

LOUISIANA ADMINISTRATIVE CODE/LOUISIANA REGISTER

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Executive Orders

EXECUTIVE ORDER MJF 96-69

JTPA Program Merger

WHEREAS: the Department of Education administers, through two separate Bureaus, the Job Training Partnership Act (hereinafter "JTPA") 8% Program and the JTPA Title III Program with funds allocated from the Louisiana Department of Labor;

WHEREAS: the JTPA 8% Program is a separate appropriation from the JTPA Title III Program which is budgeted through an appropriation of the Office of Vocational Education;

WHEREAS: the administrative and fiscal reporting requirements of and the administrative services provided by both programs are similar, and combining the programs would be more cost effective than if the two programs are kept separate; and

WHEREAS: both the Secretary of Labor (the funding source) and the State Superintendent of Education (the recipient of the funds) support the merger of the JTPA 8% Program and the JTPA Title III Program within the Department of Education;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The services, the reporting requirements and the functions of the JTPA 8% Program and the JTPA Title III Program are authorized to be merged and/or remain merged, within the Vocational Education Budget Unit of the Department of Education.

SECTION 2: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 3: Upon signature of the Governor, the provisions of this Order shall be made retroactive to August 11, 1996, and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have 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 9th day of December, 1996.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#011

EXECUTIVE ORDER MJF 96-70

Louisiana Occupational Information Coordinating Committee

WHEREAS: the United States has enacted the Job Training Partnership Act of 1982 (hereafter "JTPA"), 29 U.S.C.A. §1501 et seq.; the Vocational Education Act of 1963 (hereafter "VEA"), 20 U.S.C.A. §2301 et seq.; and the Wagner-Peyser Act of 1933, 29 U.S.C.A. §49 et seq.; and

WHEREAS: to receive federal assistance under these acts, the State of Louisiana must establish a state occupational information coordinating committee to provide and manage a statewide comprehensive labor market and occupational information system to facilitate the implementation of a career information delivery system in accordance with the JTPA and VEA;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Occupational Information Coordinating Committee (hereafter "LOICC") is hereby re-created and re-established within the Department of Labor. The LOICC shall be composed of federally mandated members and at-large members who shall be appointed by and serve at the pleasure of the governor.

The federally mandated members are as follows:

- A. a representative of the Board of Elementary and Secondary Education;
- B. the assistant secretary of the Office of Employment Security, Department of Labor;
- C. a representative of the Department of Economic Development;
- D. the director of the Job Training Partnership Act Program, as representative of the governor's State Job Training Coordinating Council;
- E. a representative of Louisiana's institutions of higher education, selected by the chair of the Board of Regents; and
- F. the director of Rehabilitation Services, Department of Social Services.

At large associate members shall be selected in accordance with LOICC bylaws.

SECTION 2: The LOICC shall be responsible for the planning, the development, and the management of a statewide occupational information system consistent with the objectives and functions of the National Occupational Information Coordinating Committee, pursuant to 29 USCA §2422a, including the design and oversight standards of the JTPA. The LOICC shall serve as the state liaison to the National Occupational Information Coordinating Council and shall have exclusive responsibility for the state's coordination of occupational information.

SECTION 3: The Office of Management and Finance, Department of Labor, shall be the fiscal agent for the LOICC. The Office of Employment Security, Department of Labor, shall be responsible for oversight of the statewide

comprehensive labor market and occupational information system for the LOICC.

SECTION 4: The duties of the LOICC federally mandated members and the secretary of the Department of Labor, or the secretary's designee, shall include, but are not limited to, reviewing and giving approval to the following: 1) the LOICC Basic Assistance Grant proposal prior to its submission to the National Occupational Information Coordinating Committee; 2) the occupational information system prior to its release; 3) all major contracts for services; and 4) any changes in basic operating policy prior to implementation.

SECTION 5: Committee members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, members may receive reimbursement for actual travel expenses in accordance with state guidelines and procedures, and upon the approval of the commissioner of administration.

SECTION 6: Support staff for the committee and facilities for its meetings shall be provided by the Department of Labor.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, and any political subdivisions thereof, are authorized and directed to cooperate with the Department of Labor and the LOICC in implementing the provisions of this order.

SECTION 8: Upon signature of the governor, the provisions of this order shall be made retroactive to August 11, 1996, and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#012

EXECUTIVE ORDER MJF 96-71

Postsecondary Review Commission

WHEREAS: federally guaranteed student loans made to students for their attendance at colleges, universities, trade schools, and proprietary schools within the State of Louisiana are of vital importance to the citizens and the economic development of this state;

WHEREAS: 20 USCA §1099a provides that, in order to be eligible for federal funding, each state shall designate a postsecondary review entity for performing a review of institutions of higher education; and

WHEREAS: the federal government has authorized the United States Secretary of Education (hereafter "secretary") to enter into agreements with states and to provide funding for the state's postsecondary review entity;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Postsecondary Review Commission (hereafter "commission") is reestablished and recreated within the Executive Department, Office of the Governor.

SECTION 2: The commission shall, on behalf of the State of Louisiana, conduct and coordinate the review of institutions of higher education pursuant to 20 USCA §1099a-3, and ensure that each institution remains in compliance with the standards required by 20 USCA §1099a-3.

SECTION 3: The commission is designated as the state entity authorized to enter into agreements with the secretary, on behalf of the State of Louisiana, as provided in the guidelines set forth in 20 USCA §1099a-1.

SECTION 4: The commission shall have the authority to apply for federal funding, as provided for by 20 USCA §1099a-2, and for other federal funding or reimbursements made available to the states.

SECTION 5: The members of the commission shall be appointed by and serve at the pleasure of the governor. The membership of the commission shall be composed as follows:

- A. the governor, or the governor's designee;
- B. the chair of the Louisiana Board of Regents, or the chair's designee;
- C. the chair of the Louisiana Association of Independent Colleges and Universities, or the chair's designee;
- D. the chair of the Proprietary School Commission, or the chair's designee;
- E. the chair of the Louisiana Bankers' Association, or the chair's designee;
- F. the chair of the Board of Secondary and Elementary Education, or the chair's designee; and
- G. the chair of the Louisiana Office of Student Financial Assistance, or the chair's designee.

SECTION 6: The chair of the commission shall be appointed by the governor from its membership.

SECTION 7: Commission members shall not receive compensation or a per diem, nor shall they be reimbursed for travel expenses for their attendance at meetings.

SECTION 8: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the commission in implementing the provisions of this order.

SECTION 9: Upon signature of the governor, the provisions of this order shall be made retroactive to August 11, 1996, and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#013

EXECUTIVE ORDER MJF 96 - 72

French Heritage—Joint Committees

WHEREAS: the State of Louisiana, through its Council for the Development of French in Louisiana (hereafter "CODOFIL") and through its Consortium of Louisiana Universities (hereafter "Consortium"), has committed itself to the preservation of its French heritage;

WHEREAS: the State of Louisiana, through CODOFIL and the Consortium, has developed considerable expertise in the promotion of the French language and culture, and has managed numerous programs related to the teaching of all levels of the French language and to the training of Louisiana teachers about the French language and culture;

WHEREAS: the State of Louisiana is deeply interested in maintaining and continuing to pursue opportunities to share its French heritage with the French-speaking countries and provinces of the world with whom it has enjoyed general relations over the years, which include France, Belgium, Quebec, and the Canadian Maritime Provinces of New Brunswick, Nova Scotia and Prince Edward Island;

WHEREAS: in a spirit of international friendship and understanding, the people of France, Belgium, Quebec, and the Canadian Maritime Provinces, have supported the efforts of the State of Louisiana in developing its French cultural heritage; and

WHEREAS: over the years, representatives of France, Belgium, Quebec, and the Canadian Maritime Provinces, and the State of Louisiana have met at regular intervals in joint commission meetings to arrange for and organize educational, cultural, and touristic exchanges;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The France-Louisiana Joint Committee, the Quebec-Louisiana Joint Committee, the Maritime Provinces-Louisiana Joint Committee, and the Belgium-Louisiana Joint Committee (hereafter "Joint Committees") are recreated and re-established.

SECTION 2: The four Joint Committees shall each be composed of the following members: the Governor, or his designee; the Lieutenant Governor, or her designee; the Chair of CODOFIL; the Chair of the Consortium of Universities, or

the Chair's designee; the Director of CODOFIL; the Superintendent of Education, or the Superintendent's designee; and the President of the State Board of Elementary and Secondary Education, or the President's designee.

SECTION 3: The Chair of CODOFIL shall also be the Chair of each of the four Joint Committees.

SECTION 4: Each of the four Joint Committees shall meet at least once prior to December 31, 1999.

SECTION 5: The members of the Joint Committees shall not receive a per diem or compensation for their services. Contingent upon the availability of funds, members may be reimbursed for actual expenses incurred for travel and accommodations while attending meetings, by the appropriate agencies of state government, in accordance with state guidelines and procedures, and upon the approval of the Commissioner of Administration.

SECTION 6: Support staff for the Joint Committees and facilities for their meetings shall be provided by CODOFIL.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, and any political subdivisions thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 8: This Order is effective upon signature of the Governor and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana at the Capitol, in the City of Baton Rouge on this 11th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#014

EXECUTIVE ORDER MJF 96-73

School Based Health Center Investigation

WHEREAS: Subsection A of R.S. 40:31.3 directs the Office of Public Health, Department of Health and Hospitals to establish an adolescent school health initiative program to facilitate and encourage development of comprehensive health centers in public middle and secondary schools in the State of Louisiana to provide preventive health services, counseling, acute health services, and appropriate referral for acute health services;

WHEREAS: Subsection C of R.S. 40:31.3 specifically prohibits personnel at school based health centers (hereafter "SBHC") from "counseling or advocating in any way or referring any student to any organization for counseling or advocating abortion" and from "distributing at any public

school any contraceptive or abortifacient drug, device or other similar product";

WHEREAS: allegations have surfaced that some personnel at SBHC may be violating the foregoing provisions of Subsection C of R.S. 40:31.3, thereby jeopardizing public and legislative approval and support for the program; and

WHEREAS: due to such concerns, certain members of the Legislature were opposed to the appropriation in the General Appropriations Act, Act Number 17 of the 1996 Regular Session of 1996, of \$2.65 million to fund 15 SBHC for the 1996-97 fiscal year, and the governor received numerous requests to make a line-item veto of the \$2.65 million appropriation;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The secretary of the Department of Health and Hospitals (hereafter "secretary") shall head an investigation regarding the allegations of violations of Subsection C of R.S. 40:31.3 by a few of the personnel employed by SBHC, and if the secretary finds evidence of violations of the statutory prohibition, the secretary shall take appropriate action against those who violated the statute.

SECTION 2: The secretary's investigation shall be conducted in such a manner as not to violate the right to privacy, as established by Article I, Section 5 of the Louisiana Constitution of 1974, of those students who have availed or who will avail themselves of the services of SBHC.

SECTION 3: The secretary shall determine the most effective means of preventing future violations of R.S. 40:31.3(C) and shall immediately implement those means or procedures consistent with state law.

SECTION 4: The secretary shall issue a report on the findings of the investigation to the governor, the House and Senate Committees on Health and Welfare, and the School Based Health Clinic Task Force, no later than February 15, 1997.

SECTION 5: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Department of Health and Hospitals in implementing the provisions of this order.

SECTION 6: The provisions of this order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have 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 16th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#015

EXECUTIVE ORDER MJF 96-74

School Based Health Clinic Task Force

WHEREAS: the school based health care program, known as the adolescent school health initiative, operates under the direction of the Office of Public Health within the Department of Health and Hospitals, pursuant to R.S. 40:31.3;

WHEREAS: school based health clinics (hereafter "SBHC") were created under this program;

WHEREAS: the number of SBHC have expanded from the three clinics in two parishes in 1987, to 15 clinics in 10 parishes in 1996, each of which is overseen by a local advisory council that consists of parents, medical professionals, and community members;

WHEREAS: the Louisiana Legislature has provided \$2.65 million in funding for SBHC in its 1996-97 fiscal budget; and

WHEREAS: some members of the Louisiana Legislature and the public-at-large have questioned whether the medical services provided by SBHC are an unnecessary duplication of the services already available to low-income families who are Medicaid eligible or an unnecessary service for middle income families, and whether there are negative aspects of the program which could be eliminated without detrimentally affecting the effectiveness of SBHC;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: An advisory task force known as the School Based Health Clinic Task Force (hereafter "task force") shall be created and established within the Executive Department, Office of the Governor.

SECTION 2: The primary objectives and duties of the Task Force are to develop and recommend a uniform parental consent form which takes into consideration public mores, the concerns of the community, and the needs of adolescent students to have appropriate medical attention or counseling; and to evaluate the types of services offered by SBHC, advise whether the services offered by SBHC adequately meet the needs of the adolescent students they serve, recommend whether any services offered by the SBHC should be limited or eliminated, and evaluate whether any services offered by SBHC are unnecessary because they duplicate other public services.

As an additional primary objective and duty, the task force shall make recommendations regarding the type of counseling which may be provided to adolescent students at SBHC, giving due consideration to the needs of the students and the parameters placed on school curricula by R.S. 17:281(A)(3) and (4) which promote and encourage sexual abstinence between unmarried persons.

SECTION 3: The secondary objectives and duties of the task force shall be to propose Adolescent School Health Initiative Program guidelines relative to the staffing and conduct of personnel employed at SBHC; and to recommend whether SBHC should be licensed and, if so, propose licensing criteria and guidelines.

SECTION 4: The task force shall prepare and submit a report to the governor on the progress and/or fulfillment of its primary objectives and duties, no later than March 15, 1997, and on the progress and/or fulfillment of its secondary objectives and duties, no later than May 15, 1997.

SECTION 5: The members of the advisory task force shall be appointed by and serve at the pleasure of the governor. The membership of the task force shall be selected from the following:

A. the secretary of the Department of Health and Hospitals, or the secretary's designee;

B. the assistant secretary, Office of Public Health, Department of Health and Hospitals, or the assistant secretary's designee;

C. the director of Adolescent and School Health, Office of Public Health, Department of Health and Hospitals, or the director's designee;

D. the president of the Senate, or the president's designee selected from the membership of the Senate;

E. the speaker of the House of Representatives, or the speaker's designee selected from the membership of the House;

F. a member of a school board in a school system which has at least one SBHC;

G. a member of a school board in a school system which applied for acceptance to the School Based Health Center program, but voluntarily withdrew its application after investigating the program or conducting public meetings on the issue;

H. a physician who practices at a SBHC;

I. four at-large members who are residents of the State of Louisiana;

J. a representative from the membership of a SBHC volunteer advisory board; and

K. the governor, or the governor's designee selected from his executive staff.

SECTION 6: The governor shall select the chair of the task force from its membership.

SECTION 7: Support staff for the task force and facilities for its meetings shall be provided by the Department of Health and Hospitals.

SECTION 8: Task force members shall not receive compensation or a per diem, but may receive reimbursement for actual travel expenses, in accordance with state guidelines and procedures, contingent upon the availability of funds, and the approval of the commissioner of administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Department of Health and Hospitals and the task force in implementing the provisions of this order.

SECTION 10: The provisions of this order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have 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 16th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#016

EXECUTIVE ORDER MJF 96-75

Forest Products Industry Development Task Force

WHEREAS: timber is the State of Louisiana's largest and highest grossing agricultural crop;

WHEREAS: in terms of gross income and value-added processing, the solid wood forest products industry, which is supported by the harvesting and processing of timber, consists of 700 primary and secondary manufacturing establishments;

WHEREAS: forest product related industries employ over 25,000 workers, making it one of the state's top employers;

WHEREAS: the State of Louisiana produces only \$0.97 of value-added product for every \$1 of lumber created by sawmills operating within the state; and

WHEREAS: for the State of Louisiana to attain its potential in the area of job creation and resource utilization within the timber industry sector, the state must develop a comprehensive program to modernize, revitalize, and maximize its forest products industries;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Governor's Forest Products Industry Development Task Force (hereafter "task force") shall be created and established within the Departments of Economic Development and Agriculture and Forestry.

SECTION 2: The objectives and duties of the task force shall consist of the following:

A. identify opportunities for, and barriers to, growth and development of the value-added forest products industry in this state;

B. develop ideas and plans that foster the growth of the forest products companies existing in this state, that encourage corporate recruitment, that maximize the value of Louisiana's forest resources, and that provide additional economic and employment opportunities for Louisiana citizens in the forest product industry; and

C. provide aide for the establishment of a comprehensive program which develops Louisiana's forest products industry.

SECTION 3: The task force shall prepare a report on the progress and/or fulfillment of its primary objectives and duties for the review of the secretary of the Department of Economic Development and the commissioner of Agriculture and Forestry, no later than March 15, 1997.

SECTION 4: The task force shall be composed of not less than 10 members appointed by and serving at the pleasure of the governor. The membership shall be selected as follows:

A. the secretary of the Department of Economic and Development, or the secretary's designee;

B. the commissioner of Agriculture and Forestry, or the commissioner's designee;

C. a minimum of four members selected from a list of nominees submitted by the commissioner of Agriculture and Forestry; and

D. a minimum of four members selected from governmental entities, institutions of higher education, special interest groups, and industries involved in or related to the forest products industry.

SECTION 5: The co-chairs of the task force shall be the secretary of Economic Development, or the secretary's designee selected from the membership of the task force, and the commissioner of Agriculture and Forestry, or the commissioner's designee selected from the membership of the task force.

SECTION 6: Task force members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, members may receive reimbursement for actual travel expenses in accordance with state guidelines and procedures, and upon the approval of the commissioner of administration.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the task force and the Departments of Economic Development and Agriculture and Forestry in implementing the provisions of this order.

SECTION 8: The provisions of this order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have 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 16th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY THE
GOVERNOR
Fox McKeithen
Secretary of State
9701#017

EXECUTIVE ORDER MJF 96-76

Tangipahoa River Task Force

WHEREAS: the scenic Tangipahoa River is a popular recreational area in the State of Louisiana;

WHEREAS: the Tangipahoa River is also a vital part of the state's transportation and ecological systems;

WHEREAS: Senate Concurrent Resolution Number 139, authored by Senator John J. Hainkel, Jr., created the

Tangipahoa River Task Force as a means to protect and preserve the recreational, ecological, functional and aesthetic aspects of the Tangipahoa River;

WHEREAS: in its Concurrent Resolution, the Louisiana Senate accurately observed that in order to protect and preserve the integrity of the Tangipahoa River's recreational, ecological, scenic, and functional attributes, it is in the best interest of the State of Louisiana to establish a Tangipahoa River Task Force to provide advisory assistance to state agencies and local governments for the management of the river and its surrounding areas; and

WHEREAS: the elimination of the Office of Permits by the Office of the Governor necessitate that the Tangipahoa River Task Force be relocated within the Office of the Governor;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Tangipahoa River Task Force (hereafter "task force") is created and established within the Executive Department, Office of the Governor.

SECTION 2: The members of the task force shall be appointed by and serve at the pleasure of the governor. The task force shall be composed of nine members selected as follows:

1. one member from a list of nominees compiled by the Tangipahoa Tourist Commission;

2. one member from a list of nominees compiled by the Tangipahoa Parish president;

3. one member from a list of nominees compiled by the president of Southeastern Louisiana University;

4. one member from a list of nominees compiled by the secretary of the Department of Economic Development;

5. one member from a list of nominees compiled by the Citizens for a Clean Tangipahoa;

6. one member from a list of nominees compiled by the Tangipahoa district of the Farm Bureau;

7. one member of the executive staff, Office of the Governor;

8. one member who is an elected mayor in the parish of Tangipahoa; and

9. the commissioner of Agriculture and Forestry, or the commissioner's designee.

SECTION 3: The membership of the task force shall elect its chair.

SECTION 4: In accordance with Senate Concurrent Resolution Number 139, the duties of the task force include, but are not limited to, coordinating the efforts of all state agencies involved in the cleanup of the Tangipahoa River and monitoring the cleanup to insure its safety for recreational use.

SECTION 5: Support staff for the task force and facilities for its meetings shall be provided by the Office of the Governor.

SECTION 6: The task force shall meet at regularly scheduled intervals, and also at the call of the chair.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision

thereof, are authorized and directed to cooperate with the task force in implementing the provisions of this order.

SECTION 8: This order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the City of Baton Rouge, on this 17th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#018

EXECUTIVE ORDER MJF 96-77

Statewide Intermodal Transportation Plan Steering Committee

WHEREAS: the Intermodal Surface Transportation Efficiency Act, enacted by the United States Congress in 1991, mandates that each state prepare a statewide intermodal transportation plan;

WHEREAS: the federal government selected Louisiana as one of six states to receive a special grant for the development of a model plan to be used as a guide by other states in developing their plans;

WHEREAS: in January of 1993, the Department of Transportation and Development, in cooperation with the Department of Economic Development and many public and private interests throughout the state, began development of its 25-year statewide intermodal transportation plan;

WHEREAS: on March 22, 1996, the secretary of the Department of Transportation and Development adopted the Statewide Intermodal Transportation Plan (hereafter "plan") as the official statewide transportation plan for the State of Louisiana; and

WHEREAS: the plan requires a steering committee to oversee its implementation;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Statewide Intermodal Transportation Plan Steering Committee (hereafter "committee") is established within the Department of Transportation and Development.

SECTION 2: The committee shall be composed of seven members who shall be appointed by and serve at the pleasure of the governor. The membership of the committee shall be composed of the following:

A. the secretary of the Department of Transportation and Development, or the secretary's designee;

B. the secretary of the Department of Economic Development, or the secretary's designee;

C. commissioner of the Division of Administration, or the commissioner's designee;

D. the president of the Senate, or the president's designee selected from the membership of the Senate;

E. the speaker of the House of Representatives, or the speaker's designee selected from the membership of the House; and

F. two representatives of Louisiana businesses.

SECTION 3: The secretary of the Department of Transportation and Development, or the secretary's designee, shall serve as the chair of the committee.

SECTION 4: The committee shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 5: The duties of the committee shall include, but are not limited to, the following:

A. providing guidance, support and executive leadership for the implementation of the plan;

B. coordinating implementation of the plan with public and private agencies, companies, groups, and individuals; and

C. drafting legislation to implement the plan.

SECTION 6: Other than from their agencies, committee members shall not receive compensation or a per diem, nor shall they be reimbursed for travel expenses for their attendance at meetings.

SECTION 7: Support staff for the committee and facilities for its meetings shall be provided by the Department of Transportation and Development.

SECTION 8: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the committee in implementing the provisions of this order.

SECTION 9: The provisions of this order are effective upon signature and shall remain in effect until amended, modified, or rescinded by operation of law.

IN WITNESS WHEREOF, I have 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 23rd day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#019

EXECUTIVE ORDER MJF 96-78

Bond Allocation—Calcasieu Parish Authority

WHEREAS: Executive Order MJF 96-32 (hereafter "MJF 96-32") was executed on September 17, 1996, pursuant to the Tax Reform Act of 1968 (hereafter "the act"), Act 51 of the 1986 Louisiana Legislature, and Executive Order MJF 96-25

(hereafter "MJF 96-25") which provides for the allocation of bonds subject to the private activity bond volume limits of the act for each calendar year (hereafter "ceiling");

WHEREAS: the \$7,300,000 allocation under the ceiling made by MJF 96-32 to the Louisiana Housing Finance Agency for the Malta Square at Sacred Heart project was returned unused by letter dated December 19, 1996;

WHEREAS: Section 4.8 of MJF 96-25 provides that if the ceiling for a year exceeds the aggregate amount of private activity bonds issued during the year, "the governor may allocate such excess to issuers for use as a carryforward for one or more carryforward projects permitted under the act by issuing an Executive Order for all carryforward projects for which an application has been submitted that contains the elements required by Subsection 4.2, and for which a request to be treated as a carryforward project has been received by the [staff of the Louisiana State Bond Commission]";

WHEREAS: the ceiling for 1996 exceeds the amount of private activity bonds issued during 1996 by \$7,300,000; and

WHEREAS: the governor desires to allocate this excess and unused amount of the 1996 ceiling to a project which is eligible for a carryforward under the act;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, and in accordance with the request for a carryforward filed by issuer, the excess unused private activity bond volume limit under the ceiling is allocated to issuer for the following carryforward project and in the following amount:

ISSUER	CARRYFORWARD PROJECT	CARRYFORWARD AMOUNT
Calcasieu Parish Authority	Single Family Mortgage Revenue Bonds or Mortgage Credit Certificate Program	\$7,300,000

SECTION 2: All references in this order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 4: This order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have 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 24th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#020

EXECUTIVE Order MJF 96-79

Unclassified State Employee Leave

WHEREAS: no permanent rules or policies on annual, compensatory, sick, special, military, and other leave exist for certain officers and employees who are in the unclassified service of the state; and

WHEREAS: Executive Order EWE 94-32, as amended by Executive Order EWE 95-27, which provided rules and policies on annual, compensatory, sick, special, military, and other leave for certain unclassified state employees, expired on August 12, 1996;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Applicability

A. The rules and policies established by this order are applicable to all officers and employees in the unclassified service of the Executive Branch of the State of Louisiana, except elected officials and the officers and employees of a system that is authorized by the Constitution or legislative act to manage and supervise its own system.

B. Nothing in this order shall be applied in a manner which violates, or is contrary to, the Fair Labor Standards Act (hereafter "FLSA"), the Family and Medical Leave Act, or any other applicable federal or state law, rule, or regulation.

SECTION 2: Definitions. Unless the context of this order clearly indicates otherwise, the words and terms used in this order shall be defined as follows:

A. *Annual Leave*—leave with pay granted to an officer or employee for the purpose of rehabilitation, restoration or maintenance of work efficiency, or the transaction of personal affairs.

B. *Appointing Authority*—the agency, department, board, or commission, or the officers and employees thereof authorized by statute or lawfully delegated authority to make appointments to positions in state service.

C. *Compensatory Leave*—time credited for hours worked outside the regularly assigned work schedule.

D. *Continuing Position*—an office or position of employment with the state which reasonably can be expected to continue for more than one calendar year and/or 12 consecutive months.

E. *Educational Leave*—leave that may be granted by an appointing authority to an officer or employee only for limited educational purposes in accordance with the uniform rules developed by the commissioner of administration. *Educational Leave with Pay* is a subclass of educational leave and is for the purpose of attending an accredited educational institution to receive formalized training which will materially assist the officer or employee in performing the type of work performed by the officer or employee's department.

F. *Intermittent Employee*—a person employed in state service who is not hired to work on a regularly scheduled basis.

G. *Leave of Absence Without Pay*—a period of leave or time off from work granted by the appointing authority, or the appointing authority's designee, for which the officer or employee receives no pay.

H. *Military Duty*—refers to the performance of continuous and uninterrupted military duty on a voluntary or involuntary basis and includes active duty, active duty for training, initial active duty for training, full-time National Guard duty, annual training, and inactive duty for training (weekend drills).

I. *Overtime Hour*—an hour worked by an unclassified officer or employee at the direction of the appointing authority, or the appointing authority's designee:

1. on a day which is observed as a holiday in the department and area of employment and falls on a day within the workweek, or is observed as a designated holiday in lieu of a regular holiday observed in the department;

2. in excess of the regular duty hours in a regularly scheduled workday;

3. in excess of the regular duty hours in a regularly scheduled workweek;

4. in excess of 40 hours worked during any regularly recurring and continuous seven-day calendar work period where excessive hours are systematically scheduled;

5. in excess of 80 hours worked during any regularly recurring and continuous 14-day calendar work period where excessive hours are systematically scheduled;

6. in excess of the hours worked in a regularly established, continuous, and regularly recurring work period where hours average 40 hours per week, regardless of the manner in which scheduled; or

7. on a day in which a department or a division thereof is closed pursuant to R.S. 1:55(B)(5) by direction of the appointing authority due to an emergency.

J. *Regular Tour of Duty*—an established schedule of work hours and days recurring regularly on a weekly, biweekly, or monthly basis for full-time or part-time unclassified officers or employees.

K. *Seasonal Employee*—a person employed on a noncontinuous basis for a recognized peak work load period.

L. *Sick Leave*—leave with pay granted to an officer or employee who is unable to perform their usual duties and

responsibilities due to illness, injury, or other disability, or when the officer or employee requires medical, dental, or optical consultation or treatment.

M. *State Service*—for leave earning purposes shall include service in a state supported school, agency, or university; public parish school system; public student employment; service as a member of a public board or commission; or service with the legislature or the state court system. All such service must have been performed for a Louisiana public entity.

N. *Temporary Employee*—a person continuously employed for a period which does not exceed three consecutive calendar months.

O. *Unclassified Service*—refers to those positions of state service as defined in Article X, §2 of the Louisiana Constitution of 1974, which are not positions in the classified service.

SECTION 3: Full-time Employees. For each full-time unclassified officer or employee, each appointing authority shall establish administrative work weeks of not less than 40 hours per week.

SECTION 4: Granting Leave

A. At the discretion of their appointing authority, or the appointing authority's designee, officers and employees may be granted time off for vacations, illnesses, and emergencies.

B. An appointing authority, or the appointing authority's designee, has discretion to grant for disability purposes, annual leave, leave without pay, or sick leave.

SECTION 5: Earning of Annual and Sick Leave

A. Annual and sick leave shall not be earned by the following persons:

1. members of boards, commissions, or authorities;
2. student employees, as defined under Civil Service Rules;

3. temporary, intermittent, or seasonal employees; and

4. effective as of the signing and issuance of this order, all part-time employees of the Executive Department, Office of the Governor.

B. The earning of annual and sick leave, shall be based on the equivalent of years of full time state service and shall be credited at the end of each calendar month, or at the end of each regular pay period, in accordance with the following general schedule:

1. less than three years of service, at the rate of .0461 hour of annual leave and .0461 hour of sick leave for each hour of regular duty;

2. three or more years but less than five years of service, at the rate of .0576 hour of annual leave and .0576 hour of sick leave for each hour of regular duty;

3. five or more years but less than 10 years of service, at the rate of .0692 hour of annual leave and .0692 hour of sick leave for each hour of regular duty;

4. ten or more years but less than 15 years of service, at the rate of .0807 hour of annual leave and .0807 hour of sick leave for each hour of regular duty; and

5. fifteen or more years of service, at the rate of .0923 hour of annual leave and .0923 hour of sick leave for each hour of regular duty.

For purposes of this Section, contract service does not constitute either full-time or part-time state service and cannot be used to determine, and has no effect upon, the rate at which annual leave and sick leave is earned by, accrued by, or credited to a full-time or a part-time officer or employee in unclassified state service.

C. No unclassified officer or employee shall be credited with annual or sick leave:

1. for any overtime hour(s);
2. for any hour(s) of leave without pay;
3. for any hour(s) of on-call status outside the officer or employee's regular duty hours;
4. for any hour(s) of travel or other activity outside the officer or employee's regular duty hours; or
5. for any hour(s) of a holiday or other nonwork day which occurs while on leave without pay.

SECTION 6: Carrying Annual and Sick Leave Forward. Accrued unused annual and sick leave earned by an unclassified officer or employee shall be carried forward to succeeding calendar years without limitation.

SECTION 7: Use of Annual Leave

A. An unclassified officer or employee must apply for use of annual leave, and it may only be used upon the approval of the appointing authority, or the appointing authority's designee.

B. Annual leave shall not be charged for nonwork days.

C. The minimum charge to annual leave records shall be in increments of not less than one-tenth of an hour, or six minutes.

D. An appointing authority, or the appointing authority's designee, may require an unclassified officer or employee to use their accrued annual leave whenever such an action is determined by the appointing authority, or the appointing authority's designee, to be in the best interest of the department.

When such an instance occurs, no unclassified officer or employee shall be required to reduce their accrued annual leave to less than 240 hours except:

1. when granted leave without pay, but subject to the military leave provisions of Section 17; or
2. when the absence from work is due to a condition covered by the Family and Medical Leave Act.

SECTION 8: Use of Sick Leave

A. Sick leave with pay may be used by an unclassified officer or employee who has accrued sick leave, when the following occurs:

1. illness or injury prevents the officer or employee from reporting to duty; or
2. medical, dental, or optical consultation or treatment is attended.

B. A medical certificate is not required for an unclassified officer or employee to use accrued sick leave, but the appointing authority, or the appointing authority's designee, has discretion to require such a certificate as justification for an absence.

C. Sick leave shall not be charged for nonwork days.

D. The minimum charge to sick leave records shall be in increments of not less than one-tenth of an hour, or six minutes.

E. Sick leave shall only be granted after it has been accrued by an unclassified officer or employee. Sick leave shall not be advanced.

F. An appointing authority, or the appointing authority's designee, has discretion to place an unclassified officer or employee on sick leave after an officer or employee asserts the need to be absent from work due to an injury or illness.

SECTION 9: Transfer of Annual and Sick Leave

A. A classified officer or employee, or an unclassified officer or employee subject to this order, shall have all accrued annual and sick leave credited to them when the officer or employee transfers without a break in service into a position covered by this order.

B. An officer or employee shall have all accumulated annual and sick leave, to the extent that it was earned, credited to them when the officer or employee transfers without a break in service from a department not covered by this order into a department covered by this order.

C. When an unclassified officer or employee transfers without a break in service to a position covered by other leave rules of the state, the officer or employee's accrued annual and sick leave shall be transferred to the new employing state department or agency. The employing department or agency shall either hold the annual and sick leave in abeyance or integrate the leave into its own system. The officer or employee's accumulated leave shall not be reduced during such integration.

SECTION 10: Disbursement of Accrued Annual Leave Upon Separation

A. Upon the resignation, death, removal, or other final termination from state service of an unclassified officer or employee, the officer or employee's accrued annual leave shall be paid in a lump sum, up to a maximum of 300 hours, disregarding any final fraction of an hour. The payment shall be computed as follows:

1. When the officer or employee is paid on an hourly basis, the regular hourly rate that the officer or employee received at the time of termination from state service shall be multiplied by the number of hours of their accrued annual leave, which number is not to exceed 300 hours; or

2. When the officer or employee is paid on other than an hourly basis, the officer or employee's hourly rate shall be determined by converting the salary the officer or employee received at the time of termination from service into a working hourly rate. The converted hourly rate shall be multiplied by the number of hours of their accrued annual leave, which number is not to exceed 300 hours.

B. An unclassified officer or employee, who is paid for accrued annual leave upon termination from service and who is subsequently reemployed in a leave-earning classified or unclassified position, shall reimburse the state service, through the employing agency, for the number of hours the officer or employee was paid which exceeded the number of work hours that transpired during the officer or employee's

break from state service. In turn, the officer or employee shall receive a credit for the number of hours of annual leave for which the officer or employee made reimbursement to state service.

SECTION 11: Disbursement of Accrued Sick Leave Upon Separation. An officer or employee shall not receive payment, directly or in kind, for any accrued sick leave remaining at the time of their termination from unclassified service.

SECTION 12: Continuance of Annual and Sick Leave. An unclassified officer or employee shall receive credit for all accrued unpaid annual leave and all unused sick leave upon reemployment by the state in the unclassified service within a period of five years from date of their termination from state service if the officer or employee's reemployment occurs during the effective period of this order.

SECTION 13: Compensatory Leave

A. Compensatory leave shall not be earned by the following persons:

1. department secretaries, undersecretaries, deputy secretaries, assistant secretaries, confidential assistants, including their equivalents appointed by elected officials, and the superintendent of education;

2. student employees, as defined under Civil Service Rules;

3. temporary, intermittent, or seasonal employees;

4. the commissioner of administration, the deputy commissioners of administration, and the assistant commissioners of administration;

5. the executive director or equivalent chief administrative officer of all boards, commissions, and authorities operating within the Executive Branch who are appointed by a board, commission, or authority;

6. members of boards, commissions, or authorities;

7. officials of the Executive Department, Office of the Governor, holding the following titles: administrative secretary for the Franklin Office, administrative secretary to the first lady, assistant chief of staff, assistant executive counsel, chief of staff, deputy chief of staff, deputy education policy advisor, director of boards and commissions, director of constituent services, director of Indian Affairs, director of Troops to Teachers, education policy advisor, executive assistant for Coastal Activities, executive counsel, executive director of children's cabinet, executive director of Office of Oil Spills, executive director of Rural Development, governor's liaison for Workforce Development, mansion coordinator, office coordinator for Disability Affairs, press secretary, senior policy analyst, special assistant to the governor, and/or special counsel;

8. other officers of the state who are appointed by the governor, including members of boards, commissions, and/or authorities; and

9. effective as of the date of the issuance and signing of this order, all part-time employees of the Executive Department, Office of the Governor.

B. Compensatory leave may be earned when an appointing authority, or the appointing authority's designee, requires an unclassified officer or employee in a

compensatory leave earning position to work on a holiday or at a time that the officer or employee is not regularly required to be on duty. Compensatory leave may be granted for such overtime hours worked outside the regularly assigned work schedule or on holidays at the discretion of the appointing authority, except that officers or employees who are not exempt from the FLSA shall be compensated for such overtime in the same manner as classified employees in accordance with the FLSA.

C. An unclassified officer or employee who sets his own work schedule shall not be eligible to earn compensatory leave; however, the appointing authority of such an unclassified officer or employee may grant compensatory leave for specific instances of overtime work which the appointing authority judges to be extraordinary.

D. If an appointing authority permits the earning of compensatory leave to an FLSA-exempt unclassified officer or employee, then the amount of such leave shall be equal to the number of extra hours such an officer or employee is required to work.

E. When earned, compensatory leave shall be promptly credited to the unclassified officer or employee and, upon the approval of the appointing authority, or the appointing authority's designee, it may be used by the officer or employee at a future time.

SECTION 14: Use and Disbursement of Compensatory Leave While in Service

A. An unclassified officer or employee who is not exempt from the FLSA shall be paid in cash for any overtime hours worked in excess of the maximum balance allowed by the FLSA.

B. At the discretion of the appointing authority, an unclassified officer or employee may be paid in cash for any compensatory leave earned at the hour for hour rate in excess of 360 hours.

C. An appointing authority may require an unclassified officer or employee to use their earned compensatory leave at any time.

SECTION 15: Disbursement of Accrued Compensatory Leave Upon Separation

A. When an unclassified officer or employee transfers without a break in service to another department within state service, compensatory leave may be credited to the officer or employee at the discretion of the new appointing authority.

B. When an unclassified officer or employee separates from state service or transfers from the department in which the officer or employee earned compensatory leave to a department not crediting the officer or employee with the accrued balance of compensatory leave, the accrued compensatory leave shall be paid as follows:

1. All unused compensatory leave earned at the hour for hour rate or at the time and one-half rate shall be paid at the higher of following rates:

(a) the average regular rate received by the officer or employee during the last three years of his or her employment; or

(b) the final regular rate received by the officer or employee.

SECTION 16: Special Leave. An unclassified officer or employee shall be given time off, without loss of pay, annual leave, or sick leave when:

- A. performing jury duty;
- B. appearing as a summoned witness before a court, grand jury, or other public body or commission;
- C. performing emergency civilian duty in relation to national defense;
- D. voting in a primary, general, or special election which falls on the officer or employee's scheduled work day, provided not more than two hours of leave shall be allowed an officer or employee to vote in the parish of employment, and not more than one day of leave shall be allowed an officer or employee to vote in another parish;
- E. participating in a State Civil Service examination on a regular work day, or taking a required examination pertinent to the officer or employee's state employment before a state licensing board;
- F. the appointing authority determines an Act of God prevents the performance of the duties of the officer or employee;
- G. the appointing authority determines that, due to local conditions or celebrations, it is impracticable for the officer or employee to work in the locality;
- H. the officer or employee is ordered to report for a pre-induction physical examination incident to possible entry into the armed forces of the United States;
- I. the officer or employee is a member of the National Guard and is ordered to active duty incident to a local emergency, an Act of God, a civil or criminal insurrection, a civil or criminal disobedience, or a similar occurrences of an extraordinary and emergency nature which threatens or affects the peace or property of the people of the State of Louisiana or the United States;
- J. the officer or employee is engaged in the representation of a client in a civil or criminal proceeding pursuant to an order of a court of competent jurisdiction. However, if compensation for such services is available from another source, and is accepted by the officer or employee, the officer or employee may not accept any special leave compensation from the state for that time period; or
- K. the officer or employee is a current member of Civil Air Patrol and, incident to such membership, is ordered to perform duty with troops or participate in field exercises or training, except that such leave shall not exceed 15 working days in any one calendar year and shall not be used for unit meetings or training conducted during such meetings.

SECTION 17: Military Leave

A. An unclassified officer or employee who is serving in a position that earns annual and sick leave and who is a member of a reserve component of the armed forces of the United States or the National Guard, shall be granted a leave of absence from a state position, without loss of pay or deduction of leave, when ordered to military duty for a period not to exceed 15 working days in any one calendar year. In addition, an appointing authority may grant annual leave, compensatory leave, leave without pay or any combination thereof, for a period which exceeds those 15 working days in

any one calendar year, in accordance with other provisions of this order and as required by state and/or federal law. When the unclassified officer or employee is ordered to duty, the officer or employee shall give prompt and immediate notice to the appointing authority, or to the appointing authority's designee.

B. An unclassified officer or employee who is serving in a position that earns sick and annual leave and who is inducted into or ordered to military duty to fulfill a reserve obligation or ordered to active duty in connection with reserve activities for an indefinite period or for a period in excess of annual field training, is eligible for leave with pay as provided in this order and as required by state and/or federal law.

SECTION 18: Other Leave

A. Worker's Compensation Payments—Optional Leave with Pay. An unclassified officer or employee who is absent from work due to a disability for which the officer or employee is entitled to receive worker's compensation benefits, has the option to use their sick and annual leave, which shall not exceed the amount necessary to receive total payments for leave and worker's compensation equal to their regular salary.

B. Law Enforcement—On Duty Disability. When an unclassified officer or employee engaged in law enforcement work becomes disabled while in the performance of a duty of a hazardous nature that results in their being unable to perform their usual or normal duties, the disabled officer or employee's appointing authority may, upon the approval of the commissioner of administration, grant the disabled officer or employee a leave of absence with full pay during the period of such disability without charge against accrued sick or annual leave, provided the officer or employee pays to their department all amounts of weekly compensation received by the officer or employee as worker's compensation benefits during that period of leave with full pay.

C. Funeral Leave. An unclassified officer or employee may be granted leave without loss of pay, annual leave, or sick leave, for attendance at the funeral or burial rites of a parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, spouse, mother-in-law, father-in-law, grandparent, or grandchild, provided such time off shall not exceed a period of two days for any single occurrence. Whenever possible, prior notice of the need to take said leave shall be given by the officer or employee to the appointing authority. At all other times, the officer or employee shall give notice of the need to take said leave at the time it is taken.

D. Educational Leave

1. An appointing authority may grant an unclassified officer or employee educational leave without pay, when it is for an approved educational purpose, for a maximum period of 12 months in accordance with the Rules developed by the commissioner of administration. Consecutive periods of leave without pay may be granted to the officer or employee by the appointing authority.

2. Upon the approval of the commissioner of administration and in accordance with the Rules developed by the commissioner of administration, an appointing authority

may grant an unclassified officer or employee educational leave with pay for a maximum period of 30 calendar days during one calendar year. Upon the approval of the commissioner of administration and in accordance with the Rules developed by the commissioner of administration, the appointing authority may grant educational leave with pay for a maximum period of 90 calendar days during one calendar year if, in addition to the general prerequisites necessary for qualification for educational leave with pay, the educational instruction or training to be taken by the officer or employee is also necessary to, or will substantially aid, the administration of the state agency.

3. In accordance with the Rules developed by the commissioner of administration, an appointing authority may grant a stipend to an unclassified officer or employee who has been granted educational leave if 1) funds are available for such purposes, 2) the commissioner of administration approves the stipend, and 3) the commissioner of administration finds the stipend will be used for a proper, designated purpose and its proper use is clearly supported with appropriate documentation.

E. Leave of Absence without Pay

1. An appointing authority may extend a leave of absence without pay to an unclassified officer or employee for a period not to exceed one year, provided that such leave shall not prolong the period of the officer or employee's appointment or employment in state service.

2. If an unclassified officer or employee fails to report for, or refuses to be restored to, duty in pay status on the first working day following the expiration of an approved leave of absence without pay, or at an earlier date upon reasonable and proper notice from the appointing authority, or the appointing authority's designee, then the officer or employee shall be considered as having deserted their position of appointment or employment.

3. At the discretion of the appointing authority, or at the request of the unclassified officer or employee, a period of leave of absence without pay that has been extended to an officer or employee, may be curtailed, provided such curtailment is in the best interest of the state service and reasonable and proper notice thereof is furnished to the officer or employee.

SECTION 19: Holidays

A. Holidays shall be observed as provided in R.S. 1:55(B) and by proclamation issued by the governor.

B. An unclassified officer or employee in state service in a compensatory leave earning position shall be eligible for compensation when required to work on an observed holiday except:

- 1. when the officer or employee's regular work schedule averages less than 20 hours a week; or
- 2. when the officer or employee is on leave without pay during the period immediately preceding and following the holiday(s).

SECTION 20: Record Keeping

A. Daily attendance and leave records shall be maintained for each unclassified officer or employee who is eligible to accrue annual, sick, and/or compensatory leave.

B. An accrued balance of unused annual, compensatory, and/or sick leave shall be held in abeyance for an officer or employee who becomes ineligible to earn and use the particular type of leave pursuant to the terms of this order. The accrued balance(s) shall be available to the officer or employee, in accordance with the provisions of this order, when he or she again becomes eligible to earn and use said leave, or when he or she separates from state service.

SECTION 21: Compliance. All departments, commissions, boards, agencies, and officers of the state, or any political subdivisions within the Executive Branch of state government shall comply with and cooperate with the implementation of the provisions of this order.

SECTION 22: Effective Dates. Upon signature of the governor, the provisions of this order shall be applicable to all current officers or employees in the unclassified state service and, as to those employees, retroactive to noon on January 8, 1996. Nonetheless, any rights that accrued prior to August 12, 1996 to the officers and employees in the unclassified state service, pursuant to the provisions of Executive Orders EWE 94-32 and 95-27, shall not be adversely affected by the retroactive application of this order. This order shall remain in effect until amended, modified, terminated, or rescinded by the governor, or until terminated by operation of law.

IN WITNESS WHEREOF, I have 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 30th day of December, 1996.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9701#021

Emergency Rules

DECLARATION OF EMERGENCY

**Department of Economic Development
Racing Commission**

Deposit for Expenses (LAC 35:I.8305)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective Thursday, December 19, 1996, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever occurs first.

C. Current population figures are used to determine the eligibility for funding of municipalities based on appropriations by the legislature. The funding is outlined in the ORD application guidelines for rural development grant funds.

D. Funds from this program cannot be used to pay for consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party, or for previously created debt.

E. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the criteria for funding.

F. Payment shall be made to the Local Governmental Agency (LGA) which is the project sponsor upon production of invoices and approval of the LGA's request for payment by ORD, according to the agreed terms of a signed and executed letter of commitment.

G. Project funds shall be spent only for the project as described in the grant application designated by the same number as the project award. Changes in the project description and extension of the agreed time for completion must be made in writing, subject to the approval of ORD.

H. Use of grant funds for any project other than that described in the grant application or amended application, or in violation of any terms of the application or letter of commitment/agreement, will be grounds for ORD to terminate the agreement and revoke the funds for the project.

I. All invoices related to the project are the responsibility of the LGA/project sponsor, and must be submitted to and approved by ORD before funds will be released to the LGA, which remains responsible for payment to its vendors in the project.

J. The LGA as project sponsor will agree to hold harmless the state of Louisiana, Office of the Governor, and Office of Rural Development as a term and condition of the letter of commitment/agreement.

K. ORD will de-obligate funds from any unexpended amount, whether by failure to start a project in the agreed upon time frame in the letter of commitment or by unexpended funds in an officially closed project, and from revoked grant awards.

L. Failure of the LGA/project sponsor to abide by any article of the Local Agency Assurances section of the grant application or of the letter of commitment/agreement, including state audit procedures, federal and state laws, state ethical rules and policy guidelines of the ORD, shall result in revocation of the grant award and the responsibility of the LGA/project sponsor to re-pay project funds released to it by ORD up to the full amount of the grant award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:311 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Rural Development, LR 23:

Larry Kinlaw
Executive Director

9701#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of Public Health

Sanitary Code—Childhood Immunizations for Day Care and School Entry (Chapter II)

As mandated by Act Number 998 of the 1995 Regular Session, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:953(B), under the authority of R.S. 40:5, the Department of Health and Hospitals, Office of Public Health hereby amends the Louisiana Sanitary Code, Chapter II.

This Emergency Rule is effective December 31, 1996 and remains in effect for 120 days.

Chapter II Control of Diseases

2:025 Appropriate immunizations for age for regulatory purposes shall be determined using the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service. Compliance will be based on the individual having received an appropriate number of immunizations for his/her age of the following types:

a. vaccines which contain tetanus and diphtheria toxoids, including DTP, DtaP, DT, Td or combinations which include these components;

b. Polio vaccine, including OPV, eIPV, IPV, or combinations which include these components;

c. vaccines which contain measles antigen, including MMR and combinations which include these components.

A two-month period will be allowed from the time the immunization is due until it is considered overdue. Medical, religious, and philosophic exemptions will be allowed for compliance with regulations concerning day care attendees and school enterers. Only medical and religious exemptions will be allowed for compliance with regulations concerning public assistance recipients. A copy of the current Office of Public Health immunization schedule can be obtained by writing to the Immunization Program, Office of Public Health, 4747 Earhart Boulevard, Suite 107, New Orleans, Louisiana 70125 or by calling (504) 483-1905 or toll free 1-800-251-2229.

2:025-1 Any child 18 years or under admitted to any day care center or residential facility shall have verification that the child has had all appropriate immunizations for age of the child according to the Office of Public Health schedule unless presenting a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from parents. The operator of any day care center shall report to the State Health Officer through the health unit of the parish or municipality where such day care center is located any case or suspected case of reportable disease. Health records, including immunization records, shall be made available during normal operating hours for inspection when requested by the State Health Officer. When an outbreak of a communicable disease occurs in a day care

center or residential facility, the operator of said day care center or residential facility shall comply with outbreak control procedures as directed by the State Health Officer.

2:025-2 On or before October 1 of each year, the operator of each day care center, nursery school, or residential facility enrolling or housing any child 18 years or under, shall submit a preliminary immunization status report of all children enrolled or housed as of that date. Forms for submittal shall be provided by the State Health Officer, and shall include identifying information for each child, and for each dose of vaccine received by the child since birth. Any child exempt from the immunization requirement shall also be identified, and the reason for exemption given on the form. After review of the form(s) by the State Health Officer or his or her designee, the day care center, nursery school, or residential facility operator will notify, on or before December 31 of each year, the parent or guardian of all enrolled or housed children who are not compliant with the immunization requirement of Sections 2:025 and 2:025-1 of this Code.

Bobby P. Jindal
Secretary

9701#001

DECLARATION OF EMERGENCY

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

**Direct Reimbursement to Recipients
During Period of Retroactive Eligibility**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Emergency Rule in the Medicaid Program as authorized by R.S. 46:153. This Emergency Rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

The Bureau of Health Services Financing currently provides direct reimbursement to enrolled providers of medical care, supplies and services delivered to persons eligible for Medicaid coverage. In order to receive Medicaid reimbursement for services rendered prior to the individual's certification for Medicaid, the provider must refund the recipient's payment, if any, for services and submit a claim for reimbursement to the fiscal intermediary in accordance with program regulations.

On May 8, 1995, the United States District Court for the Eastern District of Louisiana issued a judgment requiring the Department of Health and Hospitals to provide repayment in some form to recipients for medical care, supplies and services rendered during the retroactive coverage period established by 42 U.S.C. Section 1396a(a)(34) when such care, supplies or services have been paid in whole or part by

the recipient prior to certification. Therefore, the Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following Emergency Rule to comply with the judgment of the U.S. District Court effective June 6, 1996. This Emergency Rule provides for the direct reimbursement to persons found eligible for Medicaid benefits beginning February 15, 1995 for their payments to enrolled providers for services covered by the Medicaid Program. The following Emergency Rule continues the regulations in effect until adoption of the Rule and thereby to avoid the potential penalties, if any, or sanctions from the federal government.

Previous Emergency Rules were published in the *Louisiana Register*, Volume 22, Numbers 6 and 10.

Emergency Rule

Effective February 1, 1997 and thereafter, the Department of Health and Hospitals, Bureau of Health Services Financing adopts the following provisions to establish and govern direct reimbursement to a Medicaid eligible for his payment(s) made to any Medicaid-enrolled provider for medical care, services and supplies delivered during the recipient's period of retroactive eligibility and prior to receipt of the first medical eligibility card (MEC). Reimbursement shall be made only in accordance with all applicable federal and state regulations.

General Provisions

A. Reimbursement shall be made only for payments made to providers of medical care, services and supplies who were enrolled in the Medicaid Program at the time of service.

B. Reimbursement shall be made only for medical care, services and supplies covered by the Medicaid Program at the time of service.

C. Reimbursement shall be made only for medical care, services and supplies delivered during a retroactive eligibility period and prior to receipt of the recipient's first MEC.

D. Reimbursement shall be made only up to the maximum allowable Medicaid rate for the particular service(s) rendered.

E. Reimbursement shall be provided only under the following conditions.

1) Reimbursement shall be made only for eligibles certified for Medicaid coverage beginning February 15, 1995. Reimbursement shall be made for all bills, from any Medicaid-enrolled provider, for medical care, services and supplies covered by the Medicaid Program and rendered during the three months prior to application, as well as bills paid during the period from application to certification.

F. The Medicaid recipient must submit the following documentation to the bureau in order to receive reimbursement:

1) Proof of payment shall be a receipt or similar evidence of payment.

G. Reimbursement for services rendered during any retroactive eligibility period and prior to receipt of the initial MEC for Medicaid eligibles certified beginning February 15, 1995 through the effective date of this Rule shall be made in accordance with the following requirements:

1) Proof in accordance with Subsection F above, along with the recipient's Medicaid identification number must be presented to the local Bureau of Health Services Financing (Medicaid) office by December 30, 1996.

Qualified Aliens are eligible for regular Medicaid if they also meet additional criteria described above for mandatory Medicaid eligibility, or are eligible only for emergency services if they do not. An alien must meet all eligibility requirements for Medicaid other than citizenship to receive either regular Medicaid eligibility or emergency services. Qualified aliens are aliens who are:

1. lawful permanent residents;
 2. refugees;
 3. asylees;
 4. aliens who have had deportation withheld under Section 243(h) of the Immigration and Nationality Act (INA);
 5. aliens granted parole for at least one year by the INS;
- or
6. aliens granted conditional entry under immigration law in effect before April 1, 1980.

Emergency Medical Services are not related to either an organ transplant procedure or routine prenatal or post-partum care. The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

It is estimated that total savings resulting from implementation of this Emergency Rule is \$2,082,702 for SFY 1996-97.

Emergency Rule

Louisiana Medicaid adopts the provisions of Section 401 of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) regarding Medicaid eligibility for noncitizens. The following optional groups of qualified aliens are not eligible for regular Medicaid services under this Emergency Rule, but may be eligible for emergency services if they meet all eligibility criteria other than citizenship:

1. Aliens receiving Medicaid benefits on August 22, 1996, but not receiving SSI, are not eligible January 1, 1997 and afterward.
2. Aliens who were in the United States prior to August 22, 1996, who are included in the definition of qualified alien, but not included in the mandatory group of qualified aliens living in the United States before August 22, 1996 are not eligible for Medicaid.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule.

Bobby P. Jindal
Secretary

9701#006

DECLARATION OF EMERGENCY

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

Home Community Based Service Waiver Program
Mentally Retarded/Developmentally Disabled Waiver

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., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers four Home and Community Based Services Waiver Programs. Participation in each home and community based services waiver is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. The bureau adopted an Emergency Rule effective July 13, 1995 not to fill vacated slots in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Program except in certain specified circumstances (*Louisiana Register*, Volume 21, Number 7). Another Emergency Rule was adopted effective October 10, 1995 that allowed vacated slots in the MR/DD waiver to be filled in accordance with the methodology utilized prior to July 13, 1995 except that the number of slots to be filled could not exceed the total number of filled slots as of September 1, 1995 (*Louisiana Register*, Volume 21, Number 10). The bureau has now determined that it is necessary to adopt regulations governing the MR/DD Waiver Program to:

- 1) establish methodology for the assignment of slots vacated by discharged waiver participants and the 342 previously unoccupied slots; and
- 2) clarify policies on admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care. The eligibility criteria for the MR/DD Waiver Program shall remain unchanged. The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. A previous Emergency Rule was published in the *Louisiana Register* (Volume 22, Number 10) which continued the above provisions in force.

This action is necessary to preserve the health and welfare of individuals on the MR/DD waiver waiting list by assuring them an opportunity to make application for Medicaid eligibility and waiver services.

Emergency Rule

Effective January 31, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the MR/DD Waiver Program to:

- 1) establish methodology for the assignment of slots; and
- 2) clarify policies on admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and previously unoccupied waiver slots; admission and discharge criteria; mandatory reporting requirements and reimbursement for services provided prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

Programmatic Allocation of Waiver Slots

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. The Office for Citizens with Developmental Disabilities (OCDD) shall notify the next individual on the waiting list in writing that a slot is available and that they are next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the regional Health Standards Office. The individual then chooses a case manager who will assist in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the regional OCDD office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified. Utilizing these procedures, waiver slots shall be allocated to the targeted groups cited below as follows:

1. When a currently certified participant is discharged from the waiver, the vacated slot shall be available for allocation to the next person on the MR/DD Waiver waiting list who successfully completes the financial and medical certification eligibility process and is certified for the waiver.
2. A minimum of 40 slots shall continue to be available for allocation to foster children in the custody of the Department of Social Services, Office of Community Services (OCS) who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS shall be responsible for maintaining the waiting list for these slots; sending notification of an available slot to the next individual on the list; and assisting the individual to gather the documents needed in the eligibility determination process.
3. A maximum of 80 slots shall be available for allocation to the next 80 persons on the MR/DD Waiver waiting list who successfully complete the financial and medical certification eligibility process and are certified for the waiver.

4. A maximum of 160 slots shall be available for allocation to current residents of the Pinecrest Development Center who successfully complete the financial and medical certification eligibility process and are certified for the waiver. These residents will be identified by OCDD through their person-centered planning process and shall be individuals who are high functioning and have the self-determination capacity to live in a less restrictive environment.

5. A maximum of 78 slots shall be available for allocation to current residents of public community homes who successfully complete the financial and medical certification eligibility process and are certified for the waiver. These residents shall be individuals who are high functioning and have the self-determination capacity to live in a less restrictive environment. In addition, the public community home must reallocate its funds to the provision of waiver services.

6. Waiver slots shall no longer be reserved for use as emergency slots nor shall emergency slots be assigned.

Waiver Admission Criteria

Admission to the MR/DD Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
2. initial and continued eligibility for an ICF-MR level of care as determined by the regional Health Standards Office in consultation with the regional OCDD Office;
3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the regional Health Standards Office.

Waiver Discharge Criteria

Participants shall be discharged from the MR/DD Waiver Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish BHSF Office;
2. loss of eligibility for an ICF-MR level of care as determined by the regional Health Standards Office in consultation with the regional OCDD Office;
3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. change of residence to another state with the intent to become a resident of that state;
5. admission to an ICF-MR facility or nursing facility;
6. the health and welfare of the waiver participant cannot be assured in the community through the provision of reasonable amounts of waiver services as determined by the regional Health Standards Office, i.e., the waiver participant presents a danger to himself or others;
7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or
8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14

or more consecutive days. This does not include interruptions in services because of hospitalization.

Mandatory Reporting Requirements

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility, including but not limited to those changes cited in the discharge criteria, to either the parish BHSF Office or the regional Health Standards Office within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Regional Health Standards Office within five working days of the incident.

Reimbursement of Waiver Services

Reimbursement shall not be made for waiver services provided prior to the date of approval for the plan of care.

Bobby P. Jindal
Secretary

9701#076

DECLARATION OF EMERGENCY

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

Hospital Prospective Reimbursement
Methodology for Long-Term Acute Hospitals

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 and as directed by the 1996-97 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law". This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides reimbursement for certain specialty hospital services including long-term acute hospitals under specialty hospital peer groups as published in the *Louisiana Register*, Volume 20, Number 6, of June 20, 1994. Effective October 13, 1996 (*Louisiana Register*, Volume 22, Number 9), an Emergency Rule was adopted establishing provisions to reimburse long-term acute hospitals for psychiatric treatment at the prospective per diem rate established for psychiatric treatment

facilities. Therefore, the bureau is re-establishing the previous Emergency Rule to continue these regulations in force.

Emergency Rule

Effective for dates of services on or after February 10, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing will prospectively reimburse long-term acute hospitals for psychiatric treatment at the prospective per diem rate established for psychiatric treatment facilities.

Bobby P. Jindal
Secretary

9701#071

DECLARATION OF EMERGENCY

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

Hospital Prospective Reimbursement
Methodology for Rehabilitation Hospitals

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 and as directed by the 1996-97 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides reimbursement for certain specialty hospital services including rehabilitation hospitals under specialty hospital peer groups as established by the Hospital Prospective Reimbursement Methodology Rule adopted by reference in the *Louisiana Register*, Volume 20, Number 6, page 668. The bureau has now determined it is necessary to prospectively reimburse rehabilitation hospitals within the peer groups established for nonteaching hospitals in Hospital Prospective Reimbursement Rule. Nonteaching hospitals are grouped according to the number of staffed beds. Rehabilitation hospitals shall be placed in the appropriate nonteaching hospital peer groups according to the number of licensed rehabilitation beds as of March 31 of the year preceding the fiscal year for which the rates will be in effect. The bureau will continue to apply the criteria contained in the pre-admission and certification and length of stay criteria for Inpatient Hospital Services Rule (*Louisiana*

Register, Volume 20, Number 6, page 668-669) according to the treatment needs of the individual patient. A previous Emergency Rule was published on this matter continuing the above provisions in force (*Louisiana Register*, Volume 22, No. 10). This action is necessary to avoid a budget deficit in the medical assistance programs.

Emergency Rule

Effective for dates of services on or after January 29, 1997 the Department of Health and Hospitals, Bureau of Health Services Financing amends the Hospital Prospective Reimbursement Methodology Rule (*Louisiana Register*, Volume 20, Number 6, page 668) by prospectively reimbursing rehabilitation hospitals within the peer groups established for nonteaching hospital established in the Hospital Prospective Reimbursement Methodology Rule. The appropriate peer group shall be determined according to the number of licensed rehabilitation beds as of March 31 of the year preceding the state fiscal year for which the rates will be in effect. The bureau will continue to apply the criteria contained in the pre-admission and certification and length of stay criteria for Inpatient Hospital Services Rule (*Louisiana Register*, Volume 20, Number 6, page 668-669) according to the treatment needs of the individual patient.

Bobby P. Jindal
Secretary

9701#070

DECLARATION OF EMERGENCY

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

Low Income Families Eligibility Group

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first. Adoption of this Rule on an emergency basis is necessary to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations related to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) eliminated the Aid to Families with Dependent Children (AFDC) program which provided

financial assistance to families meeting certain requirements, and replaced it with a block grant program for Temporary Assistance for Needy Families (TANF) effective July 1, 1997, or such earlier date as the Secretary of DHHS receives the TANF State plan. Receipt of TANF does not entitle the recipient to Medicaid. TANF provisions were adopted in Louisiana by Department of Social Services effective October 1, 1996.

Also, P.L. 104-193 establishes criteria for a new category of Medicaid recipients. According to that regulation, low income families are defined as follows:

1. the family includes a dependent child who is living with a caretaker relative;
2. the family income does not exceed the 185 percent gross income test limit; and
3. the family's countable income and resources do not exceed the applicable AFDC income and resource standards (including any special needs) established in the Medicaid State Plan. This description is now found in Section 1931 of the Social Security Act. The state has elected to maintain income and resource criteria in effect on July 16, 1996 as the basis for determining eligibility for this new classification of Medicaid recipients.

Among those who will meet the income and resource criteria for low-income families are persons who are eligible for TANF financial assistance because TANF criteria are currently more restrictive than low-income family criteria. Other families who meet the criteria for low-income family but are not TANF-eligible will be eligible for Medicaid under this definition. This Emergency Rule provides notification that the population described in Section 1931 of the Social Security Act constitutes an eligibility group covered by Medicaid and establishes the income and resource limitations applicable. It is estimated that there will be slight savings because of differences in the eligibility criteria. However, the precise number of individuals affected by this change is currently unknown.

Emergency Rule

Medicaid establishes a new Medicaid eligibility group for low income families with children who meet eligibility requirements described in Section 1931 of the Social Security Act. Eligibility criteria under the AFDC State Plan in effect on July 16, 1996 will be used to determine eligibility. Additionally, recipients of TANF are deemed to meet these criteria so long as TANF requirements are more restrictive than eligibility requirements under the AFDC State Plan in effect on July 16, 1996.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule.

Bobby P. Jindal
Secretary

9701#026

DECLARATION OF EMERGENCY

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

State-Funded Medically Needy Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:953(B).

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously administered the Medically Needy Program under the Title XIX State Plan pursuant to the Social Security Act. The department determined that there were insufficient federal funds available under the federal appropriation for implementation of Title XIX of the Social Security Act for Louisiana to continue the administration of the Medically Needy Program and, as a result, terminated the Program effective June 30, 1996 (*Louisiana Register*, Volume 22, Number 6). Executive Order 96-17 authorized the establishment of a State-Funded Medically Needy Program; therefore the Department established the State-Funded Medically Needy Program in compliance with this Order by adopting two Emergency Rules effective July 1, 1996 (*Louisiana Register*, Volume 22, Number 7) and October 8, 1996 (*Louisiana Register* Volume 22, Number 10). The State-Funded Medically Needy Program is limited to individuals who were certified for the Title XIX Medically Needy Program or have pending application under the Title XIX Medicaid Program and are subsequently found eligible for Title XIX Medically Needy for June 1996. The State-Funded Medically Needy Program incorporates the same recipient eligibility criteria and scope of services which previously existed under the Medically Needy Program of the Title XIX State Plan except as otherwise provided herein. The department has now determined based on legislative recommendation that it is necessary to expand the State-Funded Medically Needy Program to:

1) provide coverage for those persons who are not continuously eligible for benefits under the State-Funded Medically Needy Program in order to assure continuity of their medical care; and

2) establish an eligibility determination process for applicants who meet specified medical or income conditions and to provide for their certification based on the Title XIX Medically Needy Program.

Adoption of the following Emergency Rule is essential to protect eligible persons from imminent peril to their health and welfare should they have insufficient resources for obtaining necessary medical services.

Emergency Rule

Effective February 5, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing continues and re-establishes the State-Funded Medically Needy Program which shall be governed by the following provisions.

I. General Provisions

The State-Funded Medically Needy Program shall be administered in accordance with requirements of Title XIX of the Social Security Act for the Medically Needy Program under the Act except as described below.

A. Eligibility

1. Coverage under this program shall be limited to individuals who are certified for the Title XIX Medically Needy Program or have a pending application for participation under the Title XIX Medicaid Program and are subsequently found eligible for Title XIX Medically Needy Program for June 30, 1996. Recipients who were found eligible and certified as of June 30, 1996 may reapply through June 30, 1997. They must meet all the federal eligibility criteria of the Title XIX Medically Needy Program in order to maintain or to re-establish their eligibility status under the State-Funded Medically Needy Program.

2. Recipients who are determined to be potentially eligible under any Title XIX eligibility category or any other benefit must take all appropriate steps to pursue that eligibility including applying for coverage and providing the necessary information to determine eligibility for the Title XIX category or other benefit.

3. Eligibility for the State-Funded Medically Needy Program will be terminated under any one of the following circumstances:

a) the recipient is determined eligible under a Title XIX category or other benefit;

b) the recipient refuses to apply for coverage or cooperate in the eligibility determination process;

c) the recipient no longer meets the required criteria of health condition or age; or

d) the recipient no longer meets the eligibility requirements of the Title XIX Medically Needy Program terminated on June 30 1996.

4. The State-Funded Medically Needy Program shall provide for an eligibility determination process for the following persons:

a. persons in a nursing facility whose countable income exceeds 300 percent of the Supplemental Security Income (SSI) federal benefit rate;

b. children under the age of one who are receiving critical care services (neonates);

c. children through age 17 with a diagnosis of cancer;

d. persons with renal (kidney) failure who require hemodialysis treatment;

Applicants listed above who meet the eligibility criteria of the Title XIX Medically Needy Program shall be determined eligible no earlier than October 8, 1996. There shall be no retroactive eligibility period for persons determined eligible under the items a. - d. listed above.

B. Services. The scope of services and reimbursement for the covered services shall be provided in accordance with

the federal and state regulations that previously governed the Title XIX Medically Needy Program administered by the Bureau of Health Services Financing.

C. Appeal Rights. Applicants who are denied eligibility or recipients who lose eligibility under the State-Funded Medically Needy Program shall be afforded the opportunity to appeal the agency's decision in accordance with the Administrative Procedure Act. There shall be no continuation of benefits pending appeal.

Bobby P. Jindal
Secretary

9701#074

DECLARATION OF EMERGENCY

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

**Temporary Assistance for Needy Families (TANF)
Work Requirements**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first. Adoption of this Emergency Rule on an emergency basis is necessary to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations related to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) eliminated the Aid to Families with Dependent Children (AFDC) program which provided financial assistance to families meeting certain requirements, and replaced it with a block grant program for Temporary Assistance for Needy Families (TANF) effective July 1, 1997, or such earlier date as the Secretary of DHHS receives the TANF State Plan. TANF provisions were adopted in Louisiana by Department of Social Services effective October 1, 1996. This Emergency Rule provides notification that Medicaid coverage will not be available to persons who fail to meet the work requirement associated with TANF, with the following exceptions: a pregnant woman; infant; or child under one of the poverty level related groups; or a minor child who is not the head of the household under TANF. It is estimated that total savings resulting from implementation of this Emergency Rule for SFY 1996-1997 will be approximately \$328,756.

Emergency Rule

Effective concurrently with implementation of the Personal Responsibility and Work Opportunity Act of 1996 provisions

for financial assistance by Department of Social Services, eligibility for Medicaid as a TANF recipient is terminated for failure to meet work requirements as described in Section 1931(b)(3) of the Social Security Act.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule.

Bobby P. Jindal
Secretary

9701#027

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Gaming Control Board**

**Board Hearings (LAC 42); Repeal of Video
Draw Poker Hearings and Sanction Procedures
(LAC 42:XI.2423); Repeal of Gaming Enforcement
Division Procedure for Riverboat License and Permit
Hearings (LAC 42:XIII.2167)**

In accordance with the provisions of R.S. 49:953(B), the Gaming Control Board hereby determines that adoption of Emergency Rules relative to standards of conduct and ethical rules, administrative actions initiated by the State Police, administrative hearings, definitions of persons furnishing significant goods and services, key employees, licensees and permittees is necessary and that for the following reasons failure to adopt Rules on an emergency basis will result in imminent peril to the public health, safety and welfare.

Act 7 of the First Extraordinary Session of 1996, effective May 1, 1996, created the Gaming Control Board with all regulatory authority, control and jurisdiction, including investigation, licensing and enforcement, and all power incidental or necessary to such regulatory authority, control and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the Riverboat Economic Development and Gaming Control Act, the Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law.

Further, Act 7 provides that all powers, duties, functions and responsibilities of the Riverboat Gaming Commission, Video Gaming Division and Riverboat Gaming Enforcement Division of State Police, and the Economic Development and Gaming Corporation are transferred to and shall be performed and exercised by the Gaming Control Board, and that the powers, duties, functions and responsibilities and any pending or unfinished business of those regulatory entities becomes the business of and shall be completed by the Gaming Control Board with the same power and authority as the entity from which the functions are transferred.

The Legislature has determined that development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of

legislative power to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements, and that it is the public policy of the state to this end that all persons, locations, practices, associations and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be strictly regulated.

Numerous licensing actions and enforcement actions are required to be initiated immediately by board and it is necessary that Rules be adopted providing for administrative hearings to ensure due process is afforded applicants, licensees and permittees.

Rules relative to hearings promulgated by predecessor gaming regulatory entities must be repealed to eliminate redundant language and potential conflicts.

Act 7 provides that hearings be conducted in conformity with Rules adopted by the board, and that such Rules provide for certain matters specified in the act.

For the foregoing reasons, the Gaming Control Board has determined adoption of Emergency Rules is necessary and hereby adopts this Emergency Rule, Rule 108 and repeals LAC 42:XIII.2167 and LAC 42:XI.2423 effective January 4, 1996, in accordance with R.S. 49:953(B), to be effective until January 20, 1997 until the final Rule is promulgated.

Title 42

LOUISIANA GAMING

§108. Board Hearings

A. Any person against whom an administrative action is proposed, and any person against whom an enforcement action is taken, may request a hearing by filing a written request with the board. The request shall be filed within 10 days of the date of receipt of the certified mailing or personal service of the notice of proposed action or within 10 days of the date the enforcement action is taken. All hearings requested and any matter the board determines should be heard in a public hearing shall be conducted in accordance with this Section.

B.1. A hearing will be conducted in accordance with procedural and evidentiary rules contained in the Administrative Procedure Act, R.S. 49:950 et seq., and the Gaming Control Law, 1996 Louisiana Acts, First Extraordinary Session, Number 7, enacting R.S. 27:1 et seq., and Rules promulgated in accordance therewith.

2. No discovery request shall be made within 20 days of the date scheduled for the hearing.

3. Hearings may be conducted by hearing officers employed by or under contract with the board.

C. 1. Hearing requests shall be promptly docketed and scheduled for hearing.

2. The requesting party shall be notified of the time, date and location of the hearing by certified mail or personal service.

D.1. Testimony taken at a hearing shall be under oath.

2. Depositions may be used at hearings as provided in the Administrative Procedure Act, R.S. 49:950 et seq.

E. A report shall be prepared in accordance with the provisions of R.S. 27:25 and submitted to the board within 60

days of the notice of any enforcement action involving suspending or conditioning a license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Gaming Control Board, LR 23:

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2423. Hearings and Sanction Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 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 21:582 (June 1995), repealed by the Gaming Control Board, LR 23:

Part XIII. Riverboat Gaming

Subpart 2. State Police Riverboat Gaming

Enforcement Division

Chapter 21. Licenses and Permits

§2167. Procedure for Hearings by the Division

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:1176 (September 1993), amended LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

Hillary J. Crain
Chairman

9701#002

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

Permit Fees (LAC 55:IX.107 and 113)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission hereby rescinds, effective December 30, 1996, its Emergency Rule regarding permit fees, published on page 1205 of the December, 1996 *Louisiana Register*.

G. L. "Mike" Manuel, Jr.
Director

9701#062

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamps—Disqualification
of Certain Recipients/Applicants

The Department of Social Services, Office of Family Support has exercised the emergency provision of the

Administrative Procedure Act, R.S. 49:953(B) to adopt the following Rule in the Food Stamp Program, effective January 1, 1997. This Rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a change in Food Stamp policy will permanently disqualify an individual convicted of a felony involving the use of a controlled substance. This Emergency Rule is necessary to effect this mandated regulation and to avoid sanctions or penalties which could be imposed by delaying implementation.

Section 1988.A was proposed by Notice of Intent published October 20, 1996. Subsection B represents new policy.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter J. Determining Household Eligibility and Benefit Levels

§1988. Eligibility Disqualification of Certain Recipients

A. Fleeing felons and probation/parole violators are ineligible for benefits.

B. An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance [as defined in Section 102(6) of the Controlled Substances Act 21 U.S.C. 802 (6)] shall be permanently disqualified from receiving food stamps. This shall not apply to convictions occurring on or before August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

Madlyn Bagneris
Secretary

9701#005

DECLARATION OF EMERGENCY

**Department of Treasury
Board of Trustees of the State Employees Group
Benefits Program**

Plan Document—Infertility Exclusion

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate Rules with respect thereto, the Board of Trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to adopt amendments to the Plan Document of Benefits.

The board finds that it is necessary to amend the Plan Document to clarify provisions related to the exclusion of benefits for treatment of infertility. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Subsection S of Article 3, Section VIII, of the Plan Document to read as follows:

VIII. Exceptions and Exclusions for All Medical Benefits

No benefits are provided under this contract for:

* * *

S. Artificial organ implants, penile implants, transplantation of other than Homo sapiens (human) organs, and any expense for treatment, subsequent to initial diagnosis, of infertility and complications thereof, including, but not limited to, services, drugs, and procedures or devices to achieve fertility; in-vitro fertilization, low tubal transfer, artificial insemination, intracytoplasmic sperm injection, embryo transfer, gamete transfer, zygote transfer, surrogate parenting, donor semen, donor eggs, and reversal of sterilization procedures;

* * *

This Emergency Rule shall become effective on January 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

James R. Plaisance
Executive Director

9701#009

DECLARATION OF EMERGENCY

**Department of Treasury
Board of Trustees of the State Employees Group
Benefits Program**

**Prescription Drugs and Medicines
Exclusions and Limitations**

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate Rules with respect thereto, the Board of Trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to adopt amendments to the Plan Document of Benefits.

The board finds that it is necessary to amend the Plan Document to restrict benefits for amphetamines to diagnoses of Attention Deficit Disorder or Narcolepsy, and to exclude benefits for smoking deterrents. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which

are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section VIII, Subsection W to read as follows:

VIII. Exceptions and Exclusions for All Medical Benefits

No benefits are provided under this contract for:

* * *

W. The following drugs, medicines, and related services:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for covered persons over age 26;
5. amphetamines dispensed for diagnoses other than

Attention Deficit Disorder or Narcolepsy;

6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;

7. nutritional or parenteral therapy;
8. vitamins and minerals; and
9. drugs available over the counter.

* * *

This Emergency Rule shall become effective on January 1, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

James R. Plaisance
Executive Director

9701#008

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Oyster Season Adjustment—1996-1997

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and under the authority of R.S. 56:6(25)(a), R.S. 56:433 and R.S. 56:435.1, notice is hereby given that the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

1. that the Sister Lake Oyster Seed Reservation shall close effective February 1, 1997 at 5 p.m. and remain closed for the remainder of the 96/97 public oyster season;

2. that an area on the Breton Sound Public Oyster Seed Ground inside a line running from the marker at Bayou Terre Boeufs, south to Snake Island, then to Lonesome Island, to Bell Island, south to the land mass on the south side of Bay Crabe, including the public grounds in Bay Gardene, Bay Crabe shall close on February 1, 1997 at 5 p.m. and remain closed for the remainder of the season;

3. that the open season on all of the remaining portions of the public grounds with the exception of Calcasieu Lake public tonging reef shall be extended to April 30, 1997, at 5 p.m.

Daniel J. Babin
Chairman

9701#053

Rules

RULE

**Capital Area Ground Water Conservation Commission
Capital Area District**

Water Well Permits

Under authority of R.S. 38:3071 et seq. (Act 1974, Number 678, as amended by Act 1976, Number 231, and Act 1980, Number 738), the Capital Area Ground Water Conservation Commission adopts procedures to require a water well drilling permit. Section 3076 of the Act gives the Board of Commissioners authority to require permits for the drilling or construction of wells having a capacity in excess of 50,000 gallons per day in the Capital Area District including the Parishes of East Baton Rouge, West Baton Rouge, East Feliciana, West Feliciana, and Pointe Coupee. Exemptions will be granted to small capacity wells designed to pump less than 50,000 gallons per day; wells screened at depths less than 400 feet; wells screened in the Mississippi River alluvial aquifer; and wells drilled for agricultural purposes.

The regulation assesses no fee for a well permit. The agency will absorb any expenses incurred during the review, approval, and oversight of the well drilling activities. The purpose is to ensure that the drilling and construction of the water well will not adversely affect the ground water in the Capital Area Ground Water Conservation District.

Section 3076. Powers of the Board

A. The board shall have authority to do all things necessary to prevent waste of groundwater resources, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the district. The board shall have authority to do, as required, the following:

To require permits for the drilling or construction of all wells drilled after the effective date of this part having a capacity in excess of 50,000 gallons per day.

Rule

Water Well Permits and Plans

Authority and Purpose

The Capital Area Ground Water Conservation Commission (hereafter referred to as the commission) has the authority to

require permits and plans for the drilling or construction of water wells having a capacity in excess of 50,000 gallons per day, in accordance with R.S. 38:3076(A)(2) and 3076(E). The purpose of this Rule is to define the procedures to be used in applying for a permit.

Exempt Wells

Wells in the following categories are exempt from the requirement for permits:

1. wells completed in the Mississippi River alluvial aquifer;
2. wells completed at depths less than 400 feet;
3. wells drilled for agricultural purposes; and
4. wells not capable of producing 50,000 gallons per day.

Large-capacity wells in categories 1 and 3, above, may be requested to supply plans and (or) information that the board may reasonably require to accomplish its water management purposes.

Applicability of Requirement for Permits and Plans

Permits are required for all nonexempt wells drilled in the parishes of East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, West Feliciana, and any other parishes that may be admitted to the Capital Area Ground Water Conservation District. The permit application for the proposed well shall be accompanied by a set of plans to include at a minimum: location of proposed well to the nearest second of latitude and longitude; location of existing water wells within 1000 feet; proposed depth; casing and screen sizes and approximate depths; proposed well yield and average daily pumpage.

When a Permit is Required

At least 30 calendar days before beginning drilling operations, the well owner (or his agent) who plans to drill a nonexempt well shall submit a permit application to the Capital Area Ground Water Conservation Commission for review and approval. No fee will be required. Permit applications can be obtained from and completed forms should be submitted to the Capital Area Ground Water Conservation Commission at 3535 South Sherwood Forest Blvd., Suite 129, Baton Rouge, LA 70816-2255, telephone (504) 293-7370.

Failure to Comply

Violation of this Rule may subject the owner or user to litigation. In any such suit, the board may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions as the facts warrant, as provided in R.S. 30:3077(C).

Revocation of Previous Rules

Upon the effective date of these Rules, Section 5.0.0.0, Rules and Regulations Requiring the Submission of Plans for New Water Wells in the Capital Area Ground Water Conservation District becomes null and void.

Don C. Dial
Director

9701#033

RULE

**Department of Culture, Recreation and Tourism
Office of the Secretary**

Byways (LAC 25:XI.101)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Culture, Recreation and Tourism adopts a Rule entitled "Segmentation of Louisiana Byways" in accordance with R.S. 56:1948.7.B.

Pursuant to R.S. 56:1948.7, the secretary of the Department of Culture, Recreation and Tourism is authorized to promulgate Rules and Regulations that set forth the procedure and criteria designated for the Louisiana byways system. This Rule sets forth such a procedure in accordance with the criteria specified in R.S. 56:1948 et seq.

Title 25

CULTURE, RECREATION AND TOURISM

Part XI. Office of the Secretary

Chapter 1. Byways

101. Segmentation of Louisiana Byways

A. Byway designations do not have to be contiguous. A specific segment of an existing or proposed Louisiana byway may be excluded from the Louisiana byway system upon the recommendation to, and determination by, the secretary of the Department of Culture, Recreation and Tourism (secretary) as provided by R.S. 56:1948.7. The local byway authority, commission or entity (commission) of each respective byway may recommend to the secretary a de-designation or exclusion of a byway segment if said portion does not contain the intrinsic values of natural, recreational, archaeological, scenic, cultural or historical features as described in R.S. 56:1948.2 and 56:1948.3. The beginning and ending of any excluded segment will be at those points of visible change in the appearance of the adjacent features along the byway.

B. Local agencies, organizations or interested residents of the parish in which a segment of a proposed or existing byway area exists may petition, in writing, the local commission for a hearing on the exclusion of a segment of the local byway. This hearing shall be held within 30 days of the commission's receipt of the petition from the applicant, and reasonable notice of the time and date of the hearing shall be given to the applicant.

C. Within 10 days of the hearing, the commission shall submit to the secretary a resolution stating the commission's recommendation to either concur with or deny the applicant's request for exclusion. The recommendation of the commission is not a final decision on the issue of exclusion. All commission recommendations are forwarded to the secretary for his consideration and final decision. The commission's resolution must provide written reasons for its recommendation and shall include the following:

1. identification of the byway at issue and as designate in accordance with R.S. 56:1948 et seq;

RULE

**Department of Economic Development
Economic Development Corporation**

**Award Program—Infrastructure
Financing (LAC 19:VII.Chapter 91)**

The Department of Economic Development, Economic Development Corporation adopts the following Rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Economic Development Corporation Act, R.S. 51:2312.1.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 8. Award Program

Chapter 91. Infrastructure Financing Program

§9101. Purpose

The purpose of the program is to provide financial incentives in the form of linked deposit loans, loan guarantees and grants to industrial or business development projects that promote economic development and that require state assistance for basic infrastructure development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997).

§9103. Definitions

Applicant—the company or sponsoring entity requesting financial assistance from LEDC under this program.

Award—funding approved under this program for eligible applicants.

Basic Infrastructure—refers to the construction, improvement or expansion of roadways, parking facilities, bridges, railroad spurs, water works, sewerage, buildings, ports, waterways and publicly owned or regulated utilities.

Company—the for-profit business enterprise for which the project is being undertaken.

Eligible Lending Institution—any depository financial institution which is authorized to make commercial loans in this state, and which agrees to participate in the program as defined herein.

LEDC—the Louisiana Economic Development Corporation.

Linked Deposit—a certificate of deposit placed by the LEDC with an eligible lending institution at an interest rate discount (below existing investment rates), as determined and calculated by LEDC, provided the institution agrees to lend the value of such deposit to the company at an equivalent interest rate discount (below the existing borrowing rate applicable to the business at the time of the deposit of state funds in the lending institution).

Program—the Economic Development Award Program.

Project—an expansion, improvement and/or provision of basic infrastructure that promotes economic development, for

2. identification of the entity that proposed the byway in accordance with R.S. 56:1948.4;

3. identification of the beginning and ending of the segment recommended to be excluded, measured in relation to permanent public features of the byway such as intersecting highways, municipal and parish boundaries and public buildings;

4. a description of the zoning on the adjacent land, including the name of the zoning authority, if zoned; or if unzoned, a description of the commercial or industrial activities located on the adjacent land, including the name of any businesses and the boundaries of the regularly used areas of such businesses;

5. a report of the differences between the segment to be excluded and the criteria for Louisiana byway designation in R.S. 56:1948.2 and R.S. 56:1948.3.

D. Within 10 days of the receipt of the resolution from the local commission, the secretary shall send a copy of the commission's resolution and accompanying documents to the Department of Transportation and Development with a request for written concurrence or nonconcurrence within 30 days on the suitability of the recommended segment for exclusion.

E. Within 45 days after the receipt of the resolution and accompanying documents from the local byway commission, the secretary will determine whether to exclude the segment of the Louisiana byway. The secretary shall provide the applicant and the local commission written reasons for his decision, which shall consider the petition of the applicant, the recommendation and accompanying documents received from the local byway commission, the recommendation of the Department of Transportation and Development, the statutory guidelines for the selection and establishment of byways as found at R.S. 56:1948 et seq., and any other evidence brought before him.

F. Incorporated communities and municipalities that are located on scenic byways may follow the procedure described above to petition the local commission to exclude segments found within the municipality if such segment does not possess the natural, recreational, archaeological, scenic, cultural or historic features described in R.S. 56:1948 et seq.

G. An excluded segment may nevertheless be included in the byway system by the Department of Culture, Recreation and Tourism, the Department of Transportation and Development, the local commission and other local authorities in official signage and mapping of the byway and other purposes solely to preserve system continuity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1948.7.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the Secretary, LR 23:35 (January 1997).

Phillip J. Jones
Secretary

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which LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, expand its Louisiana operations, or increase its capital investment in Louisiana.

Sponsoring Entity—the public or quasi-public entity responsible for performing and/or monitoring implementation of the project and monitoring the company's compliance with the terms and conditions of the award agreement.

Subprogram—the different components of the Economic Development Award Program, including, but not limited to, Loan Awards, Grant Awards, Loan Guarantee Awards and Linked Deposit Loan Awards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997).

§9105. General Principles

The following principles will direct the administration of the Economic Development Award Program:

1. Awards are not to be construed as an entitlement for firms locating or located in Louisiana.
2. An award must reasonably be expected to be a deciding factor in a firm's location, investment and/or expansion decisions.
3. Awards must reasonably be demonstrated to be of key or strategic importance to the economic well-being of the state and local communities.
4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.
5. Award amounts will not exceed the anticipated economic benefits to the state.
6. Appropriate cost sharing between project beneficiaries will be required.
7. Applicants must reasonably demonstrate that other sources of funding have been exhausted and that the requested award will not replace other sources of funding.
8. Awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997).

§9107. Subprogram Descriptions

A. Loan Awards. This subprogram provides loans to public or quasi-public entities for projects that require the provision, improvement and/or expansion of publicly owned basic infrastructure.

B. Grant Awards. This subprogram provides grant funding to projects that require the provision, improvement and/or expansion of publicly owned basic infrastructure.

C. Loan Guarantee Awards. This subprogram provides loan guarantees to projects that require the provision, improvement and/or expansion of publicly or privately owned basic infrastructure.

D. Linked Deposit Loan Awards. This subprogram provides linked deposit loans to projects that require the provision, improvement and/or expansion of publicly or privately owned basic infrastructure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997).

§9109. Eligibility

A. An eligible applicant for the Grant Award Subprogram must be one of the following:

1. a public or quasi-public state entity; or
2. a political subdivision of the state.

B. An eligible applicant for the Loan Guarantee and Linked Deposit Loan Award Subprograms must be one of the following:

1. a company currently residing in the state or planning to locate in the state;
2. a public or quasi-public state entity; or
3. a political subdivision of the state.

C. An applicant or sponsoring entity shall be considered ineligible if it has pending or outstanding claims or liabilities relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997).

§9111. Criteria

A. Preference will be given to projects in industries identified by the state as target industries, and to projects located in areas of the state with high unemployment levels.

B. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community. Special purpose and single-use basic infrastructure solely for the company's use must pass a strong needs test.

C. Applicants must provide evidence satisfactory to LEDC that without an award, the project to be funded would not take place.

D. Companies must be in full compliance with all state and federal laws.

E. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana.

F. The minimum award request size shall be \$25,000.

G. Projects must create or retain at least 10 permanent jobs in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997).

§9113. Application Procedure

An application for assistance must contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates;
2. a description of the need for the project and the factors creating the need;
3. quantifiable objectives for the project and plans to measure the effectiveness of the project according to those objectives;
4. evidence of the number, types and compensation levels of jobs to be created or retained by the project;
5. a specific description of the project, including construction, operation and maintenance plans, and a timetable for the project's completion;
6. a detailed financial plan indicating the sources and uses of funds for the initial construction and annual operation and maintenance associated with the project;
7. a feasibility study supporting the project's viability, including an analysis of the market viability of both the company and the project, and historical and pro forma financial statements, prepared by a qualified professional acceptable to LEDC;
8. an economic cost-benefit analysis of the project, including an analysis of the net economic and fiscal benefits to the state and local communities, prepared by a qualified professional acceptable to LEDC. The economic analysis must include an assessment of the cost effectiveness of alternative approaches to achieve the project's objectives. The economic cost-benefit analysis will be required only for projects seeking more than \$250,000 of grant funding under this program;
9. evidence that, without the proposed award, the project to be funded would not take place;
10. certification that the application is in compliance with all public meeting laws and public bidding laws applicable to the applicant and/or the sponsoring entity;
11. a letter from the sponsoring entity acknowledging its role in the project;
12. any additional information LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997).

§9115. Submission and Review Procedure

A. Applicants must submit their application to LEDC. Submitted applications will be reviewed and evaluated by LEDC's staff and legal counsel. Input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. determine whether the project's financing needs are best met by the proposed award;
3. validate the information presented in the project feasibility study and economic analysis submitted with the application;

B.1. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, LEDC staff will then make a recommendation to the secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

- a. the secretary of the Department of Economic Development;
- b. LEDC's board of directors;
- c. the governor; and
- d. the Joint Legislative Committee on the Budget.

2. If any application is rejected by any of the preceding entities, the application shall not be considered by the next succeeding entity unless first reconsidered and approved by the entity which initially rejected the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997).

§9117. General Award Provisions

A. Award Agreement

1. Loan Awards. A loan agreement will be executed in accordance with the following terms and conditions:

- a. The agreement will specify the performance objectives expected of the company and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, timeliness for investment and job creation.
- b. The term of the loan shall not exceed 15 years.
- c. The sponsoring entity must contribute at least 10 percent of the value of the loan as equity to the project.
- d. The sponsoring entity will be responsible for repayment of the loan.

2. Grant Awards. A grant agreement will be executed between LEDC, the sponsoring entity and the company. The agreement will specify the performance objectives expected of the company and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, timeliness for investment and job creation. Under the agreement, the sponsoring entity will monitor the progress of the project and reimburse the company from invoices submitted by the company on a form approved by LEDC.

3. Loan Guarantee Awards. A guarantee agreement will be executed in accordance with the following terms and conditions:

- a. The agreement will specify the performance objectives expected of the company and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, timeliness for investment and job creation.
- b. The amount of the guarantee shall not exceed 75 percent of the amount of the loan.
- c. The term of the guarantee shall not exceed 10 years.

d. The guarantee will cover the unpaid principal amount owed only.

e. The lending institution will be responsible for proper administration and monitoring of the loan and proper liquidation of collateral in case of default.

f. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC board.

g. If liquidation through foreclosure occurs, the lending institution will sell the collateral and handle the legal proceedings.

h. There will be a reduction of the guarantee in proportion to the principal reduction of the amortized portion of the loan. If no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

i. Delinquency will be defined according to the lending institution's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to LEDC in writing and verbally in a time satisfactory to the lending institution and LEDC as stated in the guarantee agreement.

4. **Linked Deposit Loan Awards.** A deposit agreement will be executed between the eligible lending institution, LEDC, the company and the sponsoring entity, in accordance with the following terms and conditions:

a. The agreement will specify the performance objectives expected of the company and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, timeliness for investment and job creation.

b. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year.

c. LEDC may renew a certificate of deposit in one-year increments but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed 10 consecutive years.

d. The period of time for which a certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit shall be used to provide a loan at reduced interest rates.

e. Interest on the certificate of deposit shall be discounted below applicable market rates and shall be paid at the times determined by LEDC. The maximum interest rate discount allowed shall be 5 percent. LEDC shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding linked deposit loan outstanding.

f. Linked deposits shall be available only for term loans.

g. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the entity specified in the linked deposit loan package. The loan shall be at a fixed rate of interest which shall be discounted

below the current borrowing rate applicable to each eligible small business. The interest rate discount on the loan shall be equivalent to the interest rate discount on the certificate of deposit.

h. If it is discovered that the company or the sponsoring entity is not in compliance with the terms and conditions of the deposit agreement, the certificate of deposit may be matured and/or rewritten, if appropriate, without penalty to LEDC.

i. If the eligible lending institution fails to pledge securities to LEDC or if such securities shall be unsatisfactory to secure the certificate of deposit, LEDC, at its sole discretion, may declare the certificate of deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

j. Neither the state nor LEDC shall be liable to any lending institution in any manner for payment of the principal or interest on any loan made under the linked deposit loan subprogram. Any delay in payments or default on the part of a borrower shall not in any manner affect the deposit agreement between the eligible lending institution and LEDC in the event of a loan default, except as provided above.

B. Use of Funds

1. The program offers financial assistance in the form of linked deposit loans, loan guarantees and grants for eligible project costs specified in the award agreement.

2. Eligible project costs may include, but not be limited to, the following:

- a. engineering expenses;
- b. site acquisition;
- c. site preparation;
- d. construction expenses;
- e. building materials.

3. Project costs ineligible for award funds include:

- a. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- b. company moving expenses;
- c. expenses already approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;
- d. for loan and grant awards, improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;
- e. refinance of existing debt, public or private;
- f. tangible, movable property (e.g., furniture, fixtures and equipment).

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed:

- a. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or
- b. 75 percent for projects in parishes with unemployment rates above the statewide average; or
- c. 50 percent for all other projects.

RULE

**Department of Economic Development
Economic Development Corporation**

**Small Business Loan Program—Loan Policies
(LAC 19:VII.Chapter 1)**

The Department of Economic Development, Economic Development Corporation adopts the following Rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Economic Development Corporation Act, R.S. 51:2312.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 1. Small Business Loan Program

Chapter 1. Loan Policies

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), amended LR 23:40 (January 1997).

§103. Definitions

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans With Disabilities Act of 1990.

Economically Disadvantaged Business—a Louisiana business certified as economically disadvantaged by the Department of Economic Development's Division of Economically Disadvantaged Business Development.

Small Business Concern—is defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:456 (June 1989), amended LR 23:40 (January 1997).

§105. Application Process

A. Any applicant(s) applying for either a loan guaranty or a loan participation will be required first to contact a financial lending institution that is willing to entertain such a loan with the prospect of a guaranty or a participation.

2. The award amount shall not exceed 25 percent of the total funds available to the program during a fiscal year, or \$1,250,000, whichever is greater.

D. Conditions for Disbursement of Funds

1. Grant award funds will be available to the sponsoring entity on a reimbursement basis following submission of approved invoices from the sponsoring entity to LEDC.

2. Award funds will not be available for disbursement until:

a. LEDC receives signed commitments by the project's other financing sources (public and private);

b. LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. Companies and sponsoring entities shall be required to submit periodic financial statements and progress reports, as specified in the award agreement, describing the progress towards the performance objectives specified in the award agreement. For the duration of the project, companies and sponsoring entities shall also be required to submit annually an analysis of the economic impact achieved by a project. Sponsoring entities may subcontract its monitoring and analysis responsibilities to another public, quasi-public or not-for-profit entity acceptable to LEDC, in the event the sponsoring entity lacks the ability to perform such functions.

2. In the event a company or sponsoring entity fails to meet its performance objectives specified in its agreement with LEDC, LEDC shall retain the rights to withhold award funds, modify the terms and conditions of the award (e.g., loan interest rate discount, guarantee percentage), and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event a company or sponsoring entity knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S.14:133.

4. LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997).

Brett Crawford
Executive Director

9701#045

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form to LEDC.

2. Economically disadvantaged businesses applying for assistance under that provision will have to submit certification from the Division of Economically Disadvantaged Business Development of the Department of Economic Development along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's provision shall submit adequate information to support the disabled status.

4. The lending institution will submit to LEDC its complete analysis, proposed structure, and commitment letter. LEDC staff may do analysis, independent of the lending institution's analysis.

5. The lending institution will submit to LEDC the same pertinent data that it did to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, then make recommendations. The staff will work with the lending institution on terms of the loan and LEDC loan stipulations.

7. The LEDC's Board Screening Committee will review only the completed applications submitted by staff and will make recommendations to the board.

8. The applicant(s) or their designated representative, and the loan officer or a representative of the lending institution are encouraged to attend the Screening Committee meeting.

9. LEDC's Board of Directors has the final approval authority for applications.

10. The applicant will be notified within five working days by mail of the outcome of the application.

11. A LEDC commitment letter will be mailed to the bank within five working days of approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997).

§107. Eligibility

A. Small business concerns domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident of Louisiana.

B. Certified economically disadvantaged businesses.

C. Disabled person's business enterprises domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident of Louisiana.

D. Funding requests for all but the following may be considered:

1. restaurants, except for regional or national franchises;

2. bars;

3. any project established for the principal purpose of dispensing alcoholic beverages;

4. any establishment which has gaming or gambling as its principal business;

5. any establishment which has consumer or commercial financing as its business;

6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;

7. funding for the principal purpose of refinancing existing debt;

8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:447 (June 1989), amended LR 23:41 (January 1997).

§109. General Loan Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans:

1. The corporation shall not knowingly approve any loan guarantee, loan participation or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guaranty authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees, the interest rate is to be negotiated between the borrower and the bank but may not exceed 2.5 percent above New York prime as published in the Wall Street Journal at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding one percent.

3. The bank may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

C. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one.
2. Collateral position may be negotiated, but will be no less than a sole second position.
3. Collateral Value Determination
 - a. the appraiser must be certified by recognized organization in area of collateral;
 - b. the appraisal cannot be over 90 days old.
4. Acceptable collateral may include, but not be limited to, the following:
 - a. fixed assets—business real estate, buildings, fixtures;
 - b. equipment, machinery, inventory;
 - c. personal guarantees are open for negotiation; if used, there must be signed and dated personal financial statements;
 - d. accounts receivable with supporting aging schedule. Not to exceed 90 percent of receivable value (used with guarantee only).
5. Unacceptable collateral may include, but not be limited to the following:
 - a. stock in applicant company and/or related companies;
 - b. personal items;
 - c. intangibles.

D. Equity

1. Will be no less than 20 percent of the loan amount for a start-up operation or acquisition and no less than 15 percent for an expansion.
2. Equity is defined to be:
 - a. cash;
 - b. paid-in capital;
 - c. paid-in surplus and retained earnings;
 - d. partnership capital and retained earnings.
3. No research, development expense nor intangibles of any kind will be considered equity.

E. Amount

1. For small businesses, the corporation's guarantee shall be:
 - a. no greater than 75 percent of a loan up to \$650,000; or
 - b. no greater than 70 percent of a loan up to \$1,100,000; or
 - c. no greater than 65 percent of a loan up to \$2,300,000;
 - d. if the loan request exceeds \$2,300,000 the guaranty shall not exceed \$1,500,000.
2. For certified economically disadvantaged businesses, or disabled person's business enterprises, the corporation's guarantee shall be:
 - a. no greater than 90 percent of a loan up to \$560,000; or
 - b. no greater than 85 percent of a loan up to \$875,000; or
 - c. no greater than 75 percent of a loan up to \$2,000,000;

d. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

3. For small businesses, the corporation's participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified economically disadvantaged businesses, or disabled person's business enterprises, the corporation's participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms. Terms may be negotiated with the bank, but in no case shall the terms exceed 20 years.

G. Fees

1. LEDC will charge a minimum guaranty fee of 0.5 percent of the guaranty amount up to a maximum amount of 2 percent of the guaranty amount.

2. LEDC will charge a \$100 application fee.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

a. exceeds 25 percent of total loan; and/or

b. pays off a creditor or creditors who are inadequately secured; and/or

c. provides funds to pay off debt to principals of the business; and/or

d. provides funds to pay off family members.

5. Funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997).

§111. General Agreement Provisions

A. Guarantee Agreement

1. The bank is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank will sell collateral and handle the legal proceedings.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan;

b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guarantee agreement.

B. Participation Agreement

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997).

§113. Confidentiality

Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 23:43 (January 1997).

§115. Conflict of Interest

No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 23:43 (January 1997).

§117. Conditions for Disbursement of Loan Proceeds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), repealed LR 23:43 (January 1997).

§119. Compliance Requirements for all Programs Loans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), repealed LR 23:43 (January 1997).

§121. Bank Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), repealed LR 23:43 (January 1997).

Brett Crawford
Executive Director

9701#046

RULE

**Department of Economic Development
Economic Development Corporation**

**Workforce Development and Training
Program—Workforce Development
(LAC 19:VII.Chapter 81)**

The Department of Economic Development, Louisiana Economic Development Corporation adopts the following Rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Economic Development Corporation Act, R.S. 51:2331.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

**Subpart 7. Workforce Development and Training
Program**

Chapter 81. Workforce Development

§8101. Purpose

The purpose of the program is to develop and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community;
2. upgrading employee skills for new technologies or production processes; and

3. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997).

§8103. Definitions

Applicant—the entity requesting training assistance from LEDC under this program.

Award—funding approved under this program for eligible training activities.

Awardee—an applicant [and/or company(ies)] receiving a training award under this program.

Contract—a legally enforceable agreement between LEDC, the awardee and a monitoring entity governing the terms and conditions of the training award.

Contractee—the awardee and monitoring entity that are party to a training award contract with LEDC under this program.

Labor Demand Occupation—an occupation for which there is, or is likely to be, greater demand than supply of adequately trained workers.

LEDC—the Louisiana Economic Development Corporation.

Monitoring Entity—a public or not-for-profit entity contracted to monitor the compliance of an awardee with the terms and conditions of a training award contract, and to reimburse the awardee for eligible training costs.

Program—the Workforce Development and Training Program.

Subprogram—the different components of the Workforce Development and Training Program, including, but not limited to, New Employee Training, and Workplace-Based Retraining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997).

§8105. General Principles

The following principles will direct the administration of the Workforce Development and Training Program:

1. training awards are not to be construed as an entitlement for companies locating or located in Louisiana;
2. awards must reasonably be expected to be a deciding factor in companies' location and/or investment decisions;
3. awards must reasonably be demonstrated to be of key or strategic importance to the economic well-being of the state and local communities;
4. the retention and strengthening of existing Louisiana companies will be evaluated using the same procedures and with the same priority as the recruitment of new companies to the state;
5. award amounts will not exceed the anticipated Economic benefits to the state;
6. appropriate cost sharing between project beneficiaries will be required;
7. awards will not be used to replace private training funds that would otherwise be committed to projects;

8. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate; and

9. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997).

§8107. Subprogram Descriptions

A. New Employee Training

1. This subprogram provides training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies.

2. The training to be funded can include:

a. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a subset of the trainees; and

b. on-the-job training for new employees that is needed to bring the employees up to a minimum skill and/or productively level.

B. Workplace-Based Retraining. This subprogram provides training assistance for companies seeking to upgrade the skills of existing employees in response to technological advances or improved production processes, or the need to ensure compliance with accepted international and industrial quality standards (e.g., ISO standards).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997).

§8109. Eligibility

A. An eligible applicant must be one of the following:

1. an individual employer that seeks customized training services to create, upgrade, or retain jobs in a:
 - a. labor demand occupation;
 - b. nonlabor demand occupation to prevent job loss;
2. an employer, labor organization, or community-based organization that seeks customized training services to provide training for a labor demand occupation in a particular industry;
3. a consortium made up of one or more educational institutions and individual employers, labor, or community-based organizations that seek customized training services to provide training in a labor demand occupation;
4. an individual employer that seeks customized training for employees at a facility which is being newly developed or is being relocated from another state into Louisiana.

B. Employees to be trained must be employed in Louisiana.

C. An applicant shall be considered ineligible if it has pending or outstanding claims or liabilities relating to failure or inability to pay promissory notes or other evidence of

indebtedness including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997).

§8111. Criteria

A. General (*these apply to all training subprograms administered under these Rules*).

1. Preference will be given to applicants in industries identified by the state as target industries, and to applicants located in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. During the first nine months of a fiscal year, not less than 25 percent of all funds available during a fiscal year shall be available for employers with 150 or fewer Louisiana-based employees. For the final three months of a fiscal year, the remaining available funds will be available to all eligible employers, without size restrictions.

4. No single employer shall receive more than 10 percent of the total funds available to the program during a fiscal year.

5. Employers receiving awards must provide evidence satisfactory to LEDC of their long-range commitment to employee training as a means of enhancing their future competitiveness.

B. New Employee Training

1. Applicants must create at least 10 net new jobs in the state.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

C. Workplace-Based Retraining. Applicants must request training for at least five employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997).

§8113. Application Procedure

LEDC will design a standard form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training; and

4. quantifiable objectives for the training related to the overall performance of the company, and plans to measure the effectiveness of the training according to those objectives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997).

§8115. Submission and Review Procedure

A. Applicants must submit their application to LEDC. Submitted applications will be reviewed and evaluated by LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed, in order to:

1. understand the labor market conditions the proposed training is seeking to mitigate;

2. evaluate the strategic importance of the proposed training to the economic well-being of the state and local communities;

3. determine whether the employers' specific needs are best met by training;

4. identify the availability of existing training programs which could be adapted to meet the employer's needs;

5. identify the resources the business can provide to support the training, including trainers, facilities, materials and equipment;

6. identify or develop appropriate curricula; and

7. determine the most cost effective approach to meet the employer's training needs.

B. A cost-benefit analysis tailored to applicants' specific industries shall be conducted by LEDC to determine the net benefit to the state of the proposed training award. Such analysis will include, but not be limited to, evaluations of:

1. the importance of the proposed training to the state and local economies;

2. the importance of the proposed training to the recruitment/retention of businesses and/or jobs in the state (factors to be considered will include the degree of technological advancement of the skills to be taught, the transferability of those skills across companies and industries, and the wage levels of the jobs to be created and/or retained);

3. the probability that the applicant would not undertake the proposed training without state financial assistance; and

4. the fiscal impact of the proposed training on state and local governments.

C. Upon determination that a proposal meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state according to the cost-benefit analysis, LEDC staff will then make a recommendation to LEDC's board of directors of an appropriate amount and the conditions of the training award at the next scheduled meeting of the board.

D. The final authority to approve or reject a training award will reside with LEDC's board of directors.

E. Applicants will be notified in writing of the outcome of their application within five working days following a decision by LEDC's board of directors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997).

§8117. General Award Provisions

A. Award Agreement

1. A contract will be executed between LEDC, the applicant [and/or company(ies) receiving training] and an appropriate monitoring entity from the same geographic area as the applicant. The contract will specify the performance objectives expected of the company(ies) and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for job training and job creation.

2. The monitoring entity will monitor the progress of the training and reimburse the applicant from invoices submitted by the applicant on a form approved by LEDC.

3. The cost associated with this contract incurred by the monitoring entity will be considered part of the total training award, but will not exceed 5 percent of the award amount.

4. Funds may be used for training programs extending up to two years in duration.

B. Use of Funds

1. The Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include, inter alia, the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs (limited to 30 percent of the total training award): travel for trainers and training coordinators (company and other), travel for trainees;

c. materials and supplies costs: training texts and manuals, audio/visual materials, skills assessment (documents or services to determine training needs), raw materials (for manufacturing and new employee on-the-job training); and

d. other costs: facility rental, wages for on-the-job trainees (limited to 25 percent of a trainee's wage, excluding benefits), and fees or service costs incurred by the monitoring entity associated with the contract to monitor the training and to disburse award funds, as limited by §8117.A.3 above.

3. Training costs ineligible for reimbursement include:

a. trainee fringe benefits;

b. nonconsumable tangible property (e.g., calculators, furniture, classroom fixtures, equipment), unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks; and

e. scrap produced during training.

4. Training activities eligible for funding consist of:

a. basic skills: literacy, numeracy, problem solving, team participation, etc.;

b. transferable skills: skills which will enhance an employee's general knowledge, employability and flexibility in the workplace (e.g., welding, computer skills, blueprint reading, etc.);

c. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

d. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

e. pedagogical skills: skills which pertain to instructional methods and techniques to be used by trainers (these are most relevant to train-the-trainer activities).

C. Amount of Award

1. New Employee Training. The training award amount shall cover up to 100 percent of the eligible training costs, not to exceed \$500,000.

2. Workplace-Based Retraining. The training award amount shall cover up to 50 percent of the eligible training costs, not to exceed \$500,000.

D. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of approved invoices to LEDC. Funds will not be available for reimbursement until a training agreement between the applicant [and/or company(ies) receiving the training] and an approved training provider has been executed.

2. Fifty percent of the training award will be available for reimbursement of eligible costs until the awardee(s) has achieved 75 percent of its contracted performance objectives.

3. Once the awardee(s) has achieved 75 percent of its contracted performance objectives, an additional 25 percent of the grant award will be made available for reimbursement. After the company has achieved 100 percent of its contracted performance objectives, the remaining 25 percent of the grant award will be made available for reimbursement.

E. Compliance Requirements

1. Contractees shall be required to complete quarterly reports describing the progress towards the performance objectives specified in their contract with LEDC.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a contractee fails to meet its performance objectives specified in its contract with LEDC, LEDC shall retain the rights to withhold additional award funds and to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

4. In the event a company or monitoring entity knowingly files a false statement in its application or in a progress report, the company or monitoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

5. LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the monitoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997).

Brett Crawford
Executive Director

9701#044

RULE

Department of Economic Development Office of Financial Institutions

Bank Insurance Activities—Sale of Insurance (LAC 10:III.591)

In accordance with the authority granted by the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Banking Law, R.S. 6:1 et seq., particularly R.S. 6:121 and R.S. 6:242, the Department of Economic Development, Office of Financial Institutions adopts the following Rule to preserve the dual banking system by granting state banks the same powers possessed by national banks under 12 U.S.C.A. §92.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part III. Banks

Chapter 5. Powers

Subchapter F. Sale of Insurance

§591. Definitions

As used in this regulation:

Affiliate—a corporation which owns or controls a bank, and any other corporation which is owned or controlled by the corporation which owns or controls the bank, including but not limited to entities defined as affiliates under the provisions of 12 U.S.C.A. §221a.(b), and 12 U.S.C.A. §371c.(b), as those provisions from time to time may be amended or revised.

Bank—any state bank and, to the extent applicable, any national bank. When the context so requires, the term bank shall mean an ECB as defined herein.

Commissioner—the Commissioner of the Louisiana Office of Financial Institutions.

Department—the Louisiana Department of Insurance.

Eligible Community—any community the population of which, as determined by the last decennial census, does not exceed 5,000.

Eligible Community Bank (ECB)—any state bank with an office located in an eligible community. As used herein, unless the context indicates otherwise, the term shall include any bank subsidiary, affiliate, or any officer, director or employee of the bank, bank subsidiary, or affiliate.

Insurance—a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term shall include any kind of insurance recognized under the laws of Louisiana, but shall not include the following:

a. annuities, including but not limited to annuities governed by the provisions of LAC 10:I.571-573 [LR 19:611 (5/20/93)];

b. any credit insurance which banks are authorized to sell pursuant to the provisions of the Louisiana Banking Law LSA-R.S. 6:1 et seq., the Louisiana Consumer Credit Law, LSA-R.S. 9:3510 et seq., or the Motor Vehicle Sales Finance Act, LSA-R.S. 6:951 et seq.; or

c. any insurance product sold by a bank which was engaged as a general insurance agent or broker on January 1, 1984, and continues to be so engaged, when sold by such bank.

Insurance Agent—a person appointed in writing by an insurer to submit applications for a policy of insurance or to negotiate a policy of insurance on its behalf. As used herein, the term shall also include insurance brokers, surplus lines insurance brokers, and insurance solicitors.

Insurer—any domestic, foreign, or alien insurer possessing a certificate of authority to transact any fire, life, or other insurance business in Louisiana.

Location or Located—in reference to a state bank means any place in Louisiana in which the state bank maintains an office at which money is lent, or deposits received, or checks paid.

Office of an ECB—the main office, or any branch, loan production office, or other manned physical facility of the bank or of any subsidiary or affiliate thereof.

Person—a natural or juridical person.

Subsidiary—a corporation owned or controlled by a bank, including but not limited to a service corporation governed by the provisions of LAC 10:I.501-509 [LR 20:677 (6/20/94)].

B. Authority

1. An ECB shall have and possess the rights, powers, privileges and immunities of a national bank or national bank branch domiciled in this state to engage in insurance activities.

2. An ECB may act as agent for any domestic, foreign, or alien insurer approved by the department to transact business in Louisiana.

3. An ECB may solicit and sell any insurance, may collect premiums on policies issued, and may receive such fees and commissions from the sale of such insurance as may be agreed upon between the bank and the insurer for which the bank is acting as agent.

4. An ECB may engage in the insurance activities covered by this Rule directly, through its own officers, directors or employees, or through the officers, directors or employees of its subsidiary, or affiliate.

5. An ECB may also engage in the insurance activities covered by this Rule indirectly by contracting with a third party, through officers, directors, or employees of a third party acting on behalf of the bank, or through persons acting as employee of both the ECB and the third party. The agreement between the bank and the third party shall be in writing and approved by the bank's Board of Directors.

6. The persons who act as insurance agents on behalf of the ECB shall operate from an office located within an eligible community as listed on the agents' license applications

submitted to the department. The ECB's insurance agents shall have the same authority to solicit, negotiate, and sell insurance subject to the same restrictions applicable to Louisiana licensed insurance agents in general engaged in the sale of similar kinds of insurance.

C. Licensing

1. An ECB wishing to engage in insurance sales activities, or any third party wishing to engage in insurance sales activities on behalf of the ECB, shall obtain a license from the department to act as an insurance agent, insurance broker, surplus lines insurance broker or insurance solicitor.

2. The person applying on behalf of the ECB for a license as an insurance agent shall comply with the department's requirements, including continuing education requirements, applicable to insurance agents in general engaged in the sale of similar kinds of insurance.

3. Insurance agent services shall be provided only by licensed insurance agents. Unlicensed employees of the ECB or its subsidiary may provide clerical assistance in connection with the solicitation, negotiation, and sale of insurance, may collect premiums when so authorized by a licensed agent, and may refer customers to the ECB's licensed insurance agents.

4. As part of his regular examination of the ECB and of its subsidiary, the commissioner shall determine whether all persons engaged in insurance sales activities as insurance agents have been licensed by the department. If any person has failed to comply with the department's nondiscriminatory licensing requirements applicable to all insurance agents selling the same kinds of insurance, the commissioner may institute any enforcement action authorized by the Louisiana Banking Law in addition to referring the violations to the department, pursuant to the authority of LSA-R.S. 6:103 B(8)(b).

D. Disposition of Income from Sale of Insurance

1. Pursuant to the requirements of LSA-R.S. 22:1113D., no unlicensed employee, officer, or director of an ECB may receive, directly or indirectly, commissions, brokerage, or other valuable consideration, for services as an insurance agent performed in connection with the sale of insurance authorized herein.

2. Compensation based upon commissions is a common method of selling insurance, and can increase customer awareness of the availability of insurance products offered by the ECB.

3. Compensation programs for ECB personnel engaged in insurance sales activities must be structured in such a way as to assist the customer in making informed product selections.

4. The ECB should receive compensation in recognition of the role played by its personnel, premises, and good will in connection with the ECB's insurance sales activities.

E. Consumer Protection

1. The way in which insurance products are sold within a bank can assist customers to distinguish between deposits that are insured or are obligations of the bank and uninsured products offered by the bank or a third party.

2. The commissioner shall review measures taken by an ECB with regard to the setting and circumstances of its

insurance sales activities designed to minimize potential customer confusion over the nature of the product sold. Sales of insurance should take place in a location that is distinct from the teller window setting in which retail deposits are taken.

3. The ECB should give the customer the disclosures provided in Subsection E.4.a.iv when it first informs the customer that required insurance is available from the ECB if:

a. insurance is required in order to obtain a loan; or

b. loan approval is contingent on the customer obtaining acceptable insurance; or

c. the customer obtained insurance required in connection with the loan from another insurance provider and the ECB is soliciting the sale of insurance to replace the customer's existing coverage.

4.a. At the time a written application for insurance is made, the insurance agent shall obtain a separate written statement, signed by the customer, acknowledging that the customer has received and understands the following disclosures:

i. the insurance policy is not insured by the FDIC;

ii. the insurance policy is not a deposit or other obligation of, or guaranteed by, the bank;

iii. the bank does not guarantee performance by the insurer issuing the policy.

iv. the customer is not required to purchase insurance through the bank, and the customer's choice of another insurance provider will not affect the bank's credit decision or credit terms in any way.

b. These disclosures should be conspicuous and presented in a clear and concise manner.

5. All advertisements, sales literature, and other materials which relate to the marketing of insurance sold through the ECB shall clearly state that the insurance is not insured by a federal agency or guaranteed by the bank, shall indicate whether the insurance agent is employed by the bank or by a third party, and shall indicate that an insurance company, not the bank, is underwriting the insurance product.

6. Any ECB engaging in the insurance agency activities described herein shall establish an orderly process for responding to consumer complaints arising from the sales of insurance. Whether the ECB engages in insurance activities through its own employees, employees of its subsidiary, or those of a third party, the ECB shall maintain a file describing complaints lodged against the ECB, and steps taken by the ECB to resolve the complaints.

7.a. An ECB shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer shall obtain insurance from the bank or its subsidiary.

b. The following activities shall not violate this anti-typing provision:

i. A bank may cross-sell or cross-market products or services. A bank cross-sells when it informs a customer that insurance is available from the bank, its subsidiary, or through a third party.

ii. A bank which requires a customer to obtain insurance coverage in connection with a loan or other extension of credit may provide the insurance if the bank discloses in writing that coverage may be obtained from a person of the customer's choice, and the transaction is not conditioned upon the customer obtaining insurance from the bank.

8. An ECB shall establish compliance programs to promote compliance with this provision.

9. Bank activities which conform to the requirements of 12 U.S.C.A. §1972(1), or 12 C.F.R. §225.7, as these provisions from time to time may be amended or revised, shall be deemed to satisfy the requirements of this Subsection, and any state statutes applicable to this aspect of bank insurance sales.

F. Disclosure of Financial Records. In connection with the insurance sales activities authorized herein, an ECB may disclose a customer's records to any person as authorized in LSA-R.S. 6:333.

G. Enforcement by Commissioner

1. The commissioner is committed to ensuring that ECBs conduct their insurance sales activities in a safe and sound manner. Adequate consumer protections, qualified employees, and responsible sales practices are essential for this result.

2. The commissioner may enforce compliance with the provisions of this Rule by using any regulatory, investigative, examination or enforcement authority given the Louisiana Office of Financial Institutions by the provisions of the Louisiana Banking Law, including, but not limited to, LSA-R.S. 6:121 et seq.

3. Nothing contained herein shall limit the authority or responsibility of the department to regulate insurance in conformity with all applicable laws and regulations.

H. Continuing Parity

1. The provisions of this Rule are to be construed liberally in order to promote and maintain competitive equality between state and national banks, preserve the dual banking system, and serve the public interest in the business of banking.

2. In addition to the authority conferred by this Rule, an ECB shall have and possess, and may exercise, such rights, powers, privileges, and immunities of a national bank or national bank branch engaged in insurance sales activities in the state pursuant to the authority of 12 U.S.C.A. §92 as interpreted and applied by the Comptroller of the Currency, upon complying with the requirements of LSA-R.S. 6:242 C(1). Upon receipt of the ECB's Notice of Intent, the commissioner shall transmit a copy thereof to the department.

I. Insurance Sales Exempted from Rule

1. The provisions of this Part shall be subject to the provisions of LSA-R.S. 6:242 A(6) relative to banks which were engaged as general insurance agents or brokers on January 1, 1984.

2. The provisions of this Part shall not apply to any insurance sales activities in which banks were authorized to engage prior to the adoption of this Rule, including, but not

limited to, the sale of credit insurance and the sale of annuities.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 6:121 and 6:242 A(6)(a).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:47 (January 1997).

Larry L. Murray
Commissioner

9701#088

RULE

**Department of Economic Development
Office of the Secretary
Division of Economically Disadvantaged
Business Development**

**Economically Disadvantaged Business
Development Program (LAC 19:II.Chapters 1-13)**

In accordance with the Louisiana Economically Disadvantaged Business Act of 1996 (R.S. 51:1751 through 1765, and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended) the Department of Economic Development, Division of Economically Disadvantaged Business Development, hereby adopts the following Rules relative to the Economically Disadvantaged Business Development Program effective January 20, 1997. These regulations are both substantive and technical in nature, and specify the procedure for certification and as qualification for an economically disadvantaged business; provide for bonding and other financial assistance; provide for technical and managerial assistance; provide for a business mentor-protégé program; recognize achievements for economically disadvantaged businesses; and facilitate access to state agency procurement.

These regulations apply to all state departments, boards or commissions, or educational institutions, created by the Legislature or Executive Order within the Executive Branch of state government pursuant to Title 36, operating from funds appropriated, dedicated or self-sustaining, federal funds; or funds generated from any other source. These regulations do not apply to agencies of the judicial or legislative branches of state government, except to the extent that procurement or public works activities for these branches are performed by an executive branch agency.

Title 19

CORPORATIONS AND BUSINESS

Part II. Economically Disadvantaged

Business Development Program

Chapter 1. General Provisions

§101. Statement of Policy

In accordance with the Louisiana Economically Disadvantaged Business Act of 1996 (R.S. 51:1751 through 1765 and the provisions of the Administrative Procedure Act,

R.S. 49:950-970 as amended) the Department of Economic Development, Division of Economically Disadvantaged Business Development, these regulations are both substantive and technical in nature. They are intended to specify the procedure for certification and as qualification for an economically disadvantaged business; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protégé program; to recognize achievements for economically disadvantaged businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997).

§103. Purpose

The purpose and intent of this Chapter is to provide the maximum opportunity for economically disadvantaged businesses to become competitive in a nonpreferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997).

§105. Definitions

When used in these regulations, the following terms shall have meanings as set forth below:

Certification—verification that a business qualifies for designation as an economically disadvantaged business.

Division—the division of economically disadvantaged business development in the Department of Economic Development.

Economically Disadvantaged Business (EDB)—a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more economically disadvantaged persons and which has its principal place of business in Louisiana. A nonprofit organization is not an economically disadvantaged business for purposes of this Chapter.

Economically Disadvantaged Person—a citizen or lawful resident of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Executive Director—the Director of the Division of Economically Disadvantaged Business.

Firm—a business that has been certified as economically disadvantaged.

Full-time—working in the firm at least 35 hours per week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997).

§107. Eligibility Requirements for Certification

A. An economically disadvantaged business (EDB) is a firm that is owned and controlled by one or more economically disadvantaged individuals and meets the requirements of economic disadvantaged businesses. Eligibility requirements falls into two categories that apply to the individual owners and to the applicant's firm. In order to continue participation in the program, a firm and its individual owners must continue to meet all eligibility requirements.

B. Economically Disadvantaged Persons. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as an economically disadvantaged individual:

1. **Citizenship.** The person is a citizen or lawful resident of the United States.

2. **Louisiana Residency.** The person has resided in Louisiana for at least one year.

3. **Net Worth.** Each individual owner's personal net worth may not exceed \$150,000.

4. **Income.** Each individual owner must submit personal federal income tax returns for the past three years.

C. Economically Disadvantaged Business

1. **Ownership and Control.** At least 60 percent of the company must be owned and controlled by one or more economically disadvantaged individuals.

2. **Business Size.** For purpose of Louisiana's EDB program, an eligible firm's size shall be defined as 50 percent or less of the published U.S. Small Business Administration's size standards by SIC codes.

3. **Principal Place of Business**—the firm's principal place of business must be Louisiana.

4. **Lawful Function.** The company has been organized for profit to perform a lawful, commercially useful function.

5. **Business Annual Gross Revenue.** A business's annual gross revenue may not exceed the Louisiana EDB's size standards by SIC Code. Where the EDB program size standards utilize "number of employees" instead of a monetary figure, the Louisiana EDB Program shall use \$10.5 million in gross revenue as the qualifying monetary standard.

6. **Business Net Worth.** The business' net worth at the time of application may not exceed \$750,000.

7. **Diminished Capital and Credit**

a. A firm will be considered to have diminished capital and credit if its ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to other firms in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such firm from successfully competing in the open market. Examples of diminished capital and credit are lack of access to long-term financing or credit, working capital financing, equipment

trade credit, raw materials, supplier trade credit, and bonding. The applicant must furnish documentation that credit was denied on at least three occasions or separate applications for each area of credit that applies to the firm's type of business, condition, or situation. An applicant firm that score poorly on all financial measurements published by the Robert Morris Associates for liquidity, leverage, operating efficiency and profitability is considered to be economically disadvantaged.

Factors to be considered are:

- i. business assets;
- ii. net worth;
- iii. income;
- iv. profit;

b. The latest revision of the Annual Statement Studies, published by Robert Morris Associates (the "RMA") will be used. Factors to be compared are:

- i. current ratio;
- ii. quick ratio;
- iii. inventory turnover;
- iv. account receivable turnover;
- v. sales to working capital;
- vi. debt-to-net worth ratio;
- vii. return on assets;
- viii. percentage return on investment;
- ix. percentage return on sales.

8. Full Time. Managing owners who claim economically disadvantaged status must be full-time employees of the applicant firm.

9. Job Creation. An applicant firm must have a minimum of at least two full-time employees. A waiver may be granted for this requirement dependant upon the firm's plans for expansion.

D. Documents Required for Certification. The application shall be supported by but not limited to the following documents:

1. business's balance sheet and income statement;
2. verification of signatories on bank accounts;
3. copies of income tax returns;
4. resumes of owners and top managers;
5. copies of business licenses and permits;
6. copies of stock certificates, stock transfer ledgers,

and articles of incorporation if business is a corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997).

§109. Control and Management

A. Description. An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be economically disadvantaged. In order for a disadvantaged individual to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The economically disadvantaged individual(s) upon whom eligibility is based shall control the Board of Directors of the firm, either in actual numbers of voting Directors or through weighted voting. In the case of a two-person Board of Directors where one individual on the Board is disadvantaged and one is not, the disadvantaged vote must be weighted by share ownership—worth more than one vote to achieve a minimum of 60 percent control—in order for the firm to be eligible for the program. This does not preclude the appointment of Nonvoting or Honorary Directors. All arrangements regarding the structure and voting rights of the Board must comply with state law and with the firm's Articles of Incorporation and/or Bylaws.

2. Individuals who are not economically disadvantaged may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouses or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation received by the disadvantaged chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the economically disadvantaged owner(s) of the applicant or certified firm, unless the Division determines that the contemplated relationship between the former employer and the disadvantaged individual or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interests of the certified firm.

B. Non-disadvantaged Control. Non-disadvantaged individuals or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-disadvantaged individual, such as an officer or member of the Board of Directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-disadvantaged individual or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-disadvantaged individual to gain control or direction of the firm;

3. a non-disadvantaged individual or entity controls the firm or the individual disadvantaged owners through loan arrangements;

4. other contractual relationships exist with nondisadvantaged individuals or entities, the terms of which would create control over the disadvantaged firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997).

§111. Responsibility for Applying

A. It is the responsibility of any business wishing to participate in the Program to complete the required certification process and to provide all the information requested. Failure to provide complete, true, or accurate data may result in rejection of the application to participate in the Program.

B. Certification materials will be distributed by the Division upon written or verbal request. Written requests for certification materials should be directed to the Division of Economically Disadvantaged Business Development, Baton Rouge, LA 70804.

C. Certification as an economically disadvantaged business does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a disadvantaged business also does not constitute any determination by the Division or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§113. Certification Application Procedure

A. Applicant submits a completed certification application and supporting documents to the Division.

B. The Division reviews the certification application. If it is incomplete or further information is needed, the Division will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The Division shall conduct a site visit at the firm's place of business, prior to certification.

D. Information obtained from the site visit is added to the file and a written recommendation is made to the Division's Executive Director.

E. The Executive Director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753, 1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the Division is seven years.

B. Retention of the firm in the Program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate and follow through on recommendations of the Division.

C. When the applicant firm's score on all financial measurements, per their SIC Code published by the Robert Morris Associates for liquidity, leverage, operating efficiency and profitability equals to or better than the national average, the firm will be graduated from the program if the firm's participation in the program has been less than seven years. No individual will be allowed to reenter the program under another business name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1755.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§117. Reports by Certified Economically Disadvantaged Businesses

A. Report Form. On forms identified or prescribed by the Division, certified businesses shall report at times specified by the Division their financial position and attainment of the business' performance goals.

B. Verification of Eligibility. The Division may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone contact, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the Division with a notarized statement of any changes in address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The Division, at such times it deems necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1757.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

§119. Deception Relating to Certification of Economically Disadvantaged Business

Any person found guilty of the crime of deception relating to certification of an economically disadvantaged business as provided in R.S. 51:1764 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1764.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997).

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. Purpose. The Division will coordinate technical, managerial, and financial assistance through internal and external resources to assist certified economically disadvantaged businesses to become competitive in their markets.

B. Developmental Steps

1. The Division will conduct a preliminary analysis of the firm's situation to determine its strengths and weaknesses.

2. Determination of Assistance. In consultation with the Division's staff, the business owner will determine areas in which he/she needs assistance.

3. Referral to Additional Resources. The Division will assist the firm obtain intensive technical or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies. The Small Business Development Centers shall be the point of entry for such assistance.

4. Ongoing Evaluation. In conjunction with the economically disadvantaged firm and appropriate external resources, the Division will periodically assess the EDB's progress toward attainment of its business goals. The Division, in conjunction with the EDB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the Division will investigate and take appropriate action.

5. Graduation from the Program. After a pre-agreed performance or time has been reached, or combination of the two, the EDB will graduate from the Program. Companies that do not make satisfactory progress will be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997).

Chapter 5. Mentor-Protége Program

§501. Mentor-Protége

Purpose. The Division shall design and conduct a business mentor-protége program to bring noneconomically disadvantaged businesses into a systematic working relationship with a certified economically disadvantaged business for their mutual, commercial benefit and for the development of the protége firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997).

Chapter 7. Recognition Program

§701. Recognition

Purpose. The Division will publicly recognize outstanding accomplishments or contributions from economically disadvantaged businesses, public agencies, and noneconomically disadvantaged firms. Companies and agencies that would be recognized include:

1. EDB Graduates. Economically disadvantaged businesses which graduate from the program by reaching their goals.

2. Outstanding EDB Firms. Economically disadvantaged companies which demonstrate outstanding performance beyond reaching their goals or which showed unusual effort, persistence, quality service or products, or creativity at overcoming obstacles.

3. Cooperative Agencies. Public agencies that show exceptional cooperation or success in working with economically disadvantaged companies.

4. Cooperative Non-EDB Firms. Companies in the private sector that demonstrate unusual efforts at promoting or buying from economically disadvantaged businesses or have been outstanding mentors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997).

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A. Program Activities—Louisiana Contractors Accreditation Institute: (LCAI)

1. Eligibility. All economically disadvantaged business construction contractors who are certified by the Division of Economically Disadvantaged Business Development, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive the grant assistance or bond guarantee until they have been certified by the Economically Disadvantaged Business Development Program.

2. Standards and Procedures for Determining Course Content. The Director of Bonding Assistance Program (BAP) will once a year consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified economically disadvantaged business construction contractors. However, contractors must register for institute he or she wish to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation which qualifies them to receive the grant assistance and bond guarantee phases of the program.

4. Accreditation Without Institute Attendance. An EDB firm may request to be accredited without attendance. The Director of the BAP will conduct a review of the firm. If the

contractor can present evidence he conducts business within standards set by Best Practices, the Director may issue accreditation to the firm.

5. Accreditation by Test Only. Should the accreditation in Paragraph 4, supra, be denied, the firm may gain an accreditation without attending the institute by obtaining an acceptable score on the test administered during the institute.

6. Grant Assistance

a. Eligibility. The primary goal of the Bonding Assistance Program (BAP) is to increase the number of bonds received by Economically Disadvantaged Business (EDB) on reasonable terms. Toward this end, certified economically disadvantaged business contractors are eligible to receive the grant assistance provided for by these Rules. All EDB contractors will be deemed to have the required level of capability necessary to be eligible for professional assistance if they are accredited pursuant to §501.C, D, or E of these Rules. The contractor must demonstrate economic need.

b. Method of Receiving the Grant Assistance. An accredited contractor is automatically eligible to receive the grant assistance upon successfully completing the LCAI courses and agreeing to the following:

i. to participate in surveys designed to evaluate the effectiveness of the services received and to assure that the services were adequately performed;

ii. they authorize BAP to furnish relevant information to the assigned professional;

iii. they waive all claims against BAP, the Department of Economic Development, and the State of Louisiana arising from this assistance.

c. Eligible Professionals. The professionals selected to deliver the services will be mutually agreed upon by the contractor, the local Small Business Development Center (SBDC) and Director of the BAP.

d. Successful Completion of Contract. The Local SBDC's procurement policies and procedures along with BAP's evaluation process will be used to monitor contract performance. The SBDC will allow DED personnel to inspect all relevant files.

7. Direct Bonding Assistance. All certified economically disadvantaged businesses that have been accredited by the LCAI may be eligible for surety bond guarantee assistance from the Louisiana Economic Development Corporation (LEDC). Such assistance will be provided in accordance with Rules promulgated by LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997).

Chapter 11. Promotion of Economically Disadvantaged Businesses

§1101. Promotion

A. Directory

1. Compilation. The Division shall compile a directory of all certified economically disadvantaged businesses and

make it available to the businesses and governmental agencies.

2. Frequency of Publication. The directory shall be updated at least annually, based upon information provided by certified businesses. The Division may issue updated directories more frequently.

3. Volume and Distribution. At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the State Library. Additional copies may be made available to the public and governmental agencies as Division's resources permit.

4. Available Information. Public information concerning an economically disadvantaged business may be obtained by contacting the Division of Economically Disadvantaged Business Development during normal working hours.

B. Other Promotional Means. The Division will utilize other feasible means of promoting economically disadvantaged businesses, such as, but not limited to, the Internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997).

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility

A. Right To File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the Division. The complaint must contain sufficient information for Division to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No disadvantaged business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations. However, failure of the disadvantaged business to respond to the Division's notification within 30 calendar days of mailing from the Division may result in revocation of certification.

C. Investigative Procedure

1. Notification of Allegation. The Division shall notify the certified business which is subject of the complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. Investigation Conducted. Within available resources, the Division shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. Cooperation. The disadvantaged business enterprise shall cooperate fully with the investigation and make its staff and records available to Division if requested. Insufficient cooperation may be grounds for concluding that the firm has

not borne the burden of proving to the satisfaction of the Division that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the Division's Executive Director shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the Director of the Division of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1760.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997).

§1303. Grounds and Procedure for Reconsideration of Denial

A. Right to Petition. A decision by the Division to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the Executive Director of Division.

B. Grounds. Grounds for petitioning Division to reconsider a denial or revocation of certification are that the Division of Economically Disadvantaged Business Development:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal Division's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. Petition Submitted. The appellant business submits a written petition for reconsideration to the Division's Executive Director. If the petition has not been received by the Division within 30 days of the date of the letter announcing the denial or revocation, the Division's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. Acknowledgment. Upon receiving a petition for reconsideration, Division shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The Division shall consider the petition and review all pertinent information, including additional information provided by the appellant business. Division may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the

Division shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1762.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:55 (January 1997).

Henry J. Stamper
Executive Director

9701#007

RULE

Board of Elementary and Secondary Education

Minimum Foundation Program (LAC 28:I.1709)

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 Minimum Foundation Program Student Membership Definition.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 17. Finance and Property

§1709. Budgets

A. - H. ...

I. MFP: Equalization Grant

1. Each parish and city school system shall receive an allocation from the annual equalization grant in 12 payments. These payments shall be incorporated into monthly amounts received from the state for implementation of the Minimum Foundation Program.

2. Student Membership. For state reporting for public education for the purpose of establishing the base student count for state funding, shall adhere to the following:

a. All students included for membership in school shall be identified with the following minimum required identification elements: state identification number, full legal name, date of birth, sex, race, district and school code, entry date, and grade placement.

b. For establishing the base student membership count for state funding the following guidelines will be adhered to:

i. No student will be counted more than one time. Students attending more than one school will be counted in membership only one time.

ii. All students, including special education students and students in ungraded class settings, will be included in the base student membership count who meet the following criteria:

(a). have registered or pre-registered on or before October 1*;

(b). are actively attending school (All current state laws and BESE policies concerning attendance should be carefully followed. Appropriate documentation [either written or computer documents] such as dates of absences, letters to parents, notification to Child Welfare and Attendance Officers should be placed in individual permanent records for any students who may have absences which raise questions about the student's active attendance.);

(c). and/or have not officially exited from school (Students are considered to have officially exited if a notification of transfer has been provided by the student's parent/legal guardian or received from another school.).

iii. Students who are in BESE approved alternative programs (schools), will be included in the base student count for membership.

iv. Students who reside in Louisiana, attend school in another state, and are supported by Louisiana funding will be included in the base student count for membership.

v. All special education preschool (ages 3-5) students will be included in the base student count for membership.

vi. All special education infant (ages birth-2) students for whom the district provides one or more of the 16 identified services shall be included in the base student count for membership.

vii. Students in grades 13 and 14 in Bossier Parish as cited in R.S. 17:2050 will be included in the base student count for membership.

viii. Regular pre-kindergarten (four-year-old program) students will NOT be included in the base student count for membership.

ix. Private school students receiving services through the public school system will NOT be included in the base student membership.

*If October 1 falls on a Saturday, report membership on September 30. If October 1 falls on a Sunday, report membership on October 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 23:55 (January 1997).

Weegie Peabody
Executive Director

9701#056

RULE

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

NESHAP for Source Categories
(LAC 33:III.Chapter 51 and 53)(AQ144)

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 51, Subchapters B and C and Chapter 53, Subchapter B (AQ144).

This rulemaking to adds new requirements to Louisiana's Air Quality regulations by adopting by reference specific parts of 40 CFR Part 63 - NESHAP for Source Categories. In addition, specific parts of 40 CFR Part 61 are incorporated by reference to replace existing state regulations which are identical or only slightly different from the federal regulation. This will reduce the volume of state regulations and also eliminate duplication and confusion experienced by the regulated community in determining the differences between state and federal regulations. Specific changes are as follows:

LAC 33:III.Chapter 51

Sections 5101, 5103, 5105, 5107, 5109, 5111, and 5113 have been revised to correct text with the new state codification and federal references;

Section 5115 is repealed in its entirety;

Sections 5117, 5121, 5133, 5137, 5139, 5143, 5161, 5163, and 5171 are repealed in their entirety as these regulations are incorporated by reference from 40 CFR Part 61 into §5116;

Section 5122 is added to adopt by reference specified subparts from 40 CFR Part 63 as they pertain to major sources.

LAC 33:III.Chapter 53

Section 5301 has been revised as indicated within Chapter 53;

Section 5311 is added to adopt by reference specified subparts from 40 CFR Part 63 as they pertain to area sources;

Section 5303 is repealed in its entirety.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

The following Sections from this Chapter, are hereby repealed in their entirety: LAC 33:III.5115, 5117, 5121, 5133, 5137, 5139, 5143, 5161, 5163, and 5171.

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

The provisions of this Subchapter apply to the owner or operator of any major source, as defined herein. The provisions of LAC 33:III.5105.A, 5107, 5111.A.4, and 5113 apply to the owner or operator of any stationary source which was a major source upon promulgation of this Subchapter but which has achieved minor source status through reduction of emissions and reduction of potential to emit. Effective upon promulgation of applicable source category Rules in accordance with R.S. 30:2060, the provisions of this Subchapter apply to the owner or operator of any minor source, if specified by such Rules. The provisions of this Subchapter do not apply to the consumer use, in a duration and frequency intended by the manufacturer, of products obtained through retail commerce, or to activities conducted on residential property. The provisions of this Subchapter do not apply to the distribution or application of pesticides.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997).

§5103. Definitions, Units, and Abbreviations

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows:

* * *

[See Prior Text]

Area Source—any stationary source that is not a major source.

* * *

[See Prior Text]

Certification of Compliance—a statement indicating that specific requirements under this Subchapter have been met, including a description of measures used to meet such requirements.

Compliance Plan—a description of measures to be used to meet requirements under this Subchapter, including a compliance schedule of dates by which such measures will be taken.

Compliance Schedule—a sequence of events leading to compliance with all requirements of this Subchapter including the specified date by which the source must achieve compliance, and interim dates by which all necessary milestones shall be achieved.

* * *

[See Prior Text]

Electric Utility Steam Generating Unit—any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

Existing Source—any stationary source that is not a new source.

* * *

[See Prior Text]

Maximum Achievable Control Technology (MACT)—

1. The maximum degree of reduction in emissions of each air pollutant subject to this Subchapter (including a prohibition on such emissions, where achievable) that the administrative authority, upon review of submitted MACT compliance plans and other relevant information and taking into consideration the cost of achieving such emission reduction, as well as any non-air-quality health and environmental impacts and energy requirements, determines is achievable through application of measures, processes, methods, systems, or techniques including, but not limited to, measures that:

a. reduce the volume of, or eliminate emissions of such pollutants through process changes, substitution of materials, or other modifications; or

b. enclose systems or processes to eliminate emissions; or

c. collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point; or

d. are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or

e. are a combination of the above.

2. The degree of reduction in emissions deemed achievable for new sources in a category or subcategory shall not be less stringent than the most stringent emissions level achieved in practice by the best controlled similar source in the same category or subcategory, as determined by the administrative authority upon review of submitted MACT compliance plans and other relevant information, and may be more stringent where feasible.

3. Emissions standards for existing sources in a category or subcategory may be less stringent than standards for new sources in a similar category or subcategory provided that the emissions limitation for existing sources in the category or subcategory is not less stringent, and may be more stringent, than:

a. for the categories or subcategories with 30 or more sources, the average emission limitation achieved by the best performing 12 percent of the existing sources nationally in the category or subcategory; or

b. for the categories or subcategories with fewer than 30 sources, the average emission limitation achieved by the best performing five sources nationally in the category or subcategory.

Modification (modify)—any change in a facility including, but not limited to, a physical change, a change in the method of operation, or a change in the raw materials or feedstocks used for products manufactured that increases or decreases the emission rate of any toxic air pollutant by an amount that is greater than the minimum emission rate listed for that pollutant in Table 51.1, or that results in the emission, at a rate greater than the minimum emission rate listed in Table 51.1, of any toxic air pollutant not previously emitted. A change in production rates (up to capacity) or hours of operation shall not be considered a change in the method of operation.

* * *

[See Prior Text]

Standard—any criterion or prohibition as set forth in this Subchapter to control the emission of toxic air pollutants.

* * *

[See Prior Text]

Stationary Source—any building, structure, facility, or installation that emits or may emit any toxic air pollutant designated by this Subchapter.

Toxic Air Pollutant (TAP)—any substance listed in Table 51.2 or Table 51.3 of this Subchapter. Toxic air pollutants are listed pursuant to R.S. 30:2060 and, except for lead, do not include those pollutants for which National Ambient Air Quality Standards have been established under Section 108 of the Federal Clean Air Act.

[See Prior Text]

B. Units and Abbreviations. The following units, abbreviations, and symbols are used in this Subchapter:

[See Prior Text in B.1-4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997).

§5105. Prohibited Activities and Special Provisions

[See Prior Text in A]

1. After the effective date of any standard set forth in this Subchapter, no owner or operator shall construct or modify any stationary source subject to such standard without first obtaining written authorization from the administrative authority in accordance with this Subchapter.

2. After December 20, 1991, no owner or operator of any stationary source subject to the provisions of this Subchapter shall cause a violation of any ambient air standard listed in Table 51.2, unless operating in accordance with LAC 33:III.5109.

3. No owner or operator subject to the provisions of this Subchapter shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which conceals an emission that would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of diluents to achieve compliance with an emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

4. No owner or operator subject to this Chapter shall fail to keep records, notify, report or revise reports as required under this Subchapter.

B. Special Provisions

1. The administrative authority may allow a certain complex within a facility to be considered as a separate source with regard to the requirements of this Subchapter, provided that the complex is used solely for research and development of new processes and/or products, and is not engaged in the manufacture of products for commercial sale.

2. No later than December 20, 1994, the administrative authority shall initiate a review of electric utility steam-generating units to determine whether such units shall be regulated under this Subchapter. The administrative authority may consider the results of a study of such units conducted by the United States Environmental Protection Agency as required in Title III, Section 112 of the Clean Air Act Amendments of 1990, and any other information available at that time. Until the administrative authority makes a final determination electric utility steam-generating units are exempt from the requirements of this Subchapter.

3. The administrative authority shall prepare an emissions inventory of toxic air pollutant emissions from stationary combustion sources to be made available to the public not later than December 20, 1994. The administrative

authority may require facilities that emit or discharge toxic air pollutants from stationary combustion sources to provide the identities and quantities of toxic air pollutants emitted or to provide information required to estimate emissions from such sources. The administrative authority shall regulate emissions of toxic air pollutants derived from the combustion of virgin fossil fuels under this Section if the administrative authority finds that such regulation is appropriate and necessary after consideration of information contained in the emissions inventory and any other information available at that time. Until the administrative authority makes a final determination, the following emissions are exempt from the requirements of this Subchapter:

[See Prior Text in B.3.a - B.7]

8. A Louisiana Maximum Achievable Control Technology (MACT) determination for the pulp and paper mill source category, setting forth emission and/or technical control standards and schedules for achieving compliance, shall be promulgated by the administrative authority in accordance with the Louisiana Administrative Procedure Act. The owner or operator of any major source which is a pulp or paper mill shall assist the department in the determination of MACT by providing reasonably available technical and economic data as requested. The administrative authority shall publish and make available for comment the proposed Louisiana MACT determination within six months of promulgation of the federal MACT standards for the pulp and paper source category by USEPA or on December 20, 1997, whichever is sooner. In the event that a state MACT standard is proposed pursuant to this Paragraph prior to promulgation of federal MACT standards, the proposed effective date shall be December 20, 1998. Notwithstanding LAC 33:III.5109.A, B.3.c, D, and 5111.B.4 or any contrary provision of this Subchapter, until the administrative authority makes a final determination of MACT for pulp and paper mills, major sources in the pulp and paper mill source category are exempt from the MACT provisions of this Subchapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:2104 (December 1991), amended LR 18:1362 (December 1992), LR 21:370 (April 1995), LR 23:58 (January 1997).

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

[See Prior Text in A - B.6]

C. Availability of Information. The availability to the public of information provided to, or otherwise obtained by, the administrative authority under this Subchapter, shall be governed by R.S. 30:2030, and applicable Rules and Regulations promulgated thereunder.

[See Prior Text in D - D.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997).

§5109. Emission Control and Reduction Requirements and Standards

* * *

[See Prior Text in A - B.5]

C. Standard Operating Procedure Requirements. The owner or operator of any new or existing source required to report emissions in accordance with LAC 33:III.5107.A shall develop a standard operating procedure (SOP) within 120 days after achieving or demonstrating compliance with the standards specified in this Chapter. The SOP shall detail all operating procedures or parameters established by the owner or operator to ensure that compliance with the applicable standards is maintained and shall address, but not be limited to, operating procedures for any monitoring system in place, specifying procedures to ensure compliance with LAC 33:III.5113.C.5. A written copy of the SOP must be available on site or at an alternate approved location for inspection by the administrative authority. A copy of the SOP must be provided within 30 days upon request by the department. The requirements of this Subsection do not apply to emissions of those pollutants listed in Table 51.3.

* * *

[See Prior Text in D - D.3]

4. Under no circumstance will the owner or operator of any major source under this Subchapter be granted more time to comply with Maximum Achievable Control Technology requirements than is allowed under an applicable federal MACT standard established pursuant to Section 112 of the Federal Clean Air Act.

* * *

[See Prior Text in E - E.2.c]

d. a statement specifying the requirements under this Subchapter to which the certification of compliance applies;

* * *

[See Prior Text in E.2.e - F.1.e]

2. Submitting a request for a deferred compliance schedule does not relieve the owner or operator of his or her responsibility to comply with this Subchapter and does not preclude the department from initiating enforcement actions due to failure to comply with standards.

* * *

[See Prior Text in G - G.6]

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

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

§5111. Permit Requirements, Application, and Review

* * *

[See Prior Text in A - A.3.b]

4. The owner or operator of any existing major source which is operating without a Louisiana Air Permit, or which is not fully permitted, at the time of promulgation of this Subchapter, shall apply for a permit in accordance with Subsection B of this Section. For sources not required to submit a compliance plan pursuant to LAC 33:III.5109.D, the permit application shall be submitted no later than December 20, 1993.

* * *

[See Prior Text in A.5 - B.2.e]

3. Unless otherwise specified in this Subchapter, each application for a permit to modify a new or existing major source facility shall include, in addition to the information required in Subsection B.2 of this Section, the following information:

* * *

[See Prior Text in B.3.a - C.1.a]

b. If an applicant fails or refuses to correct deficiencies in the application or to provide additional information requested by the administrative authority by the date specified, the permit shall be denied.

* * *

[See Prior Text in C.2 - C.3]

4. Permits issued by the administrative authority under this Subchapter shall be valid for a period of five years from the date of issuance at which time they will be subject to review by the administrative authority.

a. Upon review, the administrative authority may extend any such permit for a period not to exceed five years from the date of expiration. Before final action is taken upon a permit under review, a notice of the permit filed for review will be published to allow adequate time for public comment.

b. Permits under review shall remain in force until review is complete and the permit is acted upon by the administrative authority.

5. Neither the submittal of an application for a permit nor the administrative authority's granting of a permit for construction or modification shall:

a. relieve an owner or operator of legal responsibility for compliance with any applicable provision of this Subchapter or of any other applicable federal, state, or local requirement; or

b. prevent the administrative authority from implementing or enforcing this Subchapter or taking any other action under the Act.

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

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

§5113. Notification of Start-up, Testing, and Monitoring

A. Notification of Start-up. Any owner or operator that has an initial start-up of a stationary source subject to MACT or Ambient Air Standard Requirements under this Subchapter shall furnish the administrative authority written notification as follows:

* * *

[See Prior Text in A.1 - B]

1. The department may require any owner or operator to conduct tests to determine the emission of toxic air pollutants from any source whenever the department has reason to believe that an emission in excess of those allowed by this Subchapter is occurring. The department may specify testing methods to be used in accordance with good professional practice. The department may observe the testing. All tests shall be conducted by qualified personnel. The department shall be given a copy of the test results in writing signed by the person responsible for the tests within 45 days after completion of the test.

2. Emission tests shall be conducted as set forth in accordance with Test Methods of 40 CFR, parts 60, 61, and 63 or in accordance with alternative test methods approved by the administrative authority.

* * *

[See Prior Text in B.3 - B.4.d]

e. any other facilities that the administrative authority needs to safely and properly test a source.

5. Unless otherwise specified, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the administrative authority by a certified letter sent before the close of business on the 45th day following the completion of the emission test.

6. The owner or operator shall retain records of emission test results and other data needed to determine emissions. Such records shall be retained at the source, or at an alternate location approved by the administrative authority for a minimum of two years, and shall be made available upon request for inspection by the administrative authority.

7. The owner or operator shall notify the administrative authority of any emission test required to demonstrate compliance with this Subchapter at least 30 days before the emission test to allow the administrative authority the opportunity to have an observer present during the test.

C. Monitoring Requirements

1. Each owner or operator shall maintain and operate each monitoring system in a manner consistent with good air pollution control practices for minimizing emissions. Any breakdown or malfunction of the monitoring system shall be repaired or adjusted as soon as practicable after its occurrence. The administrative authority's determination of whether acceptable operating and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operating and maintenance procedures, manufacturer recommendations and specifications, inspection of the monitoring system, and adherence to a preventive maintenance program.

2. When required at any other time requested by the administrative authority, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the administrative authority with a copy of a written report of the results within 60 days of the evaluation. The owner or operator of the source shall furnish the administrative authority with written notification

of the date of the performance evaluation at least 30 days before the evaluation is to begin.

3. When monitoring is required and the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the administrative authority approves the installation of fewer systems.

* * *

[See Prior Text in C.4]

5. The administrative authority may require a continuous monitoring system where such systems are deemed feasible and necessary to demonstrate compliance with applicable standards. The owner or operator of a facility that the administrative authority has required to install a continuous monitoring system shall submit to the department for approval a plan describing the affected sources and the methods for ensuring compliance with the continuous monitoring system. The plan for the continuous monitoring system must be submitted to the department within 90 days after the administrative authority requests either the initial plan or an updated plan.

a. Upon request, the owner or operator of any affected facility shall evaluate the performance of continuous monitoring systems and furnish the administrative authority with two or more copies of a written report of the test results within 60 days. The performance of the continuous monitoring systems shall be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of 40 CFR part 60.

b. Except for continuous monitoring system breakdown and repairs, calibration checks, and zero and span adjustments, and when the equipment being monitored is out of service or shutdown, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements.

c. All continuous monitoring systems for measuring emissions, except opacity, shall where feasible complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

d. All continuous monitoring systems or monitoring devices shall be installed to make representative measurements under variable process or operating parameters.

e. An owner or operator of any continuous monitoring system shall collect and reduce all data as follows:

i. An owner or operator of a continuous monitoring system measuring opacity shall:

(a). reduce all data to six-minute averages; and

(b). calculate the six-minute averages from 36 or more data points equally spaced over each six-minute period.

ii. An owner or operator of a continuous monitoring system measuring parameters other than opacity shall:

(a). reduce all data to one-hour averages; and

(b). where feasible, calculate the one-hour averages from four or more data points equally spaced over each one-hour interval.

f. Data recorded during periods of continuous monitoring system breakdowns and repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this Paragraph.

6. Repeated problems of monitoring system breakdowns, repairs, calibration checks, zero and span adjustments, or failure to follow standard operating procedures (SOPs) shall be subject to investigation and enforcement actions.

7. The owner or operator of any monitoring system shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source, or at an alternate location approved by the administrative authority, for a minimum of three years and made available, upon request, for inspection by the administrative authority.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1364 (December 1992), LR 23:59 (January 1997).

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants published in the Code of Federal Regulations at 40 CFR part 61, revised as of July 1, 1995, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the State of Louisiana.

40 CFR 61	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart C	National Emission Standard for Beryllium
Subpart D	National Emission Standard for Beryllium Rocket Motor Firing
Subpart E	National Emission Standard for Mercury
Subpart F	National Emission Standard for Vinyl Chloride
Subpart J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
Subpart V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

Subpart Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
Subpart BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
Subpart FF	National Emission Standard for Benzene Waste Operations
Appendix A	National Emission Standards for Hazardous Air Pollutants, Compliance Status Information
Appendix B	Test Methods
Appendix C	Quality Assurance Procedures

B. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants published in the *Federal Register* as they exist from July 1, 1995, through June 30, 1996, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the State of Louisiana.

40 CFR 61	Federal Register Citation	Date Promulgated	Subpart/Appendix Heading
Appendix B	61 FR 18278	April 25, 1996	Test Methods

C. Corrective modifications are made to 40 CFR part 61 subpart A, Section 61.04(b)(T), to read as follows: State of Louisiana: Air Toxics Program Manager, Air Quality Division, Louisiana Department of Environmental Quality, Box 82135, Baton Rouge, LA 70884-2135.

D. Copies of documents incorporated by reference in this Chapter are available for review at the Air Quality Division Information Center, Louisiana Department of Environmental Quality, or may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242.

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 23:61 (January 1997).

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the Code of Federal Regulations at 40 CFR part 63, revised as of July 1, 1995, and specifically listed in the following table are hereby incorporated by reference as they apply to major sources in the State of Louisiana.

40 CFR 63	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
Subpart C	List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List (Reserved)
Subpart D	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
Subpart F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
Subpart G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
Subpart H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
Subpart I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart N	National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
Subpart R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
Subpart T	National Emission Standards for Halogenated Solvent Cleaning
Subpart W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
Subpart X	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting
Appendix A	Test Methods
Appendix B	Sources Defined for Early Reduction Provisions
Appendix C	Determination of the Fraction Biodegraded (F _{bio}) in a Biological Treatment Unit

B. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Federal Register* as they exist from July 1, 1995, through June 30, 1996, and specifically listed in the following table are hereby

incorporated by reference as they apply to major sources in the State of Louisiana.

40 CFR 63	Federal Register Citation	Date Promulgated	Subpart/Appendix Heading
Subpart B	61 FR 21372	May 10, 1996	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
Subpart C	61 FR 30823	June 18, 1996	List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List
Subpart F	60 FR 63626	December 12, 1995	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
	61 FR 7718	February 29, 1996	
	61 FR 31439	June 20, 1996	
Subpart G	61 FR 7718	February 29, 1996	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
Subpart H	60 FR 63631	December 12, 1995	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
	61 FR 31439	June 20, 1996	
Subpart I	61 FR 7718	February 29, 1996	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
	61 FR 31441	June 20, 1996	
Subpart M	61 FR 27788	June 3, 1996	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart N	61 FR 27787	June 3, 1996	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	61 FR 27788	June 3, 1996	Ethylene Oxide Emission Standards for Sterilization Facilities
Subpart X	61 FR 27788	June 3, 1996	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting
Subpart R	61 FR 43260	August 18, 1996	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
	61 FR 7723	February 29, 1996	
Subpart Y	60 FR 48399	September 19, 1995	Federal Standards for Marine Tank Vessel Loading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations
Subpart CC	60 FR 43260	August 18, 1995	National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries
	60 FR 49976	September 27, 1995	
	61 FR 7051	February 23, 1996	
	61 FR 29878	June 12, 1996	
Subpart GG	60 FR 45956	September 1, 1995	National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework Facilities
	61 FR 4903	February 9, 1996	
Subpart II	60 FR 64336	December 15, 1995	National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) Operations
	61 FR 30816	June 18, 1996	

Subpart JJ	60 FR 62935	December 7, 1995	National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations
Subpart KK	61 FR 27140	May 30, 1996	National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From the Printing and Publishing Industry
Appendix A	60 FR 62952	December 7, 1995	Test Methods

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 23:61 (January 1997).

Subchapter D. Reserved

Subchapter E. Reserved

Subchapter F. Reserved

Subchapter G. Reserved

Subchapter H. Reserved

Subchapter I. Reserved

Subchapter J. Reserved

Chapter 53. Area Sources of Toxic Air Pollutants

Subchapter A. Toxic Emissions Reporting Requirements

§5301. Applicability

The provisions of this Subchapter apply to area sources as defined in LAC 33:III.5103 which belong to the following categories of facilities and which use the chemicals listed for that category:

* * *

[See Prior Text in A.1-7]

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 20:430 (April 1994), amended LR 23:63 (January 1997).

Subchapter B. Incorporation by Reference of 40 CFR part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the Code of Federal Regulations at 40 CFR Part 63, revised as of July 1, 1995, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the State of Louisiana.

40 CFR 63	Subpart/Appendix Heading
Subpart A	General Provisions
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Subpart X	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting
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B. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Federal Register* as they exist from July 1, 1995, through June 30, 1996, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the State of Louisiana.

40 CFR 63	Federal Register Citation	Date Promulgated	Subpart/Appendix Heading
Subpart M	61 FR 27788	June 3, 1996	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
Subpart X	61 FR 27788	June 3, 1996	National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

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 23:63 (January 1997).

Gus Von Bodungen
Assistant Secretary

9701#048

RULE

Louisiana Lottery Corporation

On-Line Lottery Games (LAC 42:XV.Chapter 1)

The Louisiana Lottery Corporation in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 47:9001 et seq., has amended the Rules and Regulations pertaining to the operations of on-line lottery games in particular LAC 42:XV.141 to allow the Louisiana Lottery Corporation to offer the multi-state Lottery game "Daily Millions".

Title 42

LOUISIANA GAMING

Part XV. Lottery

Chapter 1. On Line Lottery Games

§101. Policy Statement

The Louisiana Lottery Corporation (the "corporation") is authorized by Louisiana Revised Statutes 47:9008(A) to adopt such Rules and Regulations as may be necessary to conduct specific lottery games and operations of the corporation. Pursuant to that grant of authority, the board of directors of the corporation (the "board") has adopted these on-line lottery games general Rules, which are intended to provide general

guidelines concerning the conduct and administration of on-line lottery games.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:63 (January 1997).

§103. Definitions

As used in the game rules, game directives and drawing directives, the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

Board—the Board of Directors of the Louisiana Lottery Corporation.

Claim Center—a regional office or claims office of the corporation at which winners may redeem prizes.

Claim Deadline—the day after which prizes from a particular game or on-line drawing are no longer eligible to be redeemed or claimed.

Claim Form—the form provided by the corporation to be completed by prize winners when claiming a prize.

Corporation—the Louisiana Lottery Corporation.

Drawing Directive—the detailed drawing instructions followed by the corporation for each drawing event.

Free Ticket—a lottery prize for which the winner is entitled to another ticket for the same game, without charge.

Game Directive—the game-specific guidelines that itemize the particular requirements of each game.

Game Rules—these general rules regarding all on-line lottery games, prize payments, and other game parameters.

Invalid Ticket—any ticket that fails to meet all of the validation requirements of the corporation.

Lottery—any game of chance approved by the corporation and operated pursuant to the Louisiana Lottery Corporation Law.

Lotto—a lottery game that offers a player a choice of five, six or seven numbers out of a specified field of numbers, the winner being determined by a drawing.

Numbers Game—a lottery game permitting the player to choose a three-digit or four-digit number, the winner being determined by a drawing.

On-Line Game Ticket—an official ticket issued by the corporation in connection with any on-line lottery game, produced on official paper stock by an on-line retailer in an authorized manner, bearing player or computer selected numbers, figures and/or characters representing the type of wager, drawing date, amount of wager, and validation data.

On-Line Lottery Game—a game, authorized in §105, which is played using ticket-generating terminals linked to a central computer, with winners being determined by a drawing.

On-Line Retailer—any person with whom the corporation has contracted to sell on-line game tickets to the public.

President—the president of the Louisiana Lottery Corporation.

Quick-Pick—a player option by which on-line game number selections are determined at random by computer software.

Valid Ticket—a ticket that meets the validation requirements of the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, amended October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:64 (January 1997)

§105. General Provisions

A. These game rules authorize the corporation to offer the following on-line lottery games:

1. **Pick 3 Daily Game.** An on-line numbers game permitting a player to choose a three-digit number, the winner being determined by a drawing.

2. **Lotto.** An on-line lotto game permitting a player a choice of six numbers out of a specified field of numbers, the winner being determined by a drawing.

3. **Easy 5.** An on-line lotto game permitting a player a choice of five numbers out of a specified field of numbers, the winner being determined by a drawing.

B. Introduction of a new on-line lottery game may only be accomplished by amendment of these game rules to include the game as an authorized game. These game rules shall apply to the on-line lottery games listed in this Section. The detailed information regarding each on-line game will be contained in a game directive promulgated by the president. The game directive must be signed by the president prior to the start of the game. Each game directive will be distributed and posted at every corporation office and will be available for public inspection during the sales period of the particular game.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:64 (January 1997).

§107. Probability of Winning

The overall probability of winning any prize in a particular game (expressed as "odds" of winning as that term is commonly used in the lottery industry) will be contained in the game directive for that game and shall be included in the promotional materials for the game. The statement of "odds" does not need to specify the "odds" of winning each particular prize. The corporation shall make every attempt to release accurate "odds" information in press releases for each on-line lottery game.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, repromulgated LR 23:64 (January 1997).

§109. Compliance with Law/Rules

In submitting an official on-line game ticket for validation, the player agrees to abide by applicable laws, all corporation rules, regulations, policies, directives, instructions, conditions, and final decisions of the president of the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, repromulgated LR 23:64 (January 1997).

§111. Names of Winners

The corporation shall have the right to use the names and the city or area of residence of all prize winners in on-line lottery games. The information may be used by the corporation for advertising and publicity purposes. The corporation will not make public the addresses or phone numbers of on-line lottery winners. Such information will be provided to authorized governmental agencies, as required by law or as deemed appropriate. Winners who grant the corporation permission to be photographed agree to allow the use of such photographs for publicity and advertising purposes without any additional compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§113. Age Eligibility

No person under 18 years of age may purchase an on-line game ticket, but persons under 18 years of age may receive an on-line game ticket as a gift.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§115. Retailer Eligibility

Retailers authorized by the corporation to sell tickets may purchase tickets and may claim prizes resulting from any tickets so purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§117. End of Game

Each on-line lottery game will continue until such ending date as may be announced by the president. The president may suspend or terminate a game without notice if such action is deemed to be in the best interest of the corporation. No tickets for a particular game may be sold for a game after the suspension or termination of the game.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§119. Winner Validation

A. Except as provided in specific game directives, the following requirements will apply to the validation of winning on-line game tickets:

1. The validation data, number selections, and drawing date(s) printed on the ticket must be present in their entirety and must correspond with the data reflected in the

corporation's computer records relating to the production of the ticket.

2. The on-line ticket must be intact and not defaced in any manner.

3. The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner.

4. The ticket must not be counterfeit in whole or in part, nor an exact duplicate of another winning ticket.

5. The ticket must have been issued by an authorized on-line retailer in the authorized manner on official paper stock.

6. The ticket must not be stolen or canceled.

7. The ticket must have exactly the specified number of computer selected numbers, figures and/or characters, and validation data as provided for in the game directives for the game.

8. The ticket must not be partially blank, misregistered, defectively printed, or produced in error to the extent that it cannot be validated by the corporation.

9. The ticket must be submitted for redemption within the claim period provided for in the game.

10. The ticket must be submitted for payment in accordance with the provisions set forth in each game directive.

11. The player or computer number selections, validation data and drawing date(s) of an apparent winning ticket must appear on the official transaction record of the corporation, and a ticket with that exact data must not have been previously paid.

12. The ticket must pass all other confidential security checks of the corporation.

13. In submitting an official on-line game ticket for validation, the player agrees to abide by applicable laws, all corporation rules, regulations, policies, directives, instructions, conditions, and final decisions of the president of the corporation.

B. Except as provided above, any on-line game ticket that fails to pass any of the validation requirements is void and ineligible for any prize, and no prize shall be paid. Liability for defective tickets is limited to the original purchase price of the ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, repromulgated LR 23:65 (January 1997).

§121. Prize Payment

On-line lottery game prizes will be paid in accordance with game directives and retailer regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§122. Delay of Payment

A. The corporation shall pay prizes in a timely fashion but may delay making payment of any prize or installment of a prize under the following circumstances:

1. A dispute occurs or it appears that a dispute may occur relative to any prize.

2. There is any question regarding the identity of the claimant.

3. There is any question regarding the validity of the ticket.

4. The claim is subject to any court ordered garnishment.

5. The corporation becomes aware of a change in circumstances relative to a prize award which requires review.

B. The corporation assumes no liability for interest for any delay of payment of a prize or installment.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:65 (January 1997).

§123. Claim Form

A. For any prize of more than \$600, the owner of the apparent winning ticket shall complete an official claim form that requires the winner to provide:

1. the name of the individual or entity claiming the prize;

2. the address and city of residence of the claimant;

3. the social security number of the individual claimant or the federal employer's identification number issued by the IRS for multiple claimants.

B. No prize payment will be authorized if the required information is not provided by the claimant. The name of the owner printed on the back of the ticket must correspond with the name of the claimant.

C. A group, family unit, club or other organization which plays as a partnership which is not a legal entity and which does not possess a federal employer's identification number may claim a lump sum prize if it:

1. files an Internal Revenue Service form 5754, "Statement by Person(s) Receiving Gambling Winnings", or a successor form, with the corporation, designating to whom the prize is to be paid and the person or persons to whom the prize is taxable; or

2. designates one individual in whose name the claim shall be entered and furnishes that person's social security number and other required information.

D. Formal recognition of partnership play will be required with respect to lotto grand prizes paid on an installment basis. Formal recognition shall include, but shall not be limited to, production of a partnership agreement or memorandum thereof, listing the names of all partners. The corporation must also be furnished a Federal Employer's Identification Number for the partnership entity. Each such recognized partnership shall receive a single annual installment payment payable to the partnership.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:66 (January 1997).

§125. Assignability

The right of any person to a prize after the prize is claimed shall not be assignable. The corporation may pay any prize to the estate of a deceased winner. Any prize to which a winner is entitled may be paid to any person pursuant to an appropriate judicial order.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:66 (January 1997).

§127. Installment Prizes

The corporation may provide for the payment of any prize of more than \$100,000 in equal annual installments. The schedule of payments shall be designed to pay the winner equal dollar amounts each year until the total payments equal the prize amount. When the prize amount is paid in installments, the president may round the actual amount of the prize to the nearest \$1,000 amount to facilitate the appropriate funding mechanism. The period of payment of any installment payment schedule shall not exceed 20 years. The corporation shall not accelerate the payment schedule of any installment prize for any reason except pursuant to an appropriate judicial order.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:66 (January 1997).

§129. Merchandise Prizes

If a noncash prize is offered, the value of the prize will be determined by the fair market value of any such prize, which will be the amount reported to the state and the IRS for tax purposes. If the value of the prize is \$5,000 or more, the corporation will pay withholding taxes on behalf of the winner in accordance with federal and state rules. The corporation will not be responsible for any other fees associated with the prize.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, amended October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:66 (January 1997).

§131. Drawings

The corporation shall follow drawing directives that detail the procedures for conducting each on-line game drawing, the drawing method, and the equipment to be utilized. The corporation shall exercise care to insure a totally random drawing process that results in the selection of prize winners in a method that favors none of the participants.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:66 (January 1997).

§133. Independent Auditor

All drawing events shall be witnessed by an independent auditing firm. The independent auditor shall attest to the fact that the procedures for the drawing were properly disseminated and that the procedures were followed, and shall make note of any exceptions to the procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, February 18, 1992 and promulgated in *The Advocate*, February 28, 1992, repromulgated LR 23:67 (January 1997).

§135. Bulk Purchase

"Bulk Purchase" is the purchase of on-line game tickets for the purpose of accomplishing a buyout of a lotto jackpot or grand prize pool. The bulk purchase of on-line game tickets by an investment syndicate, investment group, corporation or any person for investment purposes is expressly prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994 and promulgated *The Advocate*, October 28, 1994, repromulgated LR 23:67 (January 1997).

§137. Bulk Sale

"Bulk Sale" is the sale of on-line game tickets by a licensed on-line retailer for the purpose of assisting the purchaser in accomplishing a buyout of a lotto jackpot or grand prize pool. The bulk sale of on-line game tickets by a licensed on-line retailer is expressly prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:67 (January 1997).

§139. Enforcement

The game directive shall include provisions to enforce the prohibitions contained in §§135 and 137.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation on October 22, 1992 and promulgated in *The Advocate*, November 3, 1992, amended October 21, 1994, and promulgated in *The Advocate*, October 28, 1994, repromulgated LR 23:67 (January 1997).

§141. Multi-State Lottery

This Section authorizes the Louisiana Lottery Corporation, through an agreement with the Multi-State Lottery Association (MUSL), to offer the following games: "PowerBall" and "Daily Millions". Introduction of any new game conducted by MUSL may only be accomplished by amendment of this Section to include the game as an authorized game. The detailed information regarding the Rules of the PowerBall game and the Daily Millions game will be contained in a game directive promulgated by the president. The game directive must be signed by the president prior to the start of the game. The game directive will be distributed and posted at every corporation office and will be

available for public inspection during the sales period of PowerBall and Daily Millions.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:9001 et seq.

HISTORICAL NOTE: Adopted by the Louisiana Lottery Corporation, October 21, 1994 and promulgated in *The Advocate*, October 28, 1994, amended LR 23:67 (January 1997).

Charles R. Davis
President

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RULE

**Office of the Governor
Division of Administration
Office of the Commissioner**

Conduct of Hearing (LAC 34:I.3103)

The Division of Administration, Office of the Commissioner, in accordance with the provisions of R.S. 49:950 et seq., and R.S. 39:1581, amended LAC 34:I.3103 so that the said Rule will be in conformity with law as follows:

Title 34

**GOVERNMENT CONTRACTS,
PROCUREMENT AND PROPERTY CONTROL**

Part I. Purchasing

**Chapter 31. Conduct of Hearing—Louisiana
Procurement Code**

§3103. Application

The following Rules shall only apply to hearings held by boards of higher education and institutions under their jurisdiction in accordance with §§1601, 1671, 1672, and 1673 of Title 39 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997).

Edgar C. Jordan
Assistant Commissioner

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RULE

**Office of the Governor
Patient's Compensation Fund Oversight Board**

General Provisions; Fund Enrollment; Surcharges; and Scope of Coverage (LAC 37:III.Chapters 1, 5, 7, and 9)

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., amends LAC 37:III, as follows, which provides several technical corrections to the current Rules, defines and governs self-insurance coverage as