The board is nearing the completion of a comprehensive set of regulations to govern the operations of the landbased casino to open in April, 1995. The regulations require the input of numerous parties ranging from casino operator, to the LEDGC staff, from the LEDGC consultants to any other interested persons. The board wished to hear the final comments from all of these people before adopting the comprehensive regulations but was unable to do so before the expiration of the October 4, 1995 emergency rules.

These regulations in their current form will not be permanent regulations of the LEDGC. However, these regulations are still necessary while the comprehensive set of regulations is being finalized because the LEDGC must continue to expeditiously license and register vendors and other persons in order to meet the casino opening target date.

Title 42

LOUISIANA GAMING

Part IX. Casino Gambling

Chapter 21. General Provisions

§2101. Policy

It is the declared policy of the Louisiana Economic Development and Gaming Corporation that casino gaming in Louisiana be strictly regulated and controlled through administrative rules and the casino operating contract to protect the public morals, good order and welfare of the inhabitants of the state of Louisiana and to develop the economy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2103. Regulations

A. **Structure.** Nothing contained in these regulations shall be so construed as to conflict with any provision of the Louisiana Economic Development and Gaming Corporation Act or other applicable state or federal law.

B. **Severability.** If any provision of these regulations shall be held invalid, it shall not be construed to invalidate any other provisions of these regulations or the provisions of the Louisiana Economic Development and Gaming Corporation Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:601 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2105. Definitions, Words and Terms; Captions; Gender References

The provisions of the Louisiana Economic Development and Gaming Corporation Act relating to definition, words and terms are hereby incorporated by reference and made a part hereof and will therefore apply and govern the interpretation of these regulations, except as otherwise specifically declared or clearly apparent from the context of the regulations. Any word or term not defined in these regulations shall have the meaning ascribed to it in the Louisiana Economic Development and Gaming Corporation Act. Should any word or term not be defined in these regulations or the Louisiana Economic Development and Gaming Corporation Act, those words and terms shall be construed in accordance with their plain and ordinary meaning. The captions appearing at the beginning of each regulatory Section are for convenience and organization and in no way define, limit or describe the scope, intent or effect of the regulation. Masculine or feminine pronouns or use of neuter gender may be used interchangeably and the plural shall be substituted for the singular form and vice versa, in any place or places in the regulations where the context requires such substitution. The following terms shall have the meaning ascribed to each:

Acquire Control—any act or conduct by a person whereby he obtains control, whether accomplished through the ownership of equity or voting securities, ownership of rights to acquire equity or voting securities, by management or consultant agreements or other contracts, by proxy or power of attorney, by statutory mergers, by consummation of a tender offer, by acquisition of assets or otherwise.

Administrative Approval—the authority conferred upon the president by any regulation or by a condition imposed on a license, permit, approval or contract, in his individual discretion, to grant or deny a request for approval of a proposed action or transaction.

Administrative Decision—the final action, decision, order or disposition by the president or board directed toward a request for administrative approval.

Affiliate—a person that directly, or indirectly, through one or more intermediaries, effectively, controls, or is controlled by, or is under common control with, a specified person.

Applicant Records—those records which contain information and data pertaining to an applicant's criminal record, antecedents and background, and the applicant's financial records, furnished or obtained by the corporation from any source incidental to the investigation, for licensure, finding of suitability, permit, registration, the continuing obligation to maintain suitability or other affirmative approval.

Approvals—those actions of casino operator licensees or permittees or transactions directly or indirectly involving licensees or permittees which require approval by the corporation through the president or the board but which do not in themselves, constitute licensing or a finding of suitability of any person involved, but the licensing or finding of suitability of the person's involved may, unless the act, these regulations or the corporation dictate otherwise, constitute approval by the corporation of the transaction in question.

Associated Equipment—any device, component, machine or contrivance utilized in connection, either directly or indirectly, with gaming, which does not affect the outcome of the game.

Background Investigation—all efforts whether prior to or subsequent to application, designed to discover information about an applicant, licensee or permittee, and includes without time limitation, any additional or deferred efforts to fully develop the understanding of information which was provided or should have been provided or obtained during the application process. Examples of background investigation include but are not limited to: measures taken in connection with exploring information on applicants; procedures undertaken with respect to investigatory hearings, except for matters specifically disclosed in any hearing open to the public and orders, responses, and other documents relating thereto.

Beneficial Owner—a person possessing a beneficial ownership interest.

Beneficial Ownership—an interest held by a person directly that entitles such person to control, directly such organization, or; which constitutes more than five percent of the shares of voting stock or other voting securities of such organization, or; that entitles such person to more than five percent of the earnings and profits or distributions of such organization, or; that entitles such person to five percent or more of the assets of such organization upon the liquidation or dissolution of such organization.

Casino—the casino premises, the furniture, fixtures and equipment (FF&E), the operating equipment and operating supplies. Whenever the term casino is not preceded by either the word temporary or the word permanent, the term shall mean and include both the temporary and permanent casino.

Casino Manager—a person with whom the casino operator contracts to provide all or substantially all of the services necessary for the day-to-day management and operation of the establishment or casino pursuant to the casino operating contract and these regulations whom or which has been found suitable by the corporation.

Casino Operator—any person or entity who enters into a contract with the corporation requiring that person or entity to conduct casino gaming operations according to the provisions of R.S. 4:601 et seq. Casino operator may also mean the

former casino operator and may include any affiliate of the casino operator.

Casino Operator Affiliate—any person which directly owns any interest in the casino operator. In the event that the casino operator shall be in the form of a general partnership, then the casino operator affiliate term shall include all partners individually.

Heating Device—any tangible object, item, contrivance, part or device used, or attempted to be used, to alter the randomness of any game or any gaming device in the *Establishment*, or to play any game or gaming device without placing the required wager in order to for himself or another, win or attempt to win money or property, or a combination thereof, or reduce or attempt to reduce or increase either a losing or winning wager including any device used by a Person to gain an unfair advantage.

Confidential Record—any paper, document or other report or data reduced to a record which is not open to the public or which is related to security.

Confidential Source—a provider of information which is not a matter of general public knowledge or of public record as well as an information provider, the revelation of whose identity would tend to compromise the flow of information from that particular provider or his class of providers. Examples of confidential sources include but are not limited to: governmental agencies which provide tax records or related information; law enforcement or criminal justice agencies, including cooperative federally funded data bases, which provide criminal history and related data under information sharing or providing agreements or arrangements; private persons or entities which provide information subject to the condition that the information or their identities be kept confidential; informants, whether volunteering information or responding to investigatory measures; and any other provider or originator of information which might be deemed to be subject to a recognized disclosure (unless the privilege has been waived), or the public disclosure of which might tend to endanger or compromise the provider of information, or impede the future furnishing of similar information.

Control (including *Controlling*, *Controlled by*, and *Under Common Control*)—the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership or voting securities, by contract or otherwise conducted.

Controlled Affiliate (of a specified person)—another person which, directly or indirectly, is controlled by the person specified.

Controlling Affiliate (of a specified person)—another person which, directly or indirectly, controls the person specified.

Corporate Security—refers to any matter which relates to or has an impact on: the physical safety of personnel; the effective investigatory or regulatory functions of the corporation; the operational plans policies and techniques of the corporation; the types and uses of equipment utilized by the corporation; the design, components, layout, structure, and similar features, of facilities used, occupied, or overseen by the corporation; or any other aspect of the function of the corporation, the public disclosure of which might tend to

compromise safety or the effective regulation of gaming by the corporation. Examples of corporate security include but are not limited to: the types and location of records maintained by the corporation, security plans for the casino operation, the internal controls of casino operator, the corporate building and offices; staffing schedules and arrangements; and lists or descriptions of equipment.

Disciplinary Action—any action undertaken by the president which includes the suspension, revocation or refusal to renew any contract, other than the casino operating contract, entered into or any license issued in accordance with the provisions of the act or these regulations.

Distributor's License—a license issued by the corporation to any person who buys, sells, leases, services or repairs slot machines or other gaming devices or supplies.

Establishment—the building or facility described in R.S. 4:641 and defined in R.S. 4:605. This shall include any temporary casino pursuant to R.S. 4:641(J).

Equity Owner—any person with an ownership interest in a casino operator affiliate.

Financial Records—those records which, in the opinion of the board or president, relate to the finances, earnings or revenue of an applicant, licensee, permittee or other person to whom approval or finding of suitability has been requested or granted.

Financial Statements—refers to, and encompasses both summaries of financial matters of any sort and any source documents or records from which summaries are or may be derived. Examples of financial statements include but are not limited to: balance sheet, profit and loss statements; mortgages; debt instruments; ledgers; journals; invoices and any other document bearing on the financial status of an entity whether historical or current.

Finder's Fees—any compensation in money in excess of the sum of \$10,000, or real or personal property with a real value in excess of the sum of \$10,000 which is paid or transferred to any person in consideration for the arranging or negotiation of an extension of credit to the casino operator, a casino operator affiliate or an applicant for licensing, registration, approval or finding of suitability if the proceeds of such extension of credit is intended to be used for any of the following purposes: the acquisition of an interest in the establishment, casino operator or casino operator affiliate; to finance the gaming operations of the casino operator. The term shall not include: compensation to the person who extends the credit; normal and customary payments to employees of the person to whom the credit is extended if the arranging or negotiation of credit is part of their normal duties; normal and customary payments for bona fide professional services rendered by lawyers, accountants, engineers and appraisers; underwriters discounts paid to a member of the National Association of Securities Dealers, Inc.; fees paid to banking institutions in connection with procuring credit.

Finding of Suitability—any action required or allowed by the president, board, act or these regulations that require certain persons, directly or indirectly involved with the casino operator, licensees or permittees, to be found suitable to hold a gaming license so long as such involvement continues. A

finding of suitability relates only to the specified involvement for which it is made. If the nature of the involvement changes from that which the applicant is found suitable, he may be required to submit himself to a determination by the corporation of his suitability in the new capacity.

Funds—money or any other thing of value.

Gaming Device—any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine used directly or indirectly in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include associated equipment or a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined.

Gaming Employee—any person connected with the operation of the official gaming establishment including: pit bosses, floormen, boxmen, dealers or croupiers, machine mechanics, designated gaming area security employees, count room personnel, cage personnel, slot machine and slot booth personnel, credit and collection personnel, casino service personnel, and supervisory personnel empowered to make discretionary decisions that regulate gaming activities, including shift bosses, credit executives, casino cashier supervisors, gaming managers and assistant managers, and any individual, other than nongaming equipment maintenance personnel, cleaning personnel, waiters, waitresses, and secretaries, whose employment duties require or authorize access to designated gaming areas.

Gaming Employee License—the license granted to a gaming employee employed in the operation or supervision of a gaming activity at the official gaming establishment.

Gaming Jurisdiction—any other jurisdiction wherein gaming activity is allowed pursuant to state or federal legislation and a tribal state compact and any foreign jurisdiction allowing gaming activities.

Gaming License—any license issued by the corporation to any person or entity other than a nongaming vendor registration.

Gaming Supplies—all materials and supplies other than gaming devices used or expended in gaming operations or activities.

Hearing Officer—one or more independent attorneys at law who may administer oaths and receive evidence and testimony under oath, and who may make recommendations or render decisions affecting contracts, and permits issued pursuant to the provisions of the act and these regulations.

Holding Company or Intermediary Company—a company that has the ability to elect a majority of its directors or otherwise direct the management and policies of the casino operator, casino operator affiliate, or the ability to elect members to the executive committee of the casino operator. An intermediary or holding company of the casino manager means any company that has the ability to elect a majority of its directors or otherwise direct the management and policies of the company.

Inspection—periodic surveillance and observation by the

corporation of operations conducted by the casino gaming operator, licensee or permittee, which surveillance and observation may or may not be known to the casino gaming operator, licensee, or permittee.

Interested Person—any applicant, licensee, registrant, permittee, person found suitable, or person, group of individuals or entities affected by the application of the act or these regulations promulgated thereunder. The term shall also mean a governmental agency or political subdivision of the state.

Junket Representative—any person who contracts with the casino operator or its Affiliate to provide services inside or outside the state of Louisiana consisting of arranging transportation for guest of the licensed establishment. The term *junket representative* does not include:

- a. the casino operator;
- b. a bonded collection agency licensed by local government authorities in the jurisdiction where the agency has its principal place of business;
- c. a licensed attorney;
- d. a supplier of transportation;
- e. a travel agency whose compensation is based solely upon the price of transportation arranged for by the agency;
- f. an employee of the casino operator or an affiliate; or
- g. a person who does not receive cash for his services.

Manufacturer's License—a license issued to any person who manufactures or assembles programs or slot machines or other gaming devices or supplies for sale or use in the state of Louisiana.

Own (Hold or Have)—having an interest in a corporation, partnership, holding company, affiliate, or other form of business entity, or a security of a publicly traded corporation if such person or any associate of such person has a record of beneficial ownership therein.

Permanent Gaming Employee License—the license issued to the applicant after the president has had the ability to review the application and has not objected to or denied the issuance of that license.

Petitioner—an interested person who has filed a petition of preliminary interpretation in accordance with these regulations.

Preliminary Interpretation—a ruling on the meaning or application of the act or these regulations excluding the granting of approvals, findings of suitability, or the granting of a casino operating contract.

Preferred Guest—any person, 21 years of age or older, who received complimentary transportation or services, or other consideration with a retail price over \$10,000 in any seven-day period from the casino operator as an inducement to gamble.

Premises—the land underlying a casino together with all buildings, improvements and personal property located thereon.

President—the president of the corporation.

Public Offering—a sale of securities that is subject to the registration requirements of Section 5 of the Federal Securities Act, or that is exempt from such requirements solely by reason of an exemption contained in Section 3(a)(11) or 3(c) of said act or Regulation A adopted pursuant to Section 3(b) of said act.

Purchase Rights—a security or contractual right to securities issued or issuable on the exercise of options, warrants or other beneficial interest in securities obtained for value upon issuance of securities, or on conversion of other securities.

Records—accounts, correspondence, memoranda, tapes, disks, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

Regulations—regulations adopted by the corporation pursuant to R.S. 49:950 et seq. and as authorized by 4:601 et seq.

Sale and Sell—includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security whether or not for value. *Sale or Sell* includes any exchange of securities and any material change in the rights, preferences, privileges or restrictions of or on outstanding securities.

Secondary Representative—any person other than clerical personnel and ticket takers not otherwise exempted by the definition of junket representative who receive any form of compensation from a registered junket representative for assisting a registered junket representative.

Security—any stock; membership in an incorporated association; bond; debenture; or other evidence of indebtedness, investment contract, voting trust certificate, certificate of deposit for a security; or, in general, any interest or instrument commonly known as a security; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing regardless of whether evidenced in writing.

Security Techniques, Procedures or Practices (of an applicant licensee or permittee)—includes and refers to any matter which relates to or has an impact on: the physical safety of an applicant, licensee or permittee; the integrity of the operational methods and internal control systems; the design and description of all equipment, including its accounting, gaming and criminal detection and alarm equipment; the design, components, layout, structure, and similar features of facilities used, occupied, overseen by it; or any other aspect of its operations, the public disclosure of which might tend to compromise personal safety or the integrity of gaming. Examples of security techniques, procedures or practices include but are not limited to: lists of employees or employment positions and functions; security for the gaming establishment, including all buildings and offices; staffing schedules and arrangements; and list or descriptions of equipment.

Statements on Standards for Accounting Review Services—the standards and procedures published by the American Institute of Certified Public Accountants.

Subsidiary—includes, without limitation, any person, other than an individual, which is a controlled affiliate of another person, other than an individual.

Temporary License—the license issued to an applicant which may be effective for a term of six months or until a permanent license is issued whichever occurs first.

Trade Secrets—includes any matter the disclosure of

which might tend to weaken a competitive advantage, whether concerning a unique, rare or common practice, discovery, or anything whatsoever. Examples of trade secrets include but are not limited to: operational methods; design of equipment; routing memoranda; payroll schedules; bookkeeping and accounting procedures; internal money control systems; equipment and component sources, patron lists; proprietary information; and bid formulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:601 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2107. Specific Investigative Powers

In conducting investigations, the corporation and its authorized agents and authorized employees shall be empowered to:

1. inspect and examine all premises wherein gaming activities are conducted, proposed to be conducted or where gaming devices are maintained or manufactured, sold, distributed, or repaired and where all papers, books, records, documents, information and electronically stored media are maintained by an applicant, licensee, permittee, casino operator or other person found suitable;

2. summarily seize and remove gaming equipment and devices and impound any equipment and devices for the purposes of examination and inspection;

3. have access to and photocopy all papers, books, records, documents and information of an applicant, licensee, casino operator, permittee or other person found suitable pertaining to the application, gaming operation, or transaction for which corporation approval is required;

4. issue subpoenas;

5. conduct investigative interviews, depositions and hearings; and

6. issue written interrogatories.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2109. Subpoenas

A. The president and the board shall each have full power and authority to issue subpoenas to compel the attendance of witnesses and production of documents for any hearing and any investigative interview, deposition or hearing at any place in the state.

B. The president and the board shall have power and authority to administer oaths and require testimony under oath.

C. Subpoenas issued by the president or the board shall be served in a manner consistent with service of process and notices in civil matters.

D. A witness fee of \$25 shall be submitted with the subpoena in order to pay transportation and related expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631(D).

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2111. Interrogatories

A. All interrogatories propounded by the corporation shall be made through the president or his designee in writing and served in a manner consistent with the service of process and notices in civil actions.

B. Interrogatories shall be answered within 15 days of service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631(C).

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2113. Contempt

For failure or refusal to comply with any subpoena or order issued by the president or the board and duly served, the president or the board may cite the subpoenaed party for contempt and may impose a civil penalty as provided by the laws of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631(D).

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Chapter 23. Applications, Licensing, Permitting and Suitability

Subchapter A. Filing of Applications

§2301. General Provisions

All persons required to be licensed, permitted, approved or otherwise found suitable and all other persons the corporation deems necessary to call forward for licensing for the protection of the citizens of this state shall be required to comply with this Chapter and all other applicable provisions of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 630.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2303. Procedures and Content

A. Forms. Every application, statement, notice or report shall be filed on forms, including but not limited to personal history and financial background forms, furnished or approved by the corporation and shall contain and be accompanied and supplemented by such documents and information as may be specified or required.

B. Content. Applications shall contain all the information prescribed by the corporation and at least the following:

1. an affidavit of full disclosure, signed by the applicant or in the case of a corporation, partnership, joint venture or other business entity, by an authorized representative of the entity;
2. an authorization to release information to the corporation, signed by the applicant;
3. a release of all claims, signed by the applicant;
4. in addition, the corporation may require an applicant to provide such other information and details as it deems necessary to discharge its duties properly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:605.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2305. Amendment

Procedure. An application may be amended in any respect by leave and approval of the president at any time prior to final action thereon. The president shall have the authority to approve or disapprove any amendment. Any amendment to an application shall have the effect of establishing the date of such amendment as the new filing date of such application

with respect to the time requirements for action on such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 623.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2307. Duty to Supplement

All amendments to an application or material changes to information contained in an application shall be submitted to the corporation in writing within 10 days of the effective date of the change unless a shorter time is prescribed by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 630, 631, and 634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2309. Incorporation by Reference

Any document filed pursuant to the act or these regulations may be incorporated by reference in a subsequent application if it is available in the files of the corporation, to the extent the document is currently accurate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602; 620.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2311. Untrue Statements

It is grounds for denial of an application or disciplinary action in addition to criminal penalties (criminal if violation is knowing and intentional) for any person to make any untrue statement of material fact in any application, notice, statement or report filed with the corporation, or wilfully omit to state in any such application, notice, statement or report any material fact which is required to be stated therein or omit to state a material fact necessary to make the facts stated in view of the circumstances under which they are stated, not misleading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 630, 631, and 634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2313. Waiver of Privilege

An applicant may claim any privilege afforded by the Constitution of the United States or the Constitution of the State of Louisiana in refusing to answer any question of the president or board or request for information made by the corporation. However, a claim of privilege with respect to any testimony or evidence pertaining to an application or investigation may constitute sufficient grounds for denial of the application or revocation or suspension of the license or permit held by the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2315. Fees

Except as otherwise provided herein, all fees and costs incurred in conjunction with the investigation of any application to the corporation shall be paid by the applicant in the manner prescribed in this regulation.

1. All applications shall be accompanied by a

nonrefundable application fee (in amount set forth in fee schedule adopted by the corporation).

2. In addition to any nonrefundable application fee, the president shall have the authority to require an applicant to pay such supplementary investigative fees and costs as may be determined reasonable by the president. The president may estimate the supplementary investigative fees and costs and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation. The president shall provide a reasonable basis for the estimated investigation fees and shall provide an itemized invoice for the actual costs incurred during the investigation. The applicant shall not be entitled to request a board review of the investigative costs.

3. The president will not take final action to approve any application unless all application and investigative fees and costs have been paid in full. The president may deny any application if the applicant has failed or refused to pay all application and investigative fees and costs.

4. After all investigative fees and costs have been paid by the applicant, the corporation shall refund any balance remaining in the investigative account of the applicant.

5. If the president determines it is in the public interest, and upon substantial written justification, the president may waive payment of an investigative fee or cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 623, 631, 633, and 651.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2317. Expiration

In addition to any specific provisions contained in any other Chapter or as otherwise provided in the Casino Act, any license or permit granted pursuant to the act and/or these rules and regulations expires one year from the date of issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:650.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2319. Renewal Applications

Applications for renewal for a license or permit authorized by the Casino Act, shall be submitted on forms provided by the corporation and which shall contain a sworn statement identifying all material changes from the current application and information submitted to the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:650.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2321. Withdrawal of Application

A. A request for withdrawal of an application may be made at any time prior to final action by filing a written request to withdraw with the president.

B. The president shall render a decision in writing granting or denying the request. A denial may be made with or without prejudice.

C. If a request for withdrawal is granted with prejudice, the applicant is not eligible to reapply for licensing or approval until after the expiration of one year from the date of the president's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 633, and 655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2323. Application after Denial

A person whose license has been objected to or denied is not eligible to reapply for a license for a period of one year after the decision of the president to object to the issuance of the license, or in cases where the objection is reviewed by the board, one year from the date of the board's denial of the license, unless a shorter period is specified in the president's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:650.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Subchapter B. Findings of Suitability

§2325. Corporate Authority

The corporation shall conduct investigations of each application filed with the corporation prior to any action being taken with respect to the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2327. Government Officials Holding Licenses

No gaming license, permit, finding of suitability, contract or approval, the granting of which requires an application to be made to the corporation shall be held by nor granted to any person holding public office in, or being employed by, any governmental agency within the state of Louisiana when the duties of such office or agency pertain to the enforcement of the Casino Act or these regulations. The corporation may waive, in accordance with the Casino Act, the prohibition contained in this regulation, if the president makes a written finding that such waiver is not inconsistent with the policies of the State of Louisiana and the act and the functions, duties, or responsibilities of the person otherwise restricted from holding a license, permit, finding of suitability, contract or approval. Such waivers are nontransferable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2329. Burden of Proof

Since each applicant is seeking a revocable privilege, the burden of proving and maintaining his qualification is at all times on the applicant. Each applicant shall demonstrate his suitability by clear and convincing evidence. An applicant shall accept any risk of adverse publicity, embarrassment, criticism, or other action, or financial loss which may result or occur from action with respect to an application and expressly waive any claim for damages as a result thereof. The filing of an application or the submission of a bid for the casino operator contract under the Casino Act and these regulations constitutes a request for the board or president to determine the applicant's or the operator's general suitability, character, integrity, and ability to participate, engage in or be associated with land based gaming in Louisiana, and by filing the application or making the bid, the

applicant specifically consents to the making of such a determination by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 626.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2331. Suitability Criteria

An application for a license, permit, finding of suitability, approval or contract shall not be granted unless the board, in cases where the board has original jurisdiction, or the president and the board in cases appealed to the board is satisfied that the applicant is:

1. a person of good character, honesty and integrity;
2. a person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest or result in adverse publicity for the state of Louisiana or to the effective regulation and control of gaming, or create, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;
3. a person who is capable of and likely to conduct the activities for which the applicant is licensed or approved in accordance with the provisions of the Casino Act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2333. Grounds for Disqualification and Denial

A. A license, finding of suitability or a contract shall not be granted if:

1. the applicant has failed to prove, by clear and convincing evidence, that he is suitable pursuant to the terms of the Casino Act and these regulations;
2. the applicant failed to provide information and documentation to the corporation in order to reveal all material facts relevant to the application, or as requested by the corporation, or supplied information to the corporation that was untrue or misleading as to any material fact pertaining to the qualification criteria or the application;
3. the applicant or any other person required to be qualified under the act has been convicted of, pled guilty to, pled nolo contendere to, received only a suspended sentence or has had any conviction set aside pursuant to Louisiana Code of Criminal Procedure, Section 893, or any similar statute of any foreign jurisdiction for a felony;
4. the applicant, or any person required to be qualified pursuant to the Casino Act as a condition for a contract, has charges pending or is currently being prosecuted in any other jurisdiction for a felony;
5. the applicant is a corporation which is owned by a parent or other corporation or person as defined in R.S. 4:605, and any person owning more than five percent of the common stock of the parent corporation has been convicted of, or pled guilty or nolo contendere to, received only a suspended sentence or has had any conviction set aside pursuant to Louisiana Code of Criminal Procedure, Section 893, or any similar statute of any foreign jurisdiction, for a felony;

6. if the applicant is a corporation, partnership, association, joint venture, or other entity of which any individual holding five percent or more interest in the profits or loss has been convicted of, or pled guilty or nolo contendere to, received only a suspended sentence or has had any conviction set aside pursuant to Louisiana Code of Criminal Procedure, Section 893, or any similar statute of any foreign jurisdiction, for a felony;

7. the applicant has been found unsuitable or has been denied a gaming license or permit, or has had a gaming license or permit suspended or revoked in another gaming jurisdiction, unless circumstances indicate in the sole discretion of the corporation that such finding is not contrary to the best interest of the state of Louisiana.

B. A license or finding of suitability may be denied if:

1. the applicant knowingly failed to comply with any gaming law or regulation in Louisiana or any other gaming jurisdiction;
2. the applicant committed or attempted to commit any crime of moral turpitude, embezzlement or larceny, or any violation of law that is inimicable to the declared policy of the state of Louisiana regarding gaming;
3. the applicant has been identified in published reports of any federal or state legislative or executive body as being a member or associate of organized crime or being of notorious or unsavory reputation;
4. the applicant has been placed or remains in constructive custody of any state, federal or municipal authority.

C. Nothing contained in this Section shall be deemed to limit the corporation's authority to make suitability determinations on additional or completely different and separate factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, and 635.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2335. Unsuitability-Safe Harbor

If at any time the corporation finds that any person that is required to be and remain suitable has failed to demonstrate suitability, the corporation may, consistent with the Casino Act and the casino operating contract, take any action that the corporation deems necessary to protect the public interest. Provided however, in the event that a person associated with the casino operator, casino operator affiliate, or intermediary or holding company thereof has failed to be found suitable or remain suitable, the corporation shall take no action to declare the casino operator, casino operator affiliate or their respective intermediary or holding companies, as the case may be, unsuitable based upon such finding, if:

1. such companies comply with conditional licensing provisions; and
2. the casino operator, the casino operator affiliates, intermediary or holding companies, as the case may be, takes immediate good faith action (including the prosecution of all legal remedies) and complies with any order of the corporation to cause such person to dispose of its interest, and, that prior to such disposition, such company, from the date that it receives notice of a finding of unsuitability from the

corporation, ensures that the disqualified person:

a. does not receive dividends or interest on the securities of the casino operator, the casino operator affiliates, or their respective intermediary or holding companies;

b. does not exercise, directly or indirectly, including through a trustee or nominee, any right conferred by the securities of the casino operator, casino operator affiliates, or their intermediary or holding companies thereof;

c. does not receive any remuneration from the casino operator, casino operator affiliates, or their intermediary or holding companies;

d. does not receive any economic benefit from the casino operator, casino operator affiliates or their respective intermediary or holding companies;

e. subject to the disposition requirements of this Section, does not continue in an ownership or economic interest in the above mentioned parties or remain as a manager, officer, director, or partner thereof;

3. nothing contained in this Section shall prevent the corporation from taking any action against the casino operator if the casino manager has failed to remain suitable. Moreover, nothing contained in this Section shall prevent corporation from taking regulatory action against the casino operator, casino operator affiliate or their intermediary or holding companies, as the case may be, if:

a. any of such companies engaged in a relationship with the unsuitable person and had actual or constructive knowledge of the wrongdoing causing the corporation regulatory action; or

b. if the casino operator, casino operator affiliate or their intermediary or holding companies, as the case may be, is so tainted by such person that it affects the suitability of such company under the standards of the Casino Act; or

c. the casino operator, casino operator affiliate or their intermediary or holding companies, as the case may be, cannot meet the suitability standards contained in the Casino Act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:636.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2337. Surrender of a License

A. No license or permit issued pursuant to the act or regulations may be surrendered without the prior approval of the president.

B. If a request is granted without prejudice, the applicant is immediately eligible to apply again for licensing or approval, unless the president has placed a condition on the time in which the applicant shall wait in order to reapply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 633, and 655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2339. Denial, Revocation and Restriction

The corporation may deny, revoke, suspend, limit, condition, or restrict any finding of suitability or application therefor upon the same grounds as it may take such action with respect to licensees and permittees without exclusion of any other grounds. Except as provided in LAC 42:IX.2335,

the corporation may further take such action on the grounds that the registrant or person found suitable is associated with, or controls, or is controlled by, or is under common control with, an unsuitable or disqualified person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633, 634, and 635.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2341. Tax Qualification

No person shall knowingly be or remain employed by the casino operator, nor shall they be licensed or receive a permit, if they are not current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to the State of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable procedures, and items of which the Department of Revenue and Taxation or the Internal Revenue Service has accepted a payment schedule of back taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:634.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2343. Minors

The corporation will not ordinarily grant a license, permit, or finding of suitability to an individual under the age of 21 years. This policy should not affect the licensing or finding of suitability of a trust where the settlor or beneficiary is under the age of 21 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:660.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2345. Appeal by Applicant/Licensee

A. Any applicant aggrieved by a decision and order of the president may appeal the president's decision and order to the board by filing an appeal in the form set forth in LAC 42:IX.2501 et seq. of these regulations, and also include a full description of the application before the president, and a full description of the basis for appeal.

B. The board shall review the decision and order of the president, within 30 days of receiving the appeal.

C. Filing of the appeal shall not stay the execution of the president's decision.

D. After review of the president's decision and order, the board may reverse, sustain or modify the president's order or refer the matter back to the president for further investigation. Final action on the appeal shall occur within 120 days of the date of the appeal. All actions by the board shall occur with a majority vote of the quorum present.

E. The board shall serve the applicant with a written decision on the appeal within as soon as practicable but not later than 60 days after hearing the matter.

F. Appeal of board decisions are made pursuant to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 633, and 655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Subchapter C. Suitability of Casino Operator

§2347. Board Powers for Suitability of Casino Operator

A. Prior to issuance of a casino operating contract, the casino operator, beneficial owners of the casino operator, equity owners and all other persons the board deems necessary in order to issue the contract, shall demonstrate to the board by clear and convincing evidence their suitability, as that term is defined in the Casino Act and these regulations, to engage in the activities for which they request approval.

B. The board has full and absolute power and authority to deny the application, to limit, condition or restrict any license, contract or finding of suitability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:623, 634, 641.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2349. Exit Interviews

A. If necessary, an exit interview may be scheduled with an applicant.

B. The interview shall be scheduled orally and confirmed in writing prior to the scheduled interview date. The written notice shall include:

1. the time, place and date of the interview;
2. a general list of the issues to be addressed.

C. The interview shall be closed except to the applicant, the applicant's attorney and any witnesses the applicant deems necessary.

D. The corporation's security and audit investigators shall conduct the interviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2351. Depositions

A. The corporation may require the applicant to submit to depositions which shall be conducted by the attorney general or his designee. Deposition testimony shall be given under oath before a certified court reporter and incorporated into the record of the matter.

B. Written notice of the time, date and place of the deposition shall be provided to the applicant within three days of the date of the deposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2353. Necessity of a Record of the Proceedings

A. The corporation shall establish and maintain a record of the matter being considered by the board.

B. The record may include, but not be limited to:

1. the person's application;
2. the corporation's independent investigation of the applicant and additional investigative measures which may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2355. Notice of Board Interview

A. An applicant shall be provided five-day written notice

of the time, date and place of the interview with a general statement as to the issues to be addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633 and 641.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2357. Hearing Procedure for Owner; Operator Suitability

The following procedures shall apply to any interview conducted before the board pursuant to this Chapter:

1. an applicant shall be given an opportunity to present clear and convincing evidence of his suitability and offer any other comments including a request to withdraw from the process;

2. sworn testimony of the applicant or witness shall be taken and transcribed by a certified court reporter;

3. the applicant shall make a formal request of the board to secure a casino operating contract or a license to participate as an equity owner of the entity applying for the contract;

4. board members may ask any questions of the applicant that the member believes to be relevant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633 and 641.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2359. Board Deliberations and Decision

After investigation and review of any application required by the board for issuance of the casino operating contract, the board shall issue a written order determining the suitability of the applicant or the propriety of the request to withdraw from the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633 and 641.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Chapter 25. Administrative Proceedings

§2501. President Powers

A. The president of the corporation shall direct and supervise all administrative activities of the corporation in accordance with the act and the rules and regulations adopted by the board. The president shall:

1. supervise and administer the operation of the corporation;

2. issue orders to approve, suspend, revoke or refuse to renew any contract (except for the casino operating contract), license, permit or other approval issued or sought to be issued by the corporation.

B. The president has full and absolute power and authority to deny any application, limit, condition, or restrict any license, permit, contract, (except the casino operating contract), registration, finding of suitability, or approval, or suspend or revoke any license, contract, (except the casino operating contract) permit, registration, finding of suitability or approval or impose a civil penalty upon any person licensed, permitted, registered, found suitable, approved or holding a contract, for any violation of the Casino Act or these regulations promulgated thereunder, or any cause deemed reasonable.

C. All orders, decisions or actions of the president shall be, in writing, stating the reasons for the decision and a copy shall be provided to the interested party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2503. Appeal of President's Order

A. Any person aggrieved by a decision and order of the president issued pursuant to LAC 42:IX.2501 may appeal that decision to the board by filing a written appeal with the board within 10 days of receipt of president's order.

B. Unless otherwise provided in these regulations, the filing of an appeal shall stay the execution of the president's order until the board has completed its final review of the appeal.

C. The appeal shall contain:

1. the name, business address and telephone number of the appellant;
2. a copy of the president's order and summary of evidence;
3. a brief statement listing the statutory or regulatory provisions at issue;
4. a description of the appellant's interpretation or position;
5. a statement of the facts that support the appellant's interpretation or position including any mitigating factors;
6. a list of all witnesses, and a description of evidence that supports the appellant's interpretation or position;
7. a request for hearing before the board;
8. a statement of the reasons which justify review of the president's order; and
9. the signature of the appellant and his legal counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2505. Hearing Officers

The board may appoint an independent hearing officer to hear appeals of a president's order. The hearing officer shall hear and decide appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:632 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2507. Hearings

Hearings of appeals of decisions or orders of the president shall be conducted by the board or designated hearing officer in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2509. Conduct Of Hearing

A. The president or a representative of the president, may present an opening argument in support of the president's order.

B. The person upon whom the order was issued may present an opening argument against the president's order, or in mitigation of the facts presented.

C. The president or his representative may present any witnesses or testimony in support of his order. Any opposing party may cross examine the witnesses. Any opposing party

may make a motion to dismiss at the end of the president's case. The board may hear arguments on the motion, or may grant, deny or reverse the president's order, with or without oral argument.

D. Any other party may present witnesses and evidence in support of his position. The president or his representative may cross examine any witness.

E. Upon conclusion of the presentation of all other witnesses, the president or his representative may present a case in rebuttal.

F. Both the president or his representative and the opposing parties may present closing arguments. Thereupon, the matter will stand submitted to the board or hearing officer. Any member of the board or hearing officer may ask questions of the witnesses and may request further evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2511. Failure or Refusal To Testify

A. If an applicant licensee, permittee, person found suitable, or person who has had an act or transaction approved fails to testify on his own behalf or asserts a claim of privilege, the president, board or hearing officer may infer therefrom that such testimony would be detrimental to the aforesaid person.

B. If a person controlling, controlled by, or under common control with, or employed by, or an agent of, the applicant licensee, permittee, person found suitable or person who has had an act or transaction approved fails to respond to a subpoena, or asserts a claim of privilege with respect to any question propounded to him, the board may, taking into account all of the circumstances, infer that the testimony which would have been elicited would be detrimental to the aforementioned individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:635 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2513. Prohibition of Ex-Parte Communications

Unless required for the disposition of procedural or prehearing matters, all communications relating to the matter is prohibited except ex parte matters authorized by this Section.

1. A party or his representative shall not communicate, directly or indirectly, in connection with any issue of fact or law related to an appeal of a president's order, with any member of the board, except upon notice and opportunity to all parties to participate; and

2. A member of the board shall not communicate directly or indirectly, in connection with any issue of fact or law related to an appeal of a president's order, with any party or his representative, except upon notice and opportunity to all parties to participate;

3. This Section shall not preclude:

a. any member of the board from consulting with the attorney general or his designee; or

b. a party or his representative from conferring with the chairman or attorney general or his designee regarding

procedural matters that do not involve issues of fact or law related to the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2515. Rehearings

Rehearings shall be directed to the board within the time period provided by law and conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2517. Board's Decisions on Appeal of President's Order

As soon as practicable, but not later than 60 days of the completion of any hearing held by the board or its designated hearing officer, the board shall render a written decision containing findings of fact and conclusions of law relevant to the appeal of the president's order. The board shall determine whether the president's order was based upon good cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:655.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2519. Preliminary Interpretations by the President

A. Purpose. A preliminary interpretation is an extraordinary remedy that will be considered by the president only when the objective of the petitioner cannot reasonably be achieved by other means when the ruling would be significant to the regulation of gaming or the gaming industry.

B. Petitions. Only an interested person may petition the president for a preliminary interpretation.

C. A petition for preliminary interpretation may be filed with the corporation, together with a nonrefundable filing fee in the amount of \$300, unless the petitioner is a governmental agency or political subdivision of the state.

D. Form. The petition for preliminary interpretation shall contain:

1. the name, business address and telephone number of petitioner;

2. a statement of the nature of the interest of the petitioner in obtaining a preliminary interpretation;

3. a statement identifying the specific statute, rule or regulation in question;

4. a clear and concise statement of the interpretation or position of the petitioner relative to the statute, rule or regulation in question;

5. a description of any contrary interpretation, position or practice that gives rise to the petition;

6. a statement of facts that support the interpretation of the petitioner;

7. a statement identifying all persons or groups who the petitioner believes will be affected by the preliminary interpretation; and

8. the signature of the petitioner or his legal counsel.

E. An interested person may not file a petition for preliminary interpretation involving questions or matters that are issues in a contested case in which the interested person is a party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 631.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2521. Issuance of Preliminary Interpretation and Appeal

A. Within 60 days of the filing of the petition, the president shall issue a preliminary interpretation of the statute, rule or regulation addressed in the petition. The president, in his sole and absolute discretion, may consult with the board regarding any petition for preliminary interpretation.

B. Appeal. Any interested person affected by the preliminary interpretation may petition the board for review of the president's interpretation. A request for review shall be submitted to the board within 10 days after the issuance of the president's preliminary interpretation.

C. Content of Appeal. A petition for review of the president's preliminary interpretation shall contain:

1. a statement of the facts relevant to the review of the preliminary interpretation;

2. a statement of the provisions of the Casino Act and these regulations, and any other authority applicable thereto, relevant to the petition;

3. a statement of the arguments that the interested person considers relevant to the review of the preliminary interpretation;

4. a statement of the reasons which justify review of the preliminary interpretation; and

5. any other evidence considered relevant.

D. The petition for review shall be accompanied by a nonrefundable fee of \$300.

E. Any other interested person may file a brief in support of or in opposition to the petition for review. Such brief shall be filed within seven days of receipt of the petition for review.

F. Board Action on Review. Within 45 days of receipt of the petition for review of the preliminary interpretation of the president, the board shall either schedule a hearing or render a decision on the petition. The board may, with or without oral argument dismiss the petition in whole or in part, for any reason. If a hearing is scheduled on the matter, within 30 days of the hearing, the board shall issue its decision on the petition for review and the preliminary interpretation. The board may delegate the review of the president's preliminary interpretation to an independent hearing officer.

G. The provisions of this regulation shall not be construed to limit, condition, or restrict the right of any person to commence and maintain any action authorized by the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 et seq.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Chapter 27. Vendor and Junket Representative Licensing and Registration

Subchapter A. Vendor Licensing and Registration

§2701. Required Licensure

A. All manufacturers, distributors and vendors of gaming devices and gaming supplies or other vendors required to be licensed under the Casino Act, that propose to conduct business with the casino operator, shall apply for and receive a manufacturer's license, distributor's license or other appropriate license, pursuant to LAC 42:IX.2301 et seq. of these regulations.

B. Except as provided in LAC 42:IX.2705.A.1 and A.5, all other vendors that propose to conduct business with the casino operator shall apply for inclusion in the corporation's vendor registration list.

C. Any person who is compensated based upon a percentage, theoretical or actual, of gaming revenue shall be licensed by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:630(B), 630(D); 638.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2703. Suitability

Before a person required to be licensed pursuant to this Chapter may be issued a license, the applicant shall prove his suitability in accordance with LAC 42:IX.2301 et seq. of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:633.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2705. Non-Gaming Vendor Registration

All non-gaming vendors that propose to conduct business with the casino operator shall comply with the following requirements:

1. Under \$10,000. The casino operator shall provide a monthly listing of these vendors which shall contain all information prescribed by the corporation.

2. \$10,000 but under \$50,000. These vendors shall remit an initial application fee of \$100 in order for the vendor to be placed on the corporation's vendor registration list, unless an exception is granted under Subsection A.5 of this Section. The casino operator shall provide a monthly listing of these vendors which shall contain all information prescribed by the corporation. The corporation shall monitor and conduct ongoing reviews of the transactions between the casino operator and such vendor.

3. \$50,000 and over. The vendor shall be required to submit an application for registration on a form provided by the corporation and an application fee of \$250, in order for the vendor to be placed on the corporation's vendor registration list. The casino operator shall be required, after engaging the vendor, to immediately remit a completed Business Information Form (BIF) to the corporation. The corporation may conduct a background investigation into the qualifications of such vendor, and will monitor its transactions with the casino operator.

4. Any vendor under Subsection A.2 of this Section who meets the monetary threshold for Subsection A.3 of this Section, shall remit the remaining balance to the corporation at which time he will receive written notification of inclusion on the vendor registration list. Annual renewals shall be required from the date of this notice.

5. Upon application in a form determined by the corporation, the president may exempt any person or field of commerce from the registration or licensing requirements of this Chapter if in the president's sole discretion such person or field of commerce:

a. is currently and sufficiently regulated by a public agency; or

b. will provide goods or services in insubstantial or insignificant amounts or quantities; or

c. does not need to be licensed or registered in order to protect the public or to accomplish the policies established by this Chapter.

6. Any license or approval issued pursuant to this Chapter is a revocable privilege. Any vendor registrant may be called forward for licensing by the corporation at any time and required to demonstrate by clear and convincing evidence his suitability as defined in LAC 42:IX.2333. The president in his sole discretion may revoke any approval or registration during the pendency of this call-forward procedure.

7. Failure to meet the standards of the Casino Act or pay any fee prescribed herein shall be grounds for the corporation to refuse to place such vendor on the vendor registration list. The casino operator shall not conduct any business with any vendor excluded from the list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:624(A) and 638.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2707. Annual Renewals

One year from the date of written notification of inclusion on the vendor registration list, a vendor shall remit an annual renewal fee of \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:624(A).

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Subchapter B. Junket Representatives

§2709. Junket Representatives

A. A junket representative who arranges transportation for preferred guests or makes recommendations for approval of the extension of gaming credit on behalf of the casino operator, or collects a debt evidenced by a credit instrument, shall be licensed with the corporation prior to doing any business on behalf of the casino operator.

B. A junket representative shall not transact business on behalf of the casino operator other than is customary in the industry.

C. An application for licensing as a registered junket representative shall be made on the forms provided and furnished by the corporation and shall also include at the minimum:

1. the name, address, and type of organization of the junket representative;

2. a copy of any proposed agreement between the casino operator and the junket representative. If the proposed agreement is not in writing, the filing shall include a detailed written description of the proposed arrangement;

3. a personal financial questionnaire for the junket representative;

4. the designation of persons whom the junket representative may use as a secondary representative;

5. a statement on a form furnished or approved by the president that the junket representative:

a. submits to the jurisdiction of the state of Louisiana and the corporation;

b. designates the secretary of state as its representative

upon whom service of process may be made; and

c. agrees to be bound by the laws of the state of Louisiana and the regulations of the corporation;

6. if the junket representative is not an individual, the president may designate the officers and principals of the junket representative that shall provide this information to the corporation;

7. the junket representative shall also provide its filing to the casino operator for transmittal to the corporation. The corporation may reject filing made directly by the junket representative.

D. Upon application, the corporation may at the discretion of the president issue a temporary license to the applicant. Temporary licenses expire six months after the date of issuance or upon the issuance of a permanent license, and immediately upon denial of a permanent license or other similar order by the president.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:638.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2711. Determination of Suitability of Junket Representatives

The casino operator upon written notification of the finding of unsuitability, shall immediately terminate all relationship, direct or indirect, with the junket representative. Failure to terminate such relationship may be deemed to be an unsuitable method of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:631 and 633.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

§2713. Reporting Requirements of Junket Representatives

A. Annually, on or before July 15, each registered junket representative shall file a list of all secondary representatives on a form furnished or approved by the president. The casino operator shall send a notice annually, on or before June 1, to each junket representative under contract, advising the registered junket representative of the requirements of this Section.

B. The registered junket representative shall report addition, deletions and changes to the following items to the president within 30 days thereof:

1. the registered junket representative's address or telephone number;
2. the officers, directors, or shareholders or partners of the registered junket representative;
3. this list of secondary representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:602, 620, 631, and 633.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Chapter 33. Compliance and Disciplinary Actions

§3301. Minority Participation

A. The casino operator and the casino manager shall adopt written policies, procedures and regulations to allow the participation of businesses owned by minorities in all such design, engineering, construction, banking and maintenance contracts and any other projects initiated by the casino operator or casino manager. The written policies, procedures

and regulations shall provide for the inclusion of businesses owned by minorities to the maximum extent practicable, consistent with applicable law.

B. All businesses or vendors selected by the casino operator and the casino manager for any purpose shall strictly adhere to the nondiscrimination policies and practices embodied in applicable federal, state, and local law.

C. The casino operator and the casino manager shall, as nearly as practicable, employ minorities consistent with the population of the state and consistent with applicable law.

D. No employee shall be denied the equal protection of the law. No regulation or policy shall discriminate against an employee because of race, religious ideas, beliefs or affiliations. No regulation or policy shall arbitrarily, capriciously or unreasonably discriminate against an employee because of birth, age, sex, culture, physical condition, political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for a crime.

E. In furtherance of the mandate set forth in the preceding four Subsections, the corporation shall monitor the casino operator and casino manager's hiring and contracting practices and exercise enforcement authority, as described below:

1. the casino manager and casino operator shall file with the corporation, copies of all reports that it files with the City of New Orleans pursuant to any program or plan undertaken;

2. in addition to those reports filed, the casino operator and casino manager shall file with the corporation quarterly reports reflecting:

a. applicants for employment during the quarter with their race, sex, and parish (or county and state, if outside of Louisiana);

b. employees hired during the quarter with their race, sex, parish (or county and state, if outside of Louisiana), length of residency and EEO category;

c. all contractors first signing contracts during the quarter with their race, sex, and parish (or county and state, if outside Louisiana) wherein their principal of business is located;

d. evidence of statewide recruitment efforts for employment and contractual services;

e. all complaints received by the casino operator and casino manager related to hiring contractual services. Such reports shall include name, address, nature of the complaint and the disposition;

3. if at any time the corporation shall conclude that the contractor is conducting itself in a manner inconsistent with the requirements of Louisiana state law or these regulations, the corporation may take enforcement action including but not limited to fines, and the imposition of a plan that, in the discretion of the board meets the objectives of the act and these regulations and is otherwise consistent with the law.

AUTHORITY NOTE: R.S. 4:602(F) and (G), LSA Constitution, Article 1, Section 3.

HISTORICAL NOTE: Promulgated by the Economic Development and Gaming Corporation, LR 21:

Wilmore W. Whitmore
President

9502#003

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Discipline

The State Board of Elementary and Secondary Education, at its meeting of January 26, 1995, exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and adopted as an emergency rule, Section 459 of Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act. Emergency adoption is based on the recommendation of legal counsel and the imminent peril to health, safety, and welfare of students and the need for adequate due process timelines to protect the rights of students and school personnel. Effective date of the following emergency rule is January 26, 1995.

Section 459. Discipline Procedures

A. Definitions

1. *In-School Alternative Discipline Program*—a detention program which includes educational services as written on the IEP. Removal of a student from his/her class into this program shall not be considered an exclusion.

2. *Significant Change in Placement*—removal from educational services for more than nine consecutive days within one school year.

Note: If a series of exclusions that are each of nine days or fewer in duration creates a pattern that also constitutes a significant change in placement. Among the factors that should be considered in this determination are the length of each removal, the proximity of the removals to one another, and the total amount of time the student is excluded from school.

3. *Student with Suspected Disabilities*—pupil appraisal personnel has received formal written consent from the parent to evaluate.

B. Procedures for Exclusion of Students with Disabilities and Students with Suspected Disabilities

1. For exclusions of one to nine days:

a. the student must be given prior oral or written notice of the charges as well as the basis for such accusation and an opportunity to respond. The school principal or designee should contact the parent, tutor, or legal guardian to establish a course of action to identify and correct the behavior leading to exclusion before any further action is taken to remove the student. All procedural safeguards afforded regular education students regarding suspension must be extended to students with disabilities and their parents; (See Bulletin 741, *The School Administrator Handbook* and LSA-R.S. 17:416)

b. the special education administrator or designee shall be notified immediately, within one school day, of the student's removal from school, the number of days of exclusion, and the reason for the removal. All exclusions, regardless of the reason, must be reported.

2. For exclusions of more than nine consecutive days, or when a pattern of exclusions has occurred, or upon the fourth suspension, or upon reaching the maximum number of unexcused absences due to suspensions:

NOTE: The "stay-put" provision mandates a student with disabilities shall remain in his/her current educational

placement pending completion of any review proceedings, unless the parents and LEA otherwise agree.

a. a trained and knowledgeable group of persons must determine whether the student's misconduct or pattern of misconduct is related to the disabling condition. This group of persons must be knowledgeable about the student, the meaning of the evaluation data, and the placement options. The IEP/Placement Committee could satisfy this requirement;

NOTE: For the purpose of this section, if the IEP/Placement Committee is used, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the LEA, but the LEA must keep a record of its efforts to contact parents.

b. the data considered in making the relatedness decision includes information drawn from a variety of sources, including the IEP and evaluation reports. Other sources may include aptitude and achievement tests, teacher recommendation, physical condition, social or cultural background, and adaptive behavior. The information obtained from all such sources must be documented and carefully considered;

c. the relatedness decision cannot be based on the LEA's normal disciplinary procedures. The person, such as the principal, who recommended the exclusion of the student can not serve on the relatedness decision committee for that student;

d. if the misconduct is found not related to the disability and the exclusion will occur, a reevaluation (as defined in Bulletin 1508, *The Pupil Appraisal Handbook*) must be conducted. After the reevaluation is completed the IEP/Placement Committee must convene to determine appropriate programming and placement and develop a behavior management plan which addresses the specific behavior(s) which caused the exclusion to occur. Free appropriate public education (FAPE) must be provided and educational services may not cease;

e. if the misconduct is found related to the disability, the exclusion shall not occur. The system must convene an IEP committee to consider modifications to the student's program (e.g., additional related services, counseling, changes in the behavior management plan, increased time in Special Education, change of class schedule, change of teacher);

f. the Special Education administrator or designee shall be notified immediately, within one school day, of the recommendation for an exclusion of more than nine days. All exclusions, regardless of the reason, must be reported.

3. Exclusion from the bus is treated the same as an exclusion from school unless alternative means of transportation are provided.

4. The exclusion clock of one to nine days begins anew following a move down the placement continuum to a more restrictive environment after following the appropriate procedures.

5. Where the student is clearly dangerous to himself or others, the student may be removed immediately. In no case can this removal last longer than nine school days after the immediate exclusion. During this nine-day period, school officials may initiate a review of the student's IEP, seek to persuade the parents to agree to an interim placement, or invoke the aid of the courts to remove the allegedly dangerous

student from school if they believe that maintaining the student in the current placement would be substantially likely to result in injury to the student or others. Notice of the charges and other due process procedures may be delayed but must be carried out as soon as practical.

NOTE: At each IEP meeting there must be a discussion of the social/behavioral needs of the student. This should include the following:

1. addressing any behavioral problem(s) of the student that are related to the disabling condition;
2. developing a structured program of behavior management (including goals and objectives) for dealing with the behavior; and
3. a review and determination of the effectiveness of any prior plan of behavior management.

This revised Section 459 (Discipline) of Bulletin 1706 supersedes the Discipline Policy of Section 459 which was adopted by the board on August 25, 1994 and advertised as a notice of intent in the November, 1994 issue of the *Louisiana Register* and as an emergency rule in the September, 1994 and December, 1994 issues of the *Louisiana Register*.

AUTHORITY NOTE: R.S. 17:1941-1958.

HISTORICAL NOTE: LR 21:

Carole Wallin
Executive Director

9502#015

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Exceptional Children

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act, effective March 1, 1995, except for an amendment to page 119, Part B.1.F.2 of the bulletin and amendments approved the board on May 26, 1994. The revision to page 119 appeared on page 1285 of the October, 1993 issue of the *Louisiana Register* as an emergency rule and was adopted as a rule in February, 1994. Readoption of Bulletin 1706 is necessary in order to continue the present emergency rule until it is finalized as a rule.

Bulletin 1706 which was adopted as an emergency rule effective July 1, 1993 remains in effect, along with the newly adopted federal regulations. The effective date of this emergency rule is March 1, 1995. It will remain in effect for 120 day or until finalized as a rule, whichever occurs first.

The amendments approved by the board on May 26, 1994 are also being advertised in this issue of the *Louisiana Register* as an emergency rule. [See Log 9410#011]

Bulletin 1706 contains statewide rules and regulations enforcing the requirements of state and federal laws which

assure a free, appropriate public education to all exceptional children, ages 3 through 21 years. Responsibilities of state and local public and nonpublic educational agencies are given. Bulletin 1706 may be viewed in its entirety in the Office of the State Register, Capitol Annex, Room 512, 1051 North Third Street, Baton Rouge, LA; in the Office of Special Educational Services, State Department of Education; and in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9502#018

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Exceptional Children

The State Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, the federally required changes to Bulletin 1706 submitted by the Department of Education on May 26, 1994. Readoption of the emergency rule is necessary in order to continue the federally required changes until they are finalized as a rule. The effective date of this emergency rule is March 1, 1995. It will remain in effect for 120 days or until finalized as a rule whichever occurs first.

Emergency adoption is necessary because the Office of Special Education Programs in the U.S. Department of Education has been assured that these regulations will be in effect and enforceable by July 1, 1994. This is required in order for the Louisiana State Plan for Special Education to be approved and Part B dollars to be released to Louisiana.

These amendments may be viewed in their entirety in the Office of the State Register, Capitol Annex, Room 512, 1051 North Third Street, Baton Rouge, LA; Office of Special Educational Services; State Department of Education; or in the Office of the State Board of Elementary and Secondary Education, located on the first floor of the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9502#019

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Student Count for MFP (LAC 28:I.1709)

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and suspended for one year, its policy on Student Counting for MFP Funding. This rule has not been changed, only suspended for one year. Readoption as an emergency rule is necessary in order to continue the present emergency rule under which the Student Count for MFP Funding was suspended for one year. The policy was previously adopted as an emergency rule and was printed on page 622 of the June, 1994 issue of the *Louisiana Register*.

The effective date of this emergency rule is February 20, 1995.

AUTHORITY NOTE: R.S. 17:6

Carole Wallin
Executive Director

9502#017

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Teacher Assessment Program (LAC 28:I.917)

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and readopted as an emergency rule, the Louisiana Teacher Assessment Program, Policies and Procedures for Louisiana Teacher Assessment, which is part of the Louisiana Teacher Appraisal Instrument Panel Report (Panel IV). Section X, Grievance Procedure, is not included in the policies and procedures at this time, but will be added after board approval.

The policies and procedures were printed as part of the Louisiana Teacher Assessment Program Training Manual and disseminated to the local education agencies (LEAs) and all public schools statewide.

Readoption as an emergency rule is necessary in order assist the LEAs in implementation of the policies and procedures in the Louisiana Teacher Assessment Program which began with the 1994-95 school year and is mandated by the Louisiana Legislature, Third Extraordinary Session, 1994. The effective date of this emergency rule is February 20, 1995 for 120 days or until the final rule takes effect whichever occurs first. This document was previously advertised as an emergency rule and appeared on page 746 of the July, 1994 issue of the *Louisiana Register*.

This document may be viewed in its entirety in the Office of the State Register, Capitol Annex, Room 512, Baton Rouge, LA; in the Office of Research and Development, State

Department of Education; or in the Office of the Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, Louisiana. The policies and procedures for Louisiana Teacher Assessment will be referenced in Administrative Code, Title 28 as noted below.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §917. Personnel Evaluation Standards and Regulations

* * *

B. Teacher Assessment and Evaluation

* * *

2. Policies and Procedures for Louisiana Teacher Assessment (June, 1994) are adopted.

The Louisiana Teacher Assessment Program, which provides for the support and assessment of new teachers, was mandated by the Louisiana Legislature in the Third Extraordinary Session of 1994. The policies and procedures for the Louisiana Teacher Assessment are the guidelines by which a teacher teaching in Louisiana public schools for the first time will be assessed. The policies and procedures set forth the philosophy and purposes of the Louisiana Teacher Assessment Program as well as the time frames for conducting the assessments.

AUTHORITY NOTE: R.S. 17:3881-3884, R.S. 17:3891-3896 and R.S. 17:3901-3904.

Carole Wallin
Executive Director

9502#016

DECLARATION OF EMERGENCY

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

Radioactive Materials and Incident Reporting Requirements (LAC 33:XV.341, 550, 777, 2051)(NE17E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is being required by the Nuclear Regulatory Commission in order for the state's radiation regulatory program to remain fully compatible as an Agreement State. Revisions to LAC 33:XV, Chapters 3, 5, 7, and 20, have been made to comply with recently enacted federal regulations concerning Radiation Protection.

The immediate impact of this revision to the existing regulations is to enhance the level of public protection from radiation.

This emergency rule is effective on February 1, 1995, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever comes first.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection

Chapter 3. Licensing of Radioactive Material

§341. Reporting Requirements

A. Immediate Report. Each licensee shall notify the division as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

B. Twenty-four Hour Report. Each licensee shall notify the division within 24 hours after the discovery of any of the following events involving licensed material:

1. an unplanned contamination event that:
 - a. requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;
 - b. involves a quantity of material greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and
 - c. requires access to the area to be restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;
2. an event in which equipment is disabled or fails to function as designed when:
 - a. the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;
 - b. the equipment is required to be available and operable when it is disabled or fails to function; and
 - c. no redundant equipment is available and operable to perform the required safety function;
3. an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or
4. an unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:
 - a. the quantity of material involved is greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and
 - b. the damage affects the integrity of the licensed material or its container.

C. Preparation and Submission of Reports. Reports made by licensees in response to the requirements of LAC 33:XV.341 must be made as follows:

1. licensees shall make reports required by LAC 33:XV.341.A and B by telephone to the division. To the extent that the information is available at the time of notification, the information provided in these reports must include:

- a. the caller's name and call-back telephone number;
- b. a description of the event, including date and time;
- c. the exact location of the event;

d. the isotopes, quantities, and chemical and physical form of the licensed material involved; and

e. any personnel radiation exposure data available; and

2. each licensee who makes a report required by LAC 33:XV.341.A or B shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the division. The reports must include the following:

a. a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

b. the exact location of the event;

c. the isotopes, quantities, and chemical and physical form of the licensed material involved;

d. date and time of the event;

e. corrective actions taken or planned and the results of any evaluations or assessments; and

f. the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 21:

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

§550. Performance Requirements for Radiography Equipment

Equipment serviced, maintained, or repaired by a licensee or registrant or used in industrial operations must meet the following minimum criteria:

* * *

[See Prior Text In 1 - 3.i]

j. malfunction of any exposure device or associated equipment shall be reported to the division in accordance with the requirements of LAC 33:XV.341;

* * *

[See Prior Text In 4 - 5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:

Chapter 7. Use of Radionuclides in the Healing Arts
§777. Quality Management Program

* * *

[See Prior Text In A - A.5]

B. The licensee shall:

1. develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

a. a representative sample of patient administrations;

b. all misadministrations to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months; and

c. all recordable events;

* * *

[See Prior Text In B.2 - H]

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

Subchapter D. Notification

§2051. Notification of Incidents, Abandonment, and Lost Sources

A. The licensee shall immediately notify the division by telephone and subsequently within three days by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured. The letter must designate the well or other location, describe the magnitude and extent of the release of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

* * *

[See Prior Text In B - D.2.h]

E. The licensee shall notify the division of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation or radioactive materials, and certain other accidents as required by LAC 33:XV.341, 485, 486, and 487.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:

William A. Kucharski
Secretary

9502#023

DECLARATION OF EMERGENCY

**Office of the Governor
Commission on Law Enforcement and Administration of
Criminal Justice**

Drug Abuse Resistance Education (D.A.R.E.)

The Louisiana Commission on Law Enforcement, in accordance with the Administrative Procedure Act, R.S. 49:953(B) and by the authority of the commission as provided in R.S. 15:1204.9, adopts the following emergency rule for a period of 120 days.

In response to the mounting concern about the use of drugs by youth, the Louisiana Commission on Law Enforcement will make Drug Abuse Resistance Education (D.A.R.E.) grants available to sheriffs' offices and police departments who can

demonstrate the capacity to offer the D.A.R.E. program in accordance with the national model. The D.A.R.E. Program National Model is contained in the U.S. Department of Justice, Bureau of Justice Assistance Program Brief, entitled "An Invitation to Project D.A.R.E." Copies of this program brief are available by contacting the Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Suite 708, D.A.R.E. Unit, Baton Rouge, LA 70806.

D.A.R.E. is a substance abuse prevention program designed to equip school children with skills for resisting peer pressure to experiment with tobacco, drugs, and alcohol. This program uses uniformed law enforcement officers to teach a formal curriculum to students in a classroom setting. Law enforcement officers must become certified by completing the required D.A.R.E. training offered through a certified D.A.R.E. training center.

The effective date of this emergency rule is January 18, 1995.

Michael A. Ranatza
Executive Director

9502#004

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Inpatient Psychiatric Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. Emergency rules were previously adopted on these regulations and published in the November and December 1994 issues of the *Louisiana Register* and the following rule continues these provisions in force for the maximum allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

Emergency Rule

Effective March 1, 1995 the Bureau of Health Services Financing has adopted revised regulations governing inpatient psychiatric admissions under the Medicaid Program. These regulations established uniform admission criteria for inpatient psychiatric services, including hospital-based medical detoxification for alcohol and drug abuse services, regardless of the type of facility or inpatient setting involved in the admission, i.e. a free-standing psychiatric hospital, a long term hospital or a distinct part psychiatric unit. These regulations also instituted pre-admission certification and length of stay assignment requirements for all admissions to free-standing psychiatric hospitals. In addition these

regulations also revised regulations contained in the "Standards for Payment - Free-Standing Psychiatric Hospitals" by revising the requirements for the certification of need for psychiatric hospitalization, repealing the vendor payment policy for temporary absences or leave days and replacing the continued stay criteria for the free-standing psychiatric hospitals. The extension and discharge criteria for all psychiatric services provided in any type of facility or inpatient setting incorporated in this emergency rule also replaced previous extension criteria. The extension and discharge criteria for hospital-based medical detoxification services contained in this emergency rule also replaced the previous continued stay criteria for these services. The extension criteria are formulated according to categories for adults and children and utilizes the *Diagnostic and Statistical Manual of Mental Disorders*. The edition of this manual bearing the most recent publication date and which has been approved for use by the director, Bureau of Health Services Financing, is the manual which will be used by the fiscal intermediary for identifying psychiatric diagnoses.

A Notice of Intent has been published on these regulations in the *Louisiana Register*, Volume 21, No. 1, and a public hearing will be held on Friday, February 24, 1995 at 9:30 a.m. in the auditorium of the Department of Transportation and Development at 1201 Capitol Access Road, Baton Rouge, LA. The full text may be viewed in the January 1995 issue (Volume 21, No. 1, pages 71-79) of the *Louisiana Register*; at the Office of the State Register, 1051 North Third Street, Suite 512, Baton Rouge, LA 70802; or at the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, 1201 Capitol Access Road, Baton Rouge, LA 70802.

Rose V. Forrest
Secretary

9502#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Nonemergency Medical Transportation (NEMT)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This notice is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for 120 days or until adoption of the rule whichever occurs first.

Medicaid currently reimburses for nonemergency medical transportation services provided to Medicaid recipients on the basis of a flat fee per trip or a monthly capitated rate for recipients utilizing more than 10 trips per month for medical services (i.e., hemodialysis, chemotherapy, etc.) which are

regular, predictable and continuing. There is a shortage of transportation providers to assure access to medical services for recipients who are wheelchair bound and nonambulatory as well as for recipients under capitated rates who live in remote rural areas or who have more than five trips per week. The department is increasing the rates for these specific nonemergency transportation services. This action is necessary to assure that Medicaid recipients of these types of services have access to necessary medical services. Additionally, in conjunction with this rule, the bureau has begun maintaining complaint files on each nonemergency medical transportation provider to assure compliance with state and federal regulations and recognition of recipient rights. An emergency rule on this matter was adopted on November 1, 1994 and these provisions are continued in force through adoption of this subsequent emergency rule which shall be in effect until adoption of the rule as proposed by the notice of intent published in the December 20, 1994 issue of the *Louisiana Register*.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing, has amended the previous rule to allow for establishment of additional rates for profit providers for reimbursement of specific nonemergency medical transportation (NEMT) services to implement the following:

1. Profit/Remote Rural Capitated Rates - defined as rural capitated trips that are greater than 120 miles round-trip, including wheelchair-bound patients who are non-ambulatory, as established by the dispatch office. These trips will be paid at a monthly rate of \$300. This is not applicable to "Friends and Family Providers."

2. Profit/Enhanced Capitated Rates - defined as capitated rates for Medicaid recipients who require five or more trips on a weekly basis for the entire month, including wheelchair-bound patients who are nonambulatory, as established by the dispatch office. These trips will be paid at a monthly rate of \$300.

This is not applicable to "Friends and Family Providers."

3. Rates for wheelchair-bound patients who are non-ambulatory as established by the dispatch office:

a. Wheelchair Trips (local/profit). The rate for local trips by profit providers for wheelchair-bound patients who are non-ambulatory shall be established at \$25 per round trip. This is not applicable to capitated trips which are paid on a monthly basis.

b. Wheelchair Trips (local/non-profit). The rate for local trips by nonprofit providers for wheelchair-bound patients who are nonambulatory shall be established at \$20 per round trip.

c. Wheelchair—Capitated/Rural/Profit. The monthly capitated rate for wheelchair-bound patients who are non-ambulatory shall be established at \$250 per month.

d. Wheelchair—Capitated/Urban/Profit. The monthly capitated rate for wheelchair bound patients who are non-ambulatory shall be established at \$180 per month.

The above rules are not applicable to "Friends and Family Providers."

In addition to establishing the above specialized rates, the bureau has begun to maintain complaint files on each non-emergency medical transportation provider regarding failure

to pick up recipients in a timely manner before or after medical appointments or arriving too late for appointments. At annual vehicle inspections, the volume of complaints for that provider shall be reviewed and a determination made regarding the provider's continued participation in the program if complaint volume indicates repeated problems with adhering to the NEMT Program's federal and state regulations. In the event participation in the program is affected based upon the volume of valid complaints, the bureau will adhere to existing procedures for due process.

Rose V. Forrest
Secretary

9502#043

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Office of State Police Video Gaming Division

Video Draw Poker (LAC 42:XI.Chapter 24)

The Department of Public Safety and Corrections, Office of State Police, Video Gaming Division, has exercised the emergency rule provision of the Louisiana Administrative Procedure Act, LSA-R.S. 49:953(B), to adopt the following emergency rules, which amend existing rules, pertaining to the operation of video draw poker devices, and the regulation of manufacturers, distributors, owner/operators, service entities, and other persons who participate in the video draw poker industry in the state of Louisiana.

These emergency rules were adopted by the Video Gaming Division of the Office of State Police, and were effective February 10, 1995, and shall remain in effect for a period of 120 days, pursuant to LSA-R.S. 954(B)(2), or until final rules are promulgated, whichever occurs first.

Emergency rulemaking is necessary in order to implement the new video gaming law, effective July 1, 1994, thereby ensuring the collection of all video gaming revenues that are to be paid to the state treasurer, and further, to allow the Office of State Police to effectively regulate the video gaming industry for the purposes of maintaining the public confidence in the integrity of the industry, and protecting the health, welfare, and safety of the public.

Copies of these emergency rules and regulations may be obtained from the Office of State Register, 1051 Riverside Drive-North, Baton Rouge, LA 70804 (504) 342-5015.

Title 42 LOUISIANA GAMING Part XI. Poker

Chapter 24. Video Draw Poker

§2401. Statement of Department Policy

A. It is the position of the Office of State Police that these rules are promulgated with primary consideration given to maintaining the health, welfare, and safety of the general public. These considerations shall control the application and

interpretation of the rules and their enforcement. Any subsequent restatement, repeal, or amendment of these rules shall be according to the above considerations.

B. The Video Gaming Division of the Office of State Police shall apply these rules to protect the video gaming industry from elements of organized crime, illegal gambling activities and other harmful elements. Further, the Video Gaming Division shall protect the public from illegal and unscrupulous gaming, ensuring the fair play of video gaming devices.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2403. Definitions

The following words and phrases shall have the following meanings unless otherwise specified or clearly indicated:

Act—the provisions of Part V-B of Chapter 14 of Title 33 of the Louisiana Revised Statutes of 1950, comprised of LSA-R.S. 33:4862.1 through 4862.22, and its amendments hereafter.

Applicant—the person who has completed an application to the division for licensing to participate in the video gaming industry in Louisiana.

Agent—any commissioned Louisiana state police trooper or designated employee of the Louisiana State Police, Video Gaming Division.

Application—the process by which a person requests licensing for participation in the video gaming industry in Louisiana.

Audit Tape—an exact copy of each printed ticket voucher retained within the device pursuant to the act.

Certified Technician Level 1—shall be defined as provided in LSA-R.S. 33:4862.1(B). A certified technician level 1 shall be employed by a licensed manufacturer, distributor, device owner, or service entity.

Certified Technician Level 2—shall be defined as provided in LSA-R.S. 33:4862.1(B). A certified technician level 2 shall be employed by a licensed manufacturer, distributor, device owner, or service entity.

Designated Representative—a person designated by the licensee to oversee and assume responsibility for the operation of the licensee's gaming business.

Device—a video draw poker device as authorized by the act which complies with the rules of the division.

Device Operation—shall be defined as provided LSA-R.S. 33:4862.1(B).

Device Owner—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Distributor—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Division—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Electronic Funds Transfer—commonly referred to as a sweep, means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or

authorizing a financial institution to debit or credit an account.

Enrolling Procedure—the process by which a device is linked to and monitored by the division's mainframe computer.

Facility—commonly referred to as a business or structure which houses or offers for play video gaming devices in this state.

Hotel or Motel—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Inspection—the observation or examination by the division of any premises or motor vehicles of the licensee or applicant where video gaming devices and related equipment may be manufactured, distributed, stored, possessed, or offered for play, or any inquiry procedures necessary to discover facts or things related/connected to video gaming in any way.

Interstate Highway—a fully controlled access highway which is part of the National System of Interstate and Defense Highways.

Licensed Establishment—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Licensee—any applicant or person who is awarded a license by the division authorizing activities authorized by the act. The authorized activity of each licensee is limited to the type of license issued.

Maintenance—the routine servicing of any video gaming device, excluding the logic board, software, and mechanical or electromechanical meters, and servicing which provides for the continued efficient operation of the device.

Major State Highway—a through highway as defined in LSA-R.S. 32:1 and which has been designated as a state highway by the Louisiana Department of Transportation and Development.

Manufacturer—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Minors—every natural person under the age of 18 years.

Mixed Patronage—a clientele which includes both minors and adults.

Net Device Revenue—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Nonvolatile Memory—a type of memory in which data stored in the memory is not lost when the power is turned off.

Offense—any violation of the act or these rules or any other criminal conduct.

Person—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Premises—all building(s), and grounds, vehicles or motor vehicles controlled by an applicant or a licensee and used to conduct activities authorized by the act.

Qualified Truck Stop Facility—shall be defined as provided in LSA-R.S. 33:4862.6. In addition, a facility which is a qualified truck stop facility shall be:

a. located adjacent to a major state or interstate highway; for the purpose of this Section the word adjacent shall mean that the property line of the premises which is a qualified truck stop facility shall be within a distance of 2,000 feet to the nearest edge of the travelled portion of the roadway which is a major state highway or interstate highway.

b. has a stable parking area, either paved or concrete, of at least 50,000 square feet for 50 18-wheel tractor-trailer

motor vehicles, as provided in LSA-R.S. 33:4862.6(A)(4).

c. has functioning diesel and gasoline fuel facilities. Each fuel facility shall maintain adequate records to determine average monthly fuel sales for individual vehicle consumption, in their regular course of business and at prices not less than the delivered fuel cost. The division will develop forms to provide for the reporting of fuel sales information.

RAM Clear Chip—an EPROM (Erasable Programmable Read Only Memory) which contains a program specifically designed to clear volatile and nonvolatile memory sections of a logic board for a video gaming device.

Resident—any natural person domiciled in the state, or any other natural person who demonstrates that he maintains a permanent place of abode within the state and who has resided and been domiciled in the state of Louisiana for a period of two years prior to the date of his application for license.

Restaurant—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Security Interest Holder—any person who loans money for the purpose of financing devices, using said devices as collateral. This may also include a lessor of devices.

Service Entity—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Shipment—any physical movement of a video gaming device from a manufacturer to a distributor, from a distributor to a device owner, or vice versa either into the state, from the state, or within the state.

Suitability, Suitable or Suitability Requirements—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Ticket Voucher—a ticket which is printed by a video gaming device by use of a player-activated switch providing the player with a printed record of credits owed. A ticket voucher is valid provided it has not been created by tampering with or manipulating the device either through internal or external means (e.g., personal computer, etc.), and has not been created by a device malfunction.

Transfer—the physical movement of a video gaming device by a device owner to or from a licensed establishment where a change of ownership does not occur.

Validation Decal—the decal furnished by the division and placed on a device indicating that the device meets the criteria established by the division and that the particular device has been enrolled by the division.

Video Draw Poker Device—shall be defined as provided in LSA-R.S. 33:4862.1(B).

Video Gaming Device—for the purposes of these rules, shall have the same meaning as *video draw poker device*.

Volatile Memory—a type of memory in which data stored in the memory is lost when the power is turned off.

Written Reprimand—a written notification from the division to a licensee which outlines any violation of these rules.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2405. License

A. Requirements for Licensing

1. No person shall be granted a license, and no license will be renewed unless the applicant demonstrates to the division that he is suitable for licensing, and thereafter continues to maintain suitability, as provided in LSA-R.S. 33:4862.8 and LSA-R.S. 33:4862.10.

2. The division may deny, condition, suspend, or revoke any license pursuant to the authority of LSA-R.S. 33:4862.8.

3. The division may initially deny or subsequently revoke any license to any person or entity which has or develops a material or continuing association with any person or business of known criminal activity, or persons of disreputable character which would bear adversely upon the general credibility, integrity and reputation of the video gaming industry in Louisiana.

4. The division may deny, suspend, condition or revoke any application or license of any person in which an unsuitable person has significant influence over that licensee or applicant.

5. The division may deny, suspend, condition or revoke the license of any person or entity in which an unsuitable person has a direct or indirect financial interest in accordance with LSA-R.S. 33:4862.10.

6. Once an establishment license has been issued by the division, it shall be displayed by the licensee in his place of business so that it may be easily seen and read by the public.

7. All licenses shall expire at midnight on June 30 of each year. All appropriate license fees shall accompany the application. Licensee shall pay the entire fee(s) for the year in a single payment, except that the device operation fee may be paid quarterly and will not be prorated. After the initial enrollment device operation fee, quarterly device operation fees will be collected by electronic funds transfer at the beginning of each quarter.

8. All licenses shall be nontransferable.

9. All licenses shall be renewed annually to remain valid. The appropriate license fees shall be paid by the licensee prior to issuance of a renewal. If a licensee fails to file a renewal application with the appropriate fees on or before May 15 prior to expiration of the license, the division may, assess a civil penalty in accordance with LSA-R.S. 33:4862.8.

10. All fees shall be paid by personal, company, certified checks, cashier's check, money order, or electronic funds transfer. If a personal or company check is returned, the applicant's license will not be issued. If an application for renewal has not been received by the division on or before close of business of June 30, the license is expired, and a new application, along with all appropriate fees, must be filed.

11. Residency requirements required in the licensee's initial application shall be required in license renewals.

12. The licensee must be current in filing all applicable tax returns or in payment of all taxes, interests, and penalties owed to the state of Louisiana, local governmental units, and the Internal Revenue Service, excluding items under formal appeal pursuant to applicable statutes or payment agreement. Continued failure to timely file tax amounts due, except those under dispute, shall be grounds for revocation, suspension or condition of license.

13. With respect to the suitability of a licensee as

described in LSA-R.S. 33:4862.10, hidden ownership, whether by counter letter or other device or agreement, whether oral or written, upon discovery, shall constitute grounds for immediate suspension, revocation or denial of a license or application. All applicants shall disclose full ownership of a company to total 100 percent, regardless of the percentage of individual ownership.

14. Licensees shall attend all hearings, meetings, seminars and training sessions required by the division. The division shall not be responsible for any costs incurred by the licensees. The division shall, whenever possible, incur normal operating costs to facilitate such meetings. The division reserves the right to charge licensees, if necessary, to offset the cost of those meetings which the division determines are not in the normal scope of the division's responsibility. Such meetings may include, but shall not be limited to; training programs, updates and new requirements, any form or reporting changes, reprimands of licensee, and any other instance in which the division believes that such a meeting would benefit both licensees and the division.

15. Licensees shall maintain compliance with all applicable federal gambling law requirements, including registration under Chapter 24, of Title 15 of the United States Code.

16. Only one type of license shall be issued to each legal entity, except for licensed establishments.

B. Change of Ownership of Licensed Establishment

1. If a change in ownership of a licensed establishment occurs, the division shall immediately be notified of the Act of Sale or Lease in writing.

2. When a licensed establishment which requires an alcoholic beverage license as a condition of the receipt of a video draw poker device license is sold or leased, the video gaming devices shall be allowed to continue to operate if the new owner applies for a state Class "A" general retail or restaurant alcohol permit within five days of the Act of Sale or Lease, and upon issuance of a state Class "A" liquor permit, the new owner or lessee applies for a video draw poker license within five days of said issuance. The video draw poker devices shall be allowed to continue in operation under the old license until denial of the new license application, issuance of a video draw poker license in the name of the new owner or lessee, or 60 days from the Act of Sale or Lease, whichever comes first. The new owner or lessee must provide at the time of application to the division a certified copy of the Act of Sale or Lease, a copy of appropriate documentation which indicates the date the licensed establishment began the Alcoholic Beverage Commission (ABC) application process, and a copy of the ABC permit. If any of the documents required by this Section are not submitted with the new owner or lessee's application, the division may immediately disable the devices.

3. If the 60-day period has elapsed prior to the issuance of a new video gaming license, the devices will be disabled and the device owner shall immediately make arrangements to remove and transfer the devices from the formerly licensed establishment.

C. General Provisions

1. The division shall have the authority to immediately

suspend any license when a violation of these rules and regulations has been committed or allowed by the licensee in accordance with authority given by the act.

2. A licensee whose license has been revoked by the division may not be issued another license for a period of five years from the date of revocation.

3. If a licensee is issued more than one license by the division and has a license suspended or revoked, the division may suspend or revoke all licenses issued by the division to the licensee.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2407. Games

A. Video Draw Poker

1. A video draw poker device shall have the following features as required by LSA-R.S. 33:4862.2. In addition, all devices shall have the following features:

a. an electronic or mechanical contrivance employing a random number generator used to facilitate the risk or loss of anything in order to realize a profit;

b. a video display screen utilizing a cathode ray tube and microprocessors in order for a person or persons to view the actual games;

c. a maximum bet of \$2 per game and minimum bet of \$.25;

d. any one hand of poker played shall not exceed the value of \$500 in cash except as provided in LSA-R.S. 33:4862.4;

e. maximum expected payback value for one credit shall not exceed 94 percent of the value of a credit based on optimum operating play strategy;

f. the pay table for each hand of poker must be prominently displayed in plain view on the front of the gaming device.

2. A licensed establishment may not offer any promotion or scheme which is contingent upon the play of a video gaming device and which results in an enhanced payoff other than that set by the internal mechanism of the video gaming device as established by the act.

B. Operations of Video Draw Poker Games. The licensee of a licensed establishment shall be responsible for, but not limited to the following:

1. All devices within all licensed establishments shall be monitored by the licensee or a designated employee of the licensed establishment during hours of operation.

2. The licensee or employees shall not loan money, extend credit, or provide any financial assistance to patrons for use in video gaming activities.

3. Licensees which are truck stops shall comply with LSA-R.S. 33:4862.22.

4. The licensee or employees shall not permit any person who appears to be obviously intoxicated through his conduct or behavior or causes a public nuisance to participate in the play of the video devices.

5. A licensee shall be required to supervise his employees

to ensure compliance with laws and rules relating to the operation of video gaming devices.

6. Licensees shall be responsible for the timely payment of winnings. A licensee shall, upon demand of the player, pay all monies owed as shown on a valid ticket voucher.

7. Licensees shall be responsible for the proper placement of devices in the establishment as prescribed by these rules.

8. Licensees shall advise the division of any device malfunction that has not been rectified by the device owner, within 24 hours after the device owner or service entity has been notified or before the end of the next normal working day.

9. All licensees or a designated employee of the licensed establishment shall be required to be physically present within the licensed establishment at all times during hours of operation.

C. Prizes or Authorized Wagers

1. A valid ticket voucher shall contain all information required by LSA-R.S. 33:4862.2(A)(5)(h). In addition, a valid ticket voucher must contain the program name and/or software number.

2. No payment for prizes awarded on a terminal may be made unless the ticket voucher is:

a. fully legible;

b. not mutilated, altered, unreadable, or tampered with in any manner;

c. not falsified or counterfeited in any way;

d. presented for payment at the licensed establishment by a person authorized to operate the devices.

3. Method of Payment

a. An employee shall be available during all hours of operation to redeem valid ticket vouchers. All valid ticket vouchers shall be paid when presented.

b. Ticket vouchers shall be redeemed for cash only.

c. Ticket vouchers shall not be redeemed at licensed establishments other than the device location where the prize was won.

d. Ticket vouchers shall be redeemed during the normal operating hours of the licensed establishment unless otherwise authorized by the division.

e. The division or the state of Louisiana is not responsible for any device malfunction that causes prizes to be wrongfully awarded or denied to any player. All licensed devices will prominently display the phrase "Any malfunction voids all plays and pays."

D. Inspections. The division shall monitor the gaming on an unscheduled basis, to the extent necessary to ensure compliance with the provisions of the act and rules of the division. Furthermore, the division shall have immediate and unrestricted access to the devices, and all records in any way relating to video gaming devices.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2409. Revenues

A. License Fees

1. Upon application, a nonrefundable annual fee as listed in the below schedule shall be paid by each applicant:

- a. Manufacturer - as provided in LSA-R.S. 33:4862.11(A)(1);
- b. Distributor - as provided in LSA-R.S. 33:4862.11(A)(2);
- c. Service Entity - as provided in LSA-R.S. 33:4862.11(A)(3);
- d. Device Owner - as provided in LSA-R.S. 33:4862.11(A)(4);
- e. Licensed Establishment - as provided in LSA-R.S. 33:4862.11(A)(6).

2. A device owner shall pay a device owner fee and shall not be required to pay more than one device owner fee per year.

3. Each licensed establishment shall pay a licensed establishment fee. This fee shall be in addition to any other fee due the division.

4. The service entity fee, payable by a service entity, shall be paid by each service entity who, for hire, repairs, services, inspects, or examines video gaming devices. Each service entity shall not be required to pay more than one service entity fee per year.

B. Device Operational Fees (per device)

1. A nonrefundable annual device operation fee shall be paid by the device owner for each video gaming device placed at a licensed establishment. This annual fee may be paid quarterly as prescribed by the act. If the device operation fee is to be paid quarterly, after the initial payment, subsequent payments are to be made by electronic funds transfer and are due on the first sweep of each quarter. Any payments received after the tenth day of the beginning of each quarter will constitute a violation of this Section and be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty will be in addition to any other penalties imposed by the division. The annual device operational fees are as follows:

- a. a restaurant, bar, tavern, cocktail lounge, club, motel, or hotel—as provided in LSA-R.S. 33:4862.11(A)(5)(a);
- b. a Louisiana State Racing Commission licensed pari-mutuel wagering facility—as provided in LSA-R.S. 33:4862.11(A)(5)(b)(i);
- c. a Louisiana State Racing Commission licensed offtrack wagering facility—as provided in LSA-R.S. 33:4862.11(A)(5)(b)(ii);
- d. a qualified truck stop facility—as provided in LSA-R.S. 33:4862.11(A)(5)(c).

C. Franchise Payments

1. Each device owner shall remit to the division a franchise payment as provided for by the act. Franchise payments shall be calculated based upon the net device revenue, as verified by the electronic (soft) meters of the device. Revenues received from franchise payments shall be electronically transferred to the designated bank of the state treasurer.

2. Each device owner shall establish and maintain a single bank account exclusively for the electronic funds transfer (sweep) of franchise payments to the designated bank of the state treasurer.

a. Each device owner shall maintain a minimum balance at all times in his video gaming account equivalent to 15 percent of his previous month's net device revenue of all his video gaming devices or the account shall be secured by a line of credit or bond issued by a bank or security company acceptable by the state treasurer. For the purpose of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity. The security shall be an amount no less than 15 percent of the previous month's net device revenues.

b. Each licensed owner shall be liable for that portion of net device revenues from such times as the funds are received into the device until said funds are deposited into the designated bank of the state treasurer.

c. When an owner or entity who receives revenues from the play of devices becomes insolvent, or dies insolvent, the revenue due the state from such person, his heirs or estate shall have preference over all other debts or demands.

d. The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.

e. Electronic funds transfers shall normally be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of each month.

f. The funds shall be electronically transferred (sweep) no later than the tenth day after the fifteenth and last day of each month. Any account found with insufficient funds will constitute a violation of this Section.

g. Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer will be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty will be in addition to any other penalties imposed by the division.

h. No withdrawals at any time from the device owner's video gaming account, including electronic funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above. Any account found to have less than the minimum balance or lack of proper security at any time shall constitute a violation of these rules.

D. Parish or Municipal Licenses. All applicable parish or municipal occupational and alcohol beverage control licenses required for a facility to operate within said parish or municipality shall be current and valid. All fees required to secure said licenses shall be paid prior to the division issuing a license for video gaming.

E. Supplement Purses for Horsemen

1. After the state franchise fee as provided for by the act is paid, each licensed establishment that is considered an OTB or pari-mutuel wagering facility shall make available monthly, a percentage of its net device revenues to supplement purses for horsemen as provided by the act. Such monies shall be made available to the Horsemen's Benevolent and Protection Association (HBPA) prior to the twentieth day of the month following the month in which they are earned. Forms provided by the division shall be used to record amounts earned for purse supplements and be made available to the

HBPA. These reports shall also be filed with the division and the Louisiana State Racing Commission (LSRC) by the twentieth of each month.

a. When the owner of the licensed establishment is not the licensed owner of the devices, the supplement purse percentage is one-half of the monthly net device revenue received by the establishment owner, after deduction of one-twelfth the estimated total of the annual establishment fees, plus \$100 per device per month and any fee or tax levied by the local governing authority. If a device is in operation for less than 80 percent of the normal available play time during the month when the establishment is open and the device net revenue results in a negative amount designated for purse supplement for horsemen, that negative amount shall not be applied against positive amounts generated by other devices at that licensed establishment.

b. When the owner of the licensed establishment is the licensed device owner, the supplemental purse percentage is one-half of the monthly net revenues in excess of \$500 per device, calculated on a cumulative basis. If a device is in operation for less than 80 percent of the normal available play time during the month when the establishment is open and the device net revenue results in a negative amount designated for purse supplement for horsemen, that negative amount shall not be applied against positive amounts generated by other devices at that licensed establishment.

2. Any monthly report received by the division, HBPA, or LSRC after the twentieth day of the following month will constitute a violation of the rules.

3. Disbursements and use of the purse supplements shall be in accordance with the act.

a. In order to assure proper and timely use of monies designated for purse supplements for horsemen, the LSRC is authorized to provide oversight of collection and use of these monies and to implement procedures and require filing of reports it deems necessary to assure such proper and timely use of income and expenses for purses. Such procedures and reports shall be approved by the division prior to their implementation.

b. The LSRC may audit annually the income received from the video device operations of each licensed pari-mutuel facility or licensed off track wagering facility which is also a licensed establishment as defined in these rules, in addition to oversight by the division to assure proper and timely use of all monies designated for purse supplements of horsemen.

c. Any account or fund used for receipt and/or disbursement of any of the above mentioned monies will be subject to review and/or audit by the division.

F. Methods of Payment, Fines, Fees and Net Device Revenues

1. Required nonrefundable fees for application/renewal and any administration fines or penalties shall be remitted to the following address: Louisiana State Police, Gaming Enforcement Section, Video Gaming division, Box 66614, Baton Rouge, LA 70896.

Said fees shall be remitted in the form of personal, company, certified, or cashier's check, or money order.

2. Franchise fee payments and quarterly device operation fees shall be remitted by electronic funds transfers in

accordance with these rules.

G. Authority to Audit Records

1. Each video gaming device shall have electronic and electromechanical accounting devices to verify the net revenue and winning percentages. In the event of a discrepancy between the electronic and electromechanical account devices, the audit will be performed based on the electronic records stored by the devices. Access to the stored data shall be readily available to the division.

2. All video gaming device owners shall maintain and make available for inspection by the division, information, records, or reports required by the division in any computer form, program, format or storage consistent with the division's record keeping, computer system or access.

3. These records include, but are not limited to; audit tapes, collection reports, bank statements, canceled checks, deposit slips, lease agreements, access log books, and other records of gaming activity as may be required by the division.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2411. Regulatory Communication and Responsibilities

A. Licensed Establishments

1. Licensed establishments shall be required to maintain records, submit reports and maintain current written communications as prescribed by the division. All licensees shall retain all records for a period of three years. Licensed establishment shall make all records readily available to the division for inspection upon request. Any licensee who seeks to surrender his license and cease participation in video gaming shall surrender his license along with legible copies of all of the licensee's video gaming records to the division.

2. All licensees shall submit required reports on forms authorized by the division.

a. All monthly reports are due within five working days after the end of each month if requested.

b. All other reports are due by the date established by the division.

c. A delinquent, inaccurate, or incomplete report shall constitute a violation of these rules.

3. A licensee shall keep and maintain in a legible and orderly manner:

a. all video gaming bank accounts:

- i. video gaming checking accounts;
- ii. deposit slips and related records; and
- iii. other related financial documents;

b. all facility documents including, but not limited to:

- i. employees salary payments and hours worked;
- ii. all taxes paid, federal, state local;
- iii. all contracts and/or subcontracts that exist with

his business;

iv. any other records that would relate to services rendered licensee from another person and or business entity; and

v. training records of employees relating to the devices;

c. for all truck stops, records relative to the gross and net revenue of the establishment as it relates to the sale of prepared food or alcoholic beverages sold for on premises consumption.

4. Device owners shall provide the division with all device related reports, records, and data, in a timely manner. The report shall include but not be limited to the following:

- a. any device transfer or removals shall be reported to the division within five working days;
- b. a device maintenance log of work performed on a device shall be maintained by the licensee;
- c. ticket vouchers remitted by winners may be retained by the licensee for business accounting purposes; and
- d. all other related device records.

5. Video gaming licenses are nontransferable except as provided in LSA-R.S. 33:4862.6(E) and LAC 42:XI:2405.B. The licensee, upon divesting or selling an establishment, shall surrender the video gaming license to the division within 10 days of the effective date of change.

6. A licensed establishment which is a qualified truck stop facility shall provide to the division relevant diesel and gasoline fuel sales data consisting of beginning and ending pump meter readings and summaries of all diesel and gasoline fuel sales, in gallons. Such information shall be given to the division on a quarterly basis commencing on October 1, 1994 on a form supplied by the division for the quarterly period in question.

7. The licensed truck stop facility must also maintain such records which would enable the division to verify, on a pump by pump daily basis, the daily fuel sales at the licensed establishment. Failure to maintain such records will be considered grounds for suspension or revocation of the establishments video gaming license.

8. The division will evaluate each quarterly report to establish the average monthly fuel sales for the period in question. This will determine the number of electronic video draw poker devices which can be legally operated at the truck stop facility during the next quarterly period. The division will disable or enable devices as appropriate.

9. However, no licensed truck stop facility shall in any single month subsequent to September 30, 1994 have a monthly total fuel sales of less than 25,000 gallons. If a licensed truck stop facility fails to sell a minimum of 25,000 gallons of fuel in any single month (except under limited emergency circumstances to be determined by the division) the video gaming license is subject to immediate revocation. The division may require monthly fuel sales reports, on a form supplied by the division, to determine whether this criteria is being met.

10. For the purposes of this Section, only nonbulk transfers of fuel to over-the-road motor vehicles sold at prices not less than the delivered fuel cost may be used to compute these fuel totals. Sales to marine vessels may not be used to compute these fuel totals.

B. Licensed Manufacturers

1. Licensed manufacturers shall be required to maintain records, submit reports, and keep the division currently informed, in writing, of any changes which could affect the status of any records, reports, or gaming devices. Licensed

and formerly licensed manufacturers shall maintain all records for a period of five years. Licensed manufacturers shall make all records readily available to the division for inspection upon request.

2. All licensed manufacturers shall provide the division, if requested, with a semi-annual report on an authorized form provided by the division. The report shall include:

- a. gross machine sales for that period;
- b. specific delivery locations and identity of person(s) purchasing and receiving devices;
- c. description of each device to include, make, model and serial number; and
- d. names and addresses of carriers used in transporting devices.

3. Licensed manufacturers shall request authorization for any device modifications or updates from the division. Any modifications to devices operating in or shipped to Louisiana without prior written approval from the division shall constitute a violation of LSA-R.S. 33:4862.2 and shall be considered an illegal gambling device as provided in LSA R.S. 33:4862.9(D) considered illegal.

4. Manufacturers shall provide to the licensed distributors and device owners and to the division, a recommended maintenance schedule for each device.

5. Licensed manufacturers and distributors shall develop and provide to the licensed device owner a division-approved training program to train and certify technicians. Training records shall be documented and retained by the respective manufacturer and distributor and shall be available for inspection upon request by the division.

6. Licensed manufacturers and distributors shall certify service entity personnel to perform service work on their devices, develop the service training, award certification to authorized service personnel, and maintain the training records and certificate awards. The licensed manufacturer and distributors shall provide the division with a current list of authorized service entities and personnel. The list shall be updated as needed to maintain an accurate list of service personnel to include, but not limited to the following:

- a. name and address of service entity and each of its certified technician(s);
- b. technician's social security number and date of birth.

7. Licensed manufacturers shall provide the division at least three working days advance notice of shipments and an inventory list of video gaming devices shipped to or through Louisiana. The inventory list shall contain, but is not limited to the following:

- a. destinations of devices shipped;
- b. specific shipping routes if available and dates;
- c. each device's make, model, and serial number; and
- d. name and address of carriers transporting devices.

8. Licensed manufacturers shall sell video gaming devices only to licensed video gaming distributors.

C. Licensed Distributors

1. Licensed distributors shall be required to maintain records, submit reports and keep the division currently informed in writing of any changes which could affect the status of records, reports, or gaming devices. Licensed or

formerly licensed distributors shall maintain all records for a period of three years.

2. Licensed distributors shall provide the division, if requested, with quarterly reports on authorized forms provided by the division. The reports shall include, but are not limited to the following:

- a. gross device sales for the quarter;
- b. licensed device owners names and delivery address of devices sold;
- c. device description to include make, model, and serial number; and
- d. copies of invoices, credit memos, and/or documents substantiating transactions of sale if requested.

3. All licensed distributors shall provide the division, if requested with a quarterly inventory report on authorized forms provided by the division, which shall include, but is not limited to the following:

- a. a total number of devices in inventory; and
- b. each device's make, model, and serial number.

4. A licensed distributor may buy gaming devices from or sell gaming devices to a licensed manufacturer, licensed device owner, or another licensed distributor.

D. Licensed Device Owner

1. Licensed device owners shall provide to the division, if requested, a monthly report, on authorized forms provided by the division, to include, but are not limited to the following information:

- a. gross and net device revenue; and
- b. a listing of each device indicating make, model and serial number and physical location.

2. A licensed device owner shall maintain records and audit tapes in a safe and secure storage area.

Audit tapes shall be kept by the licensee for a period of three years.

3. A licensed device owner may buy video gaming devices from or sell video gaming devices to a licensed distributor, or another licensed device owner, if approved by the division.

4. All licensees shall submit required reports on forms authorized by the division.

a. Any reports requested by the division shall be due within five working days of said request.

b. All other reports are due by the date established by the division's rules and regulations.

c. A delinquent, inaccurate, or incomplete report shall be considered a violation of these rules.

5. If applicable, a licensee shall keep and maintain in a legible and orderly manner:

- a. all video gaming bank accounts:
 - i. video gaming checking accounts;
 - ii. deposit slips and related records; and,
 - iii. other gaming related financial documents;
- b. all facility documents including, but not limited to:
 - i. employees salary payments and hours worked;
 - ii. all taxes paid, federal, state and local;
 - iii. all gaming related contracts and/or sub-contracts that exist with his business;
- c. any other records that would relate to services rendered licensee from another person and or business entity; and

d. training records of employees relating to the devices.

6. Licensed device owners and formerly licensed device owners shall maintain all records for a period of three years.

7. Unless specifically authorized by the division, licensed device owners are prohibited from possessing RAM clear chips.

8. Anytime a device located in a licensed establishment is disabled from the central computer for a period in excess of 72 hours, the device owner shall transfer the device back to its warehouse and notify the division using the appropriate transfer report form within five working days.

E. Licensed Service Entities

1. Licensed service entities shall be required to maintain the following records:

- a. invoices, of all services and/or repairs to devices, which shall contain, but not be limited to:
 - i. date device was received;
 - ii. date device was serviced;
 - iii. date device was returned;
 - iv. service entity name and license number;
 - v. device owner name and license owner;
 - vi. manufacturer, make, and model number of the device;
 - vii. device serial number;
 - viii. description of service and/or repair performed on the device;
 - ix. name of certified technician performing service and/or repair on the device;
 - x. electronic and mechanical meter readings before and after service and/or repair of the device;
- b. a list of all certified technicians, including a list of the types of devices that each is certified to service and/or repair, and who certified the technician.

2. Licensed service entities must have adequate facilities approved by the division to repair, service, and maintain video gaming devices and the ability to make service calls at licensed establishments and must have a certified technician(s) or have employee(s) that work for him who are so trained and certified. A service entity may contract with a device owner to maintain, repair, and service video gaming devices.

3. Unless specifically authorized by the division, licensed service entities are prohibited from possessing RAM clear chips.

F. Contracts

1. In the process of licensing, the division may consider if any contract necessary or useful to obtaining a license under this part, was obtained by force, threat, intimidation, misrepresentation or fraud, or by means other than arms' length negotiations. If the division finds that this is the case such contract shall be null and void.

2. Misrepresentation of contracts concerning activities regulated by the act is prohibited, and shall be grounds for denial, suspension or revocation of a license as well as possible criminal charges.

3. Any applicant for licensing or a licensee shall submit copies of all written contracts pertaining to the operation of video gaming devices and summaries of all oral contracts pertaining to the operation of video gaming devices to which

it is a party or intends to become a party within 10 days of signing or making such contract.

4. Every person who is a party to any video gaming contract with an applicant for a license, or with a licensee shall provide the division, upon request, with all information regarding the following: financial holdings, real and personal property ownership; interests in other companies; criminal history; personal history and associations; character; reputation in the community; and any other information which might be relevant to determine whether a person would be suitable for participation in the video gaming industry.

5. Failure to provide all information requested, as provided above, shall constitute sufficient grounds, without more, for the division to require a licensee or applicant to terminate its video gaming contract with any person who failed to provide the information requested.

6. No licensee shall enter into or continue any contract with any entity which the division determines to be unsuitable.

7. Every person who has or controls directly or indirectly more than a five percent ownership, income, revenue, or profit interest in an entity which has or applies for a license in accordance with the provisions of this Part, or who receives more than a five percent revenue interest in the form of a commission, finders fee, loan repayment, or any other business expense related to the gaming operation or who has the ability, in the opinion of the division, to exercise a significant influence over the activities of a licensee authorized or to be authorized by this Part, shall meet all suitability requirements and qualifications for licensees. For the purposes of this Part, all gaming related associations, outstanding loans, promissory notes or other financial indebtedness of an applicant or licensee must be revealed to the division for the purposes of determining significant influence and suitability.

8. Every licensee or applicant requested by the division to terminate its video gaming contract with any person pursuant to this regulation must immediately terminate its video gaming contract and may not enter into a new video gaming contract with such persons, or any affiliated with such person, without the approval of the division.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2413. Devices

A. Device Specifications

1. All devices shall include all of the specification as provided in LSA-R.S. 33:4862.2. In addition, all devices shall include the following specifications:

a. Each device shall only accept either coins or currency. If the value of one dollar or less is desired, then a \$.25 coin shall be the designated coin to be utilized in the devices. Currency shall be only of U.S. denomination.

b. Each enabled video gaming device must have fully functioning electronic (soft) meters and electromechanical (hard) meters capable of displaying monetary transactions and printing a record of those transactions. The device memory

shall retain those monetary transactions for a period of no less than 180 days including:

i. electronic meters: credits in, credits played, credits won, credits paid out, times logic area accessed, times cash door accessed, credits/money won, number of credits representing money inserted by a player and credit for games won but not collected (credit balance);

ii. electromechanical meters: money inserted into devices, total credits of ticket vouchers printed, credits played, and credits won.

c. The main logic board and printed circuit board containing the game Erasable Programmable Read-Only Memory (EPROM) shall be separate in a locked area of the device. Each EPROM and logic board shall have a nonremovable number affixed or inscribed.

d. Each device shall have a permanent serial number plate as provided in LSA-R.S. 33:4862.2. The serial number plate shall be located on the upper right side panel of the device when viewed from the front and shall contain the following information:

i. manufacturer's name;

ii. model number according to manufacturer;

iii. date of manufacture and assembly; and

iv. the unique serial number of the device not to exceed nine alpha and/or numeric characters.

e. Devices shall only publicly display information on the screen or housing that has been approved by the division.

i. All information required for external display shall be kept under an approved transparent material, (i.e., shatterproof glass or plexiglass) and at no time may any stickers or other foreign objects or substances be placed on the device face or housing, without written approval by the division.

ii. Age restrictions shall clearly be shown on the face of each device. (NO PERSON UNDER THE AGE OF 18 ALLOWED TO PLAY)

f. All internal access to the device shall be controlled through a series of locks.

i. Access to the internal functions of the device shall be gained from a working front panel of the device.

ii. Access from one locked area within the device to another shall not be allowed.

iii. All keys to each device shall be secured and readily available to the division.

g. All devices must have line filters and surge protection built into the device so as to regulate the flow of electrical current.

i. A circuit-interrupting device, method, or capability which will disable the operation of the device shall be installed by the manufacturer so as to maintain the integrity of the division approved program for the device if the device is accessed or the program is altered.

ii. The device shall be equipped with a line filter and surge protector that will control all a.c. electrical current to the device and a back-up or alternate power supply source capable of maintaining the integrity of all electronic meters as well as time and date functions for a 30-day period during any power fluctuation or total power loss. The battery or back-up power source must be in a state of charge or "readiness"

during the normal operation of the device.

iii. All devices shall pass a static discharge test which shall be uniform for similar devices as required by the division before being certified.

h. The game in each device shall be random and shall be tested to at least a 99 percent certainty using a standard correlation analysis. Correlation test or analysis is when each card, or number position is chosen independently without regard to any other card or number drawn within that game play.

i. All video gaming devices must have an approved and fully functioning security system that will temporarily disable the gaming function of the device while open. Each device, upon breach of security, shall notify the central computer via electronic signal upon polling.

j. All devices shall have an approved security system that will disable the device if the division approved program is altered or accessed.

k. All devices shall have a lockout mechanism which prohibits the device from accepting coins or bills during the play of a hand.

l. Each device shall be constructed so that players are not subject to any physical, electrical, or mechanical hazards. All devices shall be constructed to meet UL-22 or CSA/NRTL standards.

m. No device shall have any switches, jumpers, wire posts, or any other means of manipulation that could be used to affect the outcome of a game. Devices shall not have any functions or parameters which are adjustable by or through any separate video display or input codes except for adjustment features which are cosmetic.

n. The ticket voucher printing system shall be located in a locked compartment of the device to safeguard the audit copy for the division.

i. Printing of all totals from the meters shall occur automatically by means of a switch attached to the locking mechanism each time the device is accessed.

ii. The printing system shall have a paper sensing device which prevents play and disables the system if there is insufficient paper to print a ticket voucher for a player or an audit copy. Upon sensing the "paper low" or "paper out" signal, the device shall finish printing the ticket voucher for the last game played and prevent further play. Once the paper has been replaced, power to the printer shall be restored and play may resume.

iii. The paper contained in the printing mechanism for the printing of the ticket vouchers and the audit copy shall be of a "security type", so that the integrity and security of the copies are safeguarded from copying, altering, or falsifying. The security paper shall be approved by the division prior to use in the devices.

o. Each device shall upon command be able to display the most recent game history of at least two plays including the current game play.

2. Licensee of the licensed establishment shall provide a separate voice grade telephone line which shall provide exclusive, continuous capabilities, for the division, to access licensed devices. Any device that loses telephone line service for any reason, within the control of the licensee, shall constitute a violation of these rules. Violations include, but

are not limited to:

a. the loss of service due to delinquent or nonpayment of telephone service;

b. the internal disruption of service resulting from tampering with the communications link or generated by a request to the phone company to disconnect service; or

c. any other method of interference with normal telephone service.

3. No licensee of a licensed establishment shall allow a device to be played unless connected to the required telephone line service and to the division's central computer system.

a. To insure successful operation and security of the system, no device shall be enrolled to the system without proper coordination and security procedures between the central computer office personnel and authorized personnel at the licensed establishment where the devices are located.

b. Each device shall meet the required central computer communications protocol requiring compatibility with the system during the enrollment procedure. A security related data exchange must occur between the device and the central computer to ensure the integrity and security of the communication link prior to the transmission of any information. Failure of the device to send the appropriate data back to the central computer will indicate a communication failure and will preclude operation of the device.

c. Each device shall report electronically as required or it shall be disabled.

d. If a device is not polled by the central computer within the specified time period, the device shall automatically disable itself. The device shall accept a parameter from the central computer that specifies the time period.

4. Device owners shall be responsible for the proper installation of devices within the licensed establishments.

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode. No person other than a licensee shall be allowed to have in his possession or control any device unless said device has been properly enrolled by the division. After January 1, 1996, no device operating in demonstration mode may accept coin or currency.

6. Manufacturers shall submit to the division and its designated testing facility, in writing, a complete description, explanation, and location of all hidden icons.

B. Device Modifications

1. No device shall be altered or modified, temporarily or permanently, without prior written approval from the division.

2. Unauthorized modifications of any type shall be grounds for immediate suspension.

C. Enrolling Procedures

1. Upon receipt of a video gaming license, a licensee of a licensed establishment shall be authorized to obtain video gaming devices for his facility and shall perform the following functions:

a. Device owners shall provide all telephone service terminals to facilitate proper enrolling procedures.

b. Upon receipt of devices, device owners shall notify the division to facilitate initial enrolling procedures.

c. Once the initial enrolling procedure is successfully

completed, the licensee shall await final approval and notification by the division prior to participating in gaming.

2. Each device shall have a feature that will accept a "shutdown" command from the central computer and obey that command.

D. Requirements for Video Gaming Devices Manufactured in Louisiana

1. Marking of Devices

a. A manufacturer of video gaming devices shall not distribute said devices in this state unless the video gaming device has been issued a unique permanent serial number.

b. The unique serial number of the device shall be affixed to the upper right side panel of the device when facing it from the front.

c. The unique serial number shall be stamped or engraved in letters and/or numbers no less than seven millimeters in height on a nonremovable metal plate attached to the cabinet of the device.

2. Registration of Devices

a. Each manufacturer shall keep a written log of the date of manufacture and the serial numbers of the device.

b. Names, address, telephone numbers, and state of residence of the person or persons to whom the video gaming devices have been distributed shall be provided to the division immediately upon request.

3. Distribution of Devices

a. Video gaming devices manufactured in Louisiana shall not be shipped within or from the state of Louisiana without written approval from the division.

b. Application for shipment of gaming devices from the state must be made and processed using forms approved by the division.

c. Information regarding shipments shall include the following:

i. the full name, state of residence, address, telephone number and social security number of both the purchaser and the person to whom the shipment is being made;

ii. the destination, including the port of exit if the destination is outside the continental United States;

iii. the number of gaming devices to be shipped;

iv. the serial number of each device shipped;

v. the model number of each device and the month and year of manufacture;

vi. the expected time and date of shipment; and

vii. The method of shipment, including the name and address of carrier.

d. Manufacturers shall not ship video gaming devices or related parts to a destination where possession of said devices is unlawful.

e. Manufacturers shall provide the division a copy of their registration with the United States Attorney General pursuant to the provision of the gaming devices Act of 1962, 15 U.S.C. and 1173 for the current year.

f. The division may inspect any video gaming devices or related articles prior to shipment.

E. Inspection of Devices

1. The division or its authorized representative(s) shall be authorized at any time to conduct routine or random

inspections of and for any video gaming device in any place controlled by the licensee where video gaming devices could be located.

a. The licensed facility shall provide the division unencumbered access to any room or any area in the facility where video gaming devices or device components could be located.

b. Video gaming devices which are not in compliance with these rules shall be subject to seizure.

2. Validation decals shall be issued by the division for devices and shall be promptly affixed by a division representative to an enrolled device. The validation decal shall be affixed to the upper left corner of the right side of the device.

a. When a device is permanently removed from service by a licensed device owner, the validation decal shall be removed by that device owner and shall be returned to the division accompanied by the completed device transfer report on the appropriate form as provided by the division. The completed device transfer report shall be submitted to the division within five working days via hand delivery or certified mail, return receipt requested.

b. No device which is permanently out of service shall have a validation decal displayed on it.

c. For the purpose of these rules, devices permanently removed from service shall mean devices:

i. that are sold back and shipped to the distributor or manufacturer; or

ii. that are damaged beyond repair due to theft, vandalism, or natural disasters.

d. In the case of devices that are damaged beyond repair due to theft, vandalism, or natural disasters, the device owner may petition, in writing, the division for a credit to be applied to a replacement device, of the same make and model, in the amount previously received by the division.

F. Testing of Video Gaming Devices

1. The division shall supply the licensed manufacturers with a tentative timetable for the implementation of acceptance testing and adaptability of the video gaming devices to the central computer of the division.

2. Manufacturers shall supply the division with timetables and guidelines for accomplishing tasks involved in the acceptance testing of video gaming devices within the division parameters. This will include system functions and communication procedures of information to and from the division's central computer and the devices.

3. Manufacturers shall continue to be responsible for the integrity and compliance of the device. Manufacturers may also be required upon request to provide assistance in troubleshooting communication and technical problems once the devices are placed at the licensed establishments, at no cost to the division.

4. Manufacturers shall submit schematic diagrams, illustrations, technical and operational manuals, program source codes and other information the division determines to be necessary to the operation, maintenance, and testing of the devices. Such information shall remain confidential.

5. Testing of the devices shall require working models of devices, associated equipment, and documentation described above to be transported to locations specified by the division

for examination and analysis.

6. The testing, examination, and analysis of the devices may require dismantling and some tests may result in permanent damage of one or more components. The manufacturer shall be required to provide additional parts or components to complete testing, and specialized testing equipment to ensure integrity and durability to the satisfaction of the division. In addition:

a. Manufacturers shall submit all hardware, software, and testing equipment for testing of their video gaming devices.

b. All devices shall have built in diagnostic functions for testing of all major components.

c. The quality of the hardware, software, and components submitted for testing shall be of the same quality as devices offered to licensees.

d. No device shall contain software that has any transparent codes, security features, or passwords, that would or could evoke any functions, or sub-routines that would alter any game characteristics, required features, specifications or device capabilities such as pay tables, payout percentages, or counters.

7. The division may accept the results of testing done by division approved independent laboratories which were performed on specified devices at the request of the division.

8. Manufacturers shall bear the costs associated with initial device testing and subsequent testing and investigation.

G. Disabling or Seizure of Devices

1. The division shall have the authority to seize any device at any location when a violation of law or these rules occur.

2. The division shall have the authority to seize, for evidentiary purposes, devices used in the commission of violations of a local, state, or federal statute(s) or administrative rules and/or regulations.

3. Any monies or revenues in a device at the time of seizure shall be forfeited to the division upon determination by the division that the device is illegal or not in compliance with the act or these rules. The forfeited monies seized shall be in addition to any civil penalties imposed upon the licensee.

4. The division shall have authority to disable and/or seize any video gaming devices in any licensed establishment when there is evidence of unsuitable conduct at the licensed establishment. In those cases where the division determines that the device owner was not responsible or involved in the unsuitable conduct, the device(s) may be returned to the device owner.

H. Maintenance

1. Only certified technicians may access the interior of an enrolled and enabled video gaming device. Access of the devices includes routine maintenance, repairs or replacement of parts, paper, etc.

a. A licensee who authorizes a certified technician to access the licensee's video gaming device(s) is responsible for any actions by the certified technician which would constitute a violation of these regulations.

b. Authorization from a licensee to a certified technician to access the licensee's gaming device(s) shall constitute an employer/employee relationship. This

relationship may be in the form of a contractual arrangement.

2. For each device operating within a licensed establishment, the device owner shall maintain a current, written maintenance log on a form approved by the division for the purpose of keeping records of routine maintenance and repairs except as otherwise authorized by the division. A log entry shall contain the following information:

a. time and date of access or entry;

b. reason for access;

c. electromechanical meter readings;

d. Social Security Number, the signed and printed name of the certified individual accessing device;

e. area accessed; and

f. time and date device was secured.

3. Any replacement or repair of a device component which may cause a change, disruption, or a loss of memory in the meter readings shall be reported to the division at the time of repair. This service/repair report shall be completed and forwarded to the division immediately.

4. A division approved RAM clear chip and procedure must be utilized whenever a video gaming device's memory is to be cleared.

5. Whenever a video gaming device's software program is to be changed or upgraded, prior approval must be obtained from the division and the video gaming device's memory must be cleared utilizing a division approved RAM clear chip.

6. Only licensed manufactures, licensed distributors, and division personnel are allowed to possess RAM clear chips for video gaming devices.

7. Use of any other method to clear a video gaming device memory is prohibited unless specifically authorized by the division.

8. Before a device is disconnected from the division's central computer for any reason, the division shall be notified.

9. A device may not be substituted or replaced until the replacement device has been approved by the division as evidenced by the presence of a validation decal.

I. Device Security and Shipments

1. Any licensee who is shipping devices into, within, or from this state for any purpose shall provide the division with information relating to those shipments, in writing, on a form provided by the division, their origin, destination, and the nature of the shipment of said devices. No licensee may ship any device until the shipment is approved by the division.

a. All devices shall be shipped only to a division approved destination.

b. The shipper shall provide the division with the make, model number, and serial number of the device being shipped.

c. The report shall include an inventory of the number of devices shipped.

d. The division shall be notified at least three working days prior to shipment of any device.

e. The devices must be shipped within 10 days of the shipment notification. The division shall be notified immediately by the shipper if the devices cannot be moved within the time frame on the shipment notification. A copy of the completed form containing the approval for shipment must be in the possession of the carrier during shipment of the listed devices.

f. Any manufacturer, distributor, or owner who ships devices to a destination other than an approved location by the division shall be subject to suspension or revocation of license or a fine levied by the division.

2. Licensees shall provide the division or its authorized representative, access to the secured areas of each approved device upon request.

J. Contraband Equipment/Unregulated Devices

1. No person shall place or allow the placement of any video gaming device in any establishment unless the device is placed pursuant to the provisions of the act.

2. No licensee or person may knowingly possess or offer for play any unlicensed device, or any other gambling device as defined in LSA-R.S. 15:31 whether electronic or mechanical, which plays, emulates, or simulates the game of draw poker and contains a circuit, meter, or switch capable of recording the removal of credits earned by a player or any variation thereof. Possession of such contraband devices shall constitute a violation of the division's rules and state law.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2415. Gaming Establishments

A. Facility License

1. The division may issue a license to qualified applicants based on the type of business being conducted. Licenses issued by the division will be categorized by Roman numerical designation. The types of licenses and the requirements for these licenses are as follows:

a. Type "I" License. Any bar, tavern, cocktail lounge or club only, as defined in LSA-R.S. 33:4862.1(B)(8) (licensed establishment) shall be designated as a type "I" establishment. All type "I" establishments shall be limited to the number of devices as provided in LSA-R.S. 33:4862.6(A)(2).

b. Type "II" License. Any restaurant, as defined in LSA-R.S. 33:4862.1(B)(12) shall be designated as a type "II" establishment. All type "II" establishments shall be limited to the number of devices as provided in LSA-R.S. 33:4862.6(A)(2).

c. Type "III" License. A hotel or motel as defined in LSA-R.S. 33:4862.1(B)(7) and LSA-R.S. 33:4862.6(A)(2) shall be designated as a type "III" establishment. All type "III" establishments shall be limited to the number of devices as provided in LSA-R.S. 33:4862.6(A)(2).

d. Type "IV" License. A Louisiana state racing commissioned licensed race track, pari-mutual wagering facility, or offtrack wagering facility as defined in LSA-R.S. 33:4862.1(B)(8) (licensed establishment) shall be designated a type "IV" establishment. All type "IV" licensed establishments may be allowed to operate the number of devices as provided in LSA-R.S. 33:482.6(A)(3).

e. Type "V" License. A qualified truck stop facility as defined in LSA-R.S. 33:4862.6 shall be designated a type "V" establishment. All type "V" licensed establishments may be allowed to operate the number of devices as provided in LSA-R.S. 33:4862.6(A)(4).

B. Operations of Facilities

1. The licensee or the designated representative shall make himself readily available to the division upon request by the division. In the event the licensee is absent from the licensed establishment or his place of business, he shall appoint an employee as his designated representative, and that designated representative shall make himself readily available to the division.

2. The following requirements shall apply to a licensee concerning the providing of designated representatives to the division. These include, but are not limited to the following:

a. Only the licensee shall be authorized to designate an employee of the establishment as a designated representative. The designated representative must be capable of meeting the suitability criteria as defined by the act and this Chapter.

b. The designated representatives and the licensee shall possess the knowledge to locate all records and documents and must have knowledge of all day-to-day operations of the licensed entity.

c. The designated representative and licensee shall be knowledgeable of the division's rules and the provisions of the act.

d. The designated representatives shall have access to all buildings, rooms, etc. on the premises.

e. The licensee shall provide, in writing, a current list of his designated representatives to the division. The licensee shall update this list promptly and as necessary to conform to the division's requirements.

f. A current copy of said rules shall be maintained at the licensed establishment for ready access by the licensee and/or his designated representative.

C. Security

1. Security personnel shall be required at all video gaming device facilities at all times the establishment is opened for gaming. Security personnel may include designated representatives, managers, or other persons employed by the establishment, independent licensed and insured security guards or off-duty Peace Officers Standards and Training (P.O.S.T) certified law enforcement officers.

2. In all Type "IV" and Type "V" establishments with more than 20 devices, licensed and insured security guards or off-duty P.O.S.T. certified law enforcement officers shall be required. Security guards in Type "IV" and "V" establishments, other than off duty P.O.S.T. certified law enforcement officers, shall possess a security guard identification card issued by the Louisiana State Board of Private Security Examiners at all times while on duty at the establishment.

a. Each licensed establishment shall be required to have in its employ or under contract a sufficient number of security personnel to provide for the safe operation, safety, and well being of patrons of the establishment.

i. The number of security personnel shall be sufficient as to provide for the safety of all patrons while on licensed establishment property.

ii. In the event the division determines that an unsafe situation exists for the patrons, the division shall have the authority to mandate that the licensee provide additional security measures necessary to correct the situation. A

licensee failing to comply with the security requirements will be considered in violation of these rules.

b. All video gaming devices are to be located in an area which is within the sight and control of the designated representative, manager, or employee of the establishment. Such person shall:

- i. ensure that the video gaming devices are not tampered with, abused, or in any way altered by patrons;
- ii. ensure that any patron desiring access to the devices for play is not discriminated against nor denied use of the devices;
- iii. ensure that persons under the age of 18 are not allowed to play or operate video gaming devices on the licensed premises;
- iv. prohibit any person who appears to be obviously intoxicated through his conduct or behavior or causes a public nuisance to participate in the play of video gaming devices.

c. All Type "V" establishments with 20 or more video gaming devices enrolled for play, shall provide video security surveillance, approved by the division, for the continuous monitoring of all gaming activities.

D. Damage to or Theft from Devices

1. Upon discovery of damage to or theft from a video gaming device, the device owner or licensed establishment shall request the local law enforcement agency to investigate.

2. The device owner or licensed establishment shall also immediately notify the division via telephone. If after normal business hours or on weekends, this notification may be accomplished by notifying the division on the next regular business day.

3. After investigation by local law enforcement authorities, the device owner shall obtain and forward the following reports to the division:

a. service/repair report with the appropriate meter readings from the device with an audit ticket attached. The meter readings should be taken as soon as possible after the discovery of damage or theft; and

b. when possible, an offense/complaint report from the local enforcement agency.

E. Payment of Prizes

1. Each video gaming establishment shall have an employee authorized to make payment for valid ticket vouchers during business hours.

2. Winnings shall be paid promptly upon presentation of valid ticket voucher(s).

3. The division is not responsible for payment of prizes to winners, however, failure to make timely payments as required shall be grounds for the suspension or revocation of the license, or assessment of a civil penalty.

F. Structural Requirements for Licensed Facilities

1. No licensed facility can be altered, renovated, or expanded primarily for the purpose of installing more than three devices without first submitting to the division, written notification of the intent along with a set of plans, of the projected changes, by registered letter with return receipt request.

2. Any licensed establishments that allow mixed patronage, shall have devices for play and operation only in designated areas. These gaming areas shall be physically

separated by a partition as provided in LSA-R.S. 33:4862.2(D)(2). The partition must be permanently affixed and solid except for an opening to allow for player access into the gaming area. In addition, with respect to qualified truck stop licensed establishments, the gaming areas shall be separated so as to prohibit access by minors.

3. The gaming area shall be of sufficient size to accommodate both devices and patrons comfortably and safely.

4. A licensed establishment which is a hotel or motel, operating under a single Alcohol Beverage Control permit for on-premises consumption of alcoholic beverages, cannot have video draw poker devices in any bar or lounge which has a connecting doorway or other opening to any other bar or lounge which has video draw poker devices.

5. In any building or structure housing more than one licensed establishment, the licensed establishments shall not be connected by a doorway or other opening which would allow a person to go from one licensed establishment to the other without first exiting the premises of one or the other establishment. Each such licensed establishment must possess either a Class "A" general retail permit or Class "A" restaurant permit issued by the Office of Alcoholic Beverage Control.

6. A licensed establishment which is connected by a doorway or other opening to any other licensed establishment or to any other business establishment whether or not such other establishment is eligible for licensing by the division shall:

a. have a door or doors between the licensed establishment and the nonlicensed entity which must automatically close;

b. have a separate outside entrance for patrons such that an individual patron may enter the licensed establishment from the exterior of the building;

c. keep business records and books that are separate from those of the nonlicensed entity;

d. have personnel who work solely for the licensed establishment and not for the nonlicensed entity during all hours of operation of the licensed establishment.

G. Device Placement

1. Device groupings shall be physically located within the licensed establishment.

2. No device shall be placed closer than 12 inches to any other device except devices may be placed back to back or in a carousel.

H. Location of Licensed Establishment

1. Except as provided in Subsection G.2 of this Section, video gaming shall be prohibited as provided in LSA-R.S. 26:281. Existing establishments that are 300 feet or less may be deemed suitable for licensing by the division if already established as an alcohol beverage outlet.

2. All applicants for a truck stop license shall comply with the distance requirements as provided in LSA-R.S. 33:4862.6(C)2.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2417. Activities Affecting General Public

A. Minors

1. Licensed establishments shall have signs posted on the premises which restrict the patronage of persons under the age of 18 in those areas where gaming is conducted.

2. All licensed establishments shall meet structural requirements as provided in §2415.E, so as to restrict access by minors to those areas where gaming is conducted.

3. All licensed establishments shall have, during all hours of normal operation, a manager or designated employee to prevent access to the gaming area by minors.

B. Notification of Gaming Activities. All entrances to the device area shall be labeled with three-inch letters stating:

1. No Minors Allowed
2. Gaming Devices Inside

C. Advertising

1. Except for a uniform logo which has been adopted by the division, no other advertising of video gaming activities may be displayed on the outside of the licensed establishment premises. The logo format previously made available to all device owners may be obtained for duplication by all licensed establishments from their respective device owners.

2. For the purpose of this Section, the word premises will mean the entire property which constitutes the licensed establishment. In the case of a licensed truck stop this would mean the entire five acres.

3. The division will not regulate the size or construction material for the approved logo nor will it regulate the physical placement of such logo at a licensed premises. The division will enforce the prohibition of any other type of video gaming advertising at a licensed premises.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2419. Forms and Reporting Requirements

A. Forms

1. The division shall have the authority to require, design, prescribe and amend all forms.

2. The division shall have the authority to require submission of any additional forms, reports, or records which it deems necessary.

3. Any person who intentionally makes, causes to be made, or aids, assists, or procures another to make a false statement in any report disclosure, application, permit form, or any other document required by this Chapter shall be subject to the provisions of LSA-R.S. 33:4862.9(A).

B. Application

1. All applications for a license shall be submitted on forms provided by the division and mailed to: Louisiana State Police, Gaming Enforcement Section, Video Gaming Division, Box 66614, Baton Rouge, LA 70896.

2. An application is not complete nor is it considered filed with the division unless it contains all information required by the division, is submitted with the appropriate fee, is signed by the applicant, and is date stamped received by the division.

3. All new applications or renewals shall be hand delivered or mailed to the division via certified or registered mail only, with return receipt requested.

4. Each applicant for a license shall comply with the provisions of LSA-R.S. 33:3862.6(B). In addition, each applicant shall be required to disclose any violation of an administrative regulation of any jurisdiction.

5. All licensed establishment applications submitted to the division shall be for an existing operating business.

6. All applications shall contain a permanent address, to include the existing physical location of the applicant. Except for a manufacturer's application, all applications shall include an accurate sketch of the facility's interiors, and the proposed location of all video gaming devices located therein. In addition, the sketch shall include all grounds and parking areas. The application shall include the name of owner(s) of the building and/or the grounds on which the establishment is located.

7. All renewal applications, shall be submitted in completed form, including a Louisiana State Tax Clearance Certificate. Out-of-state manufacturers shall not be required to submit a Louisiana State Tax Clearance Certificate.

8. Incomplete applications, including failure to pay fees, may result in a delay or denial of a license.

9. All applications shall contain a telephone number and permanent mailing address for receipt of correspondence and service of documents by the division and shall be an address at which mail is checked every business day by a representative of the applicant.

10. The division may require additional information from an applicant for clarification or in furtherance of an investigation of the applicant. Applications which lack such additional information shall be considered incomplete.

11. All applications are to contain a properly notarized oath by the applicant that:

- a. the information contained therein is true and correct;
- b. the applicant has read the act and these rules, and any other informational materials supplied by the division in connection with the application process; and
- c. that the applicant agrees to comply with the act and these rules.

12. The applicant who intentionally makes, causes to be made, or aids, assists, or procures another to make a false statement in any report disclosure, application, permit form, or any other document required by the rules or the act shall be subject to the provisions of LSA-R.S. 33:4862.9(A).

13. The applicant will notify the division in writing of all changes of address, phone numbers, personnel, and other required information in the application within 10 days of the effective date of the change.

14. All applicants must comply with the residency requirements found at LSA-R.S. 33:4862.17.

15. Application shall be denied any applicant who has been convicted in any jurisdiction for any of the following offenses within the 10 years prior to the date of the application, and at least 10 years has not elapsed between the date of application and the successful completion of any service of a sentence, deferred adjudication, or period of probation or parole for any of the following:

- a. any offense punishable by imprisonment for more than one year;
- b. theft or any crime involving false statements or declaration;
- c. gambling as defined by the laws or ordinances of any municipality, parish (county), or state, the United States, or any similar offense in any other jurisdiction.

16. The applicant must be current in filing all applicable tax returns or in payment of all taxes, interests, and penalties owed to the state of Louisiana, local governmental units, and the Internal Revenue Service, excluding items under formal appeal pursuant to applicable statutes or payment agreement. Continued failure to timely file tax amounts due, except those under dispute, shall be grounds for revocation, suspension or condition of license.

17. The division may deny or condition the application of any person or entity pursuant to the authority of LSA-R.S. 33:4862.8 and LSA-R.S. 33:4862.10.

C. Reporting Requirements

1. **Manufacturer Report.** Each licensed video gaming device manufacturer shall file, if requested by the division, a semi-annual report signed by a designated official of the company on forms prescribed by the division. The report shall be postmarked no later than the last business day of July for the reporting period of January through June and no later than the last business day of January for the reporting period of July through December. Business days are defined as Monday through Friday, not including state or federal holidays. The report shall include, but is not limited to the following information:

- a. names and addresses of licensees to whom the devices were sold;
- b. number of devices sold to each licensee; and
- c. serial number of each device sold;
- d. the division may request the sale price of each device.

2. **Distributor Reports.** Each licensed distributor shall file with the division, if requested, a quarterly report signed by the designated company representative on a form prescribed by the division. The report shall be postmarked no later than the tenth day of the first month following the end of the quarter. Quarters of the year are defined as:

- a. first quarter shall be January 1 - March 31;
- b. second quarter shall be April 1 - June 30;
- c. third quarter shall be July 1 - September 30; and
- d. fourth quarter shall be October 1 - December 31.

3. Distributor's reports shall include, but are not limited to the following information:

- a. licensed owners or other licensees that the devices were sold or leased to;
- b. number of devices sold to or leased to licensees;
- c. total amount of sales to each owner if requested by the division; and
- d. serial number of each device sold.

4. Licensed manufacturers and distributors shall maintain a record of devices received, devices sold, and devices in inventory.

5. **Device Owner Reports.** Each licensed device owner shall file with the division, if requested, a monthly report

signed by a designated company official on forms prescribed by the division. The reports must be postmarked no later than the tenth day of the first month following the end of the month for which they are required. Device owner reports shall include, but are not limited to the following:

- a. licensed establishment where each device is located;
- b. number of devices at each establishment;
- c. make, model, and serial number of each device;
- d. electromechanical and electronic meter readings for each device on the last day of the month of the reporting period; and
- e. actual cash collected from each device in comparison with the meter readings.

6. **Licensed Establishment Reports.** Licensed establishments shall file with the division, if requested, a quarterly report signed by a designated representative on forms prescribed by the division. The reports must be postmarked no later than the tenth day of the first month following the end of the month for which they are required. The reports shall include, but are not limited to the following:

- a. licensed device owners which have devices on establishment premises;
- b. number of devices each device owner has on premises; and
- c. make, model and serial number of those devices.

7. Any report postmarked later than the accepted date shall be considered in violation of these rules and will be subject to penalty.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2421. Code of Conduct of Licensee

A. The division may deny, impose a condition or fine, suspend, or revoke any license, renewal, or application for a violation of any rules and regulations of the division or of the act.

B. No licensee shall engage in unsuitable conduct or practices or shall employ or have a business association with anyone who engages in unsuitable conduct or practices.

C. For purposes of Subsection B, unsuitable conduct or practices shall specifically include, but not be limited to the following:

- 1. employment of, in a managerial or other significant capacity as determined by the division, business association with, or participation in any enterprise or business, except for race horse care personnel, with a person convicted of a felony or declared unsuitable by the division;
- 2. employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;
- 3. misrepresentation of any material fact or information to the division;
- 4. engaging in, furtherance of, or profit from any illegal activity or practice or any violation of these rules or the act;
- 5. obstruction of the activities of the division or its agents;

6. the conducting of activities, whether or not authorized by the act or these rules, in such a manner as to give the appearance of violations of the act or these rules;

7. conducting of an applicant or licensee's business affairs such that the applicant or licensee knows or should have known that he would not be able to meet, fulfill or comply with the applicant's or licensee's financial or regulatory responsibilities under the act or rules of the division;

8. persistent or repeated failure to pay amounts due or to be remitted to the state or any party, when such amounts were due to be remitted in accordance with obligations, contracts or agreements which have been executed in good faith and submitted to and approved by the division;

9. discrimination in its public service to any person;

10. inciting or advocating civil disorders, disturbances or activities in licensed establishments which are dangerous to the public health and safety.

D. Good faith compliance with statutory regulations is required as a condition of continued licensing. Neglect of good-faith compliance may give rise to written reprimands. These reprimands may be disputed or clarified in consultations upon written request from the licensee. Any amendment or recall of the reprimand shall be furnished in writing by the division. Any of the following acts or omissions, as well as any similar acts or omissions, may be cause for written reprimands to licensees including, but not limited to:

1. tardy, inaccurate, or incomplete reports;

2. failure to respond in a timely manner to communications from the division;

3. unavailability of licensees, their designated representative or their agents.

E. All licensees shall have a continuing duty to inform the division of any legal action that may materially affect the licensee's capability to perform or execute his responsibilities as a licensee.

F. All licensees shall, at all times, conduct themselves in a professional manner when communicating with the public and the division.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2423. Investigations

A. General

1. The division shall have the authority to conduct investigations, both overt and covert, of any person, entity, applicant or participant involved directly or indirectly in the video gaming industry in Louisiana.

2. No person shall be granted a license under the provisions of the act, unless the applicant has demonstrated to the division, by clear and convincing evidence, that he is suitable for licensing.

B. Background Investigations

1. An applicant shall be subject to a background investigation in order to ensure that licensing requirements are met.

a. The investigation may extend beyond the information supplied on the application.

b. Applicants shall, upon request, make available to the division, records and documentation to substantiate statements and support information supplied in the application process.

c. False statements or information, including improperly notarized documents, supplied to the division in the application process shall be grounds for denial of the application as well as possible criminal charges. Such false statements or information, including improperly notarized documents that are discovered after licensing, shall be punishable by the imposition of a fine, suspension or revocation of the license as well as possible criminal charges in accordance with LSA-R.S. 33:4862.9(A).

2. Key persons employed by a licensee shall meet the suitability requirements set forth for the licensee by the statutes.

3. Licensee and his employees shall provide the following information upon request:

a. his immediate family's and relative's names and addresses;

b. their affiliations with any organized groups or organizations;

c. their affiliation with any corporations, firms, or any other business entities; or

d. their association or involvement with any criminal or illicit activity.

C. Specific Unsuitable Actions

1. The invoking of the Fifth Amendment privilege against self incrimination in the course of an administrative investigation of the division may be determined by the division to be unsuitable conduct and may be cause for denial, suspension or revocation of a license.

2. The pardon, acquittal or deferred adjudication of an applicant or licensee for alleged criminal conduct shall not prevent the consideration of that conduct by the division in an investigation as provided in LSA-R.S. 33:4862.10.

D. Public Record. Any information provided to the division by an applicant or licensee shall be presumed to a public record unless excepted by LSA-R.S. 44:1 et seq., or any other law.

E. Inspection

1. Inspections of Facilities

a. Any premises on which a licensee conducts his business shall, at all times, be subject to inspection by the division in order to determine compliance with the laws of the state of Louisiana and the rules of the division.

b. During all hours of operation, the division may enter the premises without advance notice and inspect premises and all matters contained therein relating to video gaming.

c. Once inspection commences, the designated representative shall render full courtesy and cooperation to agents.

d. Upon completion of an inspection, agents may advise the designated representative of any violation or problems which may exist.

e. Agents shall provide the designated representative with a copy of an inspection report.

2. Inspection of Records

a. All licensees shall make available to the division, upon request, all necessary records, including, but not limited to:

i. the licensee's video gaming bank accounts including, but not limited to:

- (a). bank statements;
- (b). canceled checks;
- (c). deposit slips; and
- (d). other related documents.

ii. licensed establishment documents, including, but not limited to:

- (a). payroll records of all employees;
- (b). tax records for federal, state, and local jurisdictions;
- (c). licensee contracts concerning the premises;
- (d). video gaming contracts and agreements with other businesses; and
- (e). other video gaming related documents.

iii. licensee's device and gaming documents including but not limited to:

- (a). rental, lease or purchase agreement;
- (b). all maintenance records for the devices operated;
- (c). prize and award records; and
- (d). other video gaming related documents.

b. The licensee shall, upon request by the division, make available all information requested. Failure to supply the information requested shall be considered a violation of these rules.

c. The licensee shall retain all video gaming related records for a period of three years.

d. In the event licensee's records indicate a violation of criminal, civil, or administrative rule, said records shall be subject to seizure by the division.

3. Inspection of Devices

a. The division may, at any time, without advance notice, inspect any device located within a licensed establishment.

b. The division may seize any device which it finds to be in violation of any rule.

c. Devices shall have, at all times, the proper validation decal affixed to the device and operating documents properly secured in the device available for inspection by the division.

F. Compliance with existing laws, rules and regulations or codes of other governing authorities by licensee.

1. Licensee is required to comply with all applicable federal, state, and local laws and regulations.

2. A violation of any of the provisions of LSA-R.S. 33:4862.1 et seq., shall constitute a violation of this Chapter.

G. Gaming Activity

1. No licensee shall participate in or authorize the conducting of gambling as defined in LSA-R.S. 14:90, or other wagering activity which the division determines poses a threat to the effective regulation of the activities authorized by the act.

2. A licensee who facilitates or participates in the issuance of any loans or the providing of credit to a patron for

video gaming purposes shall be considered in violation of these rules.

H. Criminal Activity. A licensee shall not engage in, participate in, or facilitate by any means, any criminal activity.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2425. Miscellaneous

A. Special Investigations and Inspections

1. The division shall conduct such investigations, hearings, and inquiries as it deems necessary to fulfill its responsibilities under the provisions of the act.

a. As a condition of receiving a license under this Part, each licensee agrees that the division or its agents shall have unrestricted access to, and the right to inspect any premises under his control or that of his designated representative.

b. The premises include, but are not limited to the following:

- i. gaming area and entire structure thereof;
- ii. adjacent buildings or structures;
- iii. storage facilities under licensee's control; or
- iv. any structure or facility which could contain any illegal device or parts, whether leased or owned by the licensee.

2. No licensee shall circumvent, impede, or interfere with the lawful operation of the division or its agents.

3. Any act or omission committed by a licensee which would adversely affect or jeopardize the health, welfare, or safety of the general public shall constitute a violation of these rules and shall subject the licensee to the penalties prescribed in this Chapter.

4. A licensed establishment shall conduct only the games authorized on its license or by the Louisiana Racing Commission and the license shall be prominently displayed.

B. Written Reprimands and Required Meetings. The division may summon a licensee to appear for informal meetings, consultation, explanation, discussion, clarification, training, or similar activities considered by it to be of potential benefit to its regulatory duties. The required consultation procedure may be used in conjunction with both written minutes reflecting the outcome of the meeting and with written reprimand and probationary procedures.

C. Additional causes for disciplinary actions include, but are not limited to situations where:

1. the licensee has been involved in the diversion of gaming equipment into other than legitimate or lawful channels;

2. the licensee or a designated representative of the licensee has been involved in activities, otherwise prohibited by law or the willful purpose of which was to circumvent or contravene the provisions set forth in the division's rules;

3. the licensee has demonstrated his reluctance or inability to comply with the requirements set forth by the act by failure to meet demands of such regulations, particularly after repeated warnings, consultation, or probation;

4. the licensee clearly violates explicit written conditions of probation;

5. the division discovers incomplete or erroneous information as to a material or a substantial matter provided on an application or any item affecting the decision whether to license the applicant;

6. the division discovers substantial, incomplete, or erroneous information provided in a report or other required communication;

7. the licensee has had repeated regulatory difficulty;

8. the licensee has failed to timely pay a civil penalty imposed by the division.

D. Security Interest Holder

1. The division recognizes the rights of a person that holds a security interest in video gaming devices. However, the right to possess a video gaming device under the act requires an entity to be licensed by the division, and that any movement within, into, or from Louisiana be monitored by the division.

2. In order to facilitate both the security interest holder's and the division's regulatory responsibilities, the following procedures shall be followed during voluntary repossession proceedings and judicial actions to recognize and enforce security interests:

a. The security interest holder will notify the division in writing regarding its intent to repossess any video gaming device;

b. The video gaming devices shall be identified by make, model, serial number, and location;

c. The security interest holder will notify the division, in writing, of proposed date and time of repossession;

d. Agents from the division shall be present at the location to secure the gaming device, record serial numbers, and meter readings;

e. The division shall be advised of location of devices and will coordinate activities regarding the movement of such devices. The division shall issue a document authorizing the movement of the devices and said document shall accompany the devices during movement;

f. The security interest holder or former security interest holder which purchases devices at a judicial sale, may be granted a provisional license for a maximum of 90 days only, for the express purpose of selling the same devices to a licensed manufacturer, distributor, or owner only.

g. Names and addresses of licensees may be provided to the security interest holder by the division upon request; and

h. All applicable transportation forms shall be completed in whole by the licensee before video gaming devices are moved from security interest holder's storage facility.

E. Proceeds from the Sale of Devices. For the purpose of these rules and the act, a device owner may pay an entity holding a security interest in a device out of a portion or percentage of the proceeds received by the owner from the device as long as there is a fixed purchase price, with or without a fixed rate of interest, which must be payable in no more than four years. All contracts for the sale of devices where the price is paid to the seller by the owner out of device

proceeds shall be in writing and approved by the division.

F. Disposition of Secured Assets. The division recognizes that distributors, device owners, device operators and establishment owners have a need to secure financing for their business and operations, that the rights of persons granting such financing require protection in order to insure the continued availability of financing, and that the disposition of assets in liquidation, foreclosure and bankruptcy requires regulation in order to insure compliance with the provisions of the act. In order to facilitate the disposition of assets which are regulated or require licensure as regulated activities under the act, in whole or in part, the following provisions shall apply to the transfer or assignment of such assets:

1. Creditors who have provided financing to distributors, operators, or establishments and who have secured such financing by security interests under Article 9 of the Uniform Commercial Code may enforce their rights or remedies through the transfer or assignment of assets in accordance with the provisions of this Section;

2. The benefits of this provision shall apply only to state or federally chartered and insured banking institutions, chartered or licensed lending institutions authorized to do business in Louisiana, or persons holding any form of video gaming license under the act;

3. The transfer or assignment of assets may only be made pursuant to a confirmed bankruptcy plan of reorganization or liquidation, or other judicial proceedings to foreclose on a security interest under Louisiana law, and only after the division shall have been given notice of such assignment and the opportunity to be heard in the bankruptcy or other proceeding on all aspects of the assignment or transfer;

G. Provisions for Transfer of Assets. Unless the proposed transferee of the asset is fully licensed under the act to own and/or operate the particular asset to be transferred, or if previously approved by the division, has contracted with a properly licensed device owner and/or operator of the asset to be transferred, the following provisions shall apply to such transfer:

1. The creditor shall establish a Trust for its benefits in a form acceptable to the division to which legal title to the asset may be transferred;

2. The Trust shall be managed by one or more trustees who shall be appointed by the creditor beneficiary;

3. No trustee shall be empowered to act without first having received approval to serve in such position from the division; and

4. No transfer of assets shall be consummated until the Trust shall have been established, and the Trust and the trustee(s) thereof shall have received all required approvals, permits and/or licenses from the division.

H. Operation of Trust

1. The trustee(s) shall hold legal title to the assets of the Trust and shall administer those assets in accordance with the provisions of the act and shall perform such other duties as may be required by law or the trust instrument.

2. The Trust shall not conduct nor contract for the operation of any activity requiring licensure under the act without first having obtained all approvals or licenses which may be required for such activity from the division.

3. The Trust shall be permitted to contract with a person holding an appropriate license from the division for the operation of any licensed activity without the necessity of the Trust itself receiving such license.

4. In the event that the creditor which is the beneficiary of the Trust shall be a person holding any form of video poker license under the act, then the Trust may delegate the right to contract with licensed operators for any licensed activity to the creditor beneficiary pursuant to provisions of the Trust instrument.

I. Required provisions of Trust Instrument

1. Term. The Trust shall be constituted for a limited term under provisions which shall require it to divest itself of all assets within six months after the creditor beneficiary has recouped in net disbursements from the Trust the full amount of its original indebtedness, plus accrued interest and other monies due under the security agreement.

2. Reports to Division. The trustee(s) shall be required to provide the division with reports on a quarterly basis as to the financial affairs, operations and other business of the trust as the division may direct.

3. Contracts with Licensed Operators. The Trust instrument shall contain provisions governing contracts for the conduct of activities requiring licensure under the act which are satisfactory to the division and appropriate to the particular circumstances of the creditor beneficiary. The division shall review and approve such provisions of the Trust instrument, and upon approval, and provided that the Trust and creditor beneficiary only enter into contracts consistent with such provisions, the division shall not require either the Trust, the trustee(s) or the creditor beneficiary to apply for or obtain any license under the act. This provision shall not affect the requirement for approvals from the division required by other provisions of this Section.

J. Any variance to the rules shall be at the discretion of the division only and shall be granted in writing by the division.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2427. Hearings and Sanction Procedures

A. General

1. Any person who is determined by the division, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Administrative Procedure Act, to have committed an act that is a violation of LSA-R.S. 33:4862.1 et seq., or any rule herein is subject to denial, suspension or revocation of a license and/or imposition of probationary conditions or other restrictions including assessment of administrative costs incurred.

2. Civil monetary penalties may be levied in lieu of suspending or revoking a license, as provided in LSA-R.S. 33:4862.8.

3. A license granted under the Video Draw Poker Devices Control Law is considered a pure and absolute privilege, subject to immediate interruption until resolution of any issues regarding violation of rule or statute.

B. Procedure

1. When the division has received or developed reliable information which in its opinion calls for disciplinary action by the denial, revocation, suspension, or restriction of a license, including nonpayment of monetary penalty, it may in its discretion, via the division's central control computer, activate remote shutdown of device operations, thereby immediately disabling any gaming device owned or operated by the licensee.

2. When, on the basis of such information, the division intends to revoke, suspend, or restrict a license, deny an application, or levy any monetary penalty, the division shall immediately notify the licensee or applicant ordinarily in writing, of its intended actions and the reasons therefor. Such notice shall include:

- a. a short and plain statement of the violations asserted and the disciplinary action to be taken by the division;
- b. reference to the particular section of the statute and rules involved;
- c. a statement of the legal authority and jurisdiction under which a hearing may be held; and
- d. a statement of the time limits and procedure to request a hearing.

3. In ordinary situations, such notice shall be served by certified mail, return receipt requested, to the permanent address for notice as shown in the application or latest amendment thereto on file with the division. If any incorrect or incomplete addresses have been supplied by the licensee to the division, such that service by certified mail, although attempted, cannot be successfully completed, or the licensee fails to accept properly addressed certified mail, notice will be presumed to have been given.

4. In situations presenting rapidly-changing circumstances or in situations involving clearly serious violations of the act or these rules, or in other situations presenting danger to the public health, safety or welfare, the division may provide notice by telephone. Such notice shall be promptly documented, and confirmed in writing provided to the licensee.

5. Upon receipt of such notice from the division, the licensee or applicant must request a hearing or the penalty as outlined in the notice shall become final. Such a request shall be made in writing and mailed to the division by certified mail, return receipt requested, postmarked within 10 working days after the date of the notice as shown on the written notice from the division.

6. Upon receiving a hearing request the division shall promptly schedule an administrative hearing to be conducted in accordance with the provisions of the Administrative Procedure Act, LSA-R.S. 49:950 et seq.

7. Any licensee or applicant may petition for agency review for a determination as to the validity or applicability of an agency rule or regulation pursuant to the provisions of LSA-R.S. 49:963.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

§2429. Severability Clause

If any provision of these rules is declared invalid for any reason, that provision shall not affect the validity of the remaining rules or any other provision thereof.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:

Colonel Paul W. Fontenot
Deputy Secretary

9502#040

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Offshore Shrimp Closure

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close the state's offshore waters, the Wildlife and Fisheries Commission hereby orders a closure of that portion of the state's offshore territorial waters from the inside/outside shrimp line as described in R.S. 56:495, out to three miles from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel buoy line west to the eastern shore of Freshwater Bayou effective at 12:01 a.m., Wednesday, February 15, 1995.

R.S. 56:498 provides that the minimum legal count on white shrimp is 100 (whole shrimp) count per pound after the third Monday in December. Historical and current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in much of the state's outside waters do not average 100 count minimum legal size or larger. This action is being taken to protect these small white shrimp and allow them the opportunity to grow to a more valuable size.

The Wildlife and Fisheries Commission also hereby authorizes the secretary of the Department of Wildlife and Fisheries to open any portion of the state's offshore waters or open any special seasons to harvest overwintering white shrimp in the state's inshore waters as indicated by technical data derived from the department's ongoing shrimp monitoring program and upon approval by the commission's shrimp committee.

Perry Gisclair
Chairman

9502#041

RULES

RULE

Department of Economic Development Radio and Television Technicians Board

Procedures of Operation; Examining Committee Per Diem Pay; Technicians' Licensing (LAC 46:LXV.Chapter 1)
(Repeal of LAC 46:LXV.Chapters 3 and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act and R.S. 37:2301 through 2319, the Department of Economic Development, Radio and Television Technicians Board has repealed its existing rules and adopted a new set of rules governing the procedures of operation of the board; the appointment and per diem pay of the examination committee; and the licensing of technicians by the board. These rules are contained in LAC 46:LXV.Chapter 1. Existing rules in Chapters 3 and 5 have been revised and are now included as part of Chapter 1; therefore, the text of existing Chapters 3 and 5 has been repealed in its entirety.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXV. Radio and Television Technicians

Chapter 1. Organization

§101. Forward

This board, a duly constituted agency of the state of Louisiana, created under Act 428 of 1958, as amended, is authorized to administer the above mentioned Act, and its powers are controlled and governed solely by the provisions of said Act. Therefore, the following rules of procedure are intended as a means of facilitating the functions of the board in enforcing the legislative mandate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§103. Conduct of Meetings

A. Except when otherwise provided for by statutes or by rules of procedure adopted by this board, *Robert's Rules of Order* will govern the conduct of meetings and business of this board.

B. The administrator, through the secretary, shall call a board meeting as needed on any day or place where he deems necessary. Any meeting, hearing, or trial shall be counted as a meeting.

C. Meeting Agenda. A tentative agenda, or agenda, shall be supplied to each board member prior to the start of each meeting.

D. The following will be the order of business at the board meetings:

1. opening;
2. roll call and reading of minutes;
3. at the January meeting, election of officers;

4. official communications;
5. report of administrator;
6. report on enforcement;
7. reports of board members and committees;
8. unfinished business;
9. new business;
10. report of the chairman;
11. financial report; and
12. adjournment;

E. Executive Sessions

1. The board may call for executive sessions at its meetings when it deems necessary, by a majority vote of those in attendance.

2. The administrator may be present and included at any and all executive sessions at any and all meetings, by a majority vote of the board members present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§105. Method of Rule Adoption; Amendment; or Repeal

These rules of procedure may be amended, changed, or rescinded by any such proposal being submitted in writing and read at two regular meetings of this board, and decided upon the second meeting by a two-thirds vote of the members present and voting. Where a two-day meeting is held, the vote cannot be taken the second day where it is submitted the day before, but it must be read and voted on at the next regular meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§107. Election of Officers

A. At the first meeting of the board in January of each year, an executive meeting shall be called and held by the board for the purpose of accepting nominations and electing a chairman and a secretary. Said executive meeting shall be held immediately after roll call.

B. The chairman shall appoint a judge and two tellers to conduct the elections.

C. Nominations for chairman shall be considered first.

D. On the completion of the nominations for the chairman a vote shall be taken by secret ballot.

E. The nominee receiving the plurality of votes shall be declared elected as chairman.

F. Nominations for secretary shall be conducted after the chairman has been elected. On the completion of the nominations for secretary, a vote shall be taken by secret ballot. The nominee receiving a plurality of votes shall be declared elected as secretary.

G. On the completion of the elections, the new chairman and secretary shall be sworn in and take their respective offices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§109. Ethical Conduct of Board Members

A. No member of this board shall use his title or official capacity as a board member in advertising, stationery, business forms or the like, or in any manner indicate such for personal or business advantages.

B. The board shall reimburse a board member for actual expenses incurred while conducting investigations for the board, provided expressed written approval has been received by said board member to conduct such an investigation from the secretary and/or administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§111. Administrator of the Board

To dismiss the administrator of the board, a resolution to dismiss shall be made at one regular board meeting and shall be voted on at the next regular meeting. Twenty days must transpire between the first meeting and the second meeting, and a two-thirds vote of members present and/or voting by proxy shall be necessary to carry out this resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§113. Examining Committee

A. The term of members of the examining committee shall be for a period from January to December 31 and shall serve at the pleasure of the board.

B. Meetings of the examining committee shall be called by the board administrator through the secretary of the board.

C. Each member of the examining committee shall receive a per diem of \$30 for the performance of his duties while conducting examinations, and \$30 per day for any official meetings attended. He shall also be paid all necessary subsistence expenses as set forth in the guide lines of the Division of Administration.

D. The examining committee shall elect a chairman and secretary and shall meet when a meeting is called by the administrator through the board secretary. The committee shall report to the board and shall submit minutes of the committee meetings to the board.

E. A practical examination shall be conducted by the examining committee, according to the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§115. Qualifications/Requirements of Applicants

A. In compliance with other laws of this state, no applicant

under 16 years of age may be issued a license as an apprentice, and no applicant under 18 years of age may be issued a license as a technician.

B. Only applicants who have been approved by the board office shall be given examinations as evidenced by the name list furnished to the official examiner by the administrator, or a letter from the administrator authorizing such.

C. Before receiving the technicians examination an applicant must submit at least two affidavits of recommendations of qualifications which indicate the equivalent of two years of apprenticeship training. These may be from the following sources:

1. radio and/or television schools attended;
2. past employers from related fields; and
3. other licensed technicians statements, or a combination of the same.

D. An application for technicians license may be rejected if the affidavits furnished indicate that the applicant acquired his knowledge while working in the state of Louisiana without a certificate from the board.

E. In order to insure proper identification of all applicants for license as a radio technician, satellite technician, television technician or apprentice, the applicant for such license shall have attached thereto three photographs of the said applicant, size 1½" x 1¼" for reference by board members, the administrator, or the examining committee. One of the photographs shall be affixed to the licensee's ID card.

F. That no application for examination be accepted from anyone charged with violation of Act 428 as amended, until all charges are disposed of.

G. In order for a U.S. veteran to obtain credit under the provisions of the act, he must submit a copy of his DD-214.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§117. Examinations

A. Television Technicians Examination

1. The written section of the television technicians examination shall consist of 25 questions covering the circuit theory of operation and practical trouble shooting techniques as applied to a particular chassis, the schematic diagram of which is furnished with the examination questions.

2. The balance of the examination will consist of 25 questions covering circuit theory of operation and practical servicing techniques but not as applied to any specific make or model of television receiver.

3. Each television examination shall consist of the above named elements and shall exist as a packaged examination, each to be complete in itself and different from each of the others.

4. After an apprentice successfully completes his two years of apprenticeship training and before he receives his apprenticeship certificate from the Department of Labor, he shall on the mandate of the board take the technician's examination.

B. Radio Examination. The radio examination shall consist of 50 questions concerning radio theory.

C. Satellite Examination. The satellite examination shall consist of 50 questions concerning satellite theory.

D. In each type of examination in Subsections A, B, and C above, the originals of both questions and answer sheets shall be given into the care of the administrator.

E. An applicant:

1. who fails to appear for two consecutive examinations after being duly notified of each shall forfeit all fees on deposit with the board and any temporary permit issued to him shall be canceled. He shall be notified of such and that his right to practice is withdrawn.

2. who takes an examination and fails must resubmit his application and pay the examination fee with said application.

3. having failed two consecutive examinations shall not be allowed to apply for another examination for at least six months.

4. who fails to appear for an examination after being duly notified for same shall forfeit any temporary permit issued to him. Such permit can only be re-issued by special dispensation of the board.

F. The administrator shall assume the responsibility to examine and classify each applicant for the apprenticeship program according to background and ability before he shall be indentured with the federal and state Departments of Labor. He shall, also, have the responsibility of removing from apprenticeship any applicant who cannot meet the requirements of this board, and the federal and state Departments of Labor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§119. Student Permit

The State Radio and Television Technicians Board shall establish a student program by which student's enrolled in electronic classes at an accredited trade or vocational school, be granted a permit to do service on equipment regulated by this board, under the direct supervision of a licensed technician.

1. A student must be enrolled full-time at an accredited trade or vocational school and must show proof of this with a letter from the school.

2. No credit will be given for the time worked as a student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§121. License Renewal

A. The administrator shall not later than November 1 of each year send notice of license renewal.

B. Any licensee who fails to renew after expiration, which is December 31 of each year, is subject to a delinquent fee of one-third of the renewal fee.

C. Any licensee whose renewal application is received at the board office post marked after December 31 of that year

shall pay a delinquent fee in the amount of one-third of the renewal fee, rounded off to nearest \$.50.

D. A licensee who fails to renew within 70 days of the expiration of a previous license shall be automatically revoked.

E. No applicant may be accepted for action by the board until proper fees have been received and cleared by the bank. Applicants who do not submit the required fees, or the payment thereof does not clear the bank shall be notified of such and, cautioned that to practice without a proper license by the board is a violation of state law. All N.S.F. checks shall be charged a fee of \$25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§123. License Revocation

A revoked license number shall not be issued to other than the original applicant for a period of one calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§125. Temporary Work Permit

A. A temporary permit to work shall in no way be construed as permission to open a business, but only as a permit to work as a technician under a competent licensed technician.

B. The administrator may issue a letter to the applicant stating that he can practice for the months of November and December until following year's licenses are available. A copy of this letter is to be sent to the board member in the district where the person in question is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§127. Financial Records

The financial and all other records of the board shall be kept at the board office and periodic financial statements distributed to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§129. Technicians Roster

Rosters of technicians licensed by the board may be furnished by the board at a nominal fee determined by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the

Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§131. Fees

A. Fees assessed by the board are specified in R.S. 37:2301-2319.

B. Any fees or deposits unclaimed by any applicant after a period of two years shall forfeit same by prescription. These fees shall become part of earned fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

§133. Public Access to Board Records

Any person or organization may examine the records of the board under the Public Records Act of Louisiana, by appointment at said board office during normal working hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2301-2319.

HISTORICAL NOTE: Adopted by the Department of Commerce, Radio and Television Technicians Board, 1958, amended by the Department of Economic Development, Radio and Television Technicians Board, LR 21: (February 1995).

Chapter 3. Examination

Repealed in its entirety.

Chapter 5. License

Repealed in its entirety.

Jessie E. Pugh
Administrator

9502#050

RULE

Board of Elementary and Secondary Education

Bulletin 746—Certification Changes

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted the following certification policy changes as a result of the Third Extraordinary Session of 1994 and these shall take precedence over existing policies in Bulletin 746, Louisiana Standards for State Certification of School Personnel, effective August 1, 1994.

Certification Changes as a Result of Act 1 of the Third Extraordinary Session of 1994

The following certification policy changes are necessary as a result of Act 1 of the Third Extraordinary Session of 1994 and shall take precedence over the existing policies in Bulletin 746, Louisiana Standards for State Certification of School Personnel, effective August 1, 1994.

1. Effective August 1, 1994, successful completion of the Louisiana Teacher Assessment Program is required to be eligible for a Type B or Type A certificate as specified in Bulletin 746, Louisiana Standards for State Certification of

School Personnel, for a teacher who has not been employed in a Louisiana public school prior to August 1, 1994.

2. A Type C Basic certificate which is valid for three years will be issued to persons who complete all certification requirements and who are employed for the first time after August 1, 1994, according to one of the following provisions:

- a. Interim Emergency Policy for Hiring Full/Time, Part/Time, Noncertified School Personnel (Circular 665);
- b. Temporary Teaching Assignment Only (lacks a teaching certificate);
- c. Temporary Employment Permit;
- d. Emergency Permit;
- e. Out-of-State Provisional.

Upon completion of the Teacher Assessment Program, a regular certificate (C, B, or A) will be issued.

3. The requirement for a Type B or A certificate shall be deleted for certification endorsements, and the experience normally associated with the issuance of the Type B or A certificate shall be maintained as a requirement for the endorsements.

NOTE: Certification requirements for Regular Type C, B, and A certificates are prescribed within Bulletin 746, Louisiana Standards for State Certification of School Personnel, and remain as previously adopted.

AUTHORITY NOTE: R.S. 17:411

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

Carole Wallin
Executive Director

9502#032

RULE

Board of Elementary and Secondary Education

Bulletin 746—Certification Requirements for Health

The State Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:950 et seq., and adopted the continuation of current certification requirements in health as specified in Bulletin 746, Louisiana Standards for State Certification of School Personnel.

Prior to this action, effective fall of 1994, teachers pursuing certification in health would be required to complete requirements for health and physical education. Maintaining the current health certification requirements will enable any secondary certified teachers to add this area of certification without physical education courses and will allow greater flexibility for teachers and school systems in providing the ½ unit in health education which is now a high school graduation requirement.

AUTHORITY NOTE: R.S. 17:411.

Carole Wallin
Executive Director

9502#033

RULE

Board of Elementary and Secondary Education

Bulletin 1475—School Bus Driver Operational and Vehicle Maintenance Procedures (LAC 28:I.915)

The State Board of Elementary and Secondary Education, at its meeting of July 28, 1994, exercised those powers conferred by the Administrative Procedure Act, R.S. 49:950 et seq., and adopted Bulletin 1475, The Louisiana School Bus Driver Operational and Vehicle Maintenance Procedures, Revised 1994. This bulletin is referenced in the *Louisiana Administrative Code*, Title 28 as noted below:

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §915. Bus Transportation Standards and Regulations

* * *

C. Bulletin 1475, The Louisiana School Bus Driver Operational and Vehicle Maintenance Procedures, revised 1994.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:160.

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

The complete document may be seen in the Office of the State Register, located on the Fifth Floor of the Capitol Annex, 1051 North Third Street, the Office of Special Projects, State Department of Education, or in the Office of the State Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9502#034

RULE

Board of Elementary and Secondary Education

Bulletin 1868—BESE Personnel Manual

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended the smoking policy for Special School District No. 1, BESE Special Schools, and Technical Institutes. This revision is an amendment to Bulletin 1868, BESE Personnel Manual as stated below:

Bulletin 1868—BESE Personnel Manual Chapter H: Safety, Health and Environmental Work Factors

191: Programs

* * *

C. Smoking in the Workplace

1. Board Special Schools and Special School District No.

RULE

1.

a. Definition:

(1) *School Building*—any building located on the property of Louisiana School for the Deaf, the Louisiana School for the Visually Impaired, the Louisiana Special Education Center; or the buildings located on the grounds of Developmental Centers or Mental Health Hospitals, which are assigned for Special School District No. 1 school programs. Buildings used solely as residence for employees are not included in this policy.

(2) *Smoking*—possession of lighted cigar, cigarette, pipe, or any other lighted tobacco product.

b. Policy:

(1) No person shall smoke, chew, or otherwise consume any tobacco or tobacco product in any of the buildings identified in definition No. 1.

(2) No person shall smoke or carry a lighted cigar, cigarette, pipe, or any other form of smoking object or device on the grounds of the Louisiana School for the Deaf, the Louisiana School for the Visually Impaired, the Louisiana Special Education Center; or on the grounds designated for Special School District No. 1 school purposes in Developmental Centers and Mental Health Hospitals, except in an area specifically designated as a smoking area.

(3) Superintendents of the Louisiana School for the Deaf, the Louisiana School for the Visually Impaired and the Louisiana Special Education Center may designate an appropriate area(s) on the grounds for smoking. Special School District No. 1 Principals may collaborate with the superintendent/CEO of the developmental centers or mental health hospitals in the designation of an appropriate smoking area(s).

(4) Special School District No. 1 employees housed in Department of Public Safety and Corrections facilities shall abide by established policies at those facilities.

(5) Smoking is prohibited on any school bus or other state vehicle while transporting students for school activities.

(6) Employees violating these policies shall be subjected to disciplinary action in accordance with Bulletin 1868 or Civil Service procedures. Nonemployees violating the policy shall be subject to removal from the school grounds. Students violating this policy shall be subject to actions as specified in student disciplinary policies or IEP, treatment, or habilitation plans.

2. Post Secondary Technical System

a. Technical institutes under the jurisdiction of the board are to develop and administer procedures concerning smoking in the workplace.

b. Smoking shall be allowed only in clearly identified, specifically designated areas.

* * *

AUTHORITY NOTE: H.B. 234 of 1994 Legislature
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 21: (February 1994).

Carole Wallin
Executive Director

9502#037

Board of Elementary and Secondary Education

Bulletin 1943—Teacher Assessment—Grievance Procedure
Section X

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted Section X, Grievance Procedures as an addition to Bulletin 1943, Policies and Procedures for Louisiana Teacher Assessment.

The local education agencies, all public schools, assessor, and assessor trainers were provided copies of Section X, Grievance Procedures before schools opened and assessments began. Full implementation of the Louisiana Teacher Assessment Program began with the 1994-95 school year and is mandated by Act 1 of the Third Extraordinary Session, 1994 Louisiana Legislature.

Due Process

Teachers will be afforded due process in all aspects of the Louisiana Teacher Assessment Program. The due process rights include the following:

1. The assessed teacher shall receive copies of all teacher-signed documents: the postobservation conference record, the teacher summary report, and the Professional Development Plan.

2. The assessed teacher may request copies of any additional records used during the assessment process at the conclusion of the professional development conference, within 20 working days.

3. A postobservation conference must be held within two working days of the completion of the observation.

4. The assessed teacher may, in either semester, file a written response (that may or may not lead to a formal grievance process) to the assessment as represented in the teacher summary report and supporting assessment records. This response may be filed at the end of the postobservation conference or the teacher summary conference, but no later than 10 working days after the receipt of the Professional Development Plan during the professional development conference. This response shall be permanently attached to the teacher summary report.

5. The teacher has the right to receive proof, by documentation, of any item contained in the assessment documents that the teacher believes to be inaccurate, invalid, or misrepresented. If documentation does not exist, the item in question must be amended or removed from the teacher summary report.

6. Confidentiality of assessment results must be maintained as prescribed by law.

7. A grievance procedure and an appeals procedure that follow the proper lines of authority have been established and must be followed.

8. The assessed teacher shall be assured of due process in all aspects of the assessment grievance procedures. The hearing office required to conduct a hearing on a grievance shall be an employee of or contracted by the Office of the

Attorney General. The assessed teacher may retain representation of his/her choice and at his/her own expense.

9. The assessment team shall initially assume the burden of proof at Steps 1 and 2 of the grievance procedures. Upon appeal at Step 3, the burden of proof shifts to the teacher.

10. At any point in the grievance procedures when either party fails to appear for a properly scheduled grievance hearing, a remedy may be fashioned within the discretion of the hearing officer.

11. Grievance hearings shall be conducted during the working day with the teacher suffering no loss of pay or benefits for attending grievance hearings. However, in the event the hearing officer determines that the grievance is frivolous, or if the appeal is unsuccessful, the teacher shall be reimbursed for no more than two days pay. Should the teacher's appeal be successful, then he/she shall be paid for the full length of the hearing. Grievance hearings may be conducted during the summer.

12. The aggrieved teacher may choose to retain representation at any and all stages in the grievance procedure. The assessment team leader shall be notified of this decision by the aggrieved teacher five days prior to the scheduled hearing or prehearing. The assessment team shall be provided with a legal representative, upon request, at all stages of the grievance procedure, at no charge to the assessor(s). If any or all assessors choose to retain his/her own attorney rather than the state appointed attorney, then the assessor(s) will be responsible for all legal fees.

13. In the event a lawsuit is filed against the assessment team or any individual assessor in his/her official capacity in a court of competent jurisdiction, the assessor shall be represented by the Louisiana Department of Education at no charge to the individual assessor or the assessment team. The assessors shall be indemnified both as an individual and as an assessment team member should there be judgment for any cost incurred. Indemnification may be denied if the court finds the assessor's actions were willful, intentional, or malicious.

Grievance

A grievance is a claim by a teacher that the assessment is inaccurate, invalid, or misrepresented. The grievance shall be based upon assessor bias, omission, or error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

Step 1

A. Any teacher who believes that he/she has a grievance may file the grievance at any time during the assessment process but not later than 20 working days after the professional development conference. The grievance must be in writing and shall state: (a) the precise factual basis on which it is based and (b) the specific relief requested by the teacher. The grievance shall be presented to the principal or the immediate supervisor who served on the assessment team. That principal, or the immediate supervisor, shall acknowledge receipt of the grievance in writing and keep a record of its filing. That principal or that immediate supervisor shall forward a copy of the grievance to all assessment team members.

B. Within 10 working days of receipt of the written grievance, the assessment team shall schedule a conference with the teacher and/or the teacher's representative to discuss the specific terms of the grievance. If the conference must be delayed (i.e., illness, prior scheduling, holidays, etc.), the conference shall be mutually rescheduled within 20 working days. Any other extensions would be considered only in the case of documented illness or severe emergency.

C. Within 10 working days of the conference, the assessment team must confer concerning the specifics of the grievance, arrive at a mutually agreeable decision, and render a signed written response specifically addressing each area in which relief has been requested. If no mutually agreeable decision can be reached by the assessment team, the grievance shall be handled as prescribed in Step 2. Within the above stated 10-day limit, the principal or immediate supervisor from the assessment team shall hand deliver or send by certified mail, the assessment team's written response to the teacher.

Step 2

A. If a teacher is not satisfied with the decision rendered at Step 1, he/she shall institute a written request for a formal hearing within 10 working days of receipt of the response from the assessment team. The teacher must complete an official form to request a formal hearing and submit it to the Louisiana Teacher Assessment Program contact person at the appropriate Local Education Agency (LEA). The official request must be hand-delivered or mailed by certified mail. If mailed, the official request must be postmarked on or before the tenth day after receipt of the response from the assessment team.

The request for formal hearing shall contain the following:

1. the name of the teacher and the LEA in which the teacher is employed;
2. the name and position of each member of the assessment team;
3. the name, address and telephone number of the teacher's representative, if designated;
4. the date the postobservation conference was conducted;
5. the date on which the grievance was filed;
6. the date on which the teacher and the assessment team met to discuss the grievance (see Step 1B);
7. the date on which the teacher received the assessment team's response.

Attached to the request for formal hearing shall also be:

1. a copy of the original assessment team's report on the teacher's classroom performance (the teacher summary report);
2. a copy of the original grievance;
3. a copy of the assessment team's response to the specific grievance(s);
4. any other pertinent documents or relevant information.

B. The Teacher Assessment Program contact person shall notify within five days a regional hearing officer, appointed by the attorney general, of the teacher's appeal. The regional hearing officer shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s), and (1) dismiss the appeal for failing to have the official request for

formal hearing and/or the attachments required above², or (2) notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal hearing and of the prehearing conference, if any. The hearing must be conducted within 35 working days of the filing of the appeal. The regional hearing officer may grant an extension upon appropriate written request of the teacher or assessor(s) for good cause shown, or upon his own motion to grant an extension.

C. The teacher or his/her representative, or the assessment team, may add to the grievance any additional evidence relevant to the hearing. The regional hearing officer shall decide if the evidence is relevant and material.

D. The regional hearing officer may schedule any prehearing conferences as he/she feels may be necessary for the exchange of evidence, or for any other purposes set forth in these rules.

The prehearing conference must be held not less than five working days prior to the formal hearing.

At least 10 working days prior to the prehearing conference, all parties shall exchange and deliver copies of exhibits, documentary evidence, offerings, and a list of proposed witnesses. Failure to exchange documentary evidence and/or witness lists will result in those witnesses and evidence being excluded from the hearing.

The regional hearing officer, at the prehearing conferences or otherwise, may determine what material or relevant facts or issues exist without substantial controversy, and which should be deemed stipulated or proven and what material facts and issues actually, and in good faith, are contested.

The regional hearing officer may, prior to the hearing, issue an order which specifies the action(s) taken at the prehearing conference, and the agreements made by the parties as to any of the matters considered and/or which limit the issues to be considered at the hearing to those which are actually, and in good faith, contested. This order shall control the subsequent course of the proceedings, unless modified during the formal hearing to prevent manifest injustice.

All parties to the proceedings shall be given notice of any prehearing conference, and any party who fails to attend or participate in such a conference may be found to be in default. If a party is found to be in default, the regional hearing officer may limit the party's participation in the hearing or evidence sought to be introduced, dismiss the proceeding, continue the hearing at a later date, proceed with the hearing and render a decision, or order appropriate action based on the evidence submitted at the hearing.

The regional hearing officer may issue subpoenas upon the request of the teacher, his/her representative, or the assessment team. The request for subpoenas must be in writing and shall be submitted to the hearing officer 15 days prior to the scheduled formal hearing. Further discovery will not be required nor shall subpoenas be issued for public records within the Louisiana Department (LDE) of Education which are available under the Public Records Law (La. R.S. 44:1).

E. Failure by the teacher to submit relevant evidence and failure to attend the hearing may result in a dismissal of the

hearing with prejudice at the discretion of the regional hearing officer. (In the event persons directly involved in the assessment process fail to submit evidence, then the teacher shall be granted the specific relief he/she has requested.)

F. The regional hearing officer may affirm, reverse, modify or set aside the decision of the assessment team. The regional hearing officer shall render a decision in writing within 15 working days of the date of the hearing.

¹The principal or the teacher's immediate supervisor shall supply the teacher with all pertinent names and addresses, upon request by the teacher, within two working days.

²If a Professional Development Plan is in progress for the teacher, the regional hearing officer may suspend the plan, based on relevant evidence.

Step 3

A. If the teacher is not satisfied with the regional hearing officer's decision, he/she may appeal to the Attorney General's Office within 10 working days of the receipt of the regional hearing officer's decision. The appeal is deemed timely if it is postmarked within the 10 working day period. The state hearing officer appointed by the attorney general shall review the allegation(s) of the appeal, compile all evidence relevant to the allegation(s), and (1) dismiss the appeal for failing to have an official request for formal hearing and/or the attachments required above, or (2) notify, by certified mail, all persons directly involved, as to the date, time, and place of the formal appeal hearing and of the prehearing conference, if any. The formal appeal hearing must be conducted within 35 working days of the filing of the appeal. Additional evidence may be introduced by the involved parties.

The state hearing officer at his discretion may:

1. grant a limited hearing/argument of the issue with no oral testimony;
2. require an appeal through briefs;
3. grant a new formal hearing;
4. allow the introduction of new evidence that was not available and/or accessible at Step 2.

B. The state hearing officer may affirm, reverse, modify, or set aside the decision of the regional hearing officer.

C. If the state hearing officer affirms the regional hearing officer's decision and also determines the teacher's appeal to be based upon a personal grudge, harassment, frivolous complaint, or made solely for the purpose of delay, he shall dismiss the appeal with prejudice. If the state hearing officer determines that an assessment team member has committed a procedural violation during the assessment of the teacher, or it is determined that it is in the best interest of the assessment process and procedures, then the state hearing officer shall notify the LDE and make recommendations for that assessor to 1) be reprised of the assessment process and procedures, 2) be retrained, 3) have his assessment certification revoked, or 4) be reassigned to another assessment team.

D. The state hearing officer shall render a decision in writing within 25 working days of the date of the hearing.

Glossary of Terminology

In order that consistency in terminology be maintained on a statewide basis, a list of terms and definitions is being established to provide the reader with a clear and common

understanding of the due process components and grievance procedures.

Appeal—a challenge of a decision rendered by an regional hearing officer appointed by the attorney general.

Assessment Program Contact Person—a person employed by the local education agency to provide/facilitate Louisiana Teacher Assessment Program activities. These persons are also involved in the Grievance Procedures at Step 2.

Assessor Bias—a preference or inclination that inhibits impartial assessment by an assessor.

Assessor Error—intentional or unintentional deviation(s) by an assessor from the prescribed procedures set by the Policies and Procedures for Louisiana Teacher Assessment, Bulletin 1943, June 1994.

Assessor Omission—to fail to include or to leave out those steps necessary by an assessor for a procedurally accurate assessment of a teacher.

Day(s)—shall be the teacher's working days during the school calendar year adopted by the local school board except during the summer months when days shall be working days as observed by the LDE.

Note: If the hearing decision is rendered during a period of a school holiday, and the teacher does not have direct access to his/her mail because he/she is away from his/her residence, out of the city, or state, then the period of appeal shall be extended upon verified affidavit for an additional five working days upon his/her return to the residence. The affidavit shall be attached to the appeal.

It is the obligation of the teacher or his/her representative to inform the hearing officer that he/she will be away from his/her residence during said holiday period. Should the teacher commute daily to and from the place of residence during the holiday season, then the five-day extension does not apply.

Documentation—copies of the official and signed forms related to the assessment process.

Due Process—fair and impartial treatment as guaranteed under the law including, but not limited to, the first, fifth, and fourteenth amendments to the Constitution of the United States, Section 1983 of the Civil Rights Act of 1971, Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendment of 1972, relative to procedural requirements.

Formal Hearing—a meeting wherein arguments, proofs, and evidence are presented and testimony is heard.

Grievance—a claim by a teacher that the assessment is inaccurate, invalid or misrepresented. The grievance shall be based upon assessor bias, omission or error. Any other issues are to be handled as administrative complaints (i.e., receipt of implementation guide, teacher orientation, teacher notification, etc.).

Hearing Officer—a legally trained person specifically contracted and trained by the Attorney General's Office to conduct a formal investigation or hearing at either the regional or state level and to report his findings of fact and render decisions based on those facts. No person who has a personal or professional interest which conflicts with his/her objectivity may be contracted to serve as a hearing officer.

Indemnification—to provide to assessor(s) legal exemption from liability during the assessment process.

Teacher's Representative—any person selected by the aggrieved teacher to represent him/her during the course of the grievance procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3881-3884; R.S. 17:3891-3896 and R.S. 17:3901-3904.

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

Carole Wallin
Executive Director

9502#036

RULE

Board of Elementary and Secondary Education

Internship Program for Nonpublic School Administrators (LAC 28:I.952)

In accordance with the R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the State Board of Elementary and Secondary Education adopted the following internship program for nonpublic school administrators which will be included in the Administrative Code, Title 28 as stated below:

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations and State Plans Subchapter C. Nonpublic Regulations (Other than in Bulletin 741)

§952. Internship Program for Nonpublic School Administrators

A. Internship Program for Nonpublic School Administrators

1. Nonpublic school administrators who are eligible for a provisional elementary/secondary school principalship endorsement (Bulletin 746) shall be allowed to participate in a two-year administrative internship program under the auspices of a regionally accredited college or university. This college or university program shall be the equivalent to the State Administrative Leadership Academy and Project LEAD.

2. Upon successful completion of the college or university administrative internship program, nonpublic school administrators will be eligible for elementary/secondary principal endorsement that will be added to the standard Type A certificate.

AUTHORITY NOTE: R.S. 17(7).

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

Carole Wallin
Executive Director

9502#035

RULE

Board of Elementary and Secondary Education

Technical Institutes Revised Fee Schedule (LAC 28:I.1523)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended the fee schedule for Louisiana high school students attending the technical institutes. This is an amendment to the *Louisiana Administrative Code*, Title 28 as stated below:

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 15. Vocational and Vocational-Technical
Education**

§1523. Students

* * *

E. Fees for Louisiana Residents

* * *

2. Louisiana high school students shall not be charged any registration or tuition fees while attending for high school credit.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A), (10), (11).

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

Carole Wallin
Executive Director

9502#031

RULE

**Department of Education
Board of Regents**

**Registration and Licensure of Postsecondary
Academic Degree-granting Institutions
(LAC 28:IX.103, 105, 301-327)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 17:1808 which delegates the authority to the Board of Regents to set rules for registration and licensure of postsecondary academic degree-granting institutions, and R.S. 17:3125-3382 which authorizes the Board of Regents to coordinate postsecondary, academic degree-granting institutions; notice is hereby given that the Board of Regents amended its rule on the registration and licensure of institutions in Louisiana offering postsecondary academic degrees to insure the viability and worth of the instruction offered by requiring that such instruction meet minimal academic and physical plant standards; and to additionally protect both the student and the public. This rule is expected to become effective February 20, 1995. This is an

amendment to the Administrative Code, Title 28, as noted below.

**Title 28
EDUCATION
Part IX. Regents**

**Chapter 1. Rules for Registration and Licensure
§103. Registration and License Applications**

* * *

C. License applications must be accompanied by a nonrefundable license application fee of \$750. The license application fee must be paid by company or institutional check or by money order, and should be made payable to the Louisiana Board of Regents.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21: (February 1995).

§105. License Fees

A. The license application fee shall be \$750. Those institutions granted a license to operate will be required to pay an additional \$750 at the start of the second year of the two-year licensing period. License renewal fees are required during each subsequent two-year licensing period and are nonrefundable.

B. If a request for license renewal is not received at the Board of Regents' offices at least 30 days prior to its expiration date, the institution can be subject to a delinquent fee of \$500 in addition to the renewal fee.

* * *

D. Institutions seeking licensure shall submit all required materials and the nonrefundable license fee to the Board of Regents. If a final determination concerning the institution's qualifications for licensure is not reached within 180 days of receipt of the license application, a provisional license will be issued to the institution. The provisional license will remain in effect pending a final licensing decision by the board.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21: (February 1995).

**Chapter 3. Criteria and Requirements for Licensure
§301. General Standards**

A. General standards for public and private academic degree-granting institutions offering similar degrees and titles must be as close as possible.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21: (February 1995).

§302. Accreditation

A. Institutions must hold accreditation through an association recognized by the U.S. Department of Education. Institutions domiciled outside the state of Louisiana must be fully accredited by an accrediting body recognized by the U.S.

Department of Education prior to making an application for licensure with the Board of Regents. Institutions domiciled in the state of Louisiana must either hold recognized accreditation or must make formal application and obtain accreditation from a U.S. Department of Education recognized accrediting association by date certain as a requirement for licensure.

B. Institutions seeking accreditation that have been found to meet other requirements set forth by the Board of Regents will be granted a conditional license until such time that they are accredited, or at a minimum, receive candidacy status from a recognized accrediting association. An institution that does not receive accreditation within a specified time frame will have its conditional license revoked.

C. The Board of Regents will consider a possible waiver of the accreditation requirement in the case of single purpose institutions. This consideration will be given in circumstances where the board determines that it would be educationally impractical for an institution to reorganize its programs and operations in order to become eligible for consideration by a U.S. Department of Education recognized accrediting association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21: (February 1995).

§303. Faculty

A. Qualifications of Faculty

1. Faculty shall be qualified by education and experience in the fields in which they teach. Faculty must meet the following minimum requirements:

B. Institutions offering advanced degrees must employ faculty who hold advanced degrees in appropriate fields from institutions accredited by recognized agencies¹. It is required that faculty credentials be verifiable.

1. If any institution employs a faculty member whose highest earned degree is from a non-regionally-accredited institution within the United States or an institution outside the United States, the institution must show evidence that the faculty member has appropriate academic preparation.

2. It is the responsibility of the institution to keep on file for all full-time and part-time faculty members documentation of academic preparation, such as official transcripts, and if appropriate for demonstrating competency, official documentation of professional and work experience, technical and performance competency, records of publications, and certifications and other qualifications.²

¹ Recognized accrediting agencies are those approved by the United States Department of Education.

² Source: Southern Association of Colleges and Schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21: (February 1995).

§305. Academic Program Standards

C. Institutions must provide programs of sufficient quality and content to achieve stated learning objectives. Curricula offered by the institutions must be formulated and evaluated by

faculty with appropriate earned degrees from institutions with U.S. Department of Education recognized accreditation. Institutions are also required to establish procedures for evaluating program effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21: (February 1995).

§307. Physical Plant Standards

B. Facilities and Equipment

The institution shall maintain or provide access to appropriate administrative, classroom, and laboratory space, and appropriate equipment and instructional materials to support quality education based on the type and level of program being offered. Facilities must comply with all health and safety laws and ordinances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21: (February 1995).

§311. Maintenance of Records

B. A student's records must be available for review by that student at the institution's central office.

C. Individual student records must include an enrollment agreement which at a minimum contain:

D. Student records must also include:

AUTHORITY NOTE: Promulgated in accordance with 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21: (February 1995).

§315. Organization and Administration

A. An institution shall establish a governing structure which delineates responsibility for institutional operations, policy formation, and the selection of the institution's chief executive officer. If the institution is governed by a board or group of officers, the role and responsibilities of that body must be clearly defined.

B. Administrative personnel must possess qualifications which support the institution's stated purpose and effective operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21: (February 1995).

§317. Procedures for Tuition and Fee Refunds

A. Pricing and Refund Policy

e. Refunds must be paid within 45 days of the date of withdrawal of the student from the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of

Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21: (February 1995).

§325. Sale of Ownership and Transfer of License

In the event that an institution sells all or a majority interest in its ownership, it is required to notify the Board of Regents of both expected and final sale. A review of the institution's operations and objectives will be required upon final sale to determine if the institution's operating license should be transferred to the new ownership. Any and all costs associated with the Board of Regents' review will be borne by the new ownership of the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21: (February 1995).

§327. Licensure Denial

Any institution denied licensure by the Board of Regents that wishes to seek reconsideration by the board is required to wait a minimum of 24 months before resubmitting its license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21: (February 1995).

J. Larry Crain
Commissioner of Higher Education

9502#020

RULE

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

Prevention of Significant Deterioration (LAC 33:III.509) (AQ105)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary has amended the Air Quality Division Regulations, LAC 33:III.Chapter 5, (AQ105).

The original increments were specified in terms of ambient air concentrations of Total Suspended Particulate (TSP) which was the form of particulate matter addressed in the National Ambient Air Standard at that time. The revised increments for particulate matter, measured as PM₁₀, restrict increases in ambient air concentrations of PM₁₀ to the following levels: 4µg/m³ (annual arithmetic mean) and 8µg/m³ (24-hour maximum) for Class I areas; 17µg/m³ (annual arithmetic mean) and 30µg/m³ (24-hour maximum) for Class II areas; and 34µg/m³ (annual arithmetic mean) and 60µg/m³ (24-hour maximum) for Class III areas.

EPA revised the Prevention of Significant Deterioration (PSD) regulation to use particulate matter less than 10 microns in size (PM₁₀) instead of TSP as the regulated pollutant. This

change will have no impact on most facilities in Louisiana and is required by federal regulations.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

* * *

[See Prior Text in A]

B. Definitions. For the purpose of this Part, the terms below shall have the meaning specified herein as follows:

* * *

[See Prior Text]

Baseline Date—

1. "Major source baseline date" means:

a. in the case of particulate matter (PM₁₀) and sulfur dioxide, January 6, 1975, and

b. in the case of nitrogen dioxide, February 8, 1988.

2. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to LAC 33:III.509 submits a complete application under the relevant regulations. The trigger date is:

a. in the case of particulate matter (PM₁₀) and sulfur dioxide, August 7, 1977, and

b. in the case of nitrogen dioxide, February 8, 1988.

* * *

[See Prior Text]

Net Emissions Increase—

* * *

[See Prior Text in 1-3]

4. An increase or decrease in actual emissions of sulfur dioxide, particulate matter or nitrogen dioxide which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emission increase for PM₁₀.

* * *

[See Prior Text in 5-C.3.a.i]

D. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Class I	
Particulate matter:	
PM ₁₀ , Annual arithmetic mean	4
PM ₁₀ , 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM ₁₀ , Annual arithmetic mean	17
PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM ₁₀ , Annual arithmetic mean	34
PM ₁₀ , 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

* * *

[See Prior Text in E-I.8]

a. the emissions increase of the pollutant from the new stationary source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide	575 $\mu\text{g}/\text{m}^3$	8-hour average;
Nitrogen dioxide	14 $\mu\text{g}/\text{m}^3$	annual average;
Particulate matter	10 $\mu\text{g}/\text{m}^3$ PM ₁₀	24-hour average;
Sulfur dioxide	13 $\mu\text{g}/\text{m}^3$	24-hour average;

Ozone—No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data;

Lead	0.1 $\mu\text{g}/\text{m}^3$	3-month average;
Mercury	0.25 $\mu\text{g}/\text{m}^3$	24-hour average;
Beryllium	0.001 $\mu\text{g}/\text{m}^3$	24-hour average;
Fluorides	0.25 $\mu\text{g}/\text{m}^3$	24-hour average;
Vinyl chloride	15 $\mu\text{g}/\text{m}^3$	24-hour average;
Total reduced sulfur	10 $\mu\text{g}/\text{m}^3$	1-hour average;
Hydrogen sulfide	0.2 $\mu\text{g}/\text{m}^3$	1-hour average;
Reduced sulfur compounds	10 $\mu\text{g}/\text{m}^3$	1-hour average; or

* * *

[See Prior Text in I.8.b-K.1]

2. any applicable maximum allowable increase over the baseline concentration in any area. This baseline concentration for any stationary source or modification with respect to any maximum allowable increase for particulate matter (PM₁₀) shall be based on the maximum allowable increases for TSP as in effect on the date the application was submitted, if the owner or operator of the source or modification submitted an application for a permit before the PM₁₀ maximum allowable increases became effective and the application as submitted before that date was determined complete.

* * *

[See Prior Text in L-P.3]

4. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager and the administrative authority that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority may, provided the applicable requirements of this Section are otherwise met, issue the permit with such emission limitations

as may be necessary to assure that emissions of sulfur dioxide, particulate matter and nitrogen dioxide would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

	Maximum Allowable Increase (Micrograms per cubic meter)
Particulate Matter:	
PM ₁₀ Annual arithmetic mean	17
PM ₁₀ 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

* * *

[See Prior Text in Q-S.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21: (February 1995).

James B. Thompson, III
Assistant Secretary

9502#058

RULE

Firefighters' Pension and Relief Fund City of New Orleans and Vicinity

Actuarial Apportionment of Cost of Living Adjustments

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity ("fund"), pursuant to R.S. 11:3363(F), has adopted rules and regulations applicable to actuarial apportionment of cost of living adjustments between members retiring under the new system and their beneficiaries in accordance with the provisions of R.S. 11:3382 and R.S. 11:3385.

Rule I. Definitions

A. *Actuarial Equivalent Option ("Option 4")*—a reduced annuity payable to the member over the member's life with a survivor annuity payable to the member's beneficiary for life, provided the total benefit payable is the actuarial equivalent of the member's service retirement benefit, as further provided under R.S. 11:3385.

B. *Beneficiary*—the person(s) designated in a written designation filed with the Board of Trustees on or before the member retires under the new system to receive any survivor benefits payable under R.S. 11:3385.

C. *Cost of Living Adjustments ("COLAs")*—the amount annually determined and authorized to be awarded in accordance with R.S. 11:3382, as amended from time to time.

D. *50 Percent Survivor Annuity Option ("Option 3")*—a reduced annuity payable to the member on a monthly basis for his life with a 50 percent survivor annuity payable monthly to the member's beneficiary for the life of the beneficiary, as further provided under R.S. 11:3385.

E. *Joint and Survivor Annuity Option ("OPTION 2")*—a reduced annuity, actuarially calculated, based on the joint life expectancy of the member and the member's beneficiary, payable to the member monthly during his life and continuing monthly after his death in the same amount to the member's beneficiary for the life of the beneficiary, as further provided under R.S. 11:3385.

F. *Member*—a new system member who retires on or after July 1, 1995.

G. *Reduced Annuity With Lump Sum Option ("Option 1")*—a reduced annuity payable to the member monthly for his life with the unpaid balance of the actuarial value of the member's accumulated contributions, payable as a lump sum to the member's beneficiary after his death, as further provided under R.S. 11:3385.

H. *Single Life Annuity Option*—a single life annuity payable to the member on a monthly basis for the duration of his life, with no survivor benefits, as further provided under R.S. 11:3385.

Rule II. Apportionment of Cost of Living Adjustments ("COLAs")

A. Any member under the new system who retires on or after July 1, 1995 and whose payment of retirement benefits is subject to R.S. 11:3385 shall be awarded an actuarial Cost of Living Adjustment ("COLA"), which amount shall be apportioned between the member and his beneficiary in accordance with the terms and conditions provided herein.

B.1. The COLA awarded to the member under R.S. 11:3382 shall be automatically apportioned, in the manner described under Section III below, between the member and his beneficiary designated to receive the member's survivor benefit under the following optional forms of payment under R.S. 11:3385:

a. the Joint and Survivor Annuity Option (Option 2);
or

b. the 50 Percent Survivor Annuity Option (Option 3).

2. Upon the death of the member, the beneficiary designated to receive the survivor benefit paid in the form of a Joint and Survivor Annuity Option (Option 2) or a 50 Percent Survivor Annuity Option (Option 3) shall not be entitled under R.S. 11:3382 to receive any further COLA increases after the member's death in accordance with these rules and regulations, unless otherwise provided by Louisiana law.

3. If the beneficiary designated to receive the survivor benefit paid in the form of a Joint and Survivor Annuity Option (Option 2) or a 50 Percent Survivor Annuity Option

(Option 3) predeceases the member, the automatic apportionment of the COLA, actuarially calculated in accordance with Section III below, shall cease and the member shall be prospectively entitled to the full COLA increase awarded under R.S. 11:3382 just as if the member selected the Single Life Annuity Option. Any COLA increases apportioned to the beneficiary prior to the beneficiary's death shall under no circumstances revert back to the member, but shall be forfeited in a manner consistent with the forfeiture of the survivor benefits awarded under R.S. 11:3385.

C. The COLA awarded to the member under R.S. 11:3382 shall not be apportioned between the member and his beneficiary designated to receive the member's survivor benefit if the member selects the following optional forms of benefit payments under R.S. 11:3385:

1. the Single Life Annuity Option;
2. the Reduced Annuity With Lump Sum Option (Option 1); or
3. any Actuarial Equivalent Option elected under Option 4, unless the member otherwise elects in a manner consistent with R.S. 11:3385, Option 4.

D. A new system member who retires on or after July 1, 1995 may elect to waive his right to actuarially calculate and apportion his COLA increases and elect to have his retirement benefits paid in the form of a Joint and Survivor Annuity Option (Option 2) or a 50 Percent Survivor Annuity Option (Option 3), without the actuarial COLA apportionment as provided under these rules and regulations, by electing to have his benefits paid in the form of an Actuarial Equivalent Option (Option 4), provided the following conditions are satisfied:

1. The member must obtain approval from the board concerning the member's election of an Actuarial Equivalent Option (Option 4) in a manner consistent with R.S. 11:3385, Option 4.
2. The member's beneficiary designated to receive his survivor benefits must consent to the waiver of the actuarial COLA apportionment and the member's election to receive his benefit in the form of an Actuarial Equivalent Option.
3. The beneficiary must acknowledge the effect of such waiver and the member's election after receipt of a written explanation concerning the beneficiary's rights and waiver of the actuarial COLA apportionment.

Rule III. Calculation of the COLA Apportionment

A. The actuarial apportionment of the COLA increases awarded under R.S. 11:3382 from time to time shall be calculated as follows:

1. The member's retirement benefit shall be actuarially calculated in accordance with the optional form of benefit payment selected under R.S. 11:3385.
2. The member's COLA award for the plan year in question shall be calculated based on the original maximum benefit payable in the form of the Single Life Annuity Option and shall not include any COLA increases previously awarded during prior plan years.
3. If a member selects the Joint and Survivor Annuity Option (Option 2) or the 50 Percent Survivor Annuity Option (Option 3), as further provided under R.S. 11:3385, the COLA increases awarded each plan year shall be actuarially apportioned between the member and his beneficiary based on

the member's and beneficiary's life expectancy at the time the COLA is awarded and the applicable factors used to calculate the optional form of benefit selected, i.e., the Joint and Survivor Annuity Option (Option 2) or the 50 Percent Survivor Annuity Option (Option 3). The amount of the actuarial COLA apportionment shall be added to the actuarial equivalent benefit calculated under Option 2 or Option 3.

4. Upon the member's death and in accordance with the optional forms of benefits selected under R.S. 11:3385, the beneficiary shall receive a survivor benefit, including the actuarial amount of the COLA apportionment, based on the member's retirement benefit at death. The beneficiary shall not be entitled to any COLA increases after the member's death in accordance with these rules and regulations, unless otherwise provided by Louisiana law.

B. The COLA award shall be actuarially apportioned as follows:

Case 1. The member is eligible to receive \$1,000 per month in maximum benefits payable as a Single Life Annuity. He elects to receive Option 2, the Joint and Survivor Annuity Option. The member retires at age 50 with his spouse as beneficiary at age 45. The member predeceases his beneficiary spouse.

Year 1—The member's Joint and Survivor Annuity Benefit equals $\$1,000 \times 0.85883 = \858.83 per month (Joint and Survivor 100 percent Annuity).

Year 2—3 percent COLA is granted for which he qualifies.

He receives $\$858.83 + (.03 \times \$1,000 \times .85229) = \$884.40$.

Year 3—3 percent COLA is granted to which he qualifies.

He receives $\$884.40 + (.03 \times \$1,000 \times .84559) = \$909.77$.

Year 4—The member dies before another actuarial COLA is granted and apportioned. The beneficiary spouse will receive \$909.77 per month for life with no future COLA increases under these rules and regulations, unless otherwise provided by Louisiana law.

Case 2. The member is eligible to receive \$1,000 per month in maximum benefits payable as a Single Life Annuity. He elects to receive Option 2, the Joint and Survivor Annuity Option. The member retires at age 50 with his spouse as beneficiary at age 45. The beneficiary spouse predeceases the member.

Year 1—The member's Joint and Survivor Annuity Benefit equals $\$1,000.00 \times .85883 = \858.83 per month (Joint and Survivor 100% Annuity).

Year 2—3 percent COLA is granted for which he qualifies.

He receives $\$858.83 + (.03 \times \$1,000 \times .85229) = \$884.40$.

Year 3—3 percent COLA is granted for which he qualifies.

He receives $\$884.40 + (.03 \times \$1,000 \times .84559) = \$909.77$.

Year 4—The beneficiary spouse dies and the member survives, and another 3 percent COLA is granted. Since the beneficiary spouse predeceases the member, the member

prospectively receives the full COLA award just as if he selected the Single Life Annuity Option.

He receives $\$909.77 + (.03 \times \$1,000) = \$939.77$.

The beneficiary spouse's survivor benefit, including any previous actuarial COLA apportionments, are forfeited and do not revert back to the member.

Case 3. The member is eligible to receive \$1,000 per month in maximum benefits payable as a Single Life Annuity. He elects to receive Option 3, the 50 Percent Survivor Annuity Option. The member retires at age 50 with his spouse as beneficiary at age 45. The member predeceases his beneficiary spouse.

Year 1—The member's 50 Percent Survivor Annuity Benefit equals $\$1,000 \times .92406 = \924.06 per month (Joint and Survivor 50 Percent Annuity).

Year 2—3 percent COLA is granted for which he qualifies.

He receives $\$924.06 + (.03 \times \$1,000 \times .92025) = \$951.67$.

Year 3—3 percent COLA is granted for which he qualifies.

He receives $\$951.67 + (.03 \times \$1,000 \times .91634) = \$979.16$.

Year 4—The member dies before another actuarial COLA is granted and apportioned. The beneficiary spouse will receive 50 percent of \$979.16 per month, or \$489.58 per month, for life with no future COLA increases under these rules and regulations, unless otherwise provided by Louisiana law.

Case 4. The member is eligible to receive \$1,000 per month in maximum benefits payable as a Single Life Annuity. He elects to receive Option 3, the 50 Percent Survivor Annuity Option. The member retires at age 50 with his spouse as beneficiary at age 45. The beneficiary spouse predeceases the member.

Year 1—The member's 50 Percent Survivor Annuity Benefit equals $\$1,000 \times .92406 = \924.06 per month (Joint and Survivor 50 Percent Annuity).

Year 2—3 percent COLA is granted for which he qualifies.

He receives $\$924.06 + (.03 \times \$1,000.00 \times .92025) = \951.67 .

Year 3—3 percent COLA is granted for which he qualifies.

He receives $\$951.67 + (.03 \times \$1,000.00 \times .91634) = \979.16 .

Year 4—The beneficiary spouse dies and the member survives, and another 3 percent COLA is granted. Since the beneficiary spouse predeceases the member, the member prospectively receives the full COLA award just as if he selected the Single Life Annuity Option.

He receives $\$979.16 + (.03 \times \$1,000) = \$1,009.16$

The beneficiary spouse's survivor benefit, including any previous actuarial COLA apportionments, are forfeited and do not revert back to the member.

Rule IV. Application of the COLA Apportionment

A. The apportionment of the actuarial COLA shall apply if the member selects the following optional forms of benefit payments under R.S. 11:3385:

1. the Joint and Survivor Annuity Option (Option 2); and
 2. the 50 Percent Survivor Annuity Option (Option 3).
- B. The apportionment of the actuarial COLA shall not apply as to the following elections made under R.S. 11:3385:
1. The member selects the following optional forms of benefit payments:
 - a. the Single Life Annuity Option;
 - b. the Reduced Annuity with Lump Sum Option (Option 1); or
 - c. any Actuarial Equivalent Option elected under Option 4, unless he otherwise elects in a manner consistent with R.S. 11:3385, Option 4.
 2. Any survivor benefits paid to a surviving widow or child of an old system member.
 3. Any death benefits under R.S. 11:3361 et seq. payable to any survivor of the deceased firefighter.

Rule V. Effective Date

These rules and regulations shall be prospectively effective and shall apply to all members who retire on or after July 1, 1995 under the new system.

Rule VI. Sunset Provision

If the enabling statute is amended to award full COLA increases to Beneficiaries in their own right, the Board of Trustees reserves the right to prospectively repeal the application of these rules and regulations.

William M. Carrouché
President

9502#021

RULE

Department of Health and Hospitals Board of Board Certified Social Work Examiners

Fees (LAC 46:XXV.119)

The State Board of Board Certified Social Work Examiners adopted the following rule establishing an administrative fee to be assessed of Board Certified Social Workers who are sanctioned by the board for violation of the Social Work Practice Act and/or the board's rules, regulations and procedures.

R.S. 37:2712 allows the board to set fees for any administrative function provided for in the law. The board will assess sanctioned licensees for all costs incurred in connection with disciplinary sanction, including but not limited to investigators', stenographers', and attorneys' fees.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXV. Certified Social Workers

Chapter 1. General Provisions

§119. Fees

* * *

N. The board may assess all costs incurred in connection with disciplinary actions, including but not limited to

investigators', stenographers', and attorneys' fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2712.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Board Certified Social Work Examiners, LR 10:204 (March 1984), amended by the Department of Health and Hospitals, Board of Board Certified Social Work Examiners, LR 21: (February 1995).

Suzanne L. Pevey
Administrator

9502#008

RULE

Department of Health and Hospitals Board of Embalmers and Funeral Directors

Continuing Education (LAC 46:XXXVII.709)

(Editor's Note: A portion of the following rules, which appeared on pages 1378 through 1380 of the December 20, 1994 Louisiana Register, is being republished to correct typographical errors.)

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXVII. Embalmers and Funeral Directors

Chapter 7. License

§709. Continuing Education

A. - D.6. ...

E. Continuing Education Requirements

1. All persons licensed by the board shall complete a minimum of four hours of approved continuing education in each one-year period to coincide with the renewal date of the license as a requirement of license renewal.

2. Carryover credit of continuing education hours will not be permitted.

3. The maximum credit hours for participation in any course shall not exceed that number approved by the board.

4. A licensee may not receive credit for attending the same course more than once during the same one-year period.

5. No credit shall be granted for partial completion of any continuing education activity.

6. A licensed individual who conducts an approved course may receive credit for attendance at continuing education. However, the requirements of Paragraph 4 of this Subsection will apply.

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 20:1378 (December 1994), repromulgated LR 21: (January 1995).

Dawn P. Scardino
Executive Director

9502#005

RULE

Department of Health and Hospitals Board of Examiners of Nursing Facility Administrators

Administrator-in-Training (AIT) (LAC 46:XLIX.701)

(Editor's Note: The following portion of a rule, which was published on page 790 of the July 20, 1994 Louisiana Register, is being republished to correct typographical errors.)

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLIX. Board of Examiners of Nursing Facility Administrators

Chapter 7. Administrator-in-Training (AIT)

§701. Program

A. An applicant must serve as a full-time (40 hours per week) administrator-in-training for a minimum of six consecutive months. The program may be completed or begun before or after taking examinations so long as it is carried out strictly according to Chapter 7. During this time the AIT must work under close, direct, personal, on-site supervision of a full-time preceptor who shall be administrator of record or licensed nursing home administrator serving as assistant administrator in the facility in which the AIT undertakes training.

1. - 2. ...

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners for Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 11:864 (September 1985), LR 4:240 (April 1987), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992); amended by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 20:790 (July 1994), repromulgated LR 21: (February 1995).

Kemp Wright
Executive Director

9502#052

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Certified Medicaid Enrollment Centers

The Department of Health and Hospitals, Office of Secretary, Bureau of Health Services Financing, has adopted the following rule in the Medicaid Program as authorized by

R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Bureau of Health Services Financing has adopted the following requirements which govern the operation of certified medicaid enrollment centers Title XIX of the Social Security Act. The enrollment center is responsible for ensuring that all of its employees maintain compliance with the following requirements.

A. In order to participate as an enrollment center, the provider applicant must not have been suspended or excluded from the Medicaid Program and must meet one of the following definitions:

1. an institutional provider of Medicaid services (e.g. hospitals, long term care facilities);
2. a state program which provides health or social services to the local population which is staffed by state employees (e.g., parish health units, mental health units);
3. a federally funded program which provides health or social services to the local population authorized under Section 329, 330 and 340 of the Public Health Services Act (e.g., FQHC);
4. a parish, state, or federally sponsored program providing services to the community; has designated business offices with established hours of operation; a full-time staff who works with the general public performing the normal duties of the program; and the endorsement and recommendation of local government for certification training (e.g., Headstart);
5. a private program providing health or social services to an identifiable segment of the local community; designated business offices with established hours of operation; a full-time staff who works with the general public in performing the duties of the program; and the endorsement and recommendation of local government for certification training (e.g., V.O.A., Catholic Community Services, etc.);
6. home health agencies or other agencies/programs specifically approved by the Bureau of Health Services Financing;

B. Required Training/Certification. Prospective enrollment center managers are required to attend a management orientation after which referred qualified personnel of the center must successfully complete the Medicaid enrollment center representative training. The representative training includes an overview of the Medicaid programs available, the eligibility factors considered in the application process, precertification responsibilities, and a detailed review of the comprehensive application process.

C. Contractual Agreement: DHH-BHSF and Enrollment Center. The rights and responsibilities of DHH-BHSF and the enrollment centers are outlined in the contractual agreement between the BHSF and the chief administrative officer/administrator of the institution or agency seeking to become an enrollment center.

1. The Department of Health and Hospitals, Bureau of Health Services Financing, is responsible for the administration and oversight of the enrollment center's participation in the Medicaid Program. The Department of

Health and Hospitals agrees to assist enrollment centers in the following ways:

- a. each potential enrollment center is furnished with an application, the standards for participation and a contractual agreement. Management staff is required to attend an enrollment center management orientation;
- b. BHSF provides for Medicaid enrollment center representative training for approved EC staff after the EC has completed the requirements in Item 1.a. above;
- c. BHSF awards the EC representative a certification letter, certificate and an EC handbook to those approved EC staff who have attended EC representative training and passed the required test;
- d. DHH-BHSF will monitor EC operations to assure quality service is being offered to applicants;
- e. DHH-BHSF will review, approve and refer for processing and payment all complete invoices.

2. Contractual Agreement/Responsibilities. The contractual agreement must be signed by the duly authorized representative of the enrollment center. If the enrollment center is a corporation, the authorization should be evidenced by a corporate resolution which authorizes a particular person to sign on behalf of the corporation. If the enrollment center is a partnership, the authorization should be evidenced by the articles of partnership. Once the duly authorized representative of the enrollment center signs the contractual agreement with the bureau, the enrollment center and its employees are bound by the contractual agreement. The signature of the duly authorized representative serves as the facility's agreement to abide by all policies and that to the best of his/her knowledge, the information contained on the application form is true, accurate and complete. Once the contractual agreement between the DHH and the enrollment center is completed, the enrollment center:

- a. understands that their facility must qualify based upon the standards for participation. The duly authorized representative must sign the contractual agreement and must attend the enrollment center management orientation;
- b. agrees to adhere to the applicable regulations of the secretary and the Department of Health and Hospitals, Bureau of Health Services Financing. The enrollment center agrees to comply with all rules governing its participation as an enrollment center;
- c. understands that it has the right to terminate its agreement for any reason in writing with 30 days prior notice to DHH. The enrollment center understands that DHH has the right to terminate the agreement with 10 days notice for violation of any of the stated agreements and responsibilities as set forth in the agreement. The agency reserves the right to institute a 30-day period of corrective action in coordination with the enrollment center;
- d. agrees to maintain such records as outlined in the enrollment center handbook. These records are to be provided upon request by the state Medicaid agency, the secretary of the Department of Health and Hospitals, the Medicaid fraud control unit, or the U. S. Department of Health and Human Services. These records must be maintained for a minimum of three years from the date of service;

e. understands that, as a condition of enrollment and participation, it is responsible for assuring and monitoring confidentiality (including, but not limited to, the fact that the intake or enrollment unit of the provider entity is prohibited under the rules of confidentiality from sharing any information pertaining to the recipient with any other unit of the provider entity), nondiscrimination and quality standards and adhering to federal and state requirements relative thereto;

f. must undergo periodic monitoring by state and/or federal officials without prior notice and agree that state and/or federal officials will have access to the premises to inspect and evaluate work being performed. The enrollment center understands that decertification may result if, according to the determination of the state of federal agency, nonconformance with policies is found;

g. agrees that only persons who have successfully completed certification training with a passing grade will be allowed to complete Medicaid applications and agrees that any change in certified staff will be reported to DHH within 10 days to be recorded in the enrollment center profile. The enrollment center shall keep a copy on file of each employee certification document. Replacement staff must be trained and certified prior to completing applications;

h. understands that participation is required in follow-up training provided as specified by BHSF;

i. understands that the Medicaid enrollment center handbook will be furnished to the facility at no cost and agrees to comply with the provisions of the Medicaid enrollment center handbook. The enrollment center will be responsible for maintaining and updating this handbook as revisions are issued;

j. understands that application packets will be distributed by DHH. It is the responsibility of the enrollment center to maintain an applications transmittal log. Transmittal logs will be used for submitting applications, invoicing, monitoring and review purposes;

k. must forward all completed applications to DHH within established time frames, as stated by the enrollment center in the contractual agreement. All applications must be accompanied with a transmittal log for proper documentation;

l. must adhere to applicable state and federal laws and regulations.

3. Either party may terminate the contract in writing. Thirty days prior notice is required for an enrollment center to terminate its contract with the Department of Health and Hospitals while 10 days prior notice is required for the department to terminate its contract with the enrollment center.

Rose V. Forrest
Secretary

9502#049

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Minimum Standards for Licensure of Home Health Agencies (LAC 48:I.Chapter 91)

The Department of Health and Hospitals, Office of the Secretary, has adopted regulations governing the licensure of home health agencies as authorized by R.S. 40:2009.31-40. These regulations are contained in the Louisiana Administrative Code, Title 48, Part I, General Administration, Subpart 3, Licensing and Certification, Chapter 91, Minimum Standards for Home Health Agencies.

Sections 9101 through and including 9163 remain in effect and govern home health agencies issued licenses prior to July 22, 1994 and shall continue to regulate these agencies until July 22, 1995.

Sections 9165 through and including 9173 govern home health agencies issued licenses on or after July 22, 1994. On July 23, 1995 Sections 9165 through and including 9173 shall govern all home health agencies regardless of date of issuance of the license.

Home health agencies must deliver home health services in compliance with all federal and state laws and regulations.

The full text of this rule may be obtained from the Office of the State Register, Box 94095, Baton Rouge, LA 70804-9095.

Rose V. Forrest
Secretary

9502#042

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Licensing and Certification of Hospitals (LAC 48:I.Chapter 93)

Effective March 1, 1995 the Department of Health and Hospitals, Office of Secretary, has adopted regulations governing the licensure of hospitals as authorized by R.S. 40:2100-2115. These regulations are contained in the Louisiana Administrative Code Title 48, Part I, Subpart 3 General Administration, Chapter 93 Licensing and Certification.

The text of this rule may be viewed in its entirety at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

Rose V. Forrest
Secretary

9502#045

RULE

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Medicaid Funding for Abortions

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is adopting the following rule in the Medicaid Program as authorized by R.S. 46:153. This rule is in accordance with Act 1 of the Fourth Extraordinary Session 1994 which amended R.S. 40:1299.34.5 and enacted 40:1299.35.7 and authorizes the Department of Health and Hospitals to promulgate the regulations governing the coverage of abortions due to rape and incest. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Bureau of Health Services Financing adopts the following requirements which will govern the reimbursement for the performance of an abortion to terminate a pregnancy resulting from rape or incest under the Medicaid Program.

A. All of the following requirements must be met prior to the performance of an abortion to terminate a pregnancy due to rape or incest in order for Medicaid reimbursement to be made for the abortion:

1. The Medicaid recipient shall report the act of rape or incest to a law enforcement official unless the treating physician certifies in writing that in the physician's professional opinion, the victim was too physically or psychologically incapacitated to report the rape or incest.

2. The Medicaid recipient shall certify that the pregnancy is the result of rape or incest and this certification shall be witnessed by the treating physician.

B. The report of the act of rape or incest to a law enforcement official or the treating physician's statement that the victim was too physically or psychologically incapacitated to report the rape or incest must be submitted to the Bureau of Health Services Financing along with the treating physician's claim for reimbursement for performing an abortion.

C. The Department of Health and Hospitals shall make quarterly reports to the Joint Legislative Budget Committee and the House and Senate Health and Welfare Committees on the amount of Medicaid funds expended on abortions to terminate pregnancies due to rape or incest.

Rose V. Forrest
Secretary

9502#048

RULE

**Department of Health and Hospitals
Radiologic Technology Board of Examiners**

Continuing Education (LAC 46:LXVI.Chapter 12)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Health and Hospitals, Radiologic Technology Board of Examiners (board), pursuant to the authority vested in the board by R.S. 37:3207, has adopted LAC 46:LXVI.Chapter 12, regarding requirements for continuing education for licensed radiologic technologists.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXVI. Radiologic Technologists

**Chapter 12. Continuing Education Requirements for
License Renewal**

§1201. Definitions

AMA/CME—American Medical Association/Continuing Medical Education.

ARDMS—American Registry of Diagnostic Medical Sonographers.

ARRT—American Registry of Radiologic Technologists.

ASRT—American Society of Radiologic Technologists.

Active Status—radiologic technologists who maintain their license by paying an initial or renewal fee and are listed in good standing with the LSRTBE.

Approved Academic Course—a formal course of study offered by an accredited postsecondary educational institution in the biological sciences, physical sciences, radiologic sciences, health and medical sciences, social sciences, communication (verbal and written), mathematics, computers, management or education methodology.

Approved Continuing Education Activity—an educational activity which has received approval through a recognized continuing education evaluation/mechanism. Examples include: LSRTBE/ECE, LSRT/ECE, ASRT/ECE, AMA/CME, and SNM-TS/VOICE. Courses meeting this definition are awarded Category A continuing education credits. Activities meeting the definition of an approved academic course will be awarded credit at the rate of 16 CE credits for each academic semester credit and 12 CE credits for each academic quarter credit. An official transcript showing a grade of "C" or better is required to receive CE credit for an academic course.

CPR—Cardio-Pulmonary Resuscitation. Valid and current CPR, basic life support, advanced life support, instructor or instructor trainer certification will be recognized as six Category A credit hours per two-year licensing period.

Category A Credit—educational activity which qualifies as an approved continuing educational activity as defined in this document.

Category B Credit—educational activities not approved for Category A credits may be eligible to receive Category B credits provided that the activities are pertinent to the

radiologic technology fields and the LSRTBE has given written approval to these activities.

Continuing Education (CE)—educational activities which serve to improve and expand the knowledge and skills underlying professional performance that a radiologic technologist uses to provide services for patients, the public or the medical profession.

Continuing Education Credit (CEC)—a unit of measurement for continuing education activities. One continuing education credit is awarded for each 50- to 60-minute educational activity. Educational activities of 30 to 49 minutes of duration will be awarded one-half of a credit.

Directed Reading—reading of recent professional journal articles and self-assessment testing to demonstrate comprehension of the material read. The directed readings must be offered through a postsecondary educational institution or as an approved continuing education activity.

Documentation—proof of participation in a particular educational activity. Documentation shall include: the category of activity (either A or B), dates of attendance, title and content of the activity, number of continuing education credits, the signature of the instructor or a representative of the organization sponsoring the activity, and a reference number if the activity has been approved by a RCEEM.

Educational Activity—a learning activity which is planned, organized, and administered to enhance professional knowledge and skills. These include, but are not limited to, meetings, seminars, workshops, courses or programs.

Eligible for Renewal Status—a radiologic technologist who has completed all requirements for the renewal of a Louisiana radiologic technologist license is considered to be eligible for renewal status.

Expired Status—a radiologic technologist who fails to meet the continuing education requirements for renewal prior to or during probational status shall be placed on expired status and his or her license shall be considered suspended. The radiologic technologist will no longer be considered as holding a valid license in the state of Louisiana.

Inactive Status—classification of license where the LSRTBE waives renewal fees to those licensees who confirm in writing to the board that they are not actively employed in the state of Louisiana as radiologic technologists. Those licensees who are on inactive status are not required to participate in any continuing education policies. However, should these licensees seek to reactivate their license they will be required to meet the same continuing education requirements of all active licensees.

Independent Study (only available for Category A credit)—an educational activity offered by an accredited postsecondary educational institution or a comparable sponsor wherein the participant independently completes the objectives and submits the required assignments for evaluation. Independent study may be delivered through various formats such as directed readings, videotapes, audio-tapes, computer-assisted instruction and/or learning packets.

In-Service Education—a planned and organized educational activity provided by an employer in the work setting.

Ionizing Radiation—commonly known as X-rays or Gamma Rays, they remove electrons from the atoms of matter lying in their path (e.g., *ionization*).

LSRT—Louisiana Society of Radiologic Technologists.

LSRTBE—Louisiana State Radiologic Technology Board of Examiners (board).

Licensing—the process of granting a license attesting to the demonstration of qualifications in a profession.

Licensing Term—the LSRTBE issues licenses to radiologic technologists for two-year terms. All renewal licenses are issued on June 1 and expire on May 31 of the second year of their issuance.

NMTCB—Nuclear Medicine Technology Certification Board.

Probational Status—radiologic technologists who apply for the renewal of their Louisiana Radiologic Technology License but who fail to meet the continuing education renewal requirements will be placed on a probational status. Probation shall not exceed a period of six months beyond the expiration date of a license.

Recognized Continuing Education Evaluation Mechanism (RCEEM)—a mechanism for evaluating the content, quality, and integrity of an educational activity. The evaluation must include review of educational objectives, content selection, faculty qualifications, and educational methods and materials. Among the requirements for qualifying as a RCEEM, an organization must be statewide or national in scope, nonprofit and radiology based.

Example: RCEEMs include: AMA/CME system, LSRTBE/ECE, LSRT/ECE, ASRT/ECE system, SDMS/CME and SNM-TS/VOICE system.

Reinstatement—those radiologic technologists on inactive status or those radiologic technologists who have been placed on expired status may be eligible to become licensed again by applying for reinstatement. Reinstatement and the requirements thereof shall be determined by the board on an individual basis.

SDMS—Society of Diagnostic Medical Sonographers.

SNM-TS/VOICE—Society of Nuclear Medicine-Technologist Section/Verification of Involvement in Continuing Education.

Sponsor—an organization responsible for the content, quality and integrity of the educational activity, which plans, organizes, supports, endorses, subsidizes and/or administers educational activities. Sponsors may be, but are not limited to, state, national, regional and district professional societies, academic institutions, health care agencies, health care facilities, federal or state government agencies. Sponsors must apply and receive approval from a RCEEM in order to offer Category A credit for activities.

Suspension/Suspended—license status whereby the radiologic technologist is not allowed to practice where a license is required by law.

Teleconference—a planned educational activity delivered by a closed-circuit television system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1203. Renewal of License

Effective June 1, 1997, the LSRTBE will require that those licensees applying for renewal of license shall have, in the preceding two-year period, participated in and completed the continuing education requirements, and/or board-approved alternatives as set forth below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1205. Continuing Education Requirements

Twenty-four hours of continuing education credits must be earned per licensing term to meet the continuing education requirements. At least 12 of these credits must be from Category A activities. Credits earned in excess of 24 per licensing term may not be carried over into the next licensing term. The continuing education requirement is independent of the number of licenses held by an individual (i.e., a radiologic technologist certified in both radiography and radiation therapy technology needs only 24 credits). The LSRTBE will recognize only 12 credits of continuing education from sources that are not directly related to ionizing radiation.

Example: If a person is a licensed radiographer but primarily practice as an ultrasonographer, LSRTBE will recognize up to 12 hours of CE that is ultrasound specific. The remaining 12 hours must be specific to a modality that employs ionizing radiation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1207. Licensing Term Schedule

Since the licensing term is defined as that period from June 1 of a renewal or issuance of license year, to the second May 31 to occur after that date, the continuing education credits must be earned in the two years prior to the second occurrence of May 31.

Example: radiologic technologists who renew their license June 1, 1995 will be required to meet the continuing education requirements from June 1, 1995 to May 31, 1997 in order to renew their license in 1997. Radiologic technologists who renew their license June 1, 1996 will be required to meet the continuing education requirements in order to renew their license in 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1209. Renewal of License By Examination

A. Radiologic technologists who pass one of the advanced-level examinations or entry-level examinations in a different category within a licensing term are exempt from the continuing education requirement for that licensing term.

B. Subsequent renewal of license will require documentation of 24 hours of active participation in continuing education activities for the following licensing term and every two years thereafter, unless another examination is passed.

1. **Example:** A radiographer in good standing who has passed the nuclear medicine examination or the radiation therapy examination given in March 1997 does not have to complete the 24 hour continuing education requirement for the licensing term from June 1, 1995 to May 31, 1997. However, beginning June 1, 1997, the radiologic technologist must document continuing education credits for the licensing term of June 1, 1997 to May 31, 1999.

2. **Example:** A radiographer in good standing who has passed an advanced examination in a modality not specific to the use of ionizing radiation (MRI, ultrasound), but recognized as being within the profession of radiologic technology, will be awarded no more than 12 CE credits per licensing period. Therefore, the radiographer who passes the MRI advanced examination will be awarded 12 hours but still has to receive 12 hours of CE specific to ionizing radiation to total the 24 hours of CE required to renew the radiographers license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1211. Biannual Application for License Renewal

An application for the renewal of the license will be mailed to each radiologic technologist whose license to practice radiologic technology will expire that May 31 with the license fee due. Included on the renewal application will be an area to state the number of continuing education credits accrued for that licensing term up to that date. Radiologic technologists are required to provide copies of documentation of participation in the specified educational activity which shall be included with the license renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1213. Documentation

A. A licensed radiologic technologist is required to maintain proof of participation in continuing education activities and is required to attest to this participation on the renewal form. Said documentation shall be provided by the radiologic technologist to Louisiana State Radiologic Technology Board of Examiners as part of the renewal process. Failure to provide documentation acceptable to the Louisiana State Radiologic Technology Board of Examiners will result in probational status. The Louisiana State Radiologic Technology Board of Examiners will accept copies of documents. Original documents shall be kept by the radiologic technologist for two years after the end of the licensing term for the purpose of further verification should the board choose to audit the licensees' submissions.

B. Documentation of participation in Category A continuing education activities must be on a form provided by a recognized continuing education evaluation mechanism (RCEEM) or must clearly indicate the information needed to identify the activity as having been approved by a recognized continuing education evaluation mechanism (RCEEM). Documentation must include dates of attendance, title of the activity, contact hours for the activity, the reference number

if the activity has been approved by a RCEEM and the signature of an authorized representative of the sponsor issuing the documentation.

C. Documentation of participation in Category B activities must be an itemized form and must include dates of attendance, title of the activity, contact hours for each activity and the signature of the instructor or an official representative of the sponsor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1215. Applicants for Renewal Who Fail to Meet CE Requirements

A. A radiologic technologist who applies for renewal of license, but who fails to meet the renewal requirements within the previous licensing term, will automatically be transferred to a probational status. Individuals who are listed as having a probational status, due to failure to meet these renewal requirements, will receive an identification card indicating "probational" status. This status will be indicated in the *Directory of Licensed Radiologic Technologists* published by the Louisiana State Radiologic Technology Board of Examiners and will be reported in response to any inquiries regarding the radiologic technologist's status with the Louisiana State Radiologic Technology Board of Examiners. The Louisiana State Radiologic Technology Board of Examiners will notify the current employer of record of the radiologic technologists probational status.

B. Radiologic technologists who have renewed but are classified as being on probational status due to not meeting the continuing education renewal requirements may be returned to an approved status by one or more of the following:

1. passing an advanced level examination recognized by the LSRTBE;
2. passing an entry-level examination recognized by the LSRTBE in a different category;
3. completing the required continuing education hours in the six months (on or before December 31) following the May 31 expiration date.

C. Any hours completed or other requirements met during the probation term may not be used to meet the continuing education requirements for the subsequent license term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1217. Probational Fee Structure

A. The board shall impose the following probational fees on those licensees who are placed on probational status:

All or part of June:	\$ 5.00
All or part of July:	25.00
All or part of August:	50.00
All or part of September:	75.00
All or part of October:	100.00

All or part of November: 150.00

All or part of December: 200.00

B. A license with a probational status which is not brought into compliance within the six-month period (on or before December 31) will be considered "suspended" by the Louisiana State Radiologic Technology Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1219. Reinstatement of License

A. If a license lapses or is inactive for a period of less than four years and if the person is otherwise eligible for renewal of license, the person must supply evidence of having met the continuing education requirements (e.g., 24 credits) for each of the prior licensing terms and pay the designated standard renewal fee and any other associated fees deemed due by the board.

B. If a license lapses or is inactive for a period of four or more years and if the person is otherwise eligible for renewal of license, the individual must pass the entry-level examination and pay the designated special reinstatement fee. Reinstatement via continuing education is not an option in this situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

§1221. Requirements for Sponsors

A. Sponsors must submit documentation on the quality and integrity of the educational activity to be considered for Category A credits by having the educational activity approved through a recognized continuing education evaluation mechanism (RCEEM). All activities which meet the Louisiana State Radiologic Technology Board of Examiners definition of an educational activity and which do not meet Category A requirements are defined as Category B.

B. The following examples of educational activities are recognized as enhancing the knowledge, skills and attitudes underlying the professional performance of radiologic technologist:

1. panel discussions;
2. professional development educational activities;
3. presentations;
4. meetings, seminars, workshops or conferences;
5. teleconferences;
6. academic courses;
7. fellowships;
8. independent study;
9. directed reading;
10. specialty programs or courses, e.g., cardiovascular, mammography, etc.;
11. in-service programs, tumor boards, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health

and Hospitals, Radiologic Technology Board of Examiners, LR 21: (February 1995).

Richard S. Whitehorn, L.R.T.
Executive Director

9502#014

RULE

**Department of Natural Resources
Office of the Secretary
Energy Division**

Energy Rated Homes Fee Schedule (LAC 43:I.101)

The Energy Division of the Department of Natural Resources, under the authority granted by R.S. 36:354, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., is promulgating a fee schedule for the services to be offered by the new Energy Rated Homes of Louisiana (ERHL) Section. These services, which relate to residential energy efficiency and indoor air quality, will be offered to the public as well as to public and private entities.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 1. Energy Rated Homes

§101. ERHL Fee Schedule

A. As required by R.S. 36:354, the following fees shall be assessed in order to provide funding for services offered by the new Energy Rated Homes of Louisiana section of the Department of Natural Resources, Energy Division.

Ratings	
Regular Ratings	\$50/hr. with minimum 4 hours
Ratings Requiring Post Retrofit Inspection	\$50/hr. with minimum 5 hours
House Plan Review	\$50/hr. with minimum 2 hours
Residential Walk-Through Audits	\$50
Training	\$10/hr./student or actual costs incurred
Building Diagnostics	
Energy Use	\$50/hr.
Moisture Damage	\$50/hr.
Indoor Air Quality	
On-Site Time	\$50/hr.
Equipment Charges for 10-Day Monitoring Period	\$200

B. All fee payments shall be made by check, draft or money order to Energy Rated Homes of Louisiana, Department of Natural Resources, Energy Division, P.O. Box 44156, Baton Rouge, LA 70804-4156.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Energy Division, LR 21: (February 1995).

Jack McClanahan
Secretary

9502#030

RULE

**Department of Public Safety and Corrections
Office of Motor Vehicles**

Driver's License Renewal by Mail (LAC 55:III.129-141)

In accordance with the provisions of R.S. 32:412(D) and the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Office of Motor Vehicles has adopted the following rules.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 1. Driver's License

§129. Renewal by Mail

The Office of Motor Vehicles shall send an invitation to

each person qualified to renew his driver's license by mail. This invitation shall be mailed to the last known address of the qualified person 100 days prior to expiration of the person's driver's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicle, LR 21: (February 1995).

§131. Disqualifications for Mail Renewal Applicants

A person is not qualified to renew his driver's license by mail if the individual's driving record indicates that, within four years preceding the date of application, the individual has been convicted of the following moving violations:

1. Failure to Render Aid
2. Hit and Run
3. Reckless Driving
4. Speeding
5. Improper Passing
6. Making Improper Turn
7. Improper Lane Changing
8. Failure to Yield
9. Failure to Signal
10. Careless Driving
11. Negligent Injury
12. Following too Closely
13. Failure to Dim Headlights
14. Failure to Leave Sufficient Distance
15. Following Emergency Vehicle Unlawfully
16. Failure to Keep in Proper Lane
17. Improper Entry to/Exit from Traffic
18. Improper Starting from Parked Position
19. Improper Backing
20. Crossing Fire Hose
21. Passing on Wrong Side
22. Passing in a No Passing Zone
23. Failure to Yield to Passing Vehicle
24. Coasting with Gears Disengaged
25. Failure to Yield to Emergency Vehicle
26. Failure to Yield to Unsigned Intersection
27. Failure to Yield to Pedestrians
28. Failure to Follow Officer's Instruction
29. Passing through Barricade
30. Failure to Observe Safety Zone
31. Drag Racing
32. General Speeding or too Fast for Conditions
33. Speed Less than Posted Minimum
34. Making Right Turn from Left Lane
35. Making Left Turn from Right Lane
36. Driving without Proper Driver's License
37. Wrong Way on One Way Street
38. Driving on Wrong Side of Road
39. Driving Wrong Direction on Rotary
40. Leaving the Scene of an Accident
41. Evading Citation or Roadblock
42. Failure to Maintain Control
43. Driving without Headlights

The above cited convictions are in addition to those disqualifying convictions enumerated in R.S. 32:414.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

§133. Further Disqualifications

A person shall not be qualified to renew his driver's license by mail if:

1. the applicant is 70 years of age or older prior to 100 days before the expiration of the driver's license;
2. the applicant indicates on the mail-in renewal application form that there have been changes or additions since the last renewal including any physical condition or vision change which does not meet departmental standards;
3. if the renewal application is not notarized and properly signed;
4. if the applicant's driving record indicates a pending suspension, or a pickup order for the license has been issued, or the record has a notation of "no insurance" or "petition."

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

§135. Eye Examination Requirements

The affidavit submitted by the applicant, with regard to the eye examination, shall include a statement as to the visual acuity of each eye of the applicant and as to the visual acuity of both eyes combined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

§137. Renewal Stickers

Upon receipt of an application which complies with the requirements set out by law and rule, the Office of Motor Vehicles will issue a renewal sticker to be affixed to the side of the license containing the Restriction and Endorsement Code. Applicants who apply for renewal and who fail to receive a sticker within 35 days of application must contact the Office of Motor Vehicles either in writing or in person within 60 days from the date of license expiration to qualify for a free replacement sticker or free retake of the pictured license. If the applicant does not contact the department by the sixtieth day, he will be required to pay for a duplicate license or sticker at a cost of \$5 plus a \$5.50 handling fee. These written requests are to be directed to the Vehicle Renewal Unit, P.O. Box 64886, Baton Rouge, LA 70896.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

§139. Delinquent Fees

If the return of the original renewal application is postmarked 11 days or more after the date of expiration of the person's driver's license, a delinquent fee of \$15 will be charged in addition to all other applicable fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

§141. Method of Payment

All money submitted with an application must be in the form of a money order, cashier's check or certified check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:412(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 21: (February 1995).

Paul W. Fontenot
Deputy Secretary

9502#054

RULE

**Department of Public Safety and Corrections
Office of State Police**

Civil Penalties (LAC 55:III.701)

In accordance with R.S. 32:1312 et seq., and under authority conferred by Title 32 of the Louisiana Revised Statutes in general, the Department of Public Safety and Corrections, Office of State Police has adopted Civil Penalties, LAC 55:III.701.

This regulation was adopted to allow the Office of State Police to impose a civil penalty against any motor vehicle inspection station or mechanic inspector who has committed an act which is in violation of the provisions of this Chapter relative to the operation of an official inspection station or the actual conduct of a motor vehicle safety inspection.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicle

Chapter 7. Louisiana Motor Vehicle Safety Inspection Program

§701. Civil Penalty

Violations of the operation of an official inspection station or the actual conduct of a motor vehicle inspection shall be grouped as follows:

1. Administrative violations are any violation of the operation of an official inspection station not to include the actual conduct of a motor vehicle safety inspection, (station management requirements, etc.).

2. Inspection violations are any violation of the actual conduct of a motor vehicle safety inspection excluding inspection to vehicles requiring D.O.T. or school bus inspections.

3. D.O.T./school bus is any violation of the actual conduct of a motor vehicle safety inspection of vehicles requiring D.O.T. or school bus inspections.

4. Civil Penalties shall be assessed at the following rate:

- a. Administrative Violation \$25 per violation
- b. Inspection Violation \$50 per violation
- c. D.O.T./School Bus \$75 per violation

5. The maximum penalty per occurrence as set by R.S. 32:1312 is \$1,000. The increased penalty per violation from a minimum of \$25 to a maximum of \$75 per violation is intended to reflect the impact to the public from violation of the operation of an official inspection station and the conduct of a motor vehicle safety inspector.

6. If an inspection station or mechanic inspector receives three Civil Penalties within a 12-month period, this shall be grounds to remove said inspection station or mechanic inspector from the Motor Vehicle Safety Inspection Program. This in no way intends to impede the ability of the department from removing an inspection station or mechanic inspector at any time with proper cause.

7. The Office of State Police shall impose Civil Penalties after affording the accused an opportunity for a fair and impartial hearing to be held in accordance with the Administrative Procedure Act.

After the hearing process has been exhausted and upon the decision of the Office of State Police to impose Civil Penalties has been upheld, Civil Penalties shall be imposed as previously stated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1312 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 21: (February 1995).

Paul Fontenot
Deputy Secretary

9502#038

RULE

**Department of Revenue and Taxation
Sales Tax Division**

Nonresident Contractor Registration (LAC 61:I.4373)

Under the authority of R.S. 33:2847 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, has adopted LAC 61:I:4373 pertaining to the registration of nonresident contractors.

For each contract performed on immovable property, nonresident contractors are required to register and pay a \$10 fee and to provide a surety bond to cover any state and local taxes due. To ensure that taxes due by nonresident contractors are paid to state and local governments, Act 1026 of the 1993 Regular Session of the Legislature directed the secretary of the Department of Revenue and Taxation to promulgate rules to establish standards for the assessment and collection of local sales taxes from nonresident contractors; to provide for the enforcement of the rules; and authorize the withholding of state funds from local government subdivisions within parishes where the local government has failed to comply with the rules. This rule provides for the administration of the nonresident contractor program.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue and Taxation

Chapter 43. Sales and Use Tax

§4373. Nonresident Contractors

A. General. This Section provides the procedures that must be followed by nonresident contractors who do business in this state as required by R.S. 47:9 and R.S. 47:306(D). This Section also provides the procedures that must be followed by state and local agencies charged with the responsibility for granting permits and/or licenses for the lawful commencement of construction contracts in this state as required by R.S. 33:2847. This Section also provides the necessary definitions.

B. Definitions. For the purposes of this Section, the following terms are defined:

Contractor—any dealer, as defined in this Chapter, who enters into contracts for the construction, renovation, or repair of immovable properties, such as buildings, houses, roads, levees, pipelines, and industrial facilities. It also includes subcontractors who enter into similar agreements with a general or prime contractor. The term contractor shall not include businesses that fabricate or construct property that is sold to another person as tangible personal property, even though the property may be subsequently incorporated into the construction of an immovable. The term contractor shall include any project owner who obtains any permit, license, or certificate necessary for the lawful commencement of any construction contract.

Nonresident Contractor—any contractor who does not meet any of the following criteria for resident status.

a. For an individual proprietorship, resident status requires having maintained permanent domicile in Louisiana for at least one year prior to bidding on work.

b. For a corporation, resident status requires having operated a permanent business facility in Louisiana for at least one year prior to bidding on work; or having at least 50 percent of its outstanding and issued common stock owned by individuals who have maintained their domicile in Louisiana for at least one year prior to bidding on work.

c. For partnerships and other legal entities, resident status requires at least 50 percent ownership by individuals or corporations who themselves qualify as residents.

Resident Contractor—all contractors that are not nonresident contractors.

C. Contracts to be Registered with Secretary and Central Collector

1. Prior to obtaining a building permit necessary for the lawful commencement of any contract in Louisiana, a nonresident contractor shall register each contract that exceeds \$3,000 in total price or compensation with the secretary of the Department of Revenue and Taxation and with the central sales and use tax collector for the parish in which the project is located. The secretary shall provide the necessary forms for the contractors to register each contract. The forms will require the nonresident contractor to give a complete description of each project, pertinent tax registration data, and a list of anticipated subcontractors. A fee of \$10 per contract

shall be paid to the secretary at the time of registration. As required by the secretary, the contractor shall furnish a surety bond for each contract or a blanket surety bond for all contracts. The bond shall be for an amount equal to 5 percent of the total contract price, or \$1,000, whichever is greater, for each contract. Upon satisfactory completion of the registration and surety bond requirements, the secretary shall issue the contractor a certificate of compliance with which to obtain any building permits necessary for lawful commencement.

2. Following the satisfactory registration of contracts with the secretary, the contractor shall submit copies of all registration, tax, and surety bond information to the appropriate parish central sales and use tax collector, except in Cameron Parish. In Cameron Parish, the nonresident contractor is to submit the necessary information to the parish police jury. The collector or police jury may require the contractor to supply additional information necessary to ensure that the contractor and his subcontractors are registered for and remit any applicable sales/use and occupational license taxes. Upon satisfactory completion of this requirement, the collector or police jury will issue the contractor a certification of compliance with which to obtain any building permits necessary for lawful commencement.

3. Nonresident subcontractors will be held to the same requirements of registration, payment of a \$10 fee, and furnishing a surety bond, even though they may not need to secure any permits.

D. Payments to be withheld from subcontractors. R.S. 47:9(B)(3) makes each contractor subject to this provision responsible for all of its subcontractors' compliance with all state and local tax laws. A contractor shall inform each of its subcontractors of their tax registration, contract registration, and surety bond requirements, and shall withhold a sufficient amount from payments made under their contracts to ensure compliance. Upon discovering any unpaid tax liability by a subcontractor, the secretary will first attempt to collect the unpaid taxes from the subcontractor or his surety. However, if the secretary's efforts are unsuccessful, the contractor and his surety have ultimate responsibility for the payment of any subcontractor's unpaid tax liabilities.

E. Contract Completion; Cancellation of Surety Bond. Within 30 days after completion of each contract, the contractor shall submit to the secretary a completion report summarizing the costs incurred; the taxes paid to other states, to the state of Louisiana, and to local taxing authorities; and other such information that may be required by the secretary. After reviewing the report and verifying the tax payment amounts reported, the secretary shall refer the summary to the central sales and use tax collector for the parish in which the project is located to determine whether there are any unpaid local tax liabilities. If no unpaid state or local tax liabilities are discovered, the contractor's surety bond may be canceled for that contract. The surety bond will be held by the Department of Revenue and Taxation and used, if necessary, in the future if sales taxes are later found to be due on that contract.

F. Compliance by Permitting Agencies; Withheld Funds Authorized

1. R.S. 47:9(B)(4) and R.S. 47:306(D)(2)(a) place

specific responsibilities with state or local agencies that issue permits, licenses, or certificates necessary for the lawful commencement of any construction contract. State agencies, including but not limited to the office of the state fire marshal, and agencies of local governing authorities, including but not limited to parish and municipal building inspectors, shall not issue any building permit, license, or certificate until the applicant has submitted documentation verifying that the contract has been properly registered and the required surety bond has been posted. Proper documentation to be obtained from the secretary of the Department of Revenue and Taxation is as follows.

a. Resident contractors must obtain a certificate of resident status.

b. Nonresident contractors must obtain a certificate of compliance.

c. Individuals seeking a permit for work to be performed on their residence must submit an affidavit as documentation of residency.

2. The secretary is authorized by R.S. 33:2847(B) to evaluate and monitor parish and municipal permitting agencies to ensure compliance with these provisions.

a. When the secretary discovers that a parish or municipal permitting office has issued a permit to a nonresident contractor without verifying compliance with the provisions of this regulation, he shall notify that permitting office, the parish collector, and the governing authority of the parish of the violation by registered mail.

b. The affected parties will be allowed 60 days to respond to the department's notification. If the affected parties contact the department after receiving notification, the department will work with them to reconcile the situation. If the situation is resolved, no further action will be taken.

c. If an agreement cannot be reached or if the department does not receive a response after 60 days, the secretary will notify the state treasurer of the violation by registered mail. A copy of this notification will be sent to the permitting office, the parish collector, and the governing authority of the parish.

d. The state treasurer, within 90 days of notification, shall request a hearing on the suspected violation with the House Committee on Ways and Means. The date, time, and location of this meeting will be furnished by the state treasurer to the permitting office, the parish collector, the governing authority of the parish, and the secretary of the Department of Revenue and Taxation by registered mail. Following the hearing, the state treasurer shall take action as directed by the committee, including the withholding of state funds as authorized by R.S. 33:2847(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:2847, R.S. 47:9, and R.S. 47:306.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 21: (February 1995).

Raymond Tangney
Director

9502#013

RULE

Department of Revenue and Taxation Tax Commission

Ad Valorem Tax (LAC 61:V.Chapters 3-31)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission adopted and/or amended sections of the Louisiana Tax Commission real/personal property rules and regulations for use in the 1995 (1996 Orleans Parish) tax year.

The full text of these proposed rules may be viewed at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

Malcolm B. Price, Jr.
Chairman

9502#053

RULE

Department of Social Services Office of Family Support

Food Stamps—Certification of Eligible Households (LAC 67:III.Chapter 19)

The Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 3, of the Food Stamp Program. Pursuant to compliance with Public Law 103-66, the food stamp provisions of which are called the Mickey Leland Childhood Hunger Relief Act, changes in Food Stamp Program policy are necessary. Changes were generally intended to eliminate inconsistent policies and increase participation.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter A. Household Concept

§1901. Household Composition

A. The definition of a household includes an individual or a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

B. Separate household status may not be granted to the following individuals or groups of individuals, even if they purchase and prepare meals separately:

1. spouses who live together;

2. natural, adopted or step-children, age 21 or under, who live with their parents, unless the child lives with his/her own child(ren) or is married and lives with his/her spouse;

3. children under 18 who live with and are under the parental control of a household member (other than their parent), unless the child lives with his/her own child(ren) or is married and lives with his/her spouse.

C. The definition of a household provides that elderly individuals (and their spouses) who cannot prepare their own meals because they suffer from disabilities considered permanent under the Social Security Act or some other physical or mental non-disease-related disabilities may be a separate household even if living and eating with others. This is limited to those cases where the gross income of the individuals with whom the elderly or disabled person resides does not exceed 165 percent of the poverty level.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:52328 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.1, P.L. 100-77, P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:62 (February 1983), LR 9:130 (March 1983), LR 13:643 (November 1987), LR 14:87 (February 1988), amended by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

Subchapter H. Resource Eligibility Standards

§1947. Resources

A. An IRA, or individual retirement account, less the amount that would be lost as penalty for early withdrawal of the entire account, is included in a household's resources.

B. The fair market value of vehicles which is excluded in determining a household's resources is \$4,550.

AUTHORITY NOTE: Promulgated in accordance with F.R. 7:55463 et seq. and 47:55903 et seq., 7 CFR 273.8, P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. nonliquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the assets;

2. property, real or personal, to the extent that it is directly related to the maintenance or use of an income producing vehicle or a vehicle necessary to transport a physically disabled household member. Only that portion of real property determined necessary for maintenance or use is excludable under this provision;

3. inaccessible resource, that is, one whose sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. Verification shall be required only if the information provided by the household is questionable;

4. the value of a vehicle used to carry the primary source of fuel for heating or water for home use.

B. All of the resources of recipients of AFDC, SSI, and aid to the aged, blind, or disabled under Titles I, II, X, XIV, or XVI of the Social Security Act are excluded.

AUTHORITY NOTE: Promulgated in accordance with F.R.

52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:429 (August 1987), amended LR 13:656 (November 1987), LR 17:953 (October 1991), amended by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

Subchapter I. Income and Deductions

§1955. Earned Income Deduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1963. Adjustment of Shelter Deduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1964. Standard Shelter Estimate

Homeless households which do not receive free shelter throughout the calendar month shall be entitled to a Standard Shelter Estimate (SSE). All homeless households which incur or reasonably expect to incur shelter costs during a month shall be eligible for the SSE unless higher shelter costs are verified. If shelter costs in excess of the SSE are verified, the household may use actual costs.

AUTHORITY NOTE: Promulgated in accordance with F.R. 56:63614, 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), amended, LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1965. Standard Utility Allowance (SUA)

A. The Food Stamp Program shall maintain the provision that allows households to use a single standard utility allowance or actual verified utility costs in calculating shelter costs. The SUA shall be available only to households which incur heating or cooling costs separate and apart from their rent or mortgage. To be qualified, the household must be billed on a regular basis for months in which the household is actually billed for heating or cooling costs. However, during the heating season a household that is billed less often than monthly, but is eligible to use the standard allowance, may continue to use the standard allowance between billing months.

The SUA is available to those households receiving energy assistance payments or reimbursements but who continue to incur heating or cooling costs that exceed the payment during any month covered by the certification period.

B. Any household living in a housing unit which has central utility meters and which charges the household for excess utility costs only, shall not be permitted to use the SUA.

However, if a household is not entitled to the SUA, it may claim the actual utility expenses which it does pay separately.

C. Where the household shares a residence and utility costs with other individuals, the SUA shall be divided equally among the parties which contribute to meeting the utility costs. In such cases, the household shall only be permitted to use its prorated share of the standard allowance, unless the household uses its actual costs.

D. Households can switch between the SUA and actual utility costs at each recertification and one additional time during each 12-month period following the initial certification.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended LR 20:860 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1975. Earned Income Tax Credits (EITC)

Advance payment of EITC will not be counted as income for food stamp purposes. However, the amount will be counted toward the household's resources just as EITC payments made as tax refunds are.

Exclude EITC as resources for 12 months from receipt if the recipient is participating in the Food Stamp Program when the EITC is received and continuously participates for the 12 months following receipt.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 and P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:74 (February 1989), amended LR 15:393 (May 1989), amended by the Department of Social Services, Office of Family Support, repealed LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1980. Income Exclusions

A. Payments or allowances to provide energy assistance under any federal law, including the Department of Housing and Urban Development and the Farmers Home Administration, are excluded as income, and the expense is not deductible.

B. Earnings of an elementary or secondary student through age 21 who is a member of the household are excluded.

C. Vendor payments for transitional housing for the homeless are excluded.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66 and 7 CFR 273.9(c)(11).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1981. Utility Allowance for Indirect Energy Assistance Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B), 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:486 (August 1986), amended LR 12:768 (November 1986), repealed by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1983. Income Deductions and Resource Limits

A. In determining eligibility and benefit levels, the

household is allowed deductions for certain costs.

1. The earned income deduction is 20 percent of total countable gross earnings.

2. The maximum shelter deduction is \$231 for households which do not include a member who is elderly or disabled.

3. The maximum dependent care deduction is \$200 per month for each child under two years of age and \$175 for each other dependent.

A child care expense that is paid for or reimbursed by the Job Opportunities and Basic Skills Training Program or the Transitional Child Care Program is not deductible except for that expense which exceeds the payment or reimbursement.

B. The resource limit for a household is \$2,000, and the resource limit for a household which includes at least one elderly member is \$3,000.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:11009 et seq. and 51:11086 et seq., P.L. 99-500, P.L. 103-66, 7 CFR 273.9 and 273.10 (d)(1)(i).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1989. Prorated Initial Allotment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:6990 et seq., 7 CFR 273.10.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:321 (April 1990), repealed by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1991. Initial Month's Benefits

A. Initial month means either the first month for which an allotment is issued to a household, or the first month for which an allotment is issued to a household following any period of more than a month during which the household was not certified for participation in the Food Stamp Program.

B. A household's benefit level for the initial month of certification will be based on the day of the month it applies for benefits. Using a 30-day calendar or fiscal month, households shall receive benefits prorated from the day of application to the end of the month. A household applying on the thirty-first of a month will be treated as though they applied on the thirtieth of the month. If the prorated allotment results in an amount of \$1, \$3, or \$5, the allotment shall be rounded to \$2, \$4, or \$6.

C. Households who have applied for initial month's benefits after the fifteenth of the month, completed the application, provided all required verification, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. In determining initial month benefits, the result of the proration will be rounded down to the nearest lower dollar increment. If the calculation

results in an allotment of less than \$10, then no benefits will be issued.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.10, P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

§1997. Drug and Alcohol Treatment Centers

A. Residents of publicly operated community mental health centers which provide the same type of residential programs for alcoholic or drug rehabilitation as private, nonprofit institutions will be considered individual households and, if eligible, may participate in the Food Stamp Program.

B. Drug addicts or alcoholics and their children who are residents in an approved public or private, drug or alcohol treatment center program may participate in the Food Stamp Program.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:6511 et seq., 7 CFR 273.11, P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:366 (June 1986), amended by the Department of Social Services, Office of Family Support, LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

Subchapter P. Recovery of Overissued Food Stamp Benefits

§2005. Collection Methods and Penalties

B. The basis for disqualification is expanded to include the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state food stamp statute and the use of food stamps in certain illegal purchases. The Office of Family Support, hereinafter referred to as the "agency," will not increase the benefits to the household of a disqualified person because of the disqualification.

1. Mandatory disqualification periods of six months for the first offense, 12 months for the second, and permanently for the third offense will be imposed against any individual found to have committed an intentional program violation, regardless of whether the determination was arrived at administratively or through a court of law.

2. Recipients will be disqualified for one year for a first finding by a court that the recipient purchased illegal drugs with food stamps, and permanently for a second such finding. Permanent disqualification will also result for the first finding by a court that the recipient purchased firearms, ammunition or explosives with food stamps.

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L. 97-35, 97-253, 101-624 §1746, 102-237 §911, 7 CFR 272, 273, 276 and 277, P.L. 103-66.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April

1994), LR 20:780 (July 1994), LR 20:898 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21: (February 1995).

Gloria Bryant-Banks
Secretary

9502#057

RULE

Department of Social Services Rehabilitation Services

Appeals Rights (LAC 67:VII.101)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) amended its Applicant/Clients Appeals Rights Policy.

The rule governing Louisiana Rehabilitation Services' Applicant/Clients Appeals Rights Policy is to ensure that applicant/clients are afforded the opportunity to appeal agency decisions meted in a fair and impartial manner in a timely fashion.

The LRS Policy Manual is referenced in the *Louisiana Administrative Code* as follows.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§101. Policy Manual

LRS Policy Manual, fiscal year 1994, provides opportunities for employment outcomes and independence to individuals with disabilities through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:

The revision to the policy manual appears below.

LRS Policy Manual

IV. Applicant/Client Appeal Rights

A. Administrative Review. The administrative review is a process which may be used by applicants/clients for a timely resolution of disagreements. However, this process may not be used as a means to delay an impartial hearing officer conducted fair hearing. The administrative review will allow the applicant/client an opportunity for a face to face meeting in which a thorough discussion with the regional manager or designee can take place regarding the issues of concern. All administrative reviews will be expedited reviews. The administrative review will be conducted and a final decision rendered within 15 calendar days of the receipt of the initial written request from the applicant/client.

All applicants/clients must be provided adequate notification of appeal rights regarding eligibility, determination of severe disability and/or the provision or denial of vocational rehabilitation services. Unless services being provided under a current individualized written rehabilitation program have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client, such services will continue during the administrative review appeal process.

In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, adequate notification by the counselor must include:

1. the agency's decision;
2. the basis for, and effective date of the decision;
3. the specific means for appealing the decision;
4. the applicant's/client's right to submit additional evidence and information, including the client's right to representation;
5. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
6. the name and address of the regional manager who should be contacted in order to schedule an administrative review or fair hearing.

Note: All administrative reviews must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

B. Fair Hearing. The fair hearing is a process which may be used by applicants/clients to appeal disputed findings of an administrative review, or as a direct avenue of appeal bypassing the administrative review option. The fair hearing will be conducted by an impartial hearing officer within 45 calendar days of receipt of the initial written request if no administrative review was conducted and within 30 calendar days if the fair hearing follows an administrative review. The impartial hearing officer must render a final decision within 30 calendar days following the fair hearing. The entire appeal process, whether it is inclusive of the administrative review or not, will not exceed 45 calendar days unless an exception is agreed upon jointly by the participating parties; i.e.: the applicant/client and/or their representative, if applicable; the appropriate regional manager, and the impartial hearing officer. An exception to this timeline should only be made as a result of sufficient cause as agreed upon by the participants. However, if the request for a fair hearing is directly related to an agency decision to end or alter services in progress, then a fair hearing must be conducted and a decision must be reached within 60 calendar days of the initial request. The client will not have the option of requesting delays past this time. The failure of the client who is contesting an agency decision regarding a plan of services currently in progress to participate in a fair hearing within the 60 calendar days requirement will result in a dismissal of the appeal.

Note: The maximum 60 calendar days time period for participating in a fair hearing with a resulting decision does not apply to applicants/clients requesting an appeal regarding matters other than services currently in progress. With sufficient cause and joint agreement of the participating parties, the fair hearing and decision can be delayed for a longer period of time.

The impartial hearing officer shall be selected from among a pool of qualified persons identified jointly by Louisiana

Rehabilitation Services and members of the Louisiana Rehabilitation Services Vocational Rehabilitation Advisory Council.

The impartial hearing officer shall be selected to hear a particular case on a random basis, or by agreement between the LRS director and the applicant/client (or as appropriate the client's representation).

All applicants/clients must be provided adequate notification of appeal rights regarding eligibility, determination of severe disability, the provision or denial of rehabilitation services, and/or the client's right to representation. Unless services being provided under the current individualized written rehabilitation program have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client, such services will continue during the fair hearing appeal process.

If an administrative review has been conducted, in order to insure that the applicant/client is afforded the option of availing themselves of the opportunity to pursue a fair hearing, adequate notification by the regional manager must include:

1. the agency's decision;
2. the basis for, and effective date of, that decision;
3. the specific means for appealing the decision;
4. the applicant's/client's right to submit additional evidence and information, including the client's right to representation;
5. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
6. the means through which a fair hearing may be requested, including the name and address of the regional manager.

Note: All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

C. Director's Review of Fair Hearing. The director shall notify the individual of the intent to review a fair hearing decision in whole or in part within 20 calendar days of the mailing of the impartial hearing officer's decision to the individual.

If the director decides to review the decision, the individual shall be provided an opportunity to submit additional evidence and information relevant to a final decision.

The director may not overturn or modify a decision of an impartial hearing officer, or part of such a decision, that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law, including Louisiana Rehabilitation Services' policy.

A final decision shall be made in writing by the director and shall include a full report of the findings and the grounds for the decision. The director shall provide a copy of the final decision to such individual.

D. Impartial Hearing Officers. The following minimum qualifications will be required to establish a pool of qualified impartial hearing officers: a master's degree in counseling (any field), social work, education, sociology, psychology, human relations, nursing or personnel administration. Substitutions: a baccalaureate degree plus two years of

experience in counseling, social services, teaching, nursing, physical therapy, occupational therapy, rehabilitation instruction, rehabilitation evaluation, worker's compensation dispute resolution or worker's compensation rehabilitation dispute resolution; or attorney-at-law licensed by the State of Louisiana; or physician licensed by the State of Louisiana (in any field).

In addition, all applicants must meet the following criteria:

1. The individual must not be an employee of a public agency (other than an administrative law judge, hearing examiner or an employee of an institution of higher education).

2. The individual must not be a member of the state Rehabilitation Advisory Council.

3. The individual must not have been involved in previous decisions regarding the vocational rehabilitation of the applicant or client.

4. The individual must have knowledge of or the ability to learn the delivery of vocational rehabilitation services, the Vocational Rehabilitation State Plan, and the federal and state rules governing the provisions of such services and training with respect to the performance of official duties.

5. The individual must have no personal or financial associations that would present a conflict of interest.

The pool of qualified impartial hearing officers shall be jointly selected by Louisiana Rehabilitation Services and the Louisiana Rehabilitation Services Vocational Rehabilitation Advisory Council.

Gloria Bryant-Banks
Secretary

9502#055

RULE

Department of Social Services Rehabilitation Services

Order of Selection (LAC 67:VII.101)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) revised its Order of Selection Policy.

The rule governing Louisiana Rehabilitation Services' Order of Selection Policy ensures that individuals with the most severe disabilities receive priority for cost rehabilitation services.

The LRS policy manual is referenced in LAC 67:VII.101 as follows.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§101. Policy Manual

LRS Policy Manual, fiscal year 1994, provides opportunities for employment outcomes and independence to individuals

with disabilities through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:

The revision to the policy manual appears below.

LRS Policy Manual

* * *

E. Order of Selection. In accordance with the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1986 and 1992, Louisiana Rehabilitation Services is following an order of selection for vocational rehabilitation services. The order of selection assures that individuals with the most severe disabilities receive priority for cost vocational rehabilitation services.

Louisiana Rehabilitation Services distinguishes between individuals with "the most severe disabilities," individuals with "severe disabilities," and nonseverely disabled individuals as follows:

Most Severely Disabled—an individual with a most severe disability is one who has been determined eligible for vocational rehabilitation services and:

1. who has a severe physical or mental impairment which seriously limits three or more functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

2. whose vocational rehabilitation can be expected to require multiple substantial vocational rehabilitation services over an extended period of time; and

3. who has one or more physical or mental impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

Severely Disabled—an individual with a severe disability is one who has been determined eligible for vocational rehabilitation services and:

1. who has a severe physical or mental impairment which seriously limits one or two functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

2. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

3. who has one or more physical or mental impairments

resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

Nonseverely Disabled—an individual with a physical or mental disability:

1. who has been determined eligible for vocational rehabilitation services; and
2. who does not meet the criteria of an individual with either a "most severe" or a "severe" disability.

Extended Period of Time—vocational rehabilitation services that are anticipated to extend six months or longer.

The selection groups are defined as follows:

Selection Group I. Eligible individuals who are the most severely disabled:

- a. the "most severely disabled" public safety officers whose disabling conditions arose from a disability sustained in the line of duty and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition related to fire prevention, law enforcement, or other public safety activities;
- b. all other individuals with disabilities classified as the "most severe disabilities."

Selection Group II. Eligible individuals who are severely disabled:

- a. severely disabled public safety officers whose disabling conditions arose from a disability sustained in the line of duty and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition related to fire prevention, law enforcement, or other public safety activities;
- b. all other individuals with "severe disabilities."

Selection Group III. Eligible individuals with nonsevere disabilities who require only no-cost vocational rehabilitation services (counseling and guidance and job placement assistance).

- a. nonseverely disabled public safety officers who require only no-cost vocational rehabilitation services and whose disabling conditions arose from a disability sustained in the line of duty and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition related to fire prevention, law enforcement, or other public safety activities;
- b. all other individuals classified as nonseverely disabled who require only no-cost vocational rehabilitation services.

Selection Group IV. Eligible individuals with nonsevere disabilities who will require cost vocational rehabilitation services at any time during the course of their Individualized Written Rehabilitation Program Plan (RS-5).

- a. nonseverely disabled public safety officers who will

require cost vocational rehabilitation services and whose disabling conditions arose from a disability sustained in the line of duty and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition related to fire prevention, law enforcement, or other public safety activities;

- b. all other individuals classified as nonseverely disabled who will require cost vocational rehabilitation services.

F. Determination of Severity of Disability. Louisiana Rehabilitation Services is committed to providing vocational rehabilitation services to individuals who are severely disabled. Individuals who have been determined eligible for vocational rehabilitation services are classified as severely disabled if the disabling condition and subsequent functional limitations fall into one of the following three categories:

1. the individual is a recipient of Social Security Disability Insurance (SSDI); or

2. the individual is a recipient of Supplemental Security Income (SSI) by reason of blindness or disability (SSI based on age alone does not automatically render an individual severely disabled); or

3. the individual is one:

- a. who has a severe physical or mental impairment which seriously limits one or more functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and,

- b. whose vocational rehabilitation can be expected to require multiple substantial vocational rehabilitation services over an extended period of time; and

- c. who has one or more physical or mental impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

Order of selection placement does not come into play until after an evaluation of rehabilitation potential and a determination of eligibility.

Special consideration will be given to the vocational rehabilitation of public safety officers whose disabling condition arose from a disability sustained in the line of duty. The disabling condition must have resulted directly from the officer's performance of duties in the enforcement execution, and administration of law or fire prevention, fire fighting or related public safety activities.

An individual's placement in the order of selection shall not be based upon residency requirements; economic status; type of disability; age, sex, race, color, creed, or national origin; source of referral; or expected employment outcome.

All individuals within a higher priority category for services

shall be served before individuals in the next lowest priority category are served. When it is impossible to serve all individuals within a priority category, individuals shall be placed on a deferred services waiting list and served in chronological order based on the date of application. In the event that an order of selection is rescinded, individuals on deferred services waiting lists and in unserved categories will be contacted and served in chronological order based on the date of application.

After determination of eligibility for vocational rehabilitation services each individual will then be classified by placement into one of the four following priority categories:

Selection Group I—most severely disabled

Selection Group II—severely disabled

Selection Group III—nonseverely disabled individual who requires only no-cost vocational rehabilitation services (guidance and counseling and job placement)

Selection Group IV—nonseverely disabled individual who will require cost vocational rehabilitation services at any time during the course of their IWRP.

Individuals shall be classified in the highest priority category for which they are determined qualified. Upon placement into a priority category, individuals shall be notified in writing of their placement.

All services, including post-employment services, shall be available to individuals receiving services under an order of selection insofar as such services are necessary and appropriate to the individual's vocational rehabilitation needs.

All agency policies and procedures governing the expenditure of funds, client financial participation and use of comparable services and benefits are applicable to individuals receiving services under an order of selection.

Louisiana Rehabilitation Services will ensure continuity of services to individuals once an individual is selected for services. Thus, an individual who is not considered either the "most severely disabled" or "severely disabled" and who was placed in Selection Group III and who, due to unanticipated events, needs purchased services, will receive the necessary vocational rehabilitation services as identified on an IWRP.

Louisiana Rehabilitation Services will therefore carefully evaluate the fiscal impact of opening vocational rehabilitation services to individuals in Selection Group IV to ensure that ongoing resources will be available to serve these individuals beyond the current fiscal year and until such individuals achieve their employment goals or the case record is closed for other appropriate and applicable reasons.

* * *

Gloria Bryant-Banks
Secretary

9502#056

RULE

Department of Wildlife and Fisheries Office of Fisheries

Freshwater Mussel Harvest Regulations (LAC 76:VII.161)

The secretary of the Department of Wildlife and Fisheries does hereby amend a rule to establish freshwater mussel harvest regulations.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sports and Commercial Fishing

§161. Freshwater Mussel Harvest

A. Commercial Harvest

* * *

2. Fees

a. An annual permit fee of \$100 for resident mussel fishermen and \$1,000 for non-resident mussel fishermen will accompany the permit application. This fee will be applicable for one calendar year. If the permit application is disapproved, the fee will be refunded to the applicant.

* * *

4. Species for Commercial Harvest

* * *

c. The zebra mussel (*Dreissena polymorpha*), an introduced nuisance aquatic species, has the potential to severely clog industrial and public water intakes, deplete nutrients and consume huge amounts of dissolved oxygen in state waterbodies, and potentially decimate endemic freshwater mussel populations. Therefore, the Department of Wildlife and Fisheries strongly encourages the destruction of any zebra mussels encountered in order to prevent their spread.

* * *

6. Areas Open to Harvest

* * *

b. Because of the presence of threatened or endangered species of mussels, commercial mussel harvest is prohibited in the following areas:

* * *

iii. The main channel of Bayou Bartholomew in Morehouse Parish, from the Arkansas-Louisiana state line to its confluence with the Ouachita River.

* * *

7. Reporting

a. Commercial mussel buyers must compute and pay a severance tax of five percent of the revenues derived from the sale of whole freshwater mussels on forms furnished by the Department of Wildlife and Fisheries (R.S. 56:450(A) and (C) and 56:451 and 452). Both the buyers and sellers must retain such receipts for inspection by the Department of Wildlife and Fisheries for a period of not less than two years. Written notification of changes and reporting requirements sent by the Department of Wildlife and Fisheries to commercial buyers shall become part of the buyers permit and must be maintained by the buyer along with the permit.

b. Commercial harvesters must contact Department of Wildlife and Fisheries and provide information on harvesting

location at least 24 hours prior to the first day of harvesting activities on that location. The harvester must also notify Department of Wildlife and Fisheries within 24 hours when harvesting at that location has been completed.

* * *

B. Recreational Harvest

1. General Harvest Restrictions

a. Freshwater mussels may be taken year-round between official sunrise and official sunset for recreational purposes with a basic recreational fishing license. The daily take is limited to 25 whole mussels, or 50 separate valves, with a possession limit not to exceed twice the daily limit, of one species or in aggregate. There will be no possession limit for the nonindigenous Asian clam (*Corbicula fluminea*). Any zebra mussels taken or encountered should be destroyed.

* * *

2. Areas Open to Harvest

* * *

b. Because of the presence of threatened or endangered species of mussels, recreational mussel harvest is prohibited in the following areas:

* * *

iii. The main channel of Bayou Bartholomew in Morehouse Parish from the Arkansas-Louisiana state line to its confluence with the Ouachita River.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:450(A) and (C) and 56:451-452.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 19:510 (April 1993), amended LR 21: (February 1995).

Joe L. Herring
Secretary

9502#046

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

State Wildlife and Paul J. Rainey Refuges (LAC 76:III.323)

The Louisiana Wildlife and Fisheries Commission hereby adopts a rule establishing visitor regulations for State Wildlife Refuge and Paul J. Rainey Refuge of the National Audubon Society.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish

Preserves and Sanctuaries

Chapter 3. Particular Game and Fish Preserves and Commissions

§323. State Wildlife and Paul J. Rainey Refuges

A. Visitor Regulations for State Wildlife Refuge

1. Use of the refuge will be allowed from official sunrise

to official sunset. This includes access routes through the refuge.

2. Overnight camping is prohibited.

3. Hunting, pursuing, killing, molesting or intentionally disturbing any type of wildlife by the public is prohibited. This does not prohibit the Department of Wildlife and Fisheries from carrying out harvest programs for certain types of wildlife as specified in the Deed of Donation.

4. Commercial and recreational trawling on the refuge is prohibited. Recreational trotlines, jug lines, trammel nets, gill nets, hoop nets and fish and crab traps are prohibited. All commercial fishing and use of any commercial fishing gear on the refuge is prohibited. Twenty-five pounds of shrimp (heads on) per boat or vehicle per day is allowed during the inside open shrimp season as established by the Wildlife and Fisheries Commission. Ten pounds of shrimp (heads on) for bait purposes may be caught during the closed season. Shrimp may be harvested only by cast net on the refuge and only for sport fishing or home consumption use. Containers are required to receive cast net catches to prevent littering and for safety purposes.

5. 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 is allowed.

6. Crabs may be harvested from the open portion of the refuge; and 12 dozen crabs are allowed per boat or vehicle per day. A maximum of 12 crab nets are allowed per boat or vehicle. No commercial harvest is allowed.

7. Oysters may be harvested by tonging (properly licensed) or by hand collection from the natural reefs. One gallon per boat or vehicle per day is allowed and oysters must be opened at the reef and the shells returned to the reef. Taking of oysters on the reef is dependent upon Department of Health and Hospitals' approval and may be closed at any time by the Department of Wildlife and Fisheries.

8. The burning of the marsh by the public is prohibited. Water control structures shall not be tampered with or altered by anyone other than employees of the Department of Wildlife and Fisheries.

9. Bringing firearms, bows and arrows, liquor and controlled dangerous substances (drugs) onto the refuge is prohibited. Personal companion animals (e.g. dogs) are restricted to boats or vehicles unless prior approval is obtained from the refuge supervisor. Upon probable cause a violation has occurred, all boats and vehicles are subject to search by all authorized employees of the Department of Wildlife and Fisheries.

10. Speed boat racing, air boats, hover craft, jet skis, and water skiing are prohibited. All boat traffic shall honor no wake zones and shall keep wave wash to a minimum. Pulling boats over or around levees, dams or water control structures is prohibited. The Department of Wildlife and Fisheries may further restrict specified areas of the refuge from public access or use.

11. No litter is allowed. Visitors must remove their litter or place litter in appropriate litter disposal sites. Damage to or removal of trees, shrubs and wild plants without prior approval is prohibited.

12. Commercial fishing gear or trawls shall not be permitted in possession while participating in sport fishing on the refuge. Commercial fishing gear may be in possession for nonstop access directly across refuge or for safe harbor only.

13. Department officials and enforcement officers shall have the duty and the right to restrict access to the refuge, even for the purpose herein enumerated, whenever the circumstances exist that such access may impair the primary purpose of the refuge as a wildlife refuge and sanctuary.

14. Violation of any part of this Subsection constitutes a class two violation.

B. Visitor Regulations for Paul J. Rainey Refuge of the National Audubon Society

1. All visitors must be accompanied by a representative of the National Audubon Society.

2. Trespassing, hunting, pursuing, killing, molesting, fishing or intentionally disturbing any type of wildlife by the public is prohibited. This does not prohibit the National Audubon Society from carrying out harvest programs for certain types of wildlife as specified in the Deed of Donation.

3. Possessing firearms, bows and arrows, liquor and controlled dangerous substances (drugs) on the refuge is prohibited.

4. Upon probable cause a violation has occurred, all boats and vehicles are subject to search by all authorized employees of the Department of Wildlife and Fisheries.

5. Department officials and enforcement officers shall have the duty and the right to restrict access to the refuge, even for the purpose herein enumerated, whenever the circumstances exist that such access may impair the primary purpose of the refuge as a wildlife refuge and sanctuary.

6. Violation of any part of this Subsection constitutes a class two violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 et seq. and R.S. 56:763.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21: (February 1995).

Perry Gisclair
Chairman

9502#047

NOTICES OF INTENT

NOTICE OF INTENT

Department of Agriculture and Forestry
Office of Forestry
and
Department of Revenue and Taxation
Tax Commission

Timber Stumpage Values (LAC 7:XXXIX.20101)

(Editor's Note: The following notice of intent, which appeared on pages 40 through 41 of the January 20, 1995 Louisiana Register, is being republished in its entirety to correct typographical errors.)

In accordance with provisions of the Administrative Procedures Act, the Department of Agriculture and Forestry, Office of Forestry, and the Department of Revenue and Taxation proposes to amend rules regarding the value of timber stumpage for calendar year 1995.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 201. Timber Stumpage

§20101. Stumpage Values

The Louisiana Forestry Commission, and the Tax Commission, as required by R.S. 47:633, adopted the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1995:

1. Pine trees and timber	\$293.44/MBF	\$36.68/ton
2. Hardwood trees and timber	\$181.36/MBF	\$19.09/ton
3. Pine Chip and Saw	\$67.82/cord	\$25.12/ton
4. Pine pulpwood	\$24.35/cord	\$ 9.02/ton
5. Hardwood pulpwood	\$ 10.40/cord	\$ 3.65/ton

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, and the Louisiana Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 12:819 (December 1986), LR 13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January 1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6 (January 1992), LR 19:611 (May 1993), LR 20:408 (April 1994), LR 21:

Interested persons may submit written comments to Don Feduccia, Office of Forestry, Box 1628, Baton Rouge, LA

NOTICE OF INTENT

Department of Economic Development Real Estate Commission

Adjudicatory Proceedings (LAC 46:LXVII.4707)

Notice is hereby given that the Louisiana Real Estate Commission will consider the following amendments and changes to the existing rules and regulations of the agency: LAC 46:LXVII, Subpart 1, Chapter 47, Investigations and Hearings.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Chapter 47. Investigations and Hearings

§4707. Adjudicatory Proceedings

When, as a result of an investigation, it appears that violations of the Louisiana Real Estate License Law may have been committed by a licensee, registrant or certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

1. Informal Adjudicatory Proceedings

a. The complaint may be concluded informally without public hearing on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A Preliminary Notice of Adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. The informal hearing will be attended by the case investigator, who will respond to questions concerning the investigation which resulted in the allegations, and the hearing examiner, who will inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. If the informal hearing results in an admission by the respondent that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the license law or the rules and regulations of the commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not admit to having committed the act or acts specified, does not

Bob Odom, Commissioner
Agriculture and Forestry

Billy Weaver, Chairman
Louisiana Forestry Commission

Malcolm B. Price, Chairman
Louisiana Tax Commission

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Timber Stumpage Values

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

There will be no additional implementation costs or savings to state or local governments required by the implementation of this action.

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

Since this action adjusts the average stumpage value upward for timber harvested, the severance tax revenue received by state and local governments will increase if 1995 timber production levels equal the five-year average. State revenue would increase by \$223,898 and local government revenues would increase by \$671,696.

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

Although the total tax paid by timber sellers and reported and remitted by wood-using industries will increase as a result of this action, the prevailing severance tax rate for timber harvesting remains constant by statute. No increases in paperwork or procedures will result from this action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action is taken on an annual basis and should have negligible effect on competition or employment. The increased tax revenue that will result from the increase in average stumpage prices set by this action may have a positive effect on parish and state government.

Richard Allen
Assistant Commissioner
9502#006

David W. Hood
Senior Fiscal Analyst

accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations will be referred to the commission along with a recommendation for a formal adjudicatory hearing.

g. If the respondent does execute a stipulations and consent order, the executive director shall submit the document to the commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the commission.

h. The actions of the commission relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is approved and authorization is granted to the executive director to execute the order in the name of the commission.

i. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the commission.

j. Repeal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R. S. 37:1453.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), amended LR 21:

Interested parties may submit written comments until 4:30 p.m, March 20, 1995, to Stephanie C. Fagan, Office Coordinator, Real Estate Commission, Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA.

J. C. Willie
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Adjudicatory Proceedings**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to 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 NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

Belle Dunaway
Assistant Director
9502#073

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Economic Development
Real Estate Commission**

Names on Licenses, Registrations and Certificates;
Tradenames; Symbols and Trademarks
(LAC 46:LXVII.Chapter 21)

Notice is hereby given that the Real Estate Commission will consider the adoption of the following amendments and changes to the existing rules and regulations of the agency: LAC 46:LXVII, Subpart I, Chapter 21, Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXVII. Real Estate
Chapter 21. Names on Licenses, Registrations, and
Certificates; Tradenames; Symbols; and
Trademarks**

**§2101. Names on Licenses, Registrations and
Certificates**

All licenses, registrations and certificates issued by the Louisiana Real Estate Commission will be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors will be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to any corporation or partnership for any purpose will be issued in the identical name of the corporation or partnership as registered with the secretary of state, except as indicated in Section 2101.3. No license, registration or certificate will be issued to any corporation or partnership not registered with the secretary of state.

3. The name of any broker or salesperson whose real estate license has been revoked by the commission, with the revocation becoming final and effective on or after February 1, 1995, which in any way represents that the former broker or salesperson is licensed by the commission to conduct real estate activities requiring licensing in Louisiana, shall not be utilized on any license issued by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21:

§2103. Tradenames

Licenses, registrations and certificates issued by the commission will not indicate a tradename of the licensee, registrant or certificate holder unless the tradename is registered with the secretary of state and a copy of the registration is on file at the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.
HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21:

§2105. Symbols and Trademarks

A. Licensees, Registrants and Certificate Holders are prohibited from using any symbol or trademark in connection with any license, registration or certificate issued by the commission without first registering the symbol or trademark with the secretary of state and placing a copy of the registration on file with the commission.

B. Repeal

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December, 1989), amended LR 21:

§2107. Transitional Licensing and Registration of Documents

Repeal

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21:

Interested parties may submit written comments until 4:30 p.m., March 20, 1995, to Stephanie C. Fagan, Office Coordinator, Real Estate Commission, Box 14785, Baton Rouge, LA 70898-4765 or 9071 Interline Avenue, Baton Rouge, LA.

J. C. Willie
Executive Director

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

RULE TITLE: Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to 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 NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

Belle Dunaway
Assistant Director
9502#069

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Expulsion of Students

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the following additional procedures and guidelines for expulsion of students as an amendment to Bulletin 741, Louisiana Handbook for School Administrators.

Expulsion Guidelines

Additions per House Bill 173

Guidelines for Admittance or Readmittance

1. No student who has been expelled from any public or nonpublic school outside the state of Louisiana or any nonpublic school within Louisiana for committing any offenses enumerated in R.S. 17:416 shall be admitted to any public school in the state except upon the review and approval by the governing body of the admitting school. Refer to R.S. 17:416.

2. No student who has been expelled pursuant to the provisions of R.S. 17:416(C)(2) shall be readmitted to a public school in the school system in which he was expelled without the expressed approval of the school board of such school system. Refer to R.S. 17:416(C)(2).

Record of Expulsions

Any student who has been expelled from any public or nonpublic school within or outside the State of Louisiana shall provide to any public school or school system in the state to which the student is seeking admission, information on the dates of any expulsion and the reason(s) for which the student was expelled. Additionally, the transfer of a student's records by any public school or school system in the state to any other public or nonpublic school or school system shall include information on the dates of any expulsions and the reason or reasons for which the student was expelled. Refer to R.S. 17:416(B)(3).

Interested persons may submit comments until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70806-9064.

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Procedures and Guidelines for Expulsion of Students**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The total cost to the state will be \$100 for printing and mailing the guidelines to local school systems.
BESE's estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collection.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no additional costs to persons affected.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no impact on competition and employment.

Marlyn Langley
Deputy Superintendent
9502#076

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Substance Abuse Prevention Education

In accordance with the Revised Statutes 49:950 et. seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Standards 2.090.01 and 2.096.01 of Bulletin 741, Louisiana Handbook for School Administrators, as printed below:

Standard 2.090.01

Elementary schools shall provide a minimum of 16 contact hours of substance abuse prevention education each school year. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864, Volume 1) or through substance abuse programs approved by the State Board of Elementary and Secondary Education.

Procedural Block: Refer to R.S. 17:402-5

Standard 2.096.01

Secondary schools shall provide a minimum of eight contact hours of substance abuse prevention education each school year for grades 10-12 and 16 hours for grade 9. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864, Volume 1) or through substance abuse programs approved by the State Board of Elementary and Secondary Education.

Procedural Block: Refer to R.S. 17:402-5

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:404(B)(1).

Interested persons may submit comments until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70806-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741—Substance Abuse Prevention Education

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The total cost to the state will be \$100 for printing and mailing the guidelines to local school systems.
BESE's estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collection.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There should be no additional cost as the Substance Abuse Program Curriculum Guide can be used as a text for the additional hours.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
9502#074

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1525—Personnel Evaluation Guidelines

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revised pages 27, 28, and 29 of the Guidelines for Personnel Evaluation, Bulletin 1525, Revised 1992, 1994. These revisions were adopted as an emergency rule and printed in full on pages 1086 and 1087 of the October, 1994 issue of the *Louisiana Register*.

Bulletin 1525—Personnel Evaluation Guidelines

* * *

The observation process must conform to the guidelines listed below:

- 1) The LEA must specify who will conduct the observation(s). The evaluator must conduct at least one of the required number of observation(s).
- 2) The LEA must specify how often observations will occur.
- 3) The evaluator of each teacher or administrator shall conduct a pre-observation conference during which the teacher or administrator shall provide the evaluator with relevant information.
- 4) The LEA must notify the evaluatee in advance when observation(s) will occur. LEAs must define types, if different types of observations are used.

5) The LEA must specify how the post-observation conference will be conducted.

6) The LEA must specify how copies of the completed observation forms will be disseminated and filed.

7) The LEA must specify how intensive assistance, if necessary, will be initiated following the observation procedures.

Instructional Personnel

In addition to the aforementioned guidelines, the following observation procedures are for instructional personnel.

Classroom observation is a critical aspect of the teacher evaluation process. The evaluator conducts observations that are of sufficient duration to see the lesson begin, develop, and culminate. A pre-observation conference is conducted to review the teacher's lesson plan. A post-observation conference is arranged to discuss and analyze the lesson, as well as to prepare an observation report. The primary purpose of this report is not to rate the teacher on a scale or checklist, but rather, to reach consensus on commendations, as well as recommendations for strengthening or enhancing teaching. Follow-up classroom visits and observations are conducted to determine what impact these recommendations have had on improving the quality of the teaching-learning process in the teacher's classroom.

In this section of the LEA evaluation program description, the LEA delineates its classroom observation process for teachers.

The observation process must conform to the guidelines listed below:

1) Teaching is evaluated through periodic classroom observations.

2) A pre-observation conference is held to review the teacher's lesson plan.

3) Observations are of sufficient duration to see the lesson begin, develop, and culminate.

4) A post-observation conference is held to discuss and analyze the lesson as well as to prepare an observation report.

5) The primary purpose of the classroom observation is not to rate the teacher, but rather, to reach consensus on commendations, as well as recommendations to strengthen or enhance teaching.

6) Follow-up classroom visits and observations are conducted to reinforce positive practice and to determine how recommendations have impacted the quality of the teaching-learning process.

Section 6.5

Developing the Professional Growth Plan

Periodic evaluation conferences are conducted to discuss and analyze job performance for the purpose of developing longer term (1-2 year) professional growth plans to strengthen or enhance the job performance of all certified and other professional personnel. These professional growth plans should be developed at the beginning of the evaluation period and be based on a descriptive analysis of job performance rather than only on the results of a checklist or a rating scale. Appropriate time frames must be determined in regard to these procedures. Usually such plans include two to three objectives developed collaboratively by the evaluatee and evaluator. These plans must be reviewed and updated

annually. For successful, experienced personnel, these objectives may extend beyond the professional responsibilities included in the job description and may be used to explore new, untried, innovative ideas or projects. Each objective includes a plan of action to guide the evaluatee's progress, as well as observable evaluation criteria that the evaluatee and evaluator can use to determine the extent to which each objective has been achieved. The evaluation criteria should show clearly how achievement of the objective will impact the quality of the job performance.

In this section of the LEA personnel evaluation program description, the LEA delineates its process for developing the professional growth plan.

That process must conform to the guidelines listed below:

1) All certified and other professional personnel develop longer-term professional growth plans to strengthen or enhance their job performance.

2) The professional growth plan is developed at the beginning of the evaluation period. Appropriate time frames must be determined in regard to these procedures and such time frames must be given in the narrative of this subsection. The LEA must develop forms for the professional growth plan.

3) Professional growth plans are based on objectives developed collaboratively by the evaluatee and evaluator. The successful teacher shall not be mandated to participate in any one specific growth activity. These plans must be reviewed and updated annually.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3902(B)(4).

Interested persons may submit comments on the proposed revisions until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 1525—Personnel Evaluation Guidelines

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

The estimated costs for FY 94-95 are for printing pages 27, 28, 29 and 30 (page 30 has to be printed because the *Guidelines for Personnel Evaluation, Bulletin 1525*, Revised 1992, 1994, is printed two-sided) are \$28 at the state level and undetermined at the local level.

In addition, the copies for the local education agencies will be mailed to the superintendents and contact persons (one copy of all four pages to each). Postal costs are estimated to be \$72.70.

Local agencies will have to print the four pages for each school that is in their parish. This cost is undeterminable at this time.

Estimated costs for FY 95-96 are not expected to exceed to \$500 at the state level and undetermined, if any, at the local level.

Estimated costs for the State Board of Elementary and Secondary Education to print pages 27, 28, and 29 in the *Register* are \$200. Monies are available.

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

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 NONGOVERNMENTAL GROUPS (Summary)

There is no cost and/or economic benefit to directly affect persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The printing of pages 27, 28, 29, and 30 of Bulletin 1525 does not effect competition.

Marlyn Langley
Deputy Superintendent
9502#077

David W. Hood
Senior Fiscal Analyst

Carole Wallin
Executive Director

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794—Textbooks and Library Books (LAC 28:I.919)

In accordance with the R.S. 49:950 et. seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, Bulletin 1794, Textbook and Library Book Policy and Procedure Manual, Revised 1994.

The textbook adoption standards which are currently being advertised as an emergency rule are incorporated into this revised bulletin. The composition and procedures for nominations to the State Textbook Adoption Committee are also included in Bulletin 1794. Bulletin 1794 is referenced in the Administrative Code as noted below.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations and State Plans §919. Textbook Adoption Standards and Procedures

A. Bulletin 1794 (Revised 1994)

Bulletin 1794 (Revised 1994), Textbook and Library Book Policy and Procedure Manual, is adopted. The bulletin contains procedures and guidelines for the adoption of state approved textbooks and reference materials. The procedures include the appointment and functions of State Ad Hoc Adoption Committee and timelines for the preliminary adoption activities such as the placement of texts in public libraries. Provisions are made for public review and appeals. Included in the bulletin are the functions of the state board in the adoption process, including the activities of its Textbook and Media Advisory Council and its Textbook and Media Committee. The state's adoption cycle is in the bulletin.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A).

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 21:

Bulletin 1794 may be viewed in its entirety in the Office of the State Register, 1050 North Third Street, Capitol Annex Suite 512, Baton Rouge, LA, in the State Department of Education, Office of Educational Support Programs, or in the office of the State Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

Interested persons may submit comments until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 1794

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

The estimated implementation cost to print 166 copies of the revised 1994 Policy and Procedures Manual, Bulletin 1794 is \$400. The Board of Elementary and Secondary Education estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available. Local school systems will incur a cost for members to receive special training in textbook selection criteria, voting procedure and integrity of interaction with publishers. The state is required to pay the verified costs of administration incurred by each city and parish school board for the distribution of school library books, textbooks and other materials of instructions to nonpublic school students. The cost for FY 94-95 is \$200,000 and the estimated cost for FY 95-96 is \$200,000. If LEAs buy books sooner there is a spinoff effect on the MFP. If books are ordered more often, there may be an increase in the cost of textbooks for school boards, which will be included in the MFP for the following year and the state will pick up its share.

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

The estimated effect on revenue collections, after giving two copies to each school system, and selling the remaining and future copies at a rate of \$5 per copy, would be \$340 in FY 95-96.

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

Textbook supervisors, school personnel and parents may purchase this bulletin at a cost of \$5. (A) Publishers will be fined 1 percent of all outstanding balance of orders not delivered within 90 days of the end of each ordering cycle. (B) A small deposit equal to 50 percent of the replacement cost is required for books for home study programs; the deposit will be returned when the books are brought back. If books are not returned or paid for, the parent or legal guardian shall not be eligible to continue participation in the program until all indebtedness is

cleared. (C) The proposed rule benefits Louisiana School for Math, Science and the Arts and other parish/city school boards with programs for gifted students in that they are allowed to select and purchase books not included on the lists adopted by the board, provided that such authorization shall be on the ad hoc basis and shall be subject to prior approval by the board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change limits the state textbook adoption to Basal Textbooks, thus eliminating competition of other publishing companies.

Marlyn Langley
Deputy Superintendent
Management and Finance
9502#070

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1943—Teacher Assessment

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 1943, Policies and Procedures for Louisiana Teacher Assessment as stated below:

Amend Section III: Applicability and Timelines

A. Delete the second paragraph which reads:

"If a teacher or other educator to whom this program applies has been employed for more than 90 consecutive days in the same assignment in Louisiana public schools prior to August 1, 1994, that individual shall not be considered a "new teacher" for purposes of this program."

Amend Section IV: Glossary

External Assessor - amend to read:

"- an active faculty member of a college or university, a central office administrator or retired educator."

Bulletin 1943 was adopted by the board as an emergency rule, effective June 23, 1994. The above amendments were also adopted as an emergency rule, effective August 25, 1994 and were necessary in order to be in conformity with Act 1 of the Third Extraordinary Session of the 1994 Louisiana Legislature.

Interested persons may submit comments on the proposed rule until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 1943—Teacher Assessment

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

The estimated costs for FY 94-95 are for printing the policies and procedures for Louisiana Teacher Assessment, Bulletin 1943, revised page 2 and page 5 only, (\$364 at the state level and none at the local level).

In addition, copies will be mailed to all public school principals and one copy will be mailed to each superintendent, to the Louisiana Teacher Assessment Program contact person for the central office, to all assessor trainers, and assessors. Postage costs are estimated at \$250 to mail copies of the policies and procedures for Louisiana Teacher Assessment, Bulletin 1943, revised page 2 and page 5 only.

Estimated costs for FY 1995-96 will be approximately \$3,000.

By deleting the second paragraph on page 2, fewer teachers will be considered a "new teacher." The estimated number of fewer "new teachers" is 30. The estimated reduction in direct costs is \$46,000 in professional services; this is an estimated savings in assessor compensation of \$200 per "new teacher."

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available.

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

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 NONGOVERNMENTAL GROUPS (Summary)

There is no cost and/or economic benefit to directly affect persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It will eliminate the option of the experienced teacher competing for an external assessor position within the school system.

Marlyn Langley
Deputy Superintendent
9502#078

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Authority for Child Nutrition Programs and Appeals Procedure for Taking Action Against a Sponsor (LAC 28:I.943)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the following revised appeals procedure used by the Department of Education for taking action against a school food authority or a child and adult care food program sponsor.

Since these rules and regulations are referenced in LAC 28:I.943, this proposed revision will also be an amendment to the *Louisiana Administrative Code*.

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
§943. Louisiana Child Nutrition Program Regulations

A. The board adopted rules and regulations for the operation of the Louisiana Child Nutrition Program. The purpose of the program is to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. The rules and regulations are the same as those established in 7 CFR Parts 210 through 245 for the operation of the Child Nutrition Program.

* * *

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 15:9 (January 1989), amended LR 16:297 (April 1990), LR 21:

**I. LOUISIANA CHILD NUTRITION
PROGRAM REGULATIONS**

A. The Louisiana Department of Education (hereafter referred to as state agency) hereby adopts the rules and regulations as established in 7 CFR Parts 210 through 245 for the operation of the Child Nutrition Program.

**II. STATE AGENCY ACTION
AND APPEALS PROCEDURES**

A. Purpose. The rules and regulations contained in this Subpart shall govern and control procedures used by the state agency for taking action against a school food authority or a child and adult care food program sponsor (hereafter referred to as institution).

B. Service

1. The service of the Notice of Proposed Action, Request for Appeal and Decision shall be made personally or by certified mail, return receipt requested.

2. Service upon an institution's authorized representative, officer, or agent constitutes service upon that institution.

3. Service by certified mail is complete upon mailing. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. Any other orders, notices, or documents served or exchanged pursuant to these rules shall be done through personal service or the U.S. mail, all postage prepaid.

For purposes of determining whether services have been timely made, if the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day. If the deadline for service falls on a business day, service must be made before close of business that day.

C. Notice of Proposed Action. The state agency shall notify the institution, in writing, of the actions being taken through a "Notice of a Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the institution;
2. the specific amount of the fiscal sanction assessed

against the institution, if any;

3. a statement specifying what action the institution must take to correct the violation(s) to avoid further proceedings;

4. a statement of the time lines related to the proposed action;

5. a statement as to the consequences for failing to timely take corrective actions, make payments, or make a request for appeal;

6. a statement of the institution's right to appeal the proposed action.

D. Request for Appeal

1. Institutions wishing to appeal proposed actions shall serve a Request for Appeal upon the state agency within 15 calendar days from the date of receipt of the Notice of Proposed Action.

2. The Request for Appeal shall contain the following information:

a. a listing of what specific violations set forth in the Notice of Proposed Action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

b. a statement specifying which of the following two forms of appeal an institution seeks: (1) a review of the records with the right to submit additional written information to dispute the proposed action, or (2) a fair and impartial hearing before an independent hearing officer at which time the institution may appear and be represented by legal counsel or another designated individual;

c. a statement as to the relief or remedy the institution seeks from the appeal.

E. Appeals on the Record; Submissions

1. Institutions opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

2. The state agency shall submit all documents and written information it wishes to have considered to the hearing officer within 30 calendar days from the state agency's receipt of the Request for Appeal.

F. Notice and Time of Hearing. The agency shall schedule a hearing to be held within 30 calendar days from the date of receipt of the Request for Appeal. The agency shall notify the institution in writing of the time, date, and place of the hearing, at least 10 days in advance of the date of the hearing.

G. Effect of Appeal Upon Agency Actions. The Notice of Proposed Action issued to the institution shall remain in effect until the decision is rendered in the appeal. Participating institutions may continue to operate under the program during an appeal of a proposed action, unless the state agency action is based on imminent dangers to the health or welfare of children and that basis is stated in the Notice of Proposed Action. Institutions who continue to operate while appealing a termination shall not be reimbursed for any meals served from the date of service of the Notice of Proposed Action to the date of receipt of the appeal decision, if the decision upholds the termination.

H. Default

1. The hearing officer may declare any party in default

who, without good cause shown: (a) fails to file brief or memorandums or exchange information and evidence as may be required by the hearing officer or these rules; (b) fails to appear at or participate in any pre-hearing conference; (c) fails to appear at or to participate in the hearing.

I. Evidence—Order of Hearing

1. Evidence that is material and relevant to an issue or inquiry before the hearing officer is admissible, unless objected to on grounds set forth herein. The introduction of evidence may be limited or barred upon objection of any party, or by the hearing officer upon his own motions. Hearings conducted under this rule are not bound by the formal rules of evidence prescribed for civil actions in district or higher courts, and in this connection, the following rules apply:

a. Hearsay evidence may be introduced if it corroborates competent evidence found in the record. The hearing officer will determine how much weight, if any, to give to hearsay evidence. Evidence concerning the reliability and probative value of any introduced hearsay evidence may also be admitted.

b. Unduly repetitious evidence, whether testimonial or documentary, shall be excluded when such exclusion will not materially prejudice the rights of a party.

c. The hearing officer may allow oral testimony to be given under direct examination by narration rather than through question and answer. The hearing officer may allow or require any oral testimony to be submitted in written form upon agreement of both parties.

J. Hearing Conduct and Decorum. At any hearing or meeting, the hearing officer shall have the authority to regulate the course of the proceedings and the conduct of all persons present, including the right to have any person, for misconduct or refusal to obey orders, removed from the hearing, banned from further participation or introduction of evidence, dismissed as a party or subjected to such other sanctions or restrictions he deems appropriate. The hearing officer may, at any time, continue the meeting or hearing to another time and/or location and/or terminate the meeting or hearing to preserve order and decorum. The hearing officer is responsible for insuring that the hearing and/or review of records is conducted in an orderly, fair, and expeditious manner.

K. Decision, Judicial Review, Records

1. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision shall be rendered within 120 days from the receipt of the Request for Appeal by the agency. The decision shall be served to the institution and shall constitute the final agency action for purposes of judicial or other review. The decision is subject to judicial review pursuant to the Administrative Procedure Act (R.S. 49:950 et seq.).

2. The appeal record, where the institution chooses to submit written information to dispute the state agency action taken against it, shall consist of that written information together with such written information as the state agency chooses to likewise submit to support its Notice of Proposed Action and the decision thereon.

3. The appeal record of a hearing shall consist of the evidence submitted at the hearing, a statement of any matter officially noticed, offers of proof, objections and rulings thereon, a recording of the hearing procedures, and the hearing officer's decision. A verbatim transcript of the recorded proceedings shall not be accomplished unless requested by one of the parties, at its cost, or in the event of a judicial appeal.

4. The appeal record shall be maintained for a period of not less than three years from the date the decision is mailed to the institution or the date of the submission of the final claim for reimbursement of the action involving the appeal or resolving of the action, whichever comes later.

Interested persons may submit comments on the proposed policy until 4:30 p.m., April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94095, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

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

RULE TITLE: Authority for Child Nutrition Programs and Appeals Procedure for Taking Action Against a Sponsor

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

The costs for the Child Nutrition Programs for FY 1994-1995 are expected to total \$220,669,035. These costs represent an ongoing program which is primarily provided through federal resources. There will be no additional cost associated with the adoption of this program.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$300. Funds are available.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
9502#075

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Board of Elementary and Secondary Education

Technical Institutes Attendance Policy (LAC 28:I.1523)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved a revision to the attendance policy for technical institutes. This revision tracks the wording of the present policy except it follows the quarter system under which the institutes presently operate instead of the monthly system previously used. This amendment to the Administrative Code, Title 28 is stated below:

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 15. Vocational and Vocational-Technical Education

§1523. Students

B. Attendance Policies

2. Absences

a. Full-time students are subject to being suspended for nonattendance if they are absent in excess of 42 hours in a quarter. Students enrolled less than full time will operate on a pro-rated scale on the policy according to their enrollment status.

b. A student suspended for nonattendance may register at the beginning of the next quarter. Any student suspended during two consecutive quarters shall not be allowed to register for the next quarter, but may register for the following quarter with the approval of the director.

c. Absences shall be recorded in increments of one-hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)(11), R.S. 17:1997

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 21:

Interested persons may submit comments on the proposed policy until 4:30 p.m. April 10, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Technical Institutes Attendance Policy

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the Louisiana Register is approximately \$70. Funds are available.
There will be no cost to the state Department of Education. The only cost will be for the Board of Elementary and Secondary Education.
II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no effect on costs and/or economic benefits to directly affected persons or nongovernmental groups.
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Marlyn J. Langley
Deputy Superintendent
9502#081

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

Fee System (LAC 33:III.223)(AQ98)

(Editor's Note: A portion of the following notice of intent, which appeared on pages 46 through 57 of the January 20, 1995 Louisiana Register, is being republished to correct typographical errors.)

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

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

§223. Fee Schedule Listing

FEE SCHEDULE LISTING						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application	Modified Permit Fees	
					Major	Minor
* * *						
0770	Petroleum Coke Calcining Per 1,000 Ton/Yr Rated Capacity	2999 MIN.	18.08 2234.00	90.47 11170.00	54.27 6702.00	18.08 2234.00
* * *						
1590	Automobile Recycling Scrap Per 1000 Ton/Yr	5093 MIN. MAX.	18.62 931.00 45237.00	93.08 4654.00 226184.00	55.85 2792.00 135711.00	18.62 931.00 45237.00
* * *						
[See Prior Text]						

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987, amended LR 14:613 (September 1988), LR 15:735 (September 1989), LR 17:1205 (December, 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1419 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 21:

James B. Thompson, III
Assistant Secretary

9502#062

NOTICE OF INTENT

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

Gasoline Bulk Plants (LAC 33:III.2133) (AQ111)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:III.2133, (AQ111).

The proposed rule change will exempt a bulk plant that dispenses less than 4,000 gallons of gasoline daily from installing gasoline vapor recovery equipment in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge Parishes.

The proposed regulation will amend the existing regulation (LAC 33:III.2133) to conform with the Model VOC Rules for Reasonably Available Control Technology published by EPA in June, 1992 pursuant to Title I of the Clean Air Act.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter F. Gasoline Handling

§2133. Gasoline Bulk Plants

A. Applicability

1. This Section applies to all unloading, loading, and storage operations at bulk gasoline plants and to any gasoline tank truck delivering or receiving gasoline at a bulk gasoline plant.

2. The following are subject only to the requirements of Subsection C.3.g-i, E, and E.1 of this Section and are exempt from the requirements of LAC 33:III.2131:

a. any stationary storage tank of 550 gallons (2,082 liters) capacity or less, notwithstanding LAC 33:III.2107; and

b. any bulk gasoline plant with an average daily throughput of gasoline of less than 4,000 gallons (15,000 liters) on a 30-day rolling average, provided that records are maintained according to the requirements in Subsection E.1 of this Section. Any facility that becomes or is currently subject to all of the provisions of this Section by exceeding this applicability threshold will remain subject to these provisions even if its throughput later falls below the applicability threshold. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and will remain subject to these provisions, even if its throughput or emissions have fallen or later fall below the applicability threshold.

B. Definitions. As used in this Section, all terms not defined herein shall have the meaning given to them in the Act or in LAC 33:III.111.

C. Standards

1. Each bulk gasoline plant subject to this Section shall be equipped with a vapor balance system between the gasoline storage tank and the incoming gasoline tank truck designed to capture and transfer vapors displaced during filling of the gasoline storage tank. These lines shall be equipped with fittings that are vapor-tight and that automatically and immediately close upon disconnection.

2. Each bulk gasoline plant subject to this Section shall be equipped with a vapor balance system between the gasoline storage tank and the outgoing gasoline tank truck designed to capture and transfer vapors displaced during the loading of the gasoline tank truck. The vapor balance system shall be designed to prevent any vapors collected at one loading rack from passing to another loading rack.

3. Each owner or operator of a bulk gasoline plant subject to this Section shall act to ensure that the procedures in Subsection C.3.a-i of this Section are followed during all loading, unloading, and storage operations:

a. the vapor balance system required by Subsection C.1 and 2 of this Section shall be connected between the tank truck and storage tank during all gasoline transfer operations;

b. all storage tank openings, including inspection hatches and gauging and sampling devices, shall be vapor-tight when not in use;

c. the gasoline tank truck compartment hatch covers shall not be opened during product transfer;

d. all vapor balance systems shall be designed and operated at all times to prevent gauge pressure in the gasoline tank truck from exceeding 18 inches (450 millimeters) of water and vacuum from exceeding 5.9 inches (150 millimeters) of water during product transfers;

e. no pressure vacuum relief valve in the bulk gasoline plant vapor balance system shall begin to open at a system pressure of less than 18 inches (450 millimeters) of water or at a vacuum of less than 5.9 inches (150 millimeters) of water;

f. all product transfers involving gasoline tank trucks at bulk gasoline plants subject to this Section shall be limited to vapor-tight gasoline tank trucks;

g. filling of storage tanks shall be restricted to submerged fill;

h. loading of outgoing gasoline tank trucks shall be limited to submerged fill; and

i. owners or operators of bulk gasoline plants or owners or operators of tank trucks shall observe all parts of the transfer and shall discontinue transfer if any liquid leaks are observed or vapor leaks are observed from lines, hoses, or connectors.

4. Each calendar month, the vapor balance systems described in Subsection C.1 and 2 of this Section and each loading rack that loads gasoline tank trucks shall be inspected for liquid or vapor leaks during product transfer operations. For purposes of this Section, detection methods incorporating sight, sound, or smell are acceptable. Each leak that is detected shall be repaired within 15 calendar days after it is detected.

D. Compliance. Compliance with this Section shall be determined by applying the following test methods, as appropriate:

1. Leak tests for monitoring during loading, EPA, Appendix B, Control of Volatile Organic Compound Leaks

from Gasoline Tank Trucks and Vapor Collection Systems (EPA 450/2-78-51);

2. Test Method 21 (LAC 33:III.6077) for determination of Volatile Organic Compound Leaks;

3. Monitoring Requirements. Inspection for visible liquid leaks, visible fumes, or odors resulting from gasoline dispensing operations shall be conducted by the owner or the operator of the bulk plant or the owner or the operator of the tank truck. Gasoline loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

E. Recordkeeping. The owner/operator of any gasoline bulk plant shall maintain records to verify compliance with or exemption from this Section. The records will be maintained for at least five years and will include, but not be limited to, the following:

1. purchase and sales receipts including delivery dates, quantities, and comments;

2. equipment operation schedules and maintenance records;

3. data to document compliance with LAC 33:III.2133.D;

4. visual inspection to address the installation of the vapor return line, odor testing for leaks during transfer operations and suggested use of check-off sheets; and

5. the dates and times the vapor collection facility was inspected and whether it passed the requirements specified in LAC 33:III.2137.B.1.

F. Reporting. The owner or operator of any facility containing sources subject to this Section shall comply with the requirements of LAC 33:III.927 for the reporting of excess emissions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), LR 16:610 (July 1990), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

A public hearing will be held on March 30, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, April 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486. Commentors should reference this proposed regulation by the Log AQ111.

James B. Thompson, III
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Gasoline Bulk Plants

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

There is no expected change in cost or savings to state or local governmental units caused by promulgation of the proposed rule.

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

There is no expected change in revenue collections of state or local governmental units caused by promulgation of the proposed rule.

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

There will be an economic benefit of an estimated \$100,000 to each owner of a gasoline bulk plant that dispenses less than 4,000 gallons of gasoline daily by the promulgation of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no expected effect on competition or employment by the promulgation of the proposed rule.

Gus Von Bodungen
Assistant Secretary
9502#066

David W. Hood
Senior Fiscal Analyst
9502#066

NOTICE OF INTENT

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

Emissions of Organic Compounds from Industrial
Wastewater (LAC 33:III.2153)(AQ106)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:III.Chapter 21 (AQ106).

The proposed rule relates to the handling of volatile organic compound-laden industrial waste water utilizing reasonably available control technology (RACT). It applies to sources in the ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that emit at least 50 tons per year of volatile organic compounds.

This action is required as a result of the federal Clean Air Act Amendments of 1990, section 182(c) and by the directives of the United States Environmental Protection Agency.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

Title 33
ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emissions of Organic Compounds

Subchapter M. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

§2153. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

Affected Source Category—any of the following source categories located in the ozone nonattainment parishes classified as marginal or above:

a. organic chemicals, plastics, and synthetic fibers manufacturing industry under Standard Industrial Classification (SIC) codes 2821, 2823, 2824, 2865, and 2869;

b. pesticides manufacturing industry under SIC code 2879;

c. pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836; and

d. hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953 and 4959.

Affected Volatile Organic Compounds (VOC) Wastewater—a VOC wastewater stream from an affected source category with either a VOC concentration greater than or equal to 10,000 parts per million by weight (ppmw) or a VOC concentration greater than or equal to 1000 ppmw and a flow rate greater than or equal to 10 liters per minute (2.64 gallons per minute), as determined in accordance with Subsection H of this Section.

Components—includes, but is not limited to, wastewater storage tanks, surface impoundments, drains, junction boxes, lift stations, weirs, and oil-water separators.

Continuously Monitor—measure at least once every 15 minutes.

Maintenance Wastewater—wastewater generated by the draining of process fluid from components in the facility prior to or during maintenance activities. Maintenance wastewater can be generated during planned or unplanned shutdowns and periods that are not associated with shutdowns. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tube bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps, and draining of unrecovered portions of a facility prior to repair.

Plant—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emission inventory system (EIS).

Point of Generation—the location where a VOC wastewater stream exits a process unit.

Properly Operated Biotreatment Unit—a suspended growth process that generates and recycles biomass to maintain biomass concentrations in the treatment unit. The average

concentration of suspended biomass maintained in the aeration basin of a properly operated biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m³), measured as total suspended solids.

Volatile Organic Compounds (VOC) Wastewater—water which, as part of a facility process, has come into contact with VOC and is intended for treatment, disposal, or discharge without further use in a process unit. Examples of potential VOC wastewater are: product or feed tank drawdown; water formed during a chemical reaction; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling a vacuum on vessels. Examples of water streams that are not VOC wastewater are: water being used within a facility process; rainfall runoff; fire, safety, and other exigency-use water; spills; once-through noncontact cooling water; cooling tower blowdown; and maintenance wastewater.

Wet Weather Retention Basin—an impoundment or tank that is used to store rainfall runoff that would exceed the capacity of the wastewater treatment system until it can be returned to the wastewater treatment system or, if the water meets the applicable discharge limits, discharged without treatment. These units may also be used to store wastewater during periods when the wastewater treatment system is shut down for maintenance or emergencies.

B. Control Requirements. Any person who is the owner or operator of an affected source category within a plant shall comply with the following control requirements. Any component of the wastewater storage, handling, transfer, or treatment facility, if the component contains an affected VOC wastewater stream, shall be controlled in accordance with either Subsection B.1 or 2 of this Section, except for a properly operated biotreatment unit and a wet weather retention basin. The control requirements shall apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, disposed of in an underground injection well, incinerated, or treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream. For wastewater streams which are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least equal to the total amount of VOC that would be removed to treat each individual stream so that they no longer meet the definition of affected VOC wastewater stream.

1. The wastewater component shall meet the following requirements:

a. all components shall be fully covered or be equipped with water seal controls;

b. all openings shall be closed and sealed, except when the opening is in actual use for its intended purpose or the component is maintained at a pressure less than atmospheric pressure;

c. all liquid contents shall be totally enclosed;

d. if any cover, other than a junction box cover, is equipped with a vent, the vent shall be equipped with either a control device or a vapor recovery system which maintains a minimum control efficiency of 90 percent VOC removal or a

VOC concentration of less than or equal to 50 parts per million by volume (ppmv) (whichever is less stringent) or a system which prevents the flow of VOC vapors from the vent during normal operation. Any junction box vent shall be equipped with a vent pipe at least 90 centimeters (cm) (36 inches) in length and no more than 10.2 cm (4.0 inch) in diameter;

e. all gauging and sampling devices shall be vapor-tight except during gauging or sampling;

f. all seals and cover connections shall be maintained in proper condition. For purposes of these regulations, "proper condition" means that covers shall have a tight seal around the edge and shall be kept in place except as allowed herein, that seals shall not be broken or have gaps, and that sewer lines shall have no visible gaps or cracks in joints, seals, or other emission interfaces;

g. if any seal or cover connection is found not to be in proper condition, the repair or correction shall be completed as soon as possible but within 15 days of detection, unless the repair or correction is technically impossible without requiring a unit shutdown, in which case the repair or correction shall be made before the end of the next unit shutdown;

h. wastewater tanks that meet the following conditions require fixed roofs but do not require that vents be equipped with control devices or recovery devices as long as the tanks are not used for mixing, heating, or treating with an exothermic reaction:

i. have a capacity less than 250 gallons at any vapor pressure;

ii. have any capacity and a vapor pressure less than 1.5 psia; or

iii. have a capacity greater than 250 gallons and less than 40,000 gallons and a vapor pressure greater than 1.5 psia (requires submerged fill); and

i. for wastewater tanks that would normally be required to have a control device or recovery device, these devices shall not be required to meet the 90 percent removal efficiency or 50 ppmv concentration during periods of malfunction or maintenance on the devices for periods not to exceed 336 hours per year.

2. Any wastewater tank required to be equipped with a floating roof or internal floating cover shall meet the following requirements:

a. all openings in an internal or external floating roof, except for automatic bleeder vents and rim space vents, shall provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid shall be in a closed (i.e., no visible gap) position at all times except when the opening is in actual use for its intended purpose;

b. automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports;

c. rim vents, if provided, shall be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;

d. any emergency roof drain shall be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening;

e. there shall be no visible holes, tears, or other

openings in any seal or seal fabric;

f. secondary seals shall be the rim-mounted type (i.e., the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch (0.32 cm) in width between the secondary seal and tank wall shall be no greater than 1.0 inch² per foot (21 cm² per meter) of tank diameter; and

g. if any seal is found not to meet the requirements of Subsection B.2 of this Section, the tank shall be emptied and/or the repairs shall be completed within 45 days of identification in any inspection required by Subsection D.2 of this Section. If the tank cannot be emptied or the repair cannot be completed within 45 days, a 30-day extension may be requested from the administrative authority*.

3. Any wastewater component that becomes subject to this Section by exceeding the provisions of Subsection G of this Section, or becoming an affected VOC wastewater stream as defined in Subsection A of this Section, will remain subject to the requirements of this Section. This will be the case even if the tank later falls below the above-mentioned provisions unless and until emissions are reduced to a level at or below the controlled emissions level existing prior to the implementation of the project by which throughput or emission rate was reduced and less than the applicable exemption levels in Subsection G of this Section, and if the following conditions are met:

a. the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by LAC 33:III.501.B. If a standard exemption is available for the project, compliance with this Subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

b. if authorization by permit or standard exemption is not required for this project, the owner or operator has given the department 30 days notice of the project in writing.

C. Alternate Control Requirements. Alternate methods of demonstrating and documenting compliance with applicable control requirements or exemption criteria may be approved by the administrative authority* if emission reductions are demonstrated to be substantially equivalent.

D. Inspection and Monitoring Requirements. Any person who is the owner or operator of a facility subject to the control requirements of Subsection B of this Section, shall comply with the following inspection and monitoring requirements:

1. all seals and covers used to comply with Subsection B.1 of this Section shall be inspected according to the following schedules to ensure compliance with Subsection B.1.f and g of this Section:

a. initially and semiannually thereafter to ensure compliance with Subsection B.1.f of this Section; and

b. upon completion of repair to ensure compliance with Subsection B.1.f and g of this Section;

2. floating roofs and internal floating covers used to comply with Subsection B.2 of this Section shall be subject to the following requirements and all secondary seals shall be inspected according to the following schedules to ensure compliance with Subsection B.2.e and f of this Section:

a. if the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to ensure compliance with Subsection B.2.f of this Section;

b. if the tank is equipped with a metallic type shoe or liquid-mounted primary seal, compliance with Subsection B.2.f of this Section shall be determined annually by visual inspection; and

c. all secondary seals shall be visually inspected semiannually to ensure compliance with Subsection B.2.e and f of this Section; and

3. monitors shall be installed and maintained as required by this Section to measure operational parameters of any emission control device or other device installed to comply with Subsection B of this Section. Such monitoring and parameters shall be sufficient to demonstrate proper functioning of those devices and be conducted as follows:

a. for an enclosed combustion device (including, but not limited to, a thermal incinerator, boiler, or process heater), continuously monitor and record the temperature of the gas stream either in the combustion chamber or immediately downstream before any substantial heat exchange;

b. for a catalytic incinerator, continuously monitor and record the temperature of the gas stream immediately before and after the catalyst bed;

c. for a condenser (chiller), continuously monitor and record the temperature of the gas stream at the condenser exit;

d. for a carbon adsorber, continuously monitor and record the VOC concentration of the exhaust gas stream to determine if breakthrough has occurred. If the carbon adsorber does not regenerate the carbon bed directly in the control device (e.g., a carbon canister), the exhaust gas stream shall be monitored at intervals no greater than daily. As an alternative to conducting monitoring, the carbon may be replaced with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorber. For pressure-swing adsorption (PSA) systems, as an alternative to monitoring the VOC concentration of the exhaust gas stream, the temperature of the bed near the inlet and near the outlet may be continuously monitored and recorded. Proper operation shall be evidenced by a uniform pattern of temperature increases and decreases near the inlet and a fairly constant temperature near the outlet;

e. for a flare, continuously monitor for the presence of a flare pilot light using a thermocouple or any other equivalent device to detect the presence of a flame;

f. for a steam stripper, continuously monitor and record the steam flow rate, the wastewater feed mass flow rate, the wastewater feed temperature, and the condenser vapor outlet temperature; and

g. in lieu of the monitoring and parameters listed in Subsection D.3.a-f of this Section, other monitoring and parameters may be approved or required by the administrative authority*.

E. Approved Test Methods. Compliance shall be determined by applying the following test methods, as appropriate:

1. for determination of gas flow rate - Test Methods 1-4

(LAC 33:III.6001-6013);

2. for determination of gaseous organic compound emissions by gas chromatography - Test Method 18 (LAC 33:III.6071);

3. for determination of VOC leaks and for monitoring a carbon canister in accordance with Subsection D.3 of this Section - Test Method 21 (LAC 33:III.6077);

4. for determination of total gaseous nonmethane organic emissions as carbon - Test Method 25 (LAC 33:III.6085);

5. for determination of total gaseous organic concentration using a flame ionization or a nondispersive infrared analyzer - Test Method 25A or 25B (LAC 33:III.6086 or 6087);

6. for determination of VOC concentration of wastewater samples - Test Method 5030 (purge and trap) followed by Test Method 8015 with a DB-5 boiling point (or equivalent column) and flame ionization detector, with the detector calibrated with benzene (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, and 40 CFR part 261); Test Methods 3810, 5030 (followed by 8020), 8240, 8060, and 9060 (SW-846 and 40 CFR part 261); Test Methods 601, 602, and 624 (40 CFR part 136); Test Method 5310(B) (Standard Methods 17th Edition); Test Method 25D (40 CFR part 60); Test Method 305 (40 CFR part 63); or Test Method 415.1 (Methods for Chemical Analysis of Water and Wastes - EPA-600/4-79-020);

7. for determination of true vapor pressure - American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989; and

8. alternative test methods or minor modifications to these test methods as approved by the administrative authority*.

F. Recordkeeping Requirements. Any person who is the owner or operator of an affected source category within a plant shall comply with the following recordkeeping requirements:

1. complete and up-to-date records shall be maintained as needed to demonstrate compliance with Subsection B of this Section. These shall be sufficient to demonstrate the characteristics of wastewater streams and the qualification for any exemptions claimed under Subsection G of this Section;

2. records shall be maintained of the results of any inspection or monitoring conducted in accordance with the provisions specified in Subsection D of this Section;

3. records shall be maintained of the results of any testing conducted in accordance with the provisions specified in Subsection E of this Section;

4. records shall be maintained of the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of any VOC emissions during such activities; and

5. all records shall be maintained at the plant for at least two years and be made available upon request to representatives of the department, U.S. Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.

G. Exemptions

1. Any affected source category with a VOC loading in wastewater, as determined in accordance with Subsection H of this Section, less than or equal to 10 megagrams (Mg) (11.03 tons) shall be exempt from the control requirements of Subsection B of this Section.

2. At any affected source category with an annual VOC loading in wastewater, as determined in accordance with Subsection H of this Section, greater than 10 Mg (11.03 tons), any person who is the owner or operator of the affected source category may exempt from the control requirements of Subsection B of this Section one or more affected VOC wastewater streams for which the sum of the annual VOC loading in wastewater for all of the exempted streams is less than or equal to 10 Mg (11.03 tons).

3. If compliance with the control requirements of Subsection B of this Section would create a safety hazard in a component of a wastewater storage, handling, transfer, or treatment facility, the owner or operator may request the administrative authority* to exempt that component from the control requirements of Subsection B of this Section. The administrative authority* shall approve the request if justified by the likelihood and magnitude of the potential injury and if the administrative authority* determines that reducing or eliminating the hazard is technologically or economically unreasonable based on the emissions reductions that would be achieved.

4. Wastewater components are exempt from the control requirements of Subsection B of this Section if the overall control of VOC emissions from the wastewater of affected source categories is at least 90 percent less than the 1990 baseline emissions inventory, and the following requirements are met:

a. the owner or operator of the wastewater components shall submit a control plan, no later than 180 days after promulgation of this rule, to the department and the appropriate regional office which demonstrates that the overall control of VOC emissions from wastewater at the affected source categories will be at least 90 percent less than the 1990 baseline emissions inventory by November 15, 1996. At a minimum, the control plan shall include the applicable emission point number (EPN); the plant identification number (PIN); the calendar year 1990 emission rates of wastewater from affected source categories (consistent with the 1990 baseline emissions inventory); a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility; and the projected calendar year 1996 VOC emission rates. The projected 1996 VOC emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory;

b. in order to maintain exemption status under this Subsection, the owner or operator shall submit an annual report no later than March 31 of each year, starting in 1997, to the department which demonstrates that the overall control of VOC emissions at the affected source category from which wastewater is generated during the preceding calendar year is at least 90 percent less than the 1990 baseline emissions inventory. At a minimum, the report shall include the EPN; the PIN; the throughput of wastewater from affected source

categories; a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility; and the VOC emission rates for the preceding calendar year. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 baseline emissions inventory; and

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions, unless the owner or operator of the wastewater component submits a revised control plan to the department within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions from wastewater at the affected source categories continues to be at least 90 percent less than the 1990 baseline emissions inventory. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory.

5. The owner or operator of wastewater components subject to the control requirements of Subsection B of this Section may request an exemption determination from the administrative authority* if the overall control of VOC emissions from wastewater at the affected source categories is at least 80 percent less than the 1990 baseline emissions inventory, and the following requirements are met:

a. each request for an exemption determination shall be submitted to the department. Each request shall demonstrate that the overall control of VOC emissions from wastewater at the affected source categories will be at least 80 percent less than the 1990 baseline emissions inventory. The request shall include the applicable EPN; the PIN; the calendar year throughput of wastewater from affected source categories; the VOC emission rates; and a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory;

b. the administrative authority* shall approve the exemption for specific wastewater components if it is determined to be economically unreasonable to control the associated emissions subject to these regulations, all reasonable controls are applied, and the overall control of VOC emissions from wastewater at the affected source categories is at least 80 percent less than the 1990 baseline emissions inventory. The administrative authority* may subsequently direct the holder of an exemption under this Section to reapply for the exemption if there is good cause to believe that it has become economically reasonable to meet the requirements of Subsection B of this Section. Within three months of an administrative authority* request, the holder of an exemption under this Section shall reapply for the exemption. If the reapplication for an exemption is denied, the holder of the exemption shall meet the requirements of Subsection B of this Section as soon as possible, but no later than two years from the date of denial; and

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful

for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the wastewater component submits a revised control plan to the department within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions at the plant from wastewater affected source categories continues to be at least 80 percent less than the 1990 baseline emissions inventory.

6. Any component of a wastewater storage, handling, transfer, or treatment facility that is subject to the Hazardous Organic National Emission Standards for Hazardous Air Pollutants (HON) wastewater provisions or National Emission Standards for Hazardous Air Pollutants (NESHAPS) Subpart FF (benzene waste operations) or Subpart YYY (Synthetic Organic Chemical Manufacturing Industry (SOCMI) wastewater provisions) is exempt from the provisions of this Section.

7. Equipment that is installed temporarily or is portable (such as containers) is exempt from the provisions of this Section.

8. Unless specifically required, any component of a wastewater storage, handling, transfer, or treatment facility to which the requirements of this Section apply or which is specifically exempted shall be exempt from the requirements of any other portion of this Chapter.

H. Determination of Wastewater Characteristics

1. The characteristics shall be determined at a location between the point of generation and the point before which the wastewater stream is exposed to the atmosphere, treated for VOC removal, or mixed with another wastewater stream. For wastewater streams which, prior to November 15, 1993, were either actually being mixed or construction had commenced which would result in the wastewater streams being mixed, this mixing shall not establish a limit on where the characteristics may be determined.

2. The flow rate of a wastewater stream shall be determined on the basis of an annual average by one of the following methods:

a. the highest annual quantity of wastewater managed, based on historical records for the most recent five years of operation, or for the entire time the wastewater stream has existed if less than five years but at least one year;

b. the maximum design capacity of the wastewater component;

c. the maximum design capacity to generate wastewater of the process unit generating the wastewater stream; or

d. measurements that are representative of the actual, normal wastewater generation rates.

3. The VOC concentration of a wastewater stream shall be determined on the basis of a flow-weighted annual average by one of the following methods or by a combination of the methods. If the administrative authority* determines that the VOC concentration cannot be adequately determined by knowledge of the wastewater or by bench-scale or pilot-scale test data, the VOC concentration shall be determined in accordance with Subsection H.3.c of this Section. A VOC with a Henry's Law Constant less than 7.5×10^{-5} atm-m³/mole

at 25°C shall not be included in the determination of VOC concentration.

a. Knowledge of the Wastewater. Sufficient information shall be used to document the VOC concentration. Examples of information include material balances, records of chemical purchases, or previous test results.

b. Bench-scale or Pilot-scale Test Data. Sufficient information shall be used to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual VOC concentration.

c. Measurements. Collect a minimum of three representative samples from the wastewater stream and determine the VOC concentration for each sample in accordance with Subsection E of this Section. The VOC concentration of the wastewater stream shall be the flow-weighted average of the individual samples.

4. The annual VOC loading in wastewater for a wastewater stream shall be the annual average flow rate determined in Subsection H.2 of this Section multiplied by the annual average VOC concentration determined in Subsection H.3 of this Section.

5. The annual VOC loading in wastewater for an affected source category shall be the sum of the annual VOC loading in wastewater for each affected VOC wastewater stream.

I. Parishes and Compliance Schedules. For the affected facilities in the ozone nonattainment parishes classified marginal or above, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this rule no later than November 15, 1996. If an additional affected VOC wastewater stream is generated as a result of a process change, the wastewater shall be in compliance with this Section upon initial startup or by November 15, 1998, whichever is later, unless the owner or operator demonstrates to the administrative authority* that achieving compliance will take longer. If this demonstration is made to the administrative authority's* satisfaction, compliance shall be achieved as expeditiously as practicable, but in no event later than three years after the process change. An existing wastewater stream that becomes an affected VOC wastewater stream due to a process change must be in compliance with this Section as expeditiously as practicable, but in no event later than three years after the process change.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

A public hearing will be held on March 30, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, April 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-

2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486. Commentors should reference this proposed regulation by Log AQ106.

James B. Thompson, III
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Emissions of Organic Compounds from
Industrial Wastewater**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There are no costs or savings to state or local government units expected as a result of the proposed rule.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
Promulgation of the proposed rule is not expected to have any major effect on revenue collections by state or local government units.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**
Costs to approximately 29 directly affected facilities will amount to \$853,500 in the first year of implementation with minimal maintenance costs in the following years. There is an estimated potential recovery of 2,190 tons per year of volatile organic compound emissions which could be used as fuel, for a savings of \$73,300 per year.
These costs were required as a result of the federal Clean Air Act Amendments of 1990.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**
There is no expected significant effect on competition and employment from the implementation of the proposed rule amendments.

Gustave Von Bodungen
Assistant Secretary
9502#061

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

**Emissions of Nitrogen Oxides
(LAC 33:III.Chapter 22)(AQ115)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.Chapter 22, (AQ115).

This proposal relates to the repeal of LAC 33:III.Chapter 22, Control of Emissions of Nitrogen Oxides by Reasonably Available Control Technology (RACT) which would have applied to specific sources of nitrogen oxides (NO_x) at any major stationary sources within a moderate or higher ozone nonattainment area.

Computer modeling has shown that the projected NO_x reductions of 20,000 tons per year would have caused an increase in the ozone level in the Baton Rouge area. The Clean Air Act Amendments of 1990 allow an exemption from such NO_x controls if computer modeling shows that they would be detrimental to air quality. The department has applied to EPA for such an exemption.

Chapter 22 was required by the Clean Air Act Amendments of 1990, Section 182(f), and directives of the U.S. Environmental Protection Agency.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

**Chapter 22. Control of Emissions of Nitrogen Oxides
§2201. General Provisions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:162 (February 1994), repealed LR 21:

§2203. Large Combustion Sources

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:162 (February 1994), repromulgated LR 20:288 (March 1994), repealed LR 21:

§2205. Nitric Acid Manufacturing

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:162 (February 1994), repealed LR 21:

A public hearing will be held on March 30, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, April 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-

0486. Commentors should reference this proposed regulation by Log AQ115.

James B. Thompson, III
Assistant Secretary

NOTICE OF INTENT

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

Fee Schedule (LAC 33:XV.Chapter 25)(NE16)

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Emissions of Nitrogen Oxides**

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

There are no costs or savings expected from this proposal to repeal LAC 33:III.Chapter 22, Sections 2201, 2203 and 2205, Control of Emissions of Nitrogen Oxides are negligible.

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

Under the rule to be repealed, the state would have lost that sales tax from equipment that industry might have purchased for reasons of efficiency, since purchases required by federal or state law are eligible for a state sales tax exclusion pursuant to R.S. 47:301(10)(1). That sales tax is regained by the repeal of the rule. If the increased marginal costs to industry of the rule to be repealed had negatively impacted employment, both state and local revenue would have decreased. These possible effects cannot be quantified.

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

Total costs to directly affected industries of the rule to be repealed were estimated at approximately 36 million dollars per year; the repeal of the rule will save industry these costs. The rule to be repealed would have resulted in a projected reduction of 20,000 tons per year of NO_x. According to DEQ computer models this NO_x reduction would have increased the ozone level in the Baton Rouge area; thus, the repeal of the rule will save the public from these adverse health effects.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no expected significant effect on intrastate or interstate competition or employment from the implementation of the proposed rule. An increase in fees for State Air Pollution programs is expected for all states as a result of Public Law 101-549. However, the rule to be repealed might have increased costs to domestic industry relative to competitors outside the United States.

Gus Von Bodungen
Assistant Secretary
9502#060

David W. Hood
Senior Fiscal Analyst

(Editor's Note: A portion of the following notice of intent, which appeared on pages 58 through 61 of the January 20, 1995 Louisiana Register, is being republished to correct typographical errors.)

**Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection
Chapter 25. Fee Schedule**

APPENDIX A RADIATION PROTECTION PROGRAM FEE SCHEDULE		
	Application Fee	Annual Maintenance Fee
I. Radioactive Material Licensing		
* * *		
D. Industrial radioactive material licenses:		
* * *		
7. Well-logging and subsurface tracer studies		
a. Collar markers, nails, etc. for orientation	325	325
b. Sealed sources less than 10 Curies and/or tracers less than or equal to 500 mCi	975	975
c. Sealed sources of 10 Curies or greater and/or tracers greater than 500 mCi but less than 5 Curies	1,600	1,600
d. Field flood studies and/or tracers equal to or greater than 5 Curies	2,350	2,350
* * *		
11. Licenses of broad scope:		
a. Academic, industrial, research and development, total activity equal to or greater than 1 Curie	1,550	1,550
b. Academic, industrial, research and development, total activity less than 1 Curie	925	925
* * *		

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992),

James B. Thompson, III
Assistant Secretary

9502#063

NOTICE OF INTENT

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

Incident Reporting Requirements (LAC 33:XV.341, 550, 777, 2051)(NE17)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection Division regulations, LAC 33:XV.Chapter 3, 5, 7 and 20 (NE17).

The proposed rule changes to Chapters 3, 5, 7 and 20 would formally require reporting to this agency certain incidents involving radioactive materials. In the past, these incidents would probably have been reported because of other reporting requirements, however the NRC recently decided to clarify the reporting requirements. The reporting requirement changes are required by the NRC for Louisiana to remain as an agreement state.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 3. Licensing of Radioactive Material

§341. Reporting Requirements

A. Immediate Report. Each licensee shall notify the division as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

B. Twenty-four Hour Report. Each licensee shall notify the division within 24 hours after the discovery of any of the following events involving licensed material:

1. an unplanned contamination event that:
 - a. requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;
 - b. involves a quantity of material greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and
 - c. requires access to the area to be restricted for a

reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;

2. an event in which equipment is disabled or fails to function as designed when:

- a. the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

- b. the equipment is required to be available and operable when it is disabled or fails to function; and

- c. no redundant equipment is available and operable to perform the required safety function;

3. an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

4. an unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

- a. the quantity of material involved is greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and

- b. the damage affects the integrity of the licensed material or its container.

C. Preparation and Submission of Reports. Reports made by licensees in response to the requirements of LAC 33:XV.341 must be made as follows:

1. licensees shall make reports required by LAC 33:XV.341.A and B by telephone to the division. To the extent that the information is available at the time of notification, the information provided in these reports must include:

- a. the caller's name and call-back telephone number;
- b. a description of the event, including date and time;
- c. the exact location of the event;
- d. the isotopes, quantities, and chemical and physical form of the licensed material involved; and
- e. any personnel radiation exposure data available; and

2. each licensee who makes a report required by LAC 33:XV.341.A or B shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the division. The reports must include the following:

- a. a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;
- b. the exact location of the event;
- c. the isotopes, quantities, and chemical and physical form of the licensed material involved;
- d. date and time of the event;
- e. corrective actions taken or planned and the results of any evaluations or assessments; and
- f. the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 21:

Chapter 5. Radiation Safety Requirements For Industrial Radiographic Operations
§550. Performance Requirements for Radiography Equipment

Equipment serviced, maintained, or repaired by a licensee or registrant or used in industrial operations must meet the following minimum criteria:

* * *

[See Prior Text In 1 - 3.i]

j. malfunction of any exposure device or associated equipment shall be reported to the division in accordance with the requirements of LAC 33:XV.341;

* * *

[See Prior Text In 4 - 5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:

Chapter 7. Use of Radionuclides in the Healing Arts
§777. Quality Management Program

* * *

[See Prior Text In A - A.5]

B. The licensee shall:

1. develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

- a. a representative sample of patient administrations;
- b. all misadministrations to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months; and
- c. all recordable events;

* * *

[See Prior Text In B.2 - H]

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

Subchapter D. Notification

§2051. Notification of Incidents, Abandonment, and Lost Sources

A. The licensee shall immediately notify the division by telephone and subsequently within three days by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured. The letter must designate the well or other location, describe the magnitude and extent of the release of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

* * *

[See Prior Text In B - D.2.h]

E. The licensee shall notify the division of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation or radioactive materials, and certain other accidents as required by LAC 33:XV.341, 485, 486, and 487.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:

A public hearing will be held on March 30, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Thursday, April 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486. Commentors should reference this proposed regulation by Log NE17.

James B. Thompson, III
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Incident Reporting Requirements

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant effect of this proposed rule on implementation costs to state or local governmental units is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant effect of this proposed rule on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No implementation cost or economic benefit to directly affected persons is anticipated as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No significant effect of this proposed rule on competition and employment is anticipated.

Gustave Von Bodungen
Assistant Secretary
9502#072

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Firefighters' Pension and Relief Fund City of New Orleans and Vicinity

Reciprocal Recognition of Service Credit and Transfer of Credit

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity ("fund") pursuant to R.S. 11:3363(F), proposes to adopt rules and regulations in accordance with the Administrative Procedure Act, R.S. 950 et seq., for reciprocal recognition of years of service credit and transfer of credits in accordance with the provisions of R.S. 11:143 and R.S. 11:142.

R.S. 11:143 generally provides authority of the board to transfer credits between this fund and public retirement systems, and R.S. generally provides authority of the board to recognize reciprocal credits of years of service. Since the above statutory provisions are ambiguous and do not address many issues that have arisen, adoption of the proposed rules and regulations is warranted.

The proposed rules clarify the provisions under R.S. 11:142 to receive a prorated benefit from the Firefighters Pension and Retirement Fund and another public retirement system based on years of membership service credit actually accrued under each respective system. The rules also clarify the provisions under R.S. 11:143 permitting an employee to transfer service credit accumulated under a public retirement system to the Firefighters Pension and Retirement Fund or to transfer service credit accumulated under the Firefighters Pension and Retirement Fund to the public retirement system.

The text of the proposed rules may be viewed in its entirety at the Office of the Board of Trustees of the Firefighters' Pension and Relief Fund, 329 South Dorgenois Street, New Orleans, LA or at the Office of the State Register, 1050 North Third Street, Suite 512, Baton Rouge, LA.

A public hearing will be conducted by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity at 10:00 a.m. on April 15, 1995 at 329 South Dorgenois Street, New Orleans, LA 70119.

Any interested party may submit data, views or arguments orally or in writing concerning these rules, no later April 15, 1995 at 4:30 p.m., or may make inquiries concerning the adoption of these rules to Richard Hampton, Jr., Secretary-Treasurer of the Board of Trustees, 329 South Dorgenois Street, New Orleans, LA 70119.

William M. Carrouché
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Reciprocal Recognition of Years of Service Credit and Transfer of Credit

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The only estimated implementation cost which is anticipated will be the cost of printing and distributing copies of the proposed rules and regulations to persons making a request for a copy of same. Copying cost (if every participant requested one copy) is estimated to be \$1,128.80.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Adoption and implementation of the rules and regulations for reciprocal recognition of years of service credit and transfer of credit should not have any effect on revenue collection of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The rules and regulations clarify statutory requirements of permitting the transfer of service credits between public retirement systems and this fund and permitting a prorata benefit from each public retirement system. Therefore, the adoption and implementation of these rules should not have a cost impact or provide an economic benefit to any person or nongovernmental group other than costs and benefits already incurred pursuant to the statutory requirements.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Adoption and implementation of the rules and regulations for reciprocal recognition of years of service credit and transfer of credit should not have any effect on competition and employment.

Jeanne Cresson
Fund Counsel
9502#082

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals Board of Examiners of Professional Counselors

Supervised Experience (LAC 46:LX.705)

The Licensed Professional Counselors Board of Examiners, under the authority of the Louisiana Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., intends to amend the following rule governing the practice of mental health counseling in the state of Louisiana.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LX. Professional Counselors, Board of Examiners Chapter 7. Requirements for Licensure

§705. Supervised Experience

A. Supervision Requirements

1. Supervision is defined as assisting the counselor intern

in developing expertise in methods of the professional mental health counseling practice and in developing self-appraisal and professional development strategies. Supervision must comply with standards as set by the board.

2. Pursuant to R.S. 37:1107(A) an applicant for license must document a minimum of 3,000 hours of supervised mental health counseling experience during a minimum of two years post-master's degree experience. Five hundred hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the master's degree, provided that such hours are clearly related to the field of mental health and provided that in no case the applicant has less than 2,000 hours of supervised experience.

a. Based on the above, the board has broken down the required 3,000 hours of counseling experience in the following manner:

i. a minimum of 1,900 hours (up to 2,900 hours) in direct client contact - individual or group counseling.

ii. a maximum of 1,000 hours in additional client contact, counseling related activities (i.e., case notes, staffing, case consultation, or testing/assessment of clients) or education at the graduate level in the field of mental health as defined above.

iii. a minimum of 100 hours of face-to-face supervision by a board approved supervisor.

b. The board recommends one hour of supervision for every 20 hours of direct client contact as outlined in Clause i. Supervision may not take place via mail, or telephone. Telephone or mail contacts with supervisor may be counted under Clause ii (i.e., consultation), however, it cannot be counted as face-to-face supervision as defined in Clause iii.

3. Acceptable modes for supervision of direct clinical contact are the following:

a. Individual Supervision. The supervisory session is conducted by an approved supervisor with one counselor intern present.

b. Group Supervision. The supervisory session is conducted by an approved supervisor with no more than five counselor interns present.

4. At least 100 hours of the counselor intern's direct clinical contact with clients must be supervised by an approved supervisor or supervisors, as defined below.

a. At least 50 of these 100 hours must be individual supervision as defined above. The remaining 50 hours of these 100 hours may be either individual supervision or group supervision as defined above.

b. A supervisor may not supervise more than five counselor interns at any given time.

5. The counseling activities of the counselor intern must be performed pursuant to the supervisor's order, control, oversight, guidance and full professional responsibility. The supervisor must read and co-sign all written reports including treatment plans and progress notes prepared by the counselor intern when in a private practice setting with the supervising LPC. Reading and co-signing of reports in some agency settings may not be possible, however, this does not exempt the supervisor from responsibility for the clients under the counselor intern care in such agency settings. The counselor intern will remain under the full professional responsibility and

supervision of the supervisor until he/she is fully licensed.

6. The process of supervision must encompass multiple strategies of supervision, including regularly scheduled live observation of counseling sessions (where possible) and review of audiotapes and/or videotapes of counseling sessions. The process may also include discussion of the counselor intern's self-reports, microtraining, interpersonal process recall, modeling, role-playing, and other supervisory techniques.

* * *

B. Qualifications of a Supervisor

1. Those individuals who may provide supervision to counselor interns must meet the following requirements:

a. Licensure Requirements. The supervisor must hold a Louisiana license as a Licensed Professional Counselor.

b. Counseling Practice. The supervisor must have been practicing mental health counseling in their setting (i.e., school, agency, private practice) for at least five years. Two of the five years experience must be post licensing experience.

* * *

d. One year of documented experience in the supervision of mental health counseling.

* * *

C. Responsibility of Applicant under Supervision

* * *

6. Supervision hours do not begin accruing until after the application for supervision has been filed and approved by the LPC Board.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 18:269 (March 1992), amended LR 21:

Persons who wish to submit comments should write to: Peter Emerson, EdD, LPC, Board Chairman, LA LPC Board of Examiners, 4664 Jamestown Avenue, Suite 125, Baton Rouge, LA 70808-3218. Comments will be accepted through March 12, 1995.

Peter Emerson, Ed. D.
Board Chair

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Supervised Requirements

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

There will be no estimated implementation costs or savings to state or local government as a result of this rule.

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

There will be no change in revenue collections due to this rule.

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

It is anticipated that there will be no change in costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

Peter M. Emerson
Board Chair
9502#029

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals
Office of Mental Health

Problem Gambler Information Service (LAC 48:III.901)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Mental Health, intends to adopt the following rule.

Pursuant to R.S. 28:841, the Office of Mental Health of the Department of Health and Hospitals shall provide a 24-hour, toll-free information and referral telephone service for persons with compulsive or problem gambling behavior operated by persons with knowledge of programs and services available to assist these individuals. The Office of Mental Health shall make information regarding the program and services available to the public by providing signs to the Louisiana Lottery Corporation and requiring posting of these signs at lottery retail outlets, where gambling or gaming activities are conducted, at horse-racing tracks and at charitable bingo parlors.

Title 48

PUBLIC HEALTH-GENERAL

Part III. Mental Health Services

Chapter 9. Client Services

§901. Problem Gambler Telephone Information Service

The Office of Mental Health of the Department of Health and Hospitals shall provide a 24-hour, toll-free telephone information and referral service for persons with compulsive or problem gambling behavior. The Office of Mental Health shall make information available to the public regarding the program and services by providing signs to the Louisiana Lottery Corporation. The corporation shall require posting of these signs at lottery retail outlets, where gambling or gaming activities are conducted, at horse racing tracks and at charitable bingo parlors.

The format of the sign thus provided shall read:

If gambling is causing problems in your daily life, or, if you think you may have a problem controlling your gambling, you may need help. Call this 24-hour, toll-free number to find out about services available in your area.

1-800- -

Pursuant to R.S. 36:258(C)

Assistant Secretary
Office of Mental Health

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:841 and R.S. 36:258(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Mental Health, LR 21:

Interested persons may submit written comments on the proposed rule to the following address: Walter W. Shervington, M.D., Assistant Secretary, Office of Mental Health, Department of Health and Hospitals, Box 4049, Baton Rouge, LA 70821-4049. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule will be held at 9:30 a.m., on Friday, March 31, 1995, at the Department of Transportation and Development Auditorium, First Floor, 1201 Capital Access Road, Baton Rouge, LA, 70821. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at this public hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: Problem Gambler Information Service

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Estimated implementation cost for fiscal year 94-95 is \$150,000.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This rule should not impact revenue collections for state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The rule should be of benefit to those pathological gamblers who seek counseling for their problem.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
N/A

Andrew P. Twyman
Deputy Assistant Secretary
9502#059

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals
Office of the Secretary
Medical Disclosure Panel

Informed Consent (LAC 48:I.2339-2345)

As authorized by R.S. 40:1299.40(E), as enacted by Act 1093 of 1990 and later amended by Act 962 of 1991, and Act 633 of 1993, the Department of Health and Hospitals, Office of the Secretary, in consultation with the Louisiana Medical Disclosure Panel, amends rules published in the December

1993 *Louisiana Register*. In recent months, the Medical Disclosure Panel has received a number of telephone calls and inquiries regarding a portion of these rules. Hence, out of an abundance of caution, the Medical Disclosure Panel is amending a portion of these rules for clarification purposes. There are no substantive changes being made from rules which were published in the December 1993 *Louisiana Register*; therefore, no fiscal impact is anticipated. Rules regarding informed consent appeared in December 1992, December 1993, June 1994, August 1994, and October 1994.

TITLE 48

PUBLIC HEALTH

Part I. General Administration

Chapter 23. Informed Consent

§2339. Musculo-Skeletal Procedures in the Extremities

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

A surgical procedure upon, or even a closed manipulation of an extremity, entails risk to a greater or lesser degree, to all major systems of that limb, and can result in varying degrees of weaknesses, deformity, paralysis, pain, numbness, limitation of motion of the joints, and amputation. Furthermore, the goals of the procedures may not be obtained, and other therapy may be found necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21:

§2340. Peripheral Nerve Procedures

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

A. Failure to improve the condition or symptoms.

B. Injury to underlying nerve(s) of plexus with resultant weakness, numbness, pain including complete anesthesia of the extremity.

C. Recurrent symptoms which might require further surgery or continuation of condition for which surgery was performed.

D. Development of chronic pain problem in the area of the nerve—for example, anesthesia dolorosa (painful numbness).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21:

§2341. Vascular Surgery

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

A. Carotid Endarterectomy

1. Thrombosis of repair (clotting).

2. Bleeding/hematoma (accumulation of blood), requiring reoperation.

3. Infection.

4. Transient or permanent stroke.

5. Nerve injury causing asymmetry of mouth, swallowing difficulty, hoarseness, weakness/atrophy and numbness of the tongue.

6. Myocardial infarction (heart attack).

7. Death.

B. Aortic Graft for Abdominal Aortic Aneurysm or Occlusive Disease

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.

2. Infection of graft.

3. Thrombosis or emboli.

4. Limb loss.

5. Kidney failure requiring dialysis.

6. Ischemia of bowel (inadequate blood supply) with resulting loss of bowel.

7. Ischemia of spinal cord (inadequate blood supply) with resulting paraplegia (paralysis of both legs).

8. Myocardial infarction (heart attack).

9. Death.

10. Sexual dysfunction in male, including infertility.

11. Temporary dependency on a breathing machine (ventilator).

C. Arteriovenous Shunt for Hemodialysis (Artery Vein Fistula or Synthetic Graft)

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.

2. Infection.

3. False aneurysm (damaged blood vessel with swelling and risk of rupture).

4. Recurrent thrombosis (clot).

5. Severe edema of extremity (swelling).

6. Inadequate blood supply to extremity.

7. Inadequate blood supply to nerves with resulting paralysis.

D. Femoral, Popliteal or Tibial Bypass Grafts

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.

2. Necrosis (death) of skin around the incision with delayed healing.

3. Thrombi (clot).

4. Emboli (moving clot)—early or late.

5. Limb loss.

6. Nerve damage with permanent numbness/weakness.

7. Early or late thrombosis (late clotting) requiring reoperation.

8. Infection.

9. Myocardial infarction (heart attack).

10. Death.

E. Lumbar Sympathectomy

1. Injury to major artery/vein.

2. Bleeding/hematoma (accumulation of blood), requiring reoperation.

3. Injury to nerves (genitofemoral) with resulting numbness in groin and genital area.

4. Sexual dysfunction in male with resulting numbness, impotence and infertility.

5. Emboli (moving clots).

F. Thoracic Sympathectomy by Thoracotomy or

Thoracoscopy or Cervical Dorsal Sympathectomy

1. Horner's Syndrome (drooping eyelids and constricted pupil).
2. Injury to blood vessel.
3. Pneumothorax (collapsed lung) with bleeding.
4. Infection/empyema (pus collection in chest).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21:

§2343. Craniotomy

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

- A. Death.
- B. Paralysis or stroke.
- C. Infection or meningitis.
- D. Seizure or epilepsy.
- E. Loss of bone flap.
- F. Personality change.
- G. Loss of memory.
- H. Hemorrhage.
- I. Blindness.
- J. Loss of sense of smell or taste.
- K. Ringing in the ears or hearing loss.
- L. Problems with balance.
- M. Double or blurred vision.
- N. Numbness or sensory loss.
- O. Operative sight or remote from the operative sight.
- P. Blood clots.
- Q. Continuation of condition for which surgery was performed.
- R. Incontinence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21:

§2345. Anterior or Posterior Diskectomy (with or without fusion)

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

- A. Death.
- B. Quadriplegia.
- C. Paraplegia.
- D. Increased pain and numbness.
- E. Hoarseness.
- F. Failure of fusion (bone graft fails to stabilize).
- G. Infection.
- H. Need for additional surgery.
- I. Continuation of condition for which surgery was performed.
- J. Difficulty swallowing.
- H. Injury to esophagus.

I. Bowel and bladder dysfunction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21:

Interested persons may submit written comments by March 28, 1995, to Donald J. Palmisano, M.D., J.D., Chairman, Louisiana Medical Disclosure Panel, Department of Health and Hospitals, Box 1349, Baton Rouge, LA 70821-1349. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held at 10 a.m., March 28, 1995, Department of Health and Hospitals, Bureau of Health Resources Management, Third Floor Library, 1201 Capitol Access Road, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Informed Consent

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs anticipated from the adoption of these rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules 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 NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect projected on competition and employment from implementation of these rules.

Charles F. Castille
Deputy Secretary
9502#064

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals
Office of the Secretary
Medical Disclosure Panel

Informed Consent (LAC 48:I.2432-2436)

As authorized by R.S. 40:1299.40(E), as enacted by Act 1093 of 1990 and later amended by Act 962 of 1991, and Act 633 of 1993, the Department of Health and Hospitals, Office of the Secretary, in consultation with the Louisiana Medical Disclosure Panel, is proposing to amend rules which require which risks must be disclosed under the Doctrine of Informed Consent to patients undergoing medical treatments or procedures and the Consent Form to be signed by the patient and physician before undergoing any such treatment or procedure. Additional rules regarding informed consent appeared in December 1992, December 1993, June 1994, August 1994, and October 1994.

TITLE 48

PUBLIC HEALTH

Part I. General Administration

Chapter 23. Informed Consent

§2432. Ventriculoperitoneal Shunt Placement

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

- A. Malfunction of shunt due to infection.
- B. Collection of blood or fluid between brain and skull (subdural hematoma/hygroma).
- C. Headaches (low pressure syndrome).
- D. Development of condition requiring another shunt (e.g., isolated ventricle).
- E. Weakness or loss of sensation or other function due to placement of catheter.
- F. Blood clot in brain (intracerebral hematoma).
- G. Failure to absorb fluid from peritoneal cavity (fluid in abdomen).
- H. Blindness, seizures or epilepsy.
- I. Leaks in catheter and its connections.
- J. Injury to abdominal organs.
- K. Mechanical failure.
- L. Separation or migration of catheter.
- M. Infection with or without malfunction of shunt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21:

§2434. Ventricular Atrial Shunt Placement

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

- A. All of the material risks for ventriculoperitoneal shunt placement.
- B. Heart failure.
- C. Infection in blood stream.

- D. Inclusion of large veins in chest.
- E. Blood or fluid collection around heart.
- F. Blood clots in the lung.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21:

§2436. Lumboperitoneal Shunt Placement

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

- A. Inflammation reaction in nerves of spinal canal.
- B. Curvature of spine.
- C. Shifting/movement of brain with neurological impairment.
- D. Headaches.
- E. Spasticity.
- F. Difficulty swallowing.
- G. Other neurological difficulties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Medical Disclosure Panel, LR 21:

Interested persons may submit written comments by March 28, 1995, to Donald J. Palmisano, M.D., J.D., Chairman, Louisiana Medical Disclosure Panel, Department of Health and Hospitals, Box 1349, Baton Rouge, LA 70821-1349. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held at 10 a.m., March 28, 1995, Department of Health and Hospitals, Bureau of Health Resources Management, Third Floor Library, 1201 Capitol Access Road, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

ULE TITLE: Informed Consent—Shunt Placement (LAC 48:I.2432 2436)

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs anticipated from the adoption of these rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules 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 NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect projected on competition and employment from implementation of these rules.

Charles F. Castille
Deputy Secretary
9502#044

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Port Commissions
Board of River Port Pilot Commissioners

Qualification, Training,
and Conduct of River Port Pilots

In accordance with the Administrative Procedures Act R.S. 49:950 et seq. and R.S. 34:991(B)(3), the Board of River Port Pilot Commissioners hereby gives notice that it intends to amend and reenact its rules as follows:

Section 1. Terms

The following terms shall have the following meaning as used in these rules:

1. *Board*—the Board of River Port Pilot Commissioners as defined in R.S. 34:991.
2. *Pilot*—river port pilots as defined in R.S. 34:992.
3. *Commission*—the appointment by the governor authorizing one to perform the duties of a river port pilot.
4. *Commissioner*—a member of the Board of River Port Pilots Commissioners for the Port of New Orleans as appointed and serving in accordance with state law.
5. *Drug*—all controlled dangerous substances as defined in R.S. 40:961(7).
6. *Prescription Medication*—medication which can only be distributed by the authorization of a licensed physician as defined in R.S. 40:961(30).
7. *Petitioner*—one who submits a petition to become a river port pilot.
8. *Candidate*—one whose petition has been certified by the board.
9. *Apprentice*—one who has been selected to become a river port pilot pending successful completion of the apprenticeship program.

Section 2. Drug Use

Rule 1

A pilot shall be free of use of any "drug" as defined in Section 1, but excluding "prescription medication" as defined in Section 1 so long as use of such "prescription medication" does not impair the physical competence of the pilot to discharge his duties.

Rule 2

The board shall designate a testing agency to perform scientific test or tests to screen for the presence of drugs. These tests shall be conducted at random at the discretion of the board.

Rule 3

All pilots shall submit to reasonable scientific testing and screening for drugs when directed by the board.

Rule 4

The results of drug testing and screening shall be confidential and disclosed only to the board and the pilot tested, except that:

1. the board may report the results to the governor and the Board of Directors of the Crescent River Port Pilot Association; and
2. in the event that the board determines that a hearing is required pursuant to R.S. 34:991 and/or 1001 there shall be no requirement of confidentiality in connection with the hearing.

Rule 5

Any pilot testing positive for drugs or any residual thereof, shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:991 and 1001.

Rule 6

Any pilot who refuses to submit to reasonable scientific testing or screening for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:991 and 1001.

Rule 7

Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated, and/or treated for drug use and/or have his commission suspended and revoked.

Rule 8

Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility, must be approved by the board.

Section 3. Alcohol Use

Rule 1

No pilot shall consume any alcohol of any nature whatsoever within six hours before, or during, the performance of his pilotage duties.

Rule 2

No pilot shall perform his duties as a river port pilot if his blood alcohol content is .04 or greater.

Rule 3

Any pilot who believes he would be in violation of any of these rules if he were to perform his duties as a river port pilot is obligated to remove himself from duty.

Rule 4

The board may request a pilot to submit himself to a blood alcohol test upon complaint or reasonable suspicion that a pilot is performing his duties as a river port pilot while under the influence of alcohol.

Rule 5

Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated and/or treated for alcoholism and/or have his commission suspended or revoked.

Rule 6

Any pilot who is required to undergo evaluation and/or treatment for alcoholism shall do so at his own personal expense and responsibility; the physician, as well as the

evaluation and treatment facility must be approved by the board.

Section 4. Apprenticeship

Rule 1

All petitions for commissions to act as river port pilots must be in writing, must be signed by the petitioner, and presented to the secretary of the board. All petitions must be accompanied by satisfactory evidence of compliance with the following prerequisites:

1. Petitioner must be of good moral character. Evidence of a clear police record will be considered, but the board reserves the right to examine other sources of information as to the applicant's character.

2. Petitioner has been a voter of the state of Louisiana continuously for at least two years before submitting an application to become a river port pilot.

3. The petitioner must not have reached his fortieth birthday prior to the first day of balloting on apprentices by the river port pilots.

4. The petitioner must possess a high school diploma, or equivalent.

Rule 2

Before being accepted as a candidate to become a river port pilot, each petitioner must meet the below listed requirements.

1. Each petitioner must hold a United States Coast Guard First Class Pilot License of steam or motor vessel of any gross tons for the Mississippi River from Southport Mile 104.7 to the Head of Passes Mile 0.0 and for the Inner Harbor Navigation Canal (Industrial Canal) from the Mississippi River to Lake Pontchartrain, and for the Intracoastal Waterway (ICW) from the intersection of the Industrial Canal and the ICW to and including Michoud Canal, and for the Mississippi River Gulf Outlet, from the intersection of the ICW to Mile 28.3, the present location of Beacon #78.

2. Each petitioner must hold:

a. A United States Coast Guard Masters' License of steam or motor vessels of any gross tons upon inland waters, rivers or western rivers; or

b. a United States Coast Guard Second Mate's License (or any upgrade thereof) of steam or motor vessels of any gross tons upon oceans; or

c. a United States Coast Guard Third Mate's License (or any upgrade thereof) of steam or motor vessels of any gross tons upon oceans, and effective January 1, 1997, the petitioner must hold a Master's License of steam or motor vessels of 1600 gross tons upon inland waters, rivers or western rivers. The petitioner, as a condition of the apprenticeship, must upgrade the Master's License of steam or motor vessels of 1600 gross tons upon inland waters, rivers or western rivers to a Masters' License of steam or motor vessels of any gross tons upon inland waters, rivers or western rivers prior to being commissioned as a river port pilot; or

d. a bachelor's degree or diploma granted by a college or university accredited by the American Association of Colleges and Secondary Schools, and effective January 1, 1997, the petitioner must hold a Master's License of steam or motor vessels of 1600 gross tons upon inland waters, rivers or western rivers. The petitioner, as a condition of the apprenticeship, must upgrade the Master's License of steam or

motor vessels of 1600 gross tons upon inland waters, rivers or western rivers to a Masters' License of steam or motor vessels of any gross tons upon inland waters, rivers or western rivers prior to being commissioned as a river port pilot.

3. In addition to the requirements identified in Paragraphs 1 and 2 described above, the petitioner must complete the following educational requirements. To successfully complete the educational requirements the petitioner must attend a college of university accredited by the American Association of Colleges and Secondary Schools, and the petitioner must have a minimum grade point average of "2.0" on a "4.0" system, in nonremedial courses.

a. Petitioners graduating from high school or receiving a high school equivalent after 5/01/95 will be required to successfully complete 30 credit hours.

b. Petitioners graduating from high school or receiving a high school equivalent after 1/01/96 will be required to successfully complete 60 credit hours.

c. Petitioners graduating from high school or receiving a high school equivalent after 1/01/97 will be required to successfully complete 90 credit hours.

d. Petitioners graduating from high school or receiving a high school equivalent after 1/01/98 will be required to acquire a bachelor's degree or diploma.

e. Petitioners shall document the aforementioned requirements by providing the board with a transcript of the mandatory educational requirements.

Rule 3

1. The petitioner must be examined by a physician, clinic or group of physicians of the board's choosing to determine the petitioner's physical condition. The examination report must reflect to the board's satisfaction that the petitioner's physical condition is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibilities for the examinations or their results. The petitioner submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

2. The petitioner shall submit to an examination by a mental health professional or group composed of such mental health professionals of the board's choosing. The report of this examination must reflect, to the board's satisfaction, that the petitioner's mental condition and aptitude is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibility for the examinations or their results. The petitioner submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

3. The petitioners shall submit to drug screening in the same manner as pilots and apprentices.

Rule 4

The apprentice must serve a minimum of 12 months of

apprenticeship in his proposed calling, handling deep draft vessel over the operating territory of the river port pilots under the tutelage of not less than 40 commissioned river port pilots. The apprentice must set forth in detail the names of the vessels handled, dates handled, draft, tonnage, between what points so moved, and the names of the supervising commissioned river port pilots. No apprentice shall be permitted to be examined for commissioning who has not made at least 18 trips on the operating territory of the river port pilots between Pilottown and Southport during each of the 12 months of his apprenticeship and serve at least one week of each month of the apprenticeship engaged in harbor shifting, docking, undocking and piloting on the Mississippi River Gulf Outlet. The apprenticeship work must be certified by the board during the apprenticeship program. The commissioners reserve the right to require satisfactory completion of additional or extended apprenticeship, or terminate the apprenticeship when deemed necessary.

Rule 5

Open

Rule 6

The board of commissioners shall examine those apprentices who have complied with all the requirements. The apprentices will be examined as to their knowledge of pilotage and their proficiency and capability to serve as commissioned river port pilots. This examination shall be given in such manner and shall take such form as the board may, in its discretion from time to time, elect.

Rule 7

The board of commissioners shall certify to the governor for his consideration for appointments to commissions as river port pilots those apprentices who satisfactorily completed all requirements established by state law and these rules and who complete and pass the examination given by the board. Should the apprentice fail the examination, the board, at its discretion, may terminate the apprenticeship, or may designate additional apprenticeship requirements to be satisfied by the apprentice before he may again petition the board for examination.

Rule 8

The commission has established the following guidelines, which shall be adhered to whenever possible.

After being commissioned a river port pilot by the governor of Louisiana, the newly commissioned pilot shall be allowed to pilot the following vessels in the first four months subsequent to the issuance of the Pilots Commission:

- a) vessels up to 35.00 feet in draft,
- b) vessel up to 50,000.00 deadweight tons,
- c) vessels up to 700.00 feet in length.

After the newly commissioned pilot has served the first four months as a pilot subject to the restrictions of this Section, the board shall evaluate the newly commissioned pilot with regard to his ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the newly commissioned pilot shall continue to be subject to any or all of the prohibitions of this Section before being reexamined.

The newly commissioned pilot shall be allowed to pilot the

following vessels in the second four months subsequent to the issuance of the Pilots Commission:

- a) vessels up to 40.00 feet in draft,
- b) vessels up to 75,000.00 deadweight tons,
- c) vessels up to 800.00 feet in length.

After the newly commissioned pilot has served the second four months as a pilot subject to the restrictions of this Section, the board shall evaluate the newly commissioned pilot with regard to his ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the newly commissioned pilot shall continue to be subject to any or all of the prohibitions of this Section before being reexamined.

The newly commissioned pilot shall be allowed to pilot the following vessels in the third four months subsequent to the issuance of the Pilots Commission:

- a) vessels up to 45.00 feet in draft,
- b) vessels up to 100,000.00 deadweight tons,
- c) vessels up to 900.00 feet in length.

The newly commissioned river port pilot shall be prohibited from piloting the following vessel during the first 12 months he holds a commission as a river port pilot:

- 1) passenger vessels regardless of draft, tonnage or length,
- 2) tank vessels with explosive or combustible cargo aboard, regardless of the draft, tonnage or length. Gas-free tank vessels are not subject to this prohibition.

After the newly commissioned pilot has served the third four months as a pilot subject to the restrictions of this Section, the board shall evaluate the newly commissioned pilot with regard to his ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the newly commissioned pilot shall continue to be subject to any or all of the prohibitions of this Section before being reexamined.

Interested persons may comment on the proposed rule changes in writing until May 8, 1995 at the following address: Jack H. Anderson, President, Board of River Port Pilots Commissioners, Box 848, Belle Chasse, LA 70037.

Jack Anderson
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rules and Regulations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs or savings to state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no effects on revenue collections of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Persons applying to be river port pilots may incur costs and expenses to obtain specified Coast Guard licenses and to obtain specified educational requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment.

Jack Anderson
President
9502#024

David W. Hood
Senior Fiscal Analyst

Paul W. Fontenot
Superintendent

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of State Police
Charitable Gaming Division

Progressive Bingo (LAC 42:I.1789)

The Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, in accordance with R.S. 36:408, R.S. 40:1485.4, and R.S. 49:950 et seq., gives notice that rulemaking procedures have been instituted to amend LAC 42:I.1789.A pertaining to progressive bingo. This proposed amendment would prohibit the linking or networking of more than one location for the purpose of conducting a progressive bingo jackpot game and would also prohibit the participation by two or more licensed charitable organizations playing at different locations in any progressive bingo jackpot game. This proposed amendment to LAC 42:I.1789.A was published as an emergency rule, effective January 11, 1995, and published in the January 20, 1995, issue of the *Louisiana Register*, pages 14-15.

Title 42

LOUISIANA GAMING

Part I. Charitable Bingo, Keno, Raffle

Chapter 17. Charitable Bingo, Keno and Raffle

Subchapter F. Investigations

§1789. Progressive Bingo

A. Any licensed charitable organization or organizations playing at the same location may deposit a predetermined amount of money before each licensed call bingo session into a special account in order to offer a jackpot prize. The linking or networking of more than one location, commercial or noncommercial, electronically or otherwise, for the purpose of conducting a progressive bingo jackpot game, or any form thereof, and the participation by two or more licensed charitable organizations playing at different locations in any progressive bingo jackpot game shall be prohibited.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1485.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, of Charitable Gaming Division, LR 20:448 (April 1994), amended LR 21:

Interested persons may submit written comments on the proposed rule to: Lieutenant James C. McKenzie, Director, Charitable Gaming Division (52), Office of State Police, Department of Public Safety and Corrections, Box 66614, Baton Rouge, LA 70896. Lt. James C. McKenzie is the

person responsible for responding to comments regarding the proposed rule. Written comments will be accepted through the close of business, 4:30 p.m., on April 3, 1995.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Progressive Bingo

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The total cost incurred by the state for implementation of the proposed rule is \$395.16. It will have no impact on local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule change merely prohibits an activity which is not being conducted at this time; therefore, there is no effect.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rule change merely prohibits an activity which is not being conducted at this time; therefore, there is no effect.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no effect on competition or employment between the licensees.

Rex McDonald
Undersecretary
9502#039

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Revenue and Taxation
Sales Tax Division

Sales Tax—Tangible Personal Property (LAC 61:I.4301)

Under the authority of R.S. 47:301(16) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, proposes to amend LAC 61:I.4301.16 pertaining to the definition of tangible personal property.

The Supreme Court of Louisiana ruled in the case of *South Central Bell Telephone Co. v. Sidney J. Barthelemy, et al.* (94-C-0499) on October 17, 1994, that both customized and canned software are tangible personal property and subject to the sales tax. The court's ruling nullified our regulation, which considers customized software as a nontaxable service and not subject to sales tax. This amendment removes all language pertaining to computer software and also incorporates additional exceptions to the definition of tangible personal property for certain coins, bullion, geophysical survey

information, and repairs of motor vehicles that have been statutorily added to R.S. 47:301(16).

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue and Taxation**

Chapter 43. Sales and Use Tax

§4301. Definitions

* * *

16. Tangible Personal Property—

a. General. With the exception of certain provisions of R.S. 47:301(14) relating to the furnishing of services, the question of whether an item constitutes tangible personal property is of utmost importance in determining whether its sale, use, storage, consumption, rental, or lease is subject to tax under the provisions of this Chapter. Under pertinent provisions of the Louisiana Civil Code, tangible personal property must be construed to be tangible movable property. Thus, if property is movable and meets the definition of tangible personal property contained in this Section, it is tangible personal property. R.S. 47:301(16) defines tangible personal property to be any property which may be seen, weighed, felt, or touched, or is in any manner perceptible to the senses.

b. Exceptions. R.S. 47:301(16) provides for specific exceptions from the definition of *tangible personal property*. The term *tangible personal property* shall not include:

- i. stocks, bonds, notes, or other obligations or securities;
- ii. gold, silver, or numismatic coins, or platinum, gold, or silver bullion having a total value or \$1,000 or more;
- iii. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property; or
- iv. repairs of a motor vehicle by a licensed motor vehicle dealer that is performed subsequent to the lapse of a applicable warranty on that vehicle and at no charge to the owner of the vehicle. The services performed on this repair, along with the parts used will not have any value for sales and use tax. The dealer performing this repair must be licensed as a dealer in motor vehicles through the New Motor Vehicle Commission or the Used Motor Vehicle Commission. The repair must be associated with a warranty extended by the manufacturer.

c. Movable Versus Immovable. The nature of the property may change from movable to immovable or from immovable to movable so that its character at the moment of a transaction or activity must be established, in order to determine the taxability of that transaction or activity. As an example, a movable piece of machinery may be attached to a building in such a manner that it cannot be removed without doing damage to the machinery or to the building. In this case, the character of the property will have changed from movable to immovable. If, however, the machinery is attached in such a way that it may be removed from the building without doing damage to either it or the building, its character upon being separated reverts to movable property.

d. Repairs of Immovable Property. The distinction

between movable and immovable property is of particular importance in determining whether repairs to property are taxable. If equipment or machinery removed from real property has been damaged, the item constitutes tangible personal property and repairs made thereto are taxable.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301(16).

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987) amended Sales Tax Division, LR 21:

All interested persons may submit data, views, or arguments, in writing to Raymond Tangney, Director of the Sales Tax Division, Department of Revenue and Taxation, Box 3863, Baton Rouge, LA 70821. All comments must be submitted by 4:30 p.m., Wednesday, March 29, 1995. A public hearing will be held on Thursday, March 30, 1995, at 1:30 p.m. in the Department of Revenue and Taxation Secretary's conference room, 330 North Ardenwood Drive, Baton Rouge, LA.

Ralph Slaughter
Secretary

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

RULE TITLE: Tangible Personal Property

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This amendment will not result in any substantial implementation costs or savings to state or local governmental units. The department will be required to notify taxpayers of the removal of the language concerning computer software, but this notification can be accomplished through existing publications. Some additional notification to specific taxpayers may be required, but this can be accomplished with existing resources.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This amendment may result in a substantial increase in tax collections for state and local governments. The recent Supreme Court case on computer software with *South Central Bell v. the City of New Orleans* considered both customized and canned software taxable. Previously, the state and local governments have been unable to tax customized software. This amendment will remove any obstacles from state and local governments in the taxation of all computer software. Information from the federal government through the 1987 Census of Services Industries suggests that the customized software market in Louisiana is as much as \$156.9 million annually or greater. Recent audits conducted by the Department of Revenue and Taxation suggest minimum annual sales of customized software in Louisiana of \$41 million. Based on this information, annual state revenue from the four percent state sales and use tax could result in an increase of at least \$1.7 million and as much as \$6.3 million or greater as a result of imposing the tax on customized software. Local revenue increases will vary because of differences in local tax rates and the level of these sales from one area to another.

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

This amendment could result in a substantial increase in cost for many persons and nongovernmental groups. Any person or company who obtains customized software may be required to pay tax on the acquisition price of the software.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This amendment should have no effect on competition or employment. This amendment will affect all dealers and purchasers of customized software equally.

Ralph Slaughter
Secretary
9402#080

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Commission for the Deaf**

Policy Manual (LAC 67:VII.Chapter 3)

In accordance with the provisions of R.S. 49:953, the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) proposes to revise the Louisiana Commission for the Deaf's rules of operation.

The purpose of this notice of intent is to revise the rules governing Louisiana Rehabilitation Services' Commission for the Deaf rules of operation (LAC 67:VII.Chapter 3) to provide for the orderly conduct of the affairs of the commission.

Public hearings beginning at 10 a.m. will be conducted on March 29, 30, 31 1995, in Shreveport, Alexandria, and New Orleans respectively. The hearing locations are as follows: Shreveport, at 1525 Fairfield; Alexandria, at 900 Murray Street; New Orleans, at 2026 St. Charles Avenue.

Individuals with disabilities who require special services should contact Louisiana Rehabilitation Services at least seven working days prior to the hearing they wish to attend. For assistance call (504)925-4131 or 1-800-737-2958 or for Voice and TDD, 1-800-256-1523.

Interested persons may submit written comments by March 24, 1995 to May Nelson at the address below. She is responsible for responding to inquiries regarding the proposed rule.

Additional copies of the entire text of this revised policy manual may be obtained at Louisiana Rehabilitation Services headquarters, 8225 Florida Boulevard, Baton Rouge, LA, and at each of its nine regional offices, and at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

Gloria Bryant-Banks
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Rules of Operation**

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

There is no projected implementation cost.

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

There is an estimated increase of \$1,840 to be classified as self-generated revenue.

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

There is an estimated cost of \$1,840 that will be incurred in order to certify the various interpreters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no proposed change in competition and employment in the public and private sectors.

May Nelson
Director
9502#068

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the Teachers' Retirement System**

Cost-of-Living Adjustment (LAC 58:III)

In accordance with R.S. 49:950 et. seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Teachers' Retirement of Louisiana approved the following method for the distribution of the first cost-of-living adjustment for all eligible retirees, all eligible beneficiaries of deceased retirees, and eligible survivors of deceased members of the Teachers' Retirement System of Louisiana from the Employee Experience Account. This benefit adjustment is scheduled to become effective July 2, 1995.

**Title 58
RETIREMENT**

Part III. Teachers' Retirement Systems

Effective July 2, 1995, the Board of Trustees of the Teachers' Retirement System of Louisiana shall increase the retirement benefit or other benefit of each retiree, or the beneficiary or survivor of any member eligible to receive benefits, on account of the death of the member or retiree. This increase in benefit shall be provided from the Employee Experience Account held at the Teachers' Retirement System of Louisiana.

The increase in benefit granted from the Employee Experience Account shall be a monthly increase in the benefit of each eligible recipient as determined in accordance with the formula:

X (A + B + C) , where

A = the number of years of credited service accrued at the time of retirement or death of the member or retiree;

B = the number of years since retirement or since death of the member or retiree to June 30, 1994;

C = the number of years of service credit greater than 30 years; and

X = one dollar.

No increase in benefit shall be paid to any retiree, beneficiary or survivor unless such person was receiving benefits on or prior to June 30, 1994. In addition, no increase in benefits shall be paid to any former participant of the Deferred Retirement Option Plan unless both plan participation and employment were terminated by the plan participant on or prior to June 30, 1994.

Authority Note: R.S. 11:787(D) and 11:883.1

Interested persons may comment on the proposed rule in writing until 4:30 p.m., April 30, 1995, to Graig A. Luscombe, Assistant Director, Teachers' Retirement System of Louisiana, Box 94123, Baton Rouge, LA 70804-9123.

James P. Hadley, Jr.
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Employee Experience Account Cost-of-Living
Account**

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

Act 1031 of 1992 (LA R.S. 11:883.1) established the Employee Experience Account from which the Teachers' Retirement System of Louisiana (TRSL) may provide periodic cost-of-living adjustments to all eligible retirees and to beneficiaries and survivors of retirees or members. As of June 30, 1994, the Employee Experience Account had on deposit \$172,144,511. Effective July 2, 1995, the TRSL Board of Trustees will provide the first cost-of-living adjustment from the Employee Experience Account. No increase in benefits will be paid to any retiree, beneficiary or survivor unless such person was receiving benefits from TRSL on or prior to June 30, 1994. The monthly adjustment to be granted eligible recipients will be based upon the years of service credited to individual retirees at the time of retirement or to members at the time of their death, the number of years since retirement or death, and the number of years of service credit greater than 30.0 years. Each of these variables will be multiplied by one dollar and added together to determine the monthly benefit increase. It is estimated by TRSL that this benefit adjustment will cost approximately \$16.4 million the first year of implementation and will be provided to approximately 36,500 retirees, beneficiaries, and survivors of deceased members. The actuarial cost for providing this benefit adjustment for all eligible recipients for the remainder of their lives is estimated at \$130.3 million. Administrative costs associated with the provision of this benefit increase are minimal and will have no impact on the agency's budget.

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

There will be no direct effect on revenue collections of state or local governmental units as a result of this policy. Retirement benefits provided by a state public pension plan are exempt from Louisiana personal income tax.

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

It is estimated by TRSL that eligible recipients, on the average, will receive a 3.5 percent increase in benefits. The actual increase for each eligible recipient will be dependent upon the individual recipient's circumstances.

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

There is will be on effect on competition or employment.

James P. Hadley, Jr.
Director
9502#028

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Treasury

Investment Procedures (LAC 71:I.Subpart 2)

The Department of the Treasury, through Mary L. Landrieu, state treasurer, hereby gives notice of its intention to adopt a rule to govern certain matters pertaining to the investment of the monies in the Louisiana Education Quality Trust Fund (the "LEQTF" or "8(g) Fund").

The proposed rule, which is published with this notice, is intended to satisfy the legislative mandate contained in Section 1 of Act 136 of the 1994 Third Extraordinary Session of the Louisiana Legislature, which amends Section 2(a)(5) of Act 67 of the 1986 Regular Session, that the state treasurer promulgate rules and regulations both for the investment of the assets of the LEQTF in stocks and for the selection of outside investment managers for the LEQTF. The proposed rule is also intended to codify certain practices which the Investment Division of the Treasury Department has been following since the establishment of the fund in 1986 for the investment of the assets of the LEQTF in bonds and for the handling of LEQTF Assets which are in the form of cash and cash equivalents. Finally, the proposed rule explicitly authorizes the state treasurer to hire an investment consultant for the LEQTF and to pay the fees of such consultant from the Support Fund portion of the 8(g) Fund.

**Title 71
TREASURY**

Part I. Treasurer

**Subpart 2. Depository Control and Investment
Education Quality Trust Fund Investment Procedures**

In accordance with the provisions of R.S. 17:3803(c), there has been established within the state treasury as a special permanent trust fund the Louisiana Education Quality Trust Fund (the "LEQTF"), for the benefit of the State Board of

Elementary and Secondary Education and the Board of Regents (the "beneficiaries").

I. Goals for Investment of LEQTF Assets

In the management of the assets of the LEQTF (the "assets"), the state treasurer has established the following goals (the "goals"):

1. preservation of the assets;
2. provision of income in a stable and predictable manner to the beneficiaries; and
3. enhancement of the market value of the assets.

II. Investment Responsibility for the Assets

The state treasurer, through the Investment Division of the State Treasury, shall invest the assets in accordance with applicable law and regulation.

1. State Treasurer's LEQTF Investment Advisory Panel

a. The state treasurer shall establish the state treasurer's LEQTF Investment Advisory Panel (the "advisory panel") to:

- i. advise the state treasurer generally regarding the investment of the assets, including assisting in the development of investment policy for the assets; and
- ii. to perform such other duties related to advising the state treasurer regarding the investment of the assets as the state treasurer may from time to time request or deem necessary or advisable.

b. **Membership; Composition; Terms.** The advisory panel shall have at least seven but no more than 15 members, and be composed of, among others who may be chosen by the state treasurer, at least one representative of each of the beneficiaries, as well as at least one representative each from the academic and business communities, and at least one investment professional. Members of the advisory panel shall serve on a voluntary basis at the pleasure of the state treasurer. The state treasurer shall serve as the chair of the advisory panel.

c. The advisory panel will meet annually in October to review investment policy and performance, make recommendations, and to take up all business as appropriate, and shall meet at any other time when and if called to order by the state treasurer. All meetings of the advisory panel shall be conducted in accordance with the law applicable to public meetings of an official body, as that law may be in effect from time to time.

2. **Selection of Outside Investment Manager for the Assets.** The state treasurer may select, through a request for proposal process using strict selection criteria based on sound industry principles, one or more outside investment managers to invest some or all of that portion of the assets that are eligible to be invested in equity securities. If the state treasurer chooses any outside investment manager as a result of such a process, the choice, and any contract with such manager, shall be ratified and approved by a majority of the members present at a regular meeting of the State Bond Commission.

3. **Investment Consultant.** From time to time, or on a continuing basis, the state treasurer may retain the services of an investment consultant for the LEQTF for the purposes of investment assistance, including, but not limited to, assistance in the following:

- a. establishing the appropriate allocation of the assets;

- b. determining appropriate investment manager styles;
- c. conducting investment manager searches;
- d. evaluating performance of investment manager(s).

III. Investment of the Assets in Equity Securities

The state treasurer, by Section 2(a)(5) of Act 67 of the 1986 Regular Session of the Legislature ("Act 67"), as amended by Act 136 of the 1994 Third Extraordinary Session, is authorized to invest as much as 35 percent of the market value of the assets in certain stocks ("equity securities"), and to promulgate rules governing such investment. The following rules shall apply to the investment of the assets in equity securities:

1. The prudent investor standard or rule shall govern all investments of the assets. The prudent investor standard shall be the standard of care against which actual investment decisions with regard to the assets made by any person or entity investing all or any portion of the assets are judged.

2. The state treasurer shall allocate assets to be invested in equity securities in an amount calculated on the last day of each fiscal year when added to any assets already invested in equity securities that fall within the range of the market value of the assets for the applicable fiscal year as set out in the following table:

FY '95 - '96	5% to 7%
FY '96 - '97	10% to 14%
FY '97 - '98	15% to 21%
FY '98 - '99	20% to 28%
FY '99 - '00 and after	25% to 35%

For the purposes of determining the dollar amount of assets which must be invested in equity securities, the market value of the assets shall be the market value on the last day of the fiscal year immediately prior to the fiscal year in which the assets are to be allocated to be invested in equity securities.

3. The assets invested in equity securities shall not exceed an amount equal to 5 percent of the ownership of any entity or company.

4. No individual investment manager managing a portfolio of equity securities which form a part of the assets shall be permitted to concentrate more than 25 percent of the market value of that portfolio in any single industry.

5. All investment managers managing any portfolio which is part of the assets are prohibited from using the assets to engage in any of the following activities:

- a. the purchase of stock warrants;
- b. the purchase of any stock on margin;
- c. the short sale of any security;
- d. the purchase of any direct interest in oil, gas or other mineral exploration program;
- e. private or direct placement of any kind;
- f. direct ownership of real estate or real estate investment trusts;
- g. direct or indirect ownership of collectibles (including coins, stamps, or art);
- h. direct investment in the equity securities of the LEQTF custodian bank(s), investment advisor(s), or the parent company of any of them;
- i. other investments which may be restricted or which

may not be authorized by applicable law or rule from time to time.

IV. Investments of the Assets in Bonds

The state treasurer, by Section 2(a)(4) of Act 67, is authorized to invest the assets in marketable fixed income securities ("bonds"). The following rules shall apply to the investment of the assets in bonds:

1. Assets shall be invested in bonds which have been selected after consideration of the total return on such investment, including interest income and capital appreciation/loss.

2. Investment of the assets in bonds should be done so that the contents of each portfolio under management is diversified by maturity, security, sector and credit quality.

3. Each portfolio of bonds forming a part of the assets may be actively managed.

4. The total portfolio of bonds which form a portion of the assets shall not contain a concentration of more than 10 percent of any issuer's securities (valued at cost of bonds compared to market value of total portfolio), except securities which are direct obligations of the U.S. Treasury or any U.S. agency.

5. All investment managers managing any portfolio of bonds which forms a part of the assets are restricted from using the assets to engage in any of the following activities:

- a. the purchase of bonds on margin;
- b. the short sale of any bond;
- c. private or direct placement of any kind;
- d. the purchase of debt securities of the custodian bank(s), investment manager(s) or their parent or any subsidiaries, or with any entity which is a part to a contractual relationship with the state treasurer or the LEQTF;
- e. direct loans or extension of lines of credit;
- f. the purchase of foreign bonds;
- g. direct purchases of single family or commercial mortgages;
- h. the purchase of collateralized mortgage obligation derivatives;
- i. other investments which may be restricted or which may not be authorized by applicable law or rule from time to time.

V. Investment of Cash and Cash Equivalents

Any portion of the assets which is cash or the equivalent of cash ("LEQTF Cash") may be invested in a short-term investment fund (STIF) maintained for the LEQTF. All securities held in such STIF must be of the type permitted by applicable law as eligible for investment by the state treasurer. LEQTF Cash may also be invested in commercial paper rated in the two highest credit quality classes of Moody's, Inc. (P1 or P2) or of Standard & Poor's (A1 or A2).

VI. Measurement of Performance of Investments; Evaluation of the LEQTF

A. The investment performance of the assets shall be measured quarterly on the calendar quarter by a professional and independent organization which is in the business of performing such measurements and which is not affiliated with any firm or entity which advises the state treasurer on the investment of the assets or which has any responsibility for managing any portion of the assets. All measurement shall be

in compliance with the Association for Investment Management and Research performance presentation standards.

B. Annual Evaluation of Performance of the LEQTF. The state treasurer shall cause an evaluation of the LEQTF at least annually. This evaluation shall cover all aspects of the investment of the assets, including an evaluation of the investment results of the total fund, results of each class of asset, results of any and each investment manager, as well as of adherence to applicable law, rules and guidelines. This evaluation shall be made in accordance with sound review criteria and any benchmarks established by the state treasurer for evaluating investment performance. Specific investment performance benchmarks for the LEQTF shall include, but not be limited to, the following (in addition to any other provision required by law or rule):

1. Common Stocks. An annualized total return equal to or greater than the Standard & Poor's 500 Index net of investment management fees, custodial fees, and transaction costs.

2. Bonds. An annualized total return equal to or greater than the Lehman Brothers Government Bond Index net of investment management fees, custodial fees, and transaction costs.

VII. Selection of Outside Investment Managers

A. Minimum Requirements for Outside Investment Managers. Each investment manager chosen to manage any assets must be a registered investment advisor and in good standing with the Securities and Exchange Commission under the Investment Advisors Act of 1940, or, if a bank, in good standing with the appropriate federal and/or state regulatory officials.

B. Required Information. As a part of the information obtained from investment manager(s) proposing to become managers of any assets, such manager must provide five consecutive years of verifiable performance rates of return calculated on a time-weighted basis. These performance numbers must be based on a composite of fully discretionary accounts with a similar investment style and be reported net and gross of investment management fees.

C. Compensation Basis. Investment managers shall be compensated on a basis point fee as a percentage of assets contracted to manage.

D. Contract Provisions. Each contract which the state treasurer enters with an outside investment manager for managing the investment of the assets must contain, at a minimum, the following (in addition to any other provisions otherwise required by applicable law or rule in such contracts):

1. The investment manager shall manage the LEQTF assets under its care, custody or control in accordance with applicable federal and Louisiana law, regulations and rules, as well as with the goals and any investment policies or procedures which the state treasurer may have established from time to time.

2. Investment managers shall be evaluated by comparison to managers of like investment style or strategy.

3. The contract shall contain an acknowledgement by the

investment manager of its fiduciary responsibility to the beneficiaries.

4. Investment managers shall notify the state treasurer immediately of any material matters or changes pertaining to the investment of the LEQTF, as well as any material changes of staff and/or ownership of the firm.

5. Investment managers shall make a presentation on the status and performance of the assets managed to the state treasurer and, if asked, to the advisory panel at least annually, and may be required to appear more frequently if deemed appropriate by the state treasurer. As a part of this presentation, the investment manager must provide written reports on, and be prepared to discuss, the following:

- a. portfolio goals and objectives;
- b. financial markets and economic outlook;
- c. portfolio performance;
- d. transactions, including brokerage;
- e. accounting for dispersions between results of the assets managed and those assets of the LEQTF or of other entities managed by investment managers of similar or like style and strategy.

6. Investment managers shall submit quarterly a written report to the state treasurer detailing investment performance, financial markets and economic outlook, and accounting of dispersions from the benchmarks established by the state treasurer.

7. Investment managers shall be paid in arrears on a quarterly basis.

VIII. Investment Consultants

A. Method of Selection. Should the state treasurer retain the services of an investment consultant, the treasurer shall choose a firm or individual to serve as an investment consultant for the LEQTF in accordance with all applicable Louisiana laws and rules regarding the process of choosing and contracting with professionals and consultants.

B. Minimum Criteria. Any investment consultant chosen must have at least five years of experience consulting accounts with assets greater than \$250 million as well as experience conducting investment manager searches and performance measurement for public funds with total assets greater than \$250 million.

C. Payment of Fees. Investment consultants shall be paid in arrears on a quarterly basis. All consulting fees shall be paid from the assets of the Support Fund.

D. Disclosure of Affiliations. Any consultant who is a broker/dealer or affiliated with a broker/dealer or investment manager must disclose the nature of the relationship. The investment consultant shall not receive compensation of any kind from any investment manager contracted by the state treasurer for management of the LEQTF.

All inquiries regarding this proposed rule should be directed to Jules M. Nunn, Assistant State Treasurer and Chief Investment Officer, Department of Treasury, Box 44154, Third Floor, State Capitol Building, Baton Rouge, LA 70804, who is responsible for responding to such inquiries.

The Department of the Treasury is planning to hold a public hearing on the proposed rules between March 27 and April 1, 1995, in Baton Rouge, LA.

The intended action of adopting the proposed rule complies

with the statutes which are administered by the Department of Treasury, including Section 1 of Act 136 of the 1994 Third Extraordinary Session of the Louisiana Legislature, which amends Section 2(a)(5) of Act 67 of the 1986 Regular Session, as well as with all other provisions of Act 67 of 1986.

The Department of Treasury has not prepared a preamble to the proposed rule because the need for the proposed rule was demonstrated by and the background for the proposed rule is contained in Act 136 and its legislative history.

Mary L. Landrieu
State Treasurer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Education Quality Trust Fund -
Equity Investment**

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

There will be no increase in state expenditures in 1994-95. During 1995-96 the increase in expenditures in the Office of the Treasurer is estimated to be \$90,700 for the expenses of an investment consultant, investment manager and third party performance measurement service. During 1996-97, the annualization of the ongoing costs for the services of an investment manager, an optional investment consultant and performance measurement services will increase expenditures to \$228,200. By 1999-2000, the phase-in cost with 35 percent of the assets subject to investments in equities will be \$1.2 million.

By law, the Louisiana Education Quality Trust Fund, hereafter called the Trust Fund, is capped at \$2 billion. When the investment strategy is fully implemented, 35 percent of the \$2 billion will be invested in equities. The maximum expenses for implementation of this rule is \$3.5 million. The law authorizes the payment of expenses incurred in the investment and management of the Trust Fund from the Support Fund.

The Office of the Treasurer anticipates funding these expenditures from an appropriation from the Louisiana Education Quality Support Fund, hereafter referred to as the Support Fund. Article VII 10.1(B) of the Constitution states that "The amounts in the Support Fund shall be available for appropriation to pay expenses incurred in the investment and management of the Permanent Trust Fund and for education purposes only as provided in Paragraphs (C) and (D) of this Section." Although R.S. 17:3802(C)(4) states, "However, costs incurred for outside equity investment managers for the investment and management of the Permanent Trust Fund are administrative costs properly paid out of Support Fund monies," this proposed rule includes the administrative costs incurred for the investment consultant and the performance measurement service to be paid from the Support Fund.

From 1995-96 to 2005-06, the Support Fund will experience a reduction in revenues as a result of adopting this rule. However, from 1995-96 to 2006-07, the Board of Elementary and Secondary Education and the Board of Regents will receive less funding due to first, the decline of revenues and second, because administrative expenses will be funded through the Support Fund for an outside investment manager, investment consultant and performance measurement services. The cost for these contractual services will flow through the treasurer's office for payment of these related expenses. Beginning in 2007-08, the Support Fund beneficiaries will begin to experience the positive effects of the equity investments.

Current law provides that the total investment of the assets that may be invested in stocks shall not exceed 35 percent of the market value of the Trust Fund. This proposed rule, in addition to setting a maximum, provides that no less than 25 percent of the Trust Fund shall be invested in stocks. These rules propose that the investment in equities be undertaken on an incremental basis, i.e., five percent to seven percent annually until the total of 35 percent is invested.

Expenses for local school systems and universities will fluctuate. In the initial years of equity investments, the beneficiaries will receive less allocation. Once the positive impact of equity investment takes effect in subsequent years, beneficiaries will receive an increased allocation.

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

The Trust Fund has two components: the Permanent Fund and the Support Fund. The Permanent Fund will immediately begin to realize the benefits of investing in equities. The Support Fund is projected to realize the positive impact of the equity investment program beginning in 2007-08.

Although this proposed rule would become effective in the last quarter of 1994-95, the effect of this rule on revenue collections to state government will not begin until 1995-96. It is estimated that the total increase to the Trust Fund value will be \$612,500 in 1995-96 increasing to \$5.3 million in 1996-97. When the Trust Fund's \$2 billion cap is reached, the cumulative increase in fund value is estimated to exceed \$842.7 million.

On an annual basis, the introductions of equities will immediately generate an additional \$612,500 to the Trust Fund beginning in 1995-96 and \$3.9 million in 1996-97. When the Trust Fund's \$2 billion cap is reached in 2017-18, the single year annual earnings are expected to exceed \$86.6 million.

The proposed rule has no other estimated effect on revenue collections other than that noted previously for local school systems and universities.

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

This proposed rule will result in no estimated costs and/or economic benefits to directly affected persons or groups during 1994-95.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The estimated effect on competition and employment only impacts consultants and investment management firms applying to structure and invest LEQTF dollars.

Jules Nunn
Assistant State Treasurer
9502#071

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Wildlife and Fisheries Office of Fisheries

Tilapia Importation, Culture, Possession and Disposal (LAC 76:VII.903)

The secretary of the Department of Wildlife and Fisheries does hereby give notice of the intent to amend the rule governing the importation, culture, possession, and disposal of tilapia in Louisiana.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 9. Aquaculture - Exotic Species

§903. Tilapia

A. Rules and regulations on importation, culture, possession and disposal of Tilapia in Louisiana. The following terms shall have the following meaning in this Section.

Department—the Louisiana Department of Wildlife and Fisheries or an authorized employee of the department.

Process—the act of chill killing tilapia in an ice slurry for a period of not less than 60 minutes.

Secretary—the secretary of the Louisiana Department of Wildlife and Fisheries.

G. Rules for the Processing of Tilapia

1. All tilapia and tilapia parts other than live tilapia specifically permitted by the department must be properly processed and killed prior to leaving the tilapia culture facility.

2. All tilapia, other than live tilapia specifically permitted by the department, being brought into the state from without the state must be dead.

3. Records shall be kept of all tilapia processed at a culture facility and shall include the following information:

- a. species;
- b. processed pounds;
- c. date processed;
- d. name of processor;
- e. buyer of processed fish.

4. A copy of this information shall be sent to the department's Baton Rouge office at the end of each year, or at anytime upon the request of department officials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318 and 56:319.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 17:804 (August 1991), amended LR 20:1022 (September 1994), LR 21:

Interested persons may submit written comments on the proposed rule to Bennie J. Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Tuesday, April 4, 1995.

Joe L. Herring
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Tilapia

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

The amended rule would not require departmental permits for restaurants and fish houses that gut, fillet, or prepare tilapia in any other way. Estimated savings to the department exceed \$2,500 per annum.

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

There will be no effects upon revenue collection of state or local governmental units.

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

Under the amended rule, permitted tilapia culture facilities that wish to sell only whole tilapia would not be required to modify or build special fish cleaning facilities as per Office of Public Health regulations. Savings per culture facility could range from \$10,000 to \$50,000.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment.

Frederick J. Prejean, Sr.
Undersecretary
9502#051

David W. Hood
Senior Fiscal Analyst

COMMITTEE REPORTS

COMMITTEE REPORT

House Committee on Administration of Criminal Justice

Video Draw Poker (LAC 40:XI.Chapter 24)

January 24, 1995

To the Governor of the State of Louisiana:

In accordance with R.S. 49:968, an oversight subcommittee for the Administration of Criminal Justice Committee met on January 24, 1995, in Senate Committee Room E at 1:30 p.m. The purpose of the meeting was to conduct legislative oversight on proposed rule changes proposed by the Louisiana State Police, Video Gaming Division to its Video Draw Poker rules and regulations.

The following members of the house were present:

Representative Raymond "La La" Lalonde, Chairman
Representative Donald Ray Kennard, Vice Chairman
Representative Buster Guzzardo
Representative Audrey McCain
Representative Roy Quezaire
Representative Michael "Mike" Russo
Representative Stephen Windhorst
Representative C. E. "Peppi" Bruneau, Jr.

The Office of State Police, Video Gaming Division supplied the Administration of Criminal Justice Committee a report on January 4, 1995 in compliance with R.S. 49:968(D)(1)(b).

This report indicated that a public hearing was held on December 27, 1994 relative to the proposed rule changes. The notice of intent was published by the State Register on November 20, 1994.

The above referenced rule changes proposed for adoption were found unacceptable by unanimous vote of the Administration of Criminal Justice Committee.

In addition to the report required by R.S. 49:968(F), when a rule is deemed unacceptable and the accompanying reasons for the committee action, as chairman of the Administration of Criminal Justice Committee, I want to address some additional comments to you. First, the division presented the rules to the committee stating, "here are the rules are there any questions?". This, while unorthodox, can be excused by Lieutenant Fellon's admission that he "wasn't familiar with this phase of the process," it did, however, set a tone which would be repeated throughout the hearing.

These rules have been analyzed by members of the committee since December, 1993, particularly by Representative Bruneau, myself and our staff. Representative Bruneau reviewed the rules and provided an extremely thorough critique of the rules in a letter addressed to me on March 9, 1994. Many of his concerns were addressed legislatively during the Third Extraordinary Session in 1994. Since March of 1994, we have made our comments and concerns known to the Office of State Police by providing them with a copy of Representative Bruneau's letter as well as through staff contact. We even conducted a personal meeting between Lieutenant Kendall Fellon; Tammy Pruett, counsel for the division; Captain Terry Landry; myself; Representative Bruneau; and Grey Riley, counsel for the committee. In that meeting, we proposed several ideas that, in our opinion, would help strengthen the rules. Many of these suggestions were adopted by the state police, however, many of the suggestions were not adopted and remained in the rules presented to the committee. One example of this can be found in the rule which provides a definition for a "bar or tavern." This rule was criticized in Representative Bruneau's March letter and, nearly a year later, the provision remained in the set of rules presented to the committee January 24, 1995.

It is not the position of this committee that every suggestion made should be adhered to by state police, and, in fact, some suggestions were withdrawn upon an explanation regarding the necessity of the particular rule. I do want to point out, however, that at this hearing with almost every suggestion or question raised by the committee the position of Lieutenant Fellon and counsel for the division was one of blanket defense of the rules, and they offered no explanation other than "we feel these rules are valid and we need them," as to why rules which, in the opinion of the committee, exposed the state to unnecessary confusion and potential litigation, were promulgated.

Another important aspect of this hearing needs to be discussed prior to a review of the rules. Prior to voting on the rules, it was suggested that the Video Gaming Division temporarily withdraw the proposed rules for the purpose of redrafting the same in a clear and concise fashion. I offered to make available House staff to provide assistance in "ironing out" some of the problems. Lieutenant Fellon refused this

offer and stated that there had been no indication the rules were fatally flawed, this was their best effort, and they felt the rules were acceptable. Upon the unanimous vote of the committee finding the rules unacceptable, Lieutenant Fellon and his attorneys abruptly exited the room indicating general displeasure with the committee's actions.

As you are well aware, this committee is charged with the duty of performing legislative oversight to rules and regulations proposed by the Gaming Enforcement Section of the Office of State Police. It is the opinion of this committee that the rules promulgated on November 20, 1994 and presented to the committee on January 24, 1995 are replete with problems which cause massive confusion and invite resultant litigation. After almost two hours of testimony on this issue, it became apparent that the proposed rules were confusing, contradictory to law in some cases, vague and obscure. This sentiment was uniform in committee members, regardless of their opinions on gambling, in general, and video poker, in particular. It was at this time that the motion to reject the rules and find them unacceptable was made by Representative Kennard.

These areas submitted for your review present some of the highlights of the problems, but are in no way exhaustive of the problems presented with these rules. In accordance with R.S. 49:968(F)(b), the following determinations were made and are submitted for your review regarding the unacceptable proposed rule changes:

1. Many of the proposed rules reproduced the statutory law provided in the Video Draw Poker Devices Control Law, provided in R.S. 33:4862.1 et seq. In the opinion of the committee this was not the most efficient way to prepare rules and regulations. Not only does this produce a lengthy set of rules, but it invites problems when changes in language are perceived as regulation when actually they are law and the regulation becomes contradictory on its face to law. This is confusing at best and an open invitation for massive confusion and resultant litigation at worst.

2. In particular, the rules supply a definition of a "bar or tavern." In the opinion of the committee, the criteria required to be considered a "bar or tavern" is well-defined in the Alcoholic Beverage Control Law, as well as the Video Draw Poker Devices Control Law. The Video Draw Poker Control Law also provides a lengthy list of facilities which are not to be considered "licensed establishments." To create a third class of "bar or tavern" by regulation will not only subject the state to possible unnecessary litigation but will also present a regulatory nightmare for the state police. It seems this is an example of the apparent ongoing "turf war" between the state police and the Office of Alcoholic Beverage Control. If the definition of a bar needs clarification then the alcoholic beverage control laws should be amended to accomplish this. If better definitions of what a "bar or tavern" are needed then they are needed for all facilities licensed for on-premises consumption of alcoholic beverages and not just facilities attempting to have video draw poker licenses. The problem exists here, not in the division's ability to properly define a "bar or tavern," but in the litigation which will result when a license is denied based on the failure of a facility to meet the

"rule defined" definition of a bar or tavern when all statutory criteria are met. This would be a rule which would be outside the statutory grant of authority. As you are aware, this issue has already been litigated and lost by state police on a similar fact scenario regarding truck stop facilities, *Blanche Beverly Bueto v. Video Gaming Division, Office of State Police, Department of Public Safety, State of Louisiana*, 637 So. 2d 544 (La. App. 1 Cir. 1994).

3. The rules also provide the division with no time limits in processing applications. In fact, the rules formerly provided for a 30-day processing time limit. This provision is being eliminated and, throughout the rules, references are made to "ample" and "reasonable" amounts of time. This too, invites litigation and potential regulatory problems for the division.

4. Additional provisions provide for the pro-rating of device operation fees. My appreciation of the statute indicates that these fees may be paid quarterly, but is silent on the issue of pro-rating or not pro-rating these fees. The practice has been to have the fees pro-rated and there was no statutory change to indicate that there should be a change in this method of collection. There is no indication that this is a proper method of collecting device operation fees and is again a rule which would exist outside the scope of the statutory grant of authority.

5. Another area which raises concern is the rule which would allow for a new application and processing fee rather than a penalty and renewal fee if a renewal application is received late. This results in an unnecessary expense to the device owner and calls into question the initial fees which are to be based on expenses associated with investigation. Here would be a situation where no investigation is necessary, yet the person has to pay the same fees for being late. While this may not exceed the statutory grant of rulemaking authority it is another area which causes concern to the committee.

6. In addition to the duplication of statutory law, there are also various technical drafting type errors which were discovered upon review.

7. There are also some areas which are not being changed in the rules, but which cause problems. There is a provision allowing for a seizure of devices upon "ample" evidence of unsuitable conduct and a denial of a license based upon a misdemeanor or felony "charge" and not a conviction. Both of these present constitutional problems and again are fodder for the litigation mill.

Finally, there was no summary of the proposed rule changes so that there could be a review by concept by the committee. Absent that, there is no other alternative than for the committee, as a whole, to review the rules page by page, line by line. When we embarked upon this approach, the hostility of the witnesses was very apparent, and they indicated an absolute lack of willingness to explain the rule changes or the reasons therefor.

Respectfully submitted,
Raymond Lalonde, Chairman
House Committee on Administration of
Criminal Justice

9502#022

POTPOURRI

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Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Horticulture Commission

Retail Floristry Examination

The next retail floristry examination will be given April 3-7, 1995 at 9:30 a.m. at the State Police Training Academy, Building A, Room 4, Baton Rouge, LA. The deadline for sending application and fee is March 6, at 4:30 p.m. No applications will be accepted after March 6, 1995.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the Horticulture Commission office prior to March 6, 1995. If you have any questions, please call our office at (504) 925-7772.

Bob Odom
Commissioner

9502#026

POTPOURRI

Department of Elections and Registration Commissioner of Elections

Absentee Voting Equipment

The Department of Elections and Registration has developed standards for the certification of absentee voting equipment to be used in the state of Louisiana.

The department will conduct a public hearing on these standards on Monday, March 6, 1995 at 10 a.m., in the Riverboat Room of the Radisson Hotel, 4728 Constitution Avenue, Baton Rouge, LA.

Copies of these standards may be obtained from the Department of Elections and Registration, 4888 Constitution Avenue, from 8 a.m. to 4:30 p.m., Monday through Friday, or may be requested by mail by writing to the department at Box 14179, Baton Rouge, LA 70898-4179.

Jerry M. Fowler
Commissioner

9502#025

Department of Environmental Quality Office of Air Quality and Radiation Protection

Designation of Areas for Air Quality Planning Purposes and Revised Geographical Designation of Certain Air Quality Control Regions in Louisiana and Modification of Ozone Season

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that a change in the State Implementation Plan (SIP) has been initiated as follows:

Air quality control regions were designated by the U.S. EPA Administrator pursuant to Subpart C, Section 107 of the Clean Air Act as amended (42 U.S.C. 1857-18571, as amended by Pub. L. 91-604). Currently, Louisiana is divided into three, multi-county Air Quality Control Regions (AQCRs). Additionally, the ozone season for the entire state is from January through December.

The 40 CFR Ch. 1, Part 81.53 designates Southern Louisiana-Southwest Texas Interstate as an AQCR consisting of the territorial area encompassed by the boundaries of the following jurisdictions or described area as Louisiana parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, 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 and West Feliciana and Texas counties of Angelina, Hardin, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler and Walker.

The 40 CFR Ch. 1, Part 81.92 designates Monroe (Louisiana) and El Dorado (Arkansas) as an AQCR consisting of the territorial area encompassed by the boundaries of the following jurisdictions or described area as Louisiana parishes of Caldwell, Catahoula, Concordia, East Carroll, Franklin, LaSalle, Madison, Morehouse, Ouachita, Richland, Tensas, Union and West Carroll, and the Arkansas counties of Ashley, Bradley, Calhoun, Nevada, Ouachita, and Union.

The 40 CFR Ch. 1, Part 81.94 designates Shreveport-Texarkana-Tyler Interstate as an AQCR consisting of the territorial area encompassed by the boundaries of the following jurisdictions or described area as Louisiana parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Natchitoches, Red River, Sabine, Webster, Winn; the Arkansas counties of Columbia, Hempstead, Howard, Lafayette, Little River, Miller and Sevier; the Oklahoma county of McCurtain; and, the Texas counties of Anderson, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Gregg, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Poanola, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt and Wood.

POTPOURRI

Office of the Governor Postsecondary Review Commission

Fraud and Abuse Reduction in Student Financial Aid

According to the provisions of 40 CFR 58.13(a)(3), the regional administrator has the authority to exempt periods or seasons of ambient air quality data collected at SLAMS. Appendix H of 40 CFR Part 50 also mentions such waivers for continuous ozone monitoring requirements for areas where it can be demonstrated that ozone NAAQS exceedances are extremely unlikely.

This SIP seeks to move the parishes of Avoyelles, Grant, Rapides and Vernon from AQCR 106, Southern Louisiana-Southeast Texas, to AQCR 022, Shreveport-Texarkana-Tyler; and Grant parish from AQCR 106 to AQCR 019, Monroe-El Dorado. Additionally, this SIP seeks a shortened ozone season of March through October for the AQCRs of Monroe-El Dorado and Texarkana-Tyler-Shreveport.

A copy of the SIP changes may be viewed Monday through Friday, from 8 a.m. to 4:30 p.m., at:

1. DEQ Headquarters, Air Quality Division, 7290 Bluebonnet, Second Floor, Baton Rouge, LA;
2. DEQ Acadiana Regional Office, 100 Asma Blvd., Ste. 151, Lafayette, LA;
3. DEQ Bayou Lafourche Regional Office, 104 Lococo Drive, Raceland, LA;
4. DEQ Capital Regional Office, 11720 Airline Hwy., Baton Rouge, LA;
5. DEQ Kisatchie Central Regional Office, 402 Rainbow Dr., Bldg. 402, Pineville, LA;
6. DEQ Northeast Regional Office, 804 31st Street, Suite D, Monroe, LA;
7. DEQ Northwest Regional Office, 1525 Fairfield, Room 11, Shreveport, LA;
8. DEQ Southeast Regional Office, 3501 Chateau Blvd-West Wing, Kenner, LA;
9. DEQ Southwest Regional Office, 3519 Patrick, Rm. 265A, Lake Charles, LA; and
10. State Library of LA, Louisiana Section, 760 North Third St., Baton Rouge, LA.

The State Implementation Plan is also distributed to 25 other depository libraries throughout the state. A public hearing to receive comments on this proposed SIP change will be held at 1:30 p.m. on Thursday, March 30, 1995 in Room 326 of the Maynard Ketchum Building, 7290 Bluebonnet, Baton Rouge, LA.

Interested persons are invited to attend the public hearing and submit oral comments on the proposal. Written comments concerning the SIP change are also invited and should be submitted no later than 4:30 p.m. on April 6, 1995 to: Annette H. Sharp, DEQ, Air Quality Division, Box 82135, Baton Rouge, LA 70884-2135. Telephone (504) 765-0914.

Gus Von Bodungen
Assistant Secretary

9502#067

The Louisiana Postsecondary Review Commission (LPRC) has submitted to the United States Department of Education, for its approval, drafted proposed rules in compliance with a federal mandate (Education Act of 1965, as amended by the addendum of 34 CFR, Part 667). Upon approval and/or revision by the U.S. Department of Education, it is the intent of the LPRC to adopt these rules as final through the normal rulemaking process, R.S. 49:950 et seq.

The LPRC was established as a result of a mandate to the states by the U.S. Department of Education. LPRC is a federally-funded, state-administered program under Title IV of the Higher Education Act of 1965 (20 U.S.C.A. Paragraph 1099A - 1099A-3: Federal Financial Aid Programs for Postsecondary Students) and is part of a larger effort which reflects the intent of Congress to reduce fraud and abuse in the Title IV programs.

The re-authorized Title IV requires both the accrediting agencies and the federal government to adhere to more stringent requirements in approving and monitoring institutions participating in federal financial aid programs.

Under Title IV of the Higher Education Act of 1965, as amended by the inclusion of 34 CFR, Part 667, the LPRC has entered into an agreement with the U.S. Department of Education, pending approval of these rules, to conduct reviews of referred postsecondary institutions to determine whether the institutions should continue to participate in Title IV programs.

The submittal of these proposed rules is necessary because failure of the state of Louisiana to timely enter into an agreement with the United States Department of Education regarding the methods LPRC will utilize to conduct reviews of referred postsecondary institutions would lead to the loss of federal funds and the denial of participation in federal student loan programs.

The LPRC desires that the program be accepted by the U.S. Department of Education prior to the start of the summer school session. This would enable all postsecondary institutions to offer students participation in the Federal Title IV programs without interruption. Lack of approval by June 30, 1995 would result in a two-year hiatus, placing all institutions in a probationary status and denying new institutions the ability to extend loans to their students. This would place a severe financial burden on students and their families and would deny an educational opportunity to many prospective scholars.

These drafted proposed rules may be seen in their entirety on the fourth floor of the State Capitol in the office of the Louisiana Postsecondary Review Commission and at the Office of the State Register, located on the fifth floor of the Capitol Annex, 1501 North Third Street, Baton Rouge, LA.

Sally Clausen, Ed.D.
Chairperson

9502#002

POTPOURRI

**Department of Health and Hospitals
Board of Embalmers and Funeral Directors**

Embalmer/Funeral Director Examinations

The Board of Embalmers and Funeral Directors will give the National Board Funeral Director and Embalmer/Funeral Director exams on Saturday, March 11, 1995 at Delgado Community College, 615 City Park Ave., New Orleans, LA.

Interested persons may obtain further information from the Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 838-5109.

Dawn Scardino
Executive Director

9502#027

POTPOURRI

**Department of Social Services
Office of Community Services**

**Weatherization Assistance Program Year 1995-1996
Public Hearing**

The Department of Social Services, Office of Community Services will submit a State Plan to the U.S. Department of Energy around March 15, 1995 for the Weatherization Assistance Program pursuant to 10 CFR 440. As a requirement of this plan, a public hearing must be held.

The purpose of the public hearing is to receive comments on the proposed State Plan for the Weatherization Assistance Program for low-income persons, particularly the elderly, handicapped and children in the state of Louisiana. The public hearing is scheduled for Thursday, March 2, 1995 at 1 p.m. in Baton Rouge, LA at 333 Laurel Street, Eighth Floor Conference Room.

Initial funding from the Department of Energy is anticipated at \$1,052,593 for program year April 1, 1995 through March 31, 1996. Any additional funding which may be made available from the Department of Energy will be distributed and expended according to the 1995-96 Weatherization Assistance Program Plan.

Copies of the plan can be obtained prior to the hearing by contacting the Department of Social Services, Office of Community Services at (504) 342-2272 or Box 3318, Baton Rouge, LA 70821.

Interested persons will be afforded an opportunity to submit written comments by March 9, 1995 to the Office of Community Services at the above address.

Gloria Bryant-Banks
Secretary

9502#079

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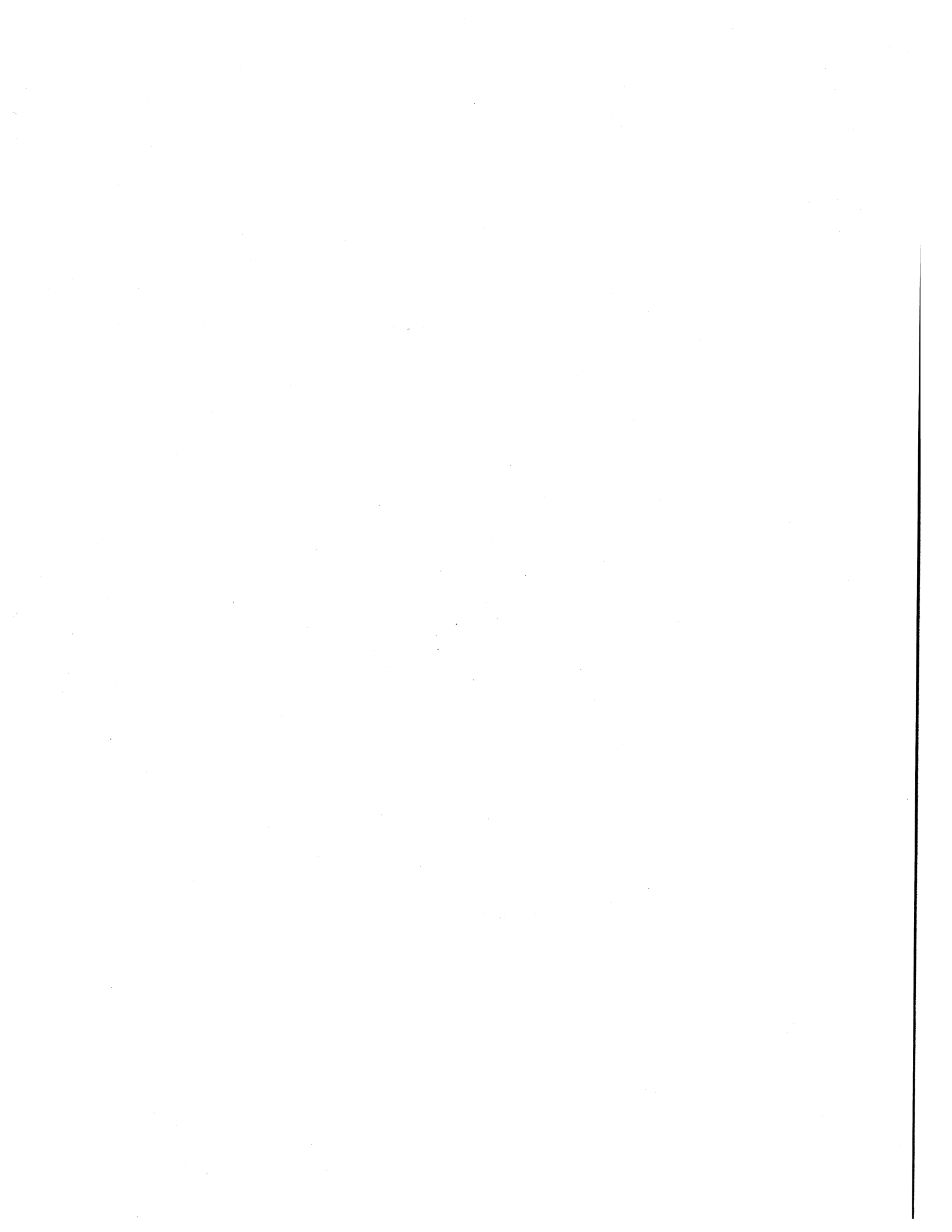
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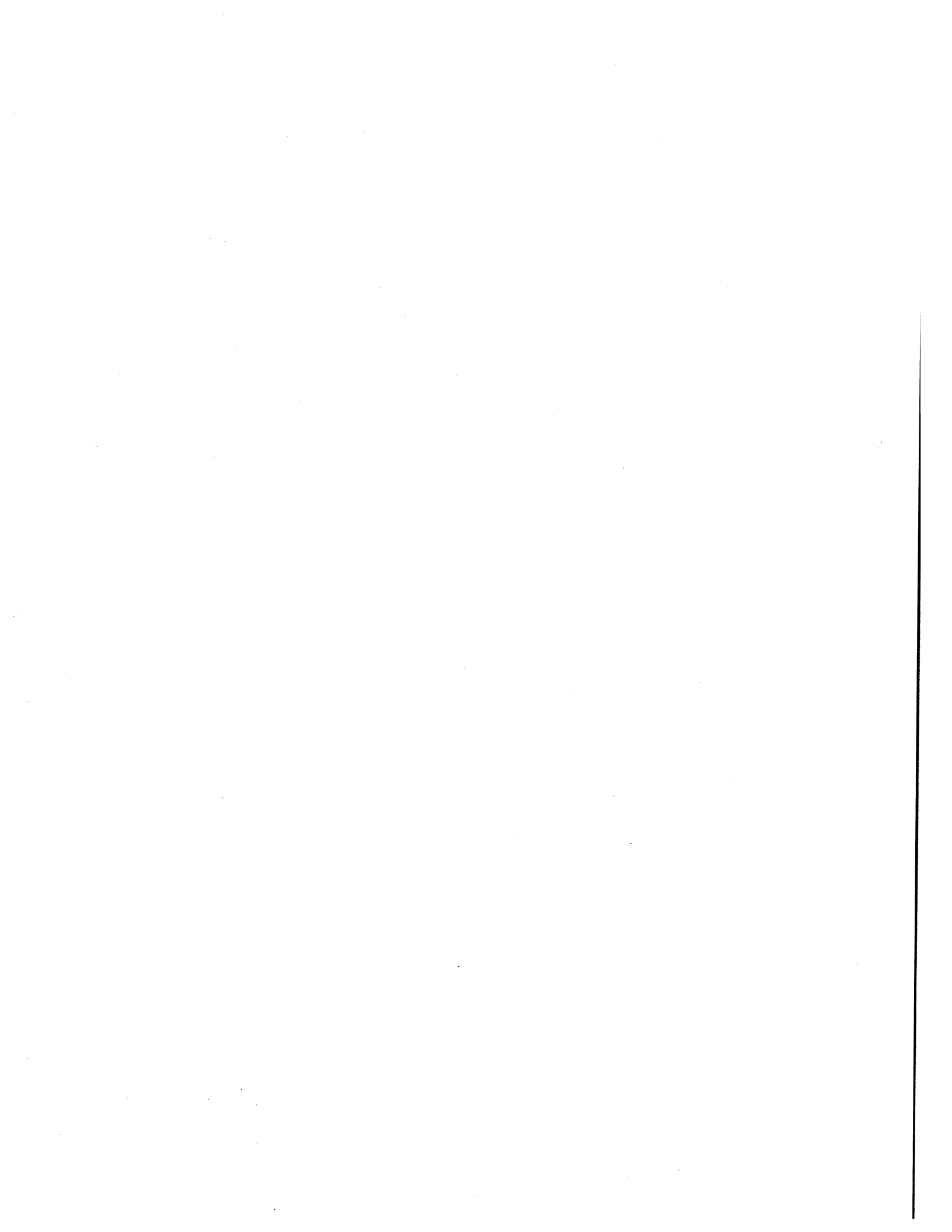
EO—Executive Order
L—Legislation
P—Potpourri
R—Rule



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