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# Executive Orders

## EXECUTIVE ORDER EWE-78-17

WHEREAS, the State of Louisiana has faced and, undoubtedly, will continue to face increasing demands for social and other governmental services, and

WHEREAS, the resource costs of social and other governmental services are accelerating at a faster rate than the projected growth of state resources, and

WHEREAS, through mastery of program evaluation techniques, state agencies will be better able to make the most efficient possible use of the resources allotted to them, while securing the maximum possible benefits from their program efforts for the people of Louisiana, and

WHEREAS, Act 277 of the 1976 Louisiana Legislature established a policy of mandatory review of state statutory agencies and required the periodic termination of such agencies, making their re-creation contingent of an evaluation of their program effectiveness.

NOW, THEREFORE, IT IS ORDERED THAT state agencies develop and implement policies of program evaluation designed to increase the efficiency of their resource utilization, to improve the effectiveness of their management structure, to measure the impact of their program efforts, to better their decision-making ability, and to thereby raise the quality of state services provided to the people of Louisiana, and

IT IS FURTHER ORDERED THAT, to aid agency efforts in this project, the Division of Administration and the Governmental Services Institute offer a series of training sessions designed to instruct senior state personnel in the techniques and theory of program evaluation, and

IT IS FURTHER ORDERED THAT, to ensure the success of program evaluation efforts in Louisiana, the Assistant Secretaries and Undersecretaries of all state departments lend this project their fullest cooperation.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 6th day of December, A.D. 1978.

Edwin Edwards  
Governor of Louisiana

# Emergency Rules

## DECLARATION OF EMERGENCY

**Department of Agriculture  
Office of Agricultural and Environmental Sciences**

Effective December 7, 1978, the Department of Agriculture, Office of Agricultural and Environmental Sciences, has exercised those powers conferred by the emergency provisions of the Administration Procedures Act, R.S. 49:953, to adopt amendments to the Sweet-potato Weevil Quarantine and Regulations, which

were initially adopted under the provisions of Parts 2 and 3 of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950. This action has been taken to prevent spread of Sweet-potato Weevil from infested areas, to areas not known to sustain infestations of these pests. This insect is considered to be the most destructive pest of sweet potato industry of Louisiana. In connection with this infestation, it has become necessary to promulgate the following emergency rule, by amending Supplement to Sweet-potato Quarantine and Regulation, Section III, Quarantined Areas, that portion of paragraph 2-A dealing with West Carroll Parish, by adding the following property.

... that portion consisting of a one mile radius of and including the property of E.A. O'Neal Farm, Eugene and Model O'Neal, section 10, R11E, T22N, which includes portions of sections 2, 3, 4, 9, 10, 11, 15, and 16.

Richard Carlton, State Entomologist  
Office of Agricultural and  
Environmental Sciences

## DECLARATION OF EMERGENCY

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

Effective January 1, 1979, the Department of Health and Human Resources, Office of Family Security, has exercised those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953B, to adopt limitations in the Medical Assistance Program (MAP).

It has become necessary to promulgate the following emergency rule to remain within the budget appropriations for fiscal year 1978-79, the following program limitations are being implemented effective January 1, 1979:

(1) Inpatient hospital services. The number of days payable for inpatient hospital service are reduced from fifteen to ten. The present procedure for applying Professional Studies Activities/Length of Stay criteria to every admission may extend the number of inpatient hospital days if the patient is admitted with at least one eligible day remaining.

(2) Outpatient hospital services. The number of outpatient hospital visits are limited to three per calendar year.

(3) Physician services. The number of inpatient physician visits are reduced from fifteen to ten per calendar year. There is no provision for extension of visits beyond the ten visit limit.

(4) Home health services. Before payment can be made for all home health services, prior approval of the treatment plan by the MAP will be required. This prior approval will be secured directly from the MAP by the home health agency.

(5) Durable medical equipment. The existing program is being closely reviewed and a very restrictive criteria is being applied for approval of all durable medical equipment. Hearing aid batteries will no longer be a covered service.

(6) Drug services.

(a) The Medical Assistance Program will implement a "lock-in" procedure whereby a recipient suspected of overutilizing the pharmacy program is limited to services from one physician and one pharmacy.

(b) The following maintenance type drugs shall be dispensed in a month's supply or one hundred unit doses: anti-coagulants; anti-convulsants; oral anti-diabetics; calcium gluconate, calcium lactate, and calcium phosphate; cardiovascular drugs, including diuretics and antihypertensives; estrogens; ferrous gluconate and ferrous sulfate; potassium supplements; thyroid and anti-thyroid drugs; vitamins A, D, K, B<sub>12</sub> injection, folic acid, and nicotinic acid. Claims submitted for quantities less than a month's supply are to be rejected.

(c) The therapeutic class of antilipemics are to be excluded from payment. Examples of nonpayable drugs in this class are Athemol—N, Atromid—S, Choloxin, Colestid, Cytellin, Lorelco, Nicalex, and Questran.

(d) The following specific drugs are also to be excluded:

Amitriptyline Tab. 150 mg.	Motrin
Amoxicillin, All Forms	Nalfon
Clinoril	Naprosyn
Darvocet-N 50	Propoxyphene 32 mg.
Darvocet-N 100	Propoxyphene Comp. 32 mg.
Darvon-N	Propoxyphene with aspirin
Darvon N with ASA	Stero-Darvon with ASA
Indocin	Robaxisal
Melzine (Antivert)	Tetrex, All Forms
	Tolectin

(e) The program has established a price listing under which a payment will not be made in excess of the established maximum cost for certain drugs that are available from more than one manufacturer.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

### DECLARATION OF EMERGENCY

#### Department of Health and Human Resources Office of Human Development

The Department of Health and Human Resources, Office of Human Development (OHD) does hereby exercise the emergency provisions of the Administrative Procedures Act (R.S. 49:953B) to adopt the following policy in relation to vendor payments to licensed day care centers and approved family day care homes. Effective January 1, 1979, the maximum rate of monthly payment to family day care homes is \$69.30 for each eligible child. The maximum rate of monthly payment to licensed day care centers is \$104.72 for each eligible child.

In addition, OHD is revising the eligibility criteria for day care which results in more children who become Title XX eligible to receive the service. Specifically, the criteria in regard to provision of day care has been expanded to provide that the service may be utilized in a formerly active protective service case when recommended by the service worker at the time the case is transferred to another OHD service unit. In addition, in former foster care cases the service of day care will be utilized to facilitate child and family adjustment immediately after the child is returned home from placement.

Adoption of emergency rulemaking is necessary as follows. State funds were appropriated for day care vendor payment rate increases by the 1978 Louisiana Legislature, contingent on the availability of federal funds. These federal funds were to be used in part to increase the state's vendor payment rate because of the inadequacy of present rates due to inflationary spiral. In November, 1978, P.L. 95-600, Revenue Act of 1978, releasing federal funds, was signed by President Carter. Therefore, in order to insure that day care centers have sufficient funds to meet the January 1, 1979, increase in social security taxes as well as minimum wage increases, the increase in payment rate will become effective January 1, 1979. Without sufficient funds to meet the increased costs in staff expenses, the health, safety, and welfare of many of Louisiana's children will be adversely affected by either a decrease in day care center staff or through involuntary displacement from day care center rolls.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

### DECLARATION OF EMERGENCY

#### Department of Natural Resources Office of Conservation

Pursuant to the provisions of R.S. 49:953B, as Commissioner of Conservation, I have adopted Emergency Rules for Practice and Procedure for All Applications and Proceedings for Determination of Well Categories under Natural Gas Policy Act of 1978.

These rules are being adopted on an emergency basis due to the Natural Gas Policy Act of 1978. The failure to adopt rules with immediate effect could cause severe disruptions or uncertainty in the supply of natural gas for public consumption during the winter period, and I do find that an imminent peril to public welfare requires this emergency action.

These rules are designed to implement and clarify applicable Federal Energy Regulatory Commission regulations as they apply to Louisiana with the minimum possible imposition of a regulatory burden.

These Emergency Rules of Practice and Procedure shall be effective on and after November 27, 1978, as amended on November 29, 1978.

\* \* \* \*

#### Emergency Rules Practice and Procedure for All Applications and Proceedings for Determination of Well Categories Under Natural Gas Policy Act of 1978

*(Editor's Note: The forms which accompany these rules are not published here, in accordance with R.S. 49:954.1C. Copies of the forms may be obtained from the Office of Conservation, Department of Natural Resources, Box 44275, Baton Rouge, Louisiana 70804.)*

#### 1. Definitions.

A. Unless the context specifically requires otherwise any special words or terms and phrases used herein are used as defined in the Natural Gas Policy Act of 1978, applicable Federal Energy Regulatory Commission rules and regulations pertaining thereto, or applicable meanings given in Title 30 of the Louisiana Revised Statutes.

B. "Commissioner" shall mean the Commissioner of Conservation, State of Louisiana.

C. "FERC" means the Federal Energy Regulatory Commission.

D. "NGPA" means the Natural Gas Policy Act of 1978.

E. "Sections 102, 103, 107 and 108" mean those sections of the Natural Gas Policy Act of 1978 (NGPA).

F. "District office" means one of the district offices of the Office of Conservation, State of Louisiana.

#### 2. Applications.

2.1 Any interested person requesting the classification of a well or a reservoir pursuant to the authority granted to the Commissioner by Section 503 of the NGPA in order to determine the applicable category for any such wells or reservoirs pursuant to Title 1 of said NGPA shall:

2.2 File a written application made upon forms prescribed by the Office of Conservation, Department of Natural Resources, State of Louisiana. The original and two copies of such applications shall be filed with the Commissioner at the District Office for the district in which the subject well or reservoir is located. All applications must be completed in conformance with the Commissioner's Rules and Regulations as well as the rules and regulations of FERC before the applications will be considered by the Commissioner. An application may cover a new determi-

nation or a request for a change affecting an existing determination. An application may be amended, supplemented or withdrawn by the applicant at any time prior to the Commissioner's determination.

2.3 An individual application must be completed as to each well for which a status determination is being requested, and if more than one status determination is being requested as to a single well then all forms and information required for each requested determination shall be submitted jointly under one application with notice to the Commissioner that multiple determinations for one well are being sought under the application.

2.4 If applicant is an individual, the application shall be signed and sworn to by such individual. If applicant is a corporation, the application shall be signed and sworn to by a responsible official of such corporation. If applicant is a partnership, the application must be signed and sworn to by one general partner of the partnership.

2.5 Certify that the purchaser(s) of the natural gas has been served by delivery or by mail, postage prepaid, a copy of the application, less required supporting documents.

2.6 Include a filing fee of one hundred dollars per application to cover administrative costs.

2.7 Upon receipt of an application for a well status determination under the NGPA, the Commissioner shall notify the applicant of the receipt of its application by the Commissioner, and should the application be incomplete in any respect, indicate the items to be filed which would make the application complete. Upon receipt of a complete application, the Commissioner shall assign a docket number to the application, and notify the applicant of the hearing date and docket number.

### 3. Documents Supporting Application.

3.1 All applications must contain, prior to hearing, all information, data, forms, affidavits, plats, maps, exhibits and evidence as may be required by law or the rules and regulations of the FERC and the Louisiana Office of Conservation.

3.2 The form prescribed by the Commissioner shall prescribe for documents sufficient to comply with the minimum requirements imposed by the FERC. Additional support may be required by the Commissioner by giving notice of such to the applicant prior to the hearing, at the hearing itself, or by other means.

### 4. Notice; hearing.

4.1 Upon receipt by the Commissioner of a complete application and after assigning a docket number to the application, the Commissioner shall set a reasonable time and place for a hearing on the application and shall cause a notice of the application to be published in the Official Journal of the State of Louisiana. Such notice shall be published at least ten days before the hearing and shall include:

- A. A statement of the time, place and nature of the hearings.
- B. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- C. A reference to the particular sections of the statutes and rules involved.
- D. A short and plain statement of the matters asserted and the relief sought.

Provided, however, that unless the Commissioner, for good reason, determines otherwise, an application involving recognition of the new onshore reservoir category (§102(c)(1)(c)) shall not be brought up for hearing prior to a hearing for unitization of the subject reservoir held pursuant to the rules of the Office of Conservation. Further, the Commissioner may hear any such NGPA application and unitization hearing jointly.

4.2 Any notice filed and published pursuant hereto may cover and include more than one well or reservoir in one notice

published provided the same applicant has filed for all such well determinations or multiple determinations as to any such well.

4.3 Any interested party shall have the right to protest to the Commissioner with respect to a determination sought by any applicant. Each protest shall include:

- A. An identification of the determination protested.
- B. The name and address of the person filing the protest.
- C. A statement of the effect the determination will have on the protestor.
- D. A statement of the precise grounds for the protest, and all supporting documents or references to any information relied on in connection with the protest.

After filing the protest as provided for herein the party filing such protest shall have the right to be heard at all hearings and to present witnesses and other evidence, whether or not represented by legal counsel or technical assistants, on all issues of fact involved and argument of all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

If such a protest is received by the Commissioner prior to the date set for the hearing, then a copy of same shall be delivered by the Commissioner to the applicant by mail, postage prepaid.

4.4 Except with regard to applications involving recognition of the new onshore reservoir category (§102(c)(1)(C)) wherein the limits of the subject reservoir have not been subject to an Office of Conservation unitization hearing prior to the NGPA determination hearing, if there are no protests filed, an application may be considered and determined by the Commissioner by informal disposition on the basis of sworn testimony, depositions, or affidavits filed in writing with the Commissioner as well as all exhibits, forms and other matters properly filed before the Commissioner, which matters shall comprise the transcript of the hearing on which the determination is based. Each applicant, requesting an informal disposition, as such, shall file with the Commissioner an affidavit agreeing that the determination can be made by the Commissioner without the necessity of an appearance. The Commissioner may, however, in any event, upon his own motion, require an evidentiary hearing with sworn testimony and in such cases shall notify the applicant prior to the hearing date of his decision to do so.

4.5 If an interested party files a protest at the hearing on the application, and no other protest to the application has been made prior to the hearing, then the Commissioner shall continue the hearing on the application until a date determined by him at that time, and his fixing of such new hearing date as such shall be notice to the party filing the protest. Thereafter, the Commissioner shall notify the applicant of the new hearing date and shall additionally send the applicant a copy of the protest which has been filed. Failure to appear at such continued hearing will be deemed a withdrawal by the applicant or any protestant.

4.6 The Commissioner shall mail a notice of his determination to the applicant and to all parties appearing at the hearing.

### 5. Rehearings.

5.1 Upon determination by the Commissioner, any party to the hearing may file a motion for rehearing within ten days after the date of determination. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. The grounds for such action shall be either that:

- A. The decision is clearly contrary to the law and the evidence.
- B. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing.
- C. There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

D. There is other good ground for further consideration of the issues and the evidence in the public interest.

Upon such application the Commissioner shall have power to grant or deny rehearing or to abrogate or modify his previous determination without further hearing. Unless the Commissioner acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied.

6. Notice of Determination.

6.1 Within five days after the last day for filing a motion for rehearing, or if such a motion is filed, within fifteen days after it is denied or overruled by operation of law, the Commissioner shall give written notice to the FERC of his determination in accordance with the FERC Rules and Regulations.

These emergency rules of practice and procedure shall be effective on and after November 27, 1978, as amended on November 29, 1978.

R. T. Sutton  
Commissioner of Conservation

## Rules

### RULES

#### Department of Agriculture Fertilizer Commission

The Louisiana Fertilizer Commission adopted the following at its meeting of November 21, 1978:

1. Rules and regulations, statements of uniform interpretation and policy, and official terms and definitions as set forth in the Official Publication of the Association of American Plant Food Control Officials, Number 30, 1977.

2. Procedures for sampling and analysis of fertilizers as set forth in Official Method of Analysis of the Association of Official Analytical Chemists, Twelfth Edition, 1975.

The Department of the State Register has chosen to omit publication of the rules in accordance with R.S. 49:954.1C. The rules may be inspected at Room 118 Wilson Laboratories, Louisiana State University, Baton Rouge, Louisiana.

E. A. Epps, Jr., Chief Chemist  
Fertilizer Commission

### RULES

#### Department of Agriculture Market Commission

1. Approved loans will be funded or guaranteed only after the facility has been completed in accordance with the loan application. Furthermore, evidence must be submitted showing that all material suppliers and workmen have been fully paid.

2. Livestock and/or commodities will not be considered as primal security for any loan made or guaranteed by the State Market Commission.

3. No loans and/or guarantees will be extended for consolidation of previous financial obligations. See Attorney General's Opinion No. 76-165, 2/4/76.

4. Loans and/or guarantees will be extended only to facilities which process, distribute, and/or market basic raw agricultural commodities as they originate from Louisiana producers. (Previous loan requests which were determined not in compliance with the statutes include clothing manufacturing plants, nursery opera-

tions, plants producing fertilizer, agricultural chemicals, and veterinarian supplies, and feed manufacturing plants where the major ingredients are not grown in Louisiana.)

5. No loans or guarantees shall be made for any facility which is constructed on leased land unless the Market Commission has been furnished an assignment of the lease and right of re-assignment. The lease must be for a term of not less than five years beyond the term of the loan.

6. Applications for a loan guarantee shall include a letter of commitment from a lending institution setting forth the terms and conditions upon which the loan sought to be guaranteed will be made.

7. Any person indebted to the Market Commission, whether through a direct loan, participation loan, or guarantee, must carry public liability insurance on the facility in an amount of not less than five hundred thousand dollars, naming the Market Commission as an additional insured. The Market Commission must be furnished a certificate evidencing such insurance, which shall include a condition that the insurance can not be cancelled without thirty days notice to the Market Commission. In addition, the applicant must carry fire and extended insurance coverage on the facility, naming the Market Commission as a loss payee as its interest may appear.

8. An application and its supporting data must be filed in the Department of Agriculture's Office a minimum of thirty working days prior to the meeting of the Market Commission at which the application will be considered.

9. The application must include:

- A. A feasibility study of the proposed enterprise.
- B. A credit analysis of the principals.
- C. A three-year projected cash flow statement.
- D. A letter from a Department of Agriculture attorney stating the application is in compliance with the law.
- E. An evaluation of management capability.
- F. Turn-down letters from two area lending institutions. The Market Commission will attempt to obtain participation from local sources.

G. An explanation of how the proposed marketing facility would enhance and/or benefit the agricultural community in which it would be located.

H. A financial statement on the principals, corporations, or cooperatives prepared by a Public Accountant using acceptable accounting principles.

I. An appraisal, if an existing facility, using market data, cost and earning approaches as the basis of value. Appraisers must be approved by the Market Commission prior to submission of the appraisal.

J. An affidavit disclosing what relationship, if any, the applicant(s) may have to any state official or employee of the State Department of Agriculture.

10. Marketing specialists from the Department of Agriculture will be utilized to analyze feasibility studies, and shall report to the Market Commission.

11. It shall be a Market Commission policy that at least one Commission member make on-site inspections and familiarize himself with the proposed facility.

12. Upon completion of the facility, the applicant must submit to the Market Commission a copy of the note, the mortgage, and a mortgagee title insurance binder in favor of the Market Commission. Upon approval of these documents by a Department of Agriculture attorney, the Market Commission shall schedule a formal loan closing. On all loans to corporations, personal endorsements shall be required unless waived by unanimous vote of the Market Commission. In addition, each corporation shall furnish on the anniversary date of the loan the following:

A. Names of all stockholders and the number of shares held by each.

B. The statement of its operations, including an analysis of profits and losses.

C. A statement of financial condition.

13. Follow procedures as outlined in House Concurrent Resolution No. 194 of 1973.

14. During the first meeting of the Market Commission of each calendar year, interest rates will be discussed and set for that calendar year.

15. Upon the signing of a loan guarantee, the Market Commission shall collect from the applicant a sum equal to one percent of the amount of the loan guaranteed by the Market Commission.

16. Terms or conditions imposed upon and made or part of any loan or guarantee agreement authorized by vote of the Market Commission shall not be varied or altered by any member of the Commission or employee of the Department of Agriculture, except by subsequent vote of approval by the Commission in open meeting, as reflected in the Commission's minutes.

17. The Market Commission shall not knowingly approve any loan or guarantee if the applicant has presently pending or outstanding any charge or liability relating to failure, or inability, to pay promissory notes or other evidence of indebtedness, including state or federal obligations; nor shall the Commission 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. The applicant must give the Market Commission written authorization to conduct a credit investigation.

18. These rules shall complement, where there is no inconsistency or contradiction, those guidelines for facility loans previously adopted by the Market Commission in compliance with House Concurrent Resolution 194 of 1973 and House Concurrent Resolution 168 of 1974. If there is conflict with the previously adopted guidelines, the provisions of these rules shall prevail.

Dr. Mary B. Blalock, Assistant Commissioner  
Office of Marketing

## **RULES**

### **Department of Commerce Real Estate Commission**

#### **LAC 11-15:1 Authority**

§1.1 The Rules and Regulations of the Louisiana Real Estate Commission contained herein have been adopted pursuant to and in compliance with R.S. 37:1431 et seq., and any violation of these rules or regulations, or of any real estate licensing law, shall be sufficient cause for any disciplinary action permitted by law.

#### **LAC 11-15:2 Applications**

§2.1 All applications for license shall meet the following requirements before being processed by the Commission:

§2.1.1 Applications shall be fully completed, notarized and accompanied by the appropriate fees, including licensing and examination fees, and revenues for the recovery fund and education fund.

§2.1.2 Applications shall be received by the Commission not less than thirty days prior to the date of the next scheduled license examination.

§2.1.3 Broker license applications shall include current credit report obtained from a recognized credit reporting agency; escrow account affidavit properly executed and notarized; broker application acknowledgment, if required, as specified in LAC 11-15:12.

§2.1.4 Salesman license applications shall include satisfactory proof of the attainment of a high school education or the

equivalent thereof; satisfactory proof of having completed the requisite educational hourly requirement.

§2.1.5 Proof may be established by the original or a copy of a high school diploma or the certificate of equivalency thereof. If the high school diploma or certificate of equivalency is not available the applicant may provide the Commission with an affidavit which shall state the date and place of attainment of a high school education or the equivalency thereof.

#### **LAC 11-15:3 Examinations**

§3.1 Examinations shall be held, after due notice thereof, at such time and place to be designated by the Louisiana Real Estate Commission. The following terms and conditions shall apply with respect to the taking of examinations:

§3.1.1 The responsibility for timely submission of initial applications rests solely with each individual applicant.

§3.1.2 In order to be permitted to take a license examination, an applicant must obtain an admittance authorization by complying with the provisions of LAC 11-15:2.

§3.1.3 Examinations shall be taken only on the date and time specified in the admittance authorization.

§3.1.4 Admittance authorization and photographic evidence of applicant's identity (e.g. driver's license) shall be presented to examination monitor by the applicant before an examination will be administered.

§3.1.5 Applicants who fail to appear for examination, as specified in their admittance authorization, shall forfeit all fees.

§3.1.6 Applicants who are disqualified, for any reason, on an examination shall forfeit all fees.

§3.1.7 Applicants who are disqualified on an examination and/or applicants who fail to appear to take the examination are permitted to reapply provided that they remit new license and examination fees and obtain an admittance authorization.

§3.1.8 Applicants who fail to pass their initial examination shall forfeit all examination fees. However, they are permitted to take subsequent examinations, provided that they remit a new examination fee and obtain an admittance authorization.

§3.1.9 Applicants who fail to pass any examination shall forfeit all fees.

§3.1.10 Applicants are permitted to use calculating devices during examinations. Applicants are not allowed to possess or utilize any reference material during examination. Examinations will be administered only at designated examination centers, on the prescribed date and at the prescribed time as shown on admittance authorization, and only after all of the requirements of this Rule have been met.

#### **LAC 11-15:4 Fees**

§4.1 All fees are forfeited to the Commission when received.

§4.2 License fees shall cover a period of one calendar year beginning January 1 and shall not be prorated. Commencing January 1, 1980, license fees shall be for a period of two years, and shall not be prorated thereafter.

§4.3 Any check remitted to the Commission as a fee which is returned unpaid by the issuer's bank shall be cause for suspension or revocation of license, and/or refusal to issue or renew license.

#### **LAC 11-15:5 Renewal Applications**

§5.1 Renewal applications shall be received by the Commission not later than October 15 in order for the license to be issued in proper statutory time.

§5.2 The responsibility for timely submission of renewal applications rests solely with each individual licensee. Failure to timely submit applications for renewal shall be cause for fine and/or suspension of license.

§5.3 Salesmen's licenses shall be renewed subsequent to renewal of their sponsoring broker's license.

§5.4 Salesmen's renewal applications shall be signed by the sponsoring broker and submitted to the Commission together with renewal fee.

§5.5 Renewal applications of licensees who intend to transfer from one broker to another at the beginning of the calendar year shall comply with the provisions of LAC 11-15:9 as set forth herein.

#### **LAC 11-15:6 Delinquent Renewal**

§6.1 Applications for renewal of delinquent licenses shall be accepted by the Commission only during the calendar year following the last date on which an applicant held a valid license. Delinquent applications shall be accompanied by an affidavit which explains the reason(s) for delinquency before renewal license will be issued.

§6.2 Former licensees who are not eligible for renewal shall apply as initial applicants.

§6.3 Examination requirements shall apply to all applicants who are not eligible for renewal.

§6.4 Former licensees who have not been licensed for three consecutive calendar years preceding their date of application are subject to all educational requirements of initial applicants.

#### **LAC 11-15:7 Waivers**

§7.1 The Louisiana Real Estate Commission shall not waive any examinations provided by law of an applicant, nor shall the Louisiana Real Estate Commission, except as hereinafter provided, waive any educational requirements as provided for by law. The Commission does hereby waive the hourly educational requirements for applicants for a broker's license as provided for in R.S. 37:1437, only under the following conditions:

§7.1.1 The Commission may waive thirty hours of the educational requirements required of a broker if the applicant has been actively engaged in the real estate business as a salesman and is the holder of a salesman's license for at least five consecutive years preceding the date of his application, and if said applicant has passed the salesman's examination as administered by the Louisiana Real Estate Commission.

§7.1.2 The Commission may waive sixty hours of the educational requirements required of a broker if the applicant has been actively engaged in the real estate business as a salesman and is the holder of a salesman's license for at least ten consecutive years preceding the date of his application, and if said applicant has passed the salesman's examination as administered by the Louisiana Real Estate Commission.

§7.1.3 The Commission may waive thirty hours of the educational requirements required of a broker if the applicant has been actively engaged in the real estate business in a state other than Louisiana and is the holder of a salesman's license in good standing in another state for at least five consecutive years preceding the date of application and if said applicant has passed an examination on the Louisiana licensing laws and the rules and regulations of the Louisiana Real Estate Commission to be administered by the Louisiana Real Estate Commission.

§7.1.4 The Commission may waive sixty hours of the educational requirements required of a broker if the applicant has been actively engaged in the real estate business in a state other than Louisiana and is the holder of a salesman's license in good standing in another state for at least ten consecutive years preceding the date of application and if said applicant has passed an examination on the Louisiana licensing laws and the rules and regulations of the Louisiana Real Estate Commission to be administered by the Louisiana Real Estate Commission.

§7.1.5 The Commission may waive sixty hours of the educational requirements required of a broker if the applicant has been actively engaged in the real estate business in a state other than Louisiana and has been the holder of a salesman's license for at least three years and a broker's license for at least two years

in another state and has passed an examination to be administered by or under the direction of the Louisiana Real Estate Commission.

#### **LAC 11-15:8 Broker Affiliation**

§8.1 Brokers are permitted to become affiliated provided that all requirements of individual broker licenses are maintained.

§8.2 Presently licensed brokers or broker applicants who elect to become exclusively affiliated with another broker, whether that broker is an individual, corporation, or partnership, shall notify the Commission prior to beginning or terminating such relationship and indicate the effective date thereof. The notification required by this Section shall be on a form provided by the Commission and shall be accompanied by delivery of the individual's broker's license to the Commission along with a transfer fee of twenty-five dollars. The Commission shall inscribe the identity of the sponsoring broker on the license and immediately return same to the sponsoring broker.

§8.3 All brokers who are exclusively affiliated shall be exempt from the requirement of maintaining an escrow (trust) account as otherwise required in the law or rules and regulations of the Commission. The waiver provided herein must be specifically claimed by the broker and approved by the Commission.

#### **LAC 11-15:9 Salesman License Transfer**

§9.1 Licensees who elect to transfer their license from one sponsoring broker to another, shall notify their present sponsoring broker by registered or certified mail of the intended action, in writing, along with the request that the broker forward the license to the Louisiana Real Estate Commission in accordance with the time requirements specified in R. S. 37:1441A.

§9.2 A copy of said notification along with the transfer fee of ten dollars and the acknowledgement of the new sponsoring broker shall be immediately forwarded to the Commission by the transferring licensee.

§9.3 No action is required by the present sponsoring broker other than the prompt and timely return of the license to the Commission.

§9.4 Sponsoring brokers who return a salesman's license to the Commission for cancellation shall immediately sign and forward to the Commission by registered mail, a copy of the letter by which the broker notified the salesman that his license has been returned to the Commission for cancellation.

§9.5 A transfer to the new sponsoring broker is effective the date the license is received by the Louisiana Real Estate Commission.

§9.6 A sponsoring broker who fails to promptly return to the Commission the license of a licensee who has notified the sponsoring broker of his intention and desire to transfer, shall subject the sponsoring broker to fine and/or suspension and/or revocation of the broker's license.

#### **LAC 11-15:10 Termination Responsibilities**

§10.1 Upon termination of the business relationship with a sponsoring broker, salesmen and exclusively affiliated brokers shall immediately turn over to the sponsoring broker all listing information, contracts, keys, and other property and pertinent information or data obtained during said business relationship, whether such information was originally given by, or copied from the records of the sponsoring broker, or otherwise acquired by the salesman or exclusively affiliated broker during the business relationship with the said sponsoring broker.

§10.2 A licensee who has terminated a business relationship with his sponsoring broker shall not engage in any practice or conduct, directly or indirectly, which encourages, entices, or induces clients of the sponsoring broker to terminate any legal business relationship with said sponsoring broker.

§10.3 Compliance with this Rule is required before a license will be transferred.



§10.4 Sponsoring brokers who allege failure of compliance with this Rule shall furnish a documented report of the alleged violation to the Commission within ten days of termination of the business relationship. Failure to timely comply with the requirements of this Rule shall be deemed as a waiver thereof.

#### **LAC 11-15:11 Broker**

##### **Application Acknowledgment**

§11.1 Salesmen who apply for broker's licenses shall submit written acknowledgment of their application from their sponsoring broker. The acknowledgment shall be prepared by the applicant for execution by the sponsoring broker and may be submitted under separate cover or attached to the application when submitted to the Commission. No application will be processed until the acknowledgment is received by the Commission.

§11.2 Execution of the acknowledgment shall be done by the sponsoring broker, without qualification, within ten days following the applicant's receipt of written request therefor.

§11.3 Failure of the sponsoring broker to acknowledge in accordance with the provisions of this Rule, shall be cause for the suspension or revocation of license.

#### **LAC 11-15:12 Trade Names and Names of Licensees**

§12.1 Not more than one broker's license shall be issued in the same or substantially similar trade name.

§12.2 No surname shall appear on an individual broker's license except that of the said broker.

§12.3 No surname shall appear in the trade name of a corporation or partnership license to be issued after October 20, 1977, unless such surname is that of an active broker or brokers who own an interest in the said corporation or partnership.

§12.4 Every partnership or corporation must designate on the license a sponsoring broker who must own a substantial interest in said partnership or corporation.

§12.5 A license issued in the name of a corporation shall be limited to the legal name of the corporate entity and shall not include any additional trade names or surnames.

§12.6 The trade name of a licensee that is incorporated must be licensed in exactly the same manner and name as it appears on the corporate charter.

§12.7 Brokers who use franchise, trade, service, or professional names, symbols, or trademarks in connection with their activities, shall register such name, symbol, or trademark with the Commission; disclose to the public in all advertising, with the exception of standard picket yard signs, that the said real estate brokerage firm is independently owned and operated.

§12.8 A symbol or trademark utilized under this Rule shall not be similar or substantially similar to any other symbol or trademark that is registered with the Commission.

#### **LAC 11-15:13 Concurrent Licenses**

§13.1 Broker and salesman licenses shall not be issued nor held concurrently.

#### **LAC 11-15:14 Advertising**

§14.1 All advertising by real estate brokers shall be stated in the exact name as shown on their broker's license.

§14.2 Brokers shall have the actual written authority of the owner of any property before they represent or advertise the said property in any way.

§14.3 All advertising by real estate brokers shall be a clear, concise, true and up-to-date representation of the property advertised.

§14.4 All advertising, whether printed, by radio, television, display, or of any other nature, must contain the name and telephone number of the advertising broker. The name and telephone number of salesmen and/or broker affiliates may appear in advertising of the sponsoring broker; however, it must be displayed in a manner distinctively subordinate to that of the sponsoring broker.

§14.5 No advertisement shall be made by telephone number alone.

§14.6 A licensed broker or salesman offering property in which such licensee owns an interest shall state in his advertisement that the owner is a licensed real estate agent. The utilization of the term agent-owner will be sufficient to satisfy this regulation.

§14.7 No real estate broker shall offer or advertise to the public the service of "free appraisal" unless said broker is fully qualified and/or certified in the field of real estate appraisal by competent authority. Any real estate broker who, nevertheless, advertises or offers the service of "free appraisal" shall furnish a complete written copy of each appraisal that is requested in response to such offer or advertisement.

§14.8 Any broker who operates under or uses a franchise name shall incorporate in the franchise name and logotype his own name; however, the broker's name as licensed may not be less than fifty percent of the surface area of the entire combined area of both the broker's name and the trade name of logotype.

#### **LAC 11-15:15 Escrow Accounts**

§15.1 Immediately upon becoming licensed, each broker shall open and maintain an escrow (trust) account into which they shall deposit all monies, or other things of value received in trust on behalf of clients.

§15.2 The escrow (trust) account or rental trust account required by this Rule shall be established as a separate account in a bank in the parish in which the broker's main office is located except under circumstances where requirements of the principal parties dictate a different parish and mutual consent of said parties is obtained.

§15.3 If a broker opens a branch office in an adjoining parish, different from the parish in which his main office is located, the broker may open an additional separate escrow (trust) account or a separate rental trust account in the parish in which the branch office is located, in which he shall deposit monies or other things of value received in trust on behalf of his clients.

§15.4 A separate rental trust account shall be opened and maintained for the collection and management of rentals.

§15.5 Monies received in trust on behalf of clients are not assets of the broker and shall not be commingled with personal or business funds of the broker; however, a broker may deposit and keep a sum not to exceed one hundred dollars in said account from his personal funds, which sum shall be specifically identified and deposited to cover bank service charges related to said escrow (trust) account or separate rental trust account. Failure to comply with the requirements of this Section shall be construed as prima facie evidence of fraud.

§15.6 Applicants for broker's licenses shall execute affidavits authorizing and empowering the Commission or its representative to examine, inspect, and/or copy their escrow (trust) accounts or rental trust accounts.

§15.7 Brokers shall execute a separate escrow (trust) account or rental trust account affidavit upon opening any new or additional escrow (trust) account or rental trust account. Affidavits required by this Section shall be submitted to and received by the Commission within ten days following the opening of such account.

§15.8 Monies received and deposited in escrow (trust) accounts or rental trust accounts shall be transferred to the personal account of the broker only upon being earned and with the consent of the owner of the funds, or by court order.

§15.9 Brokers shall notify the Commission of their intention to close an escrow (trust) account or rental trust account at least ten days prior to the intended closing date.

§15.10 Upon cancellation of license for any reason, a broker shall nevertheless continue and maintain the escrow (trust) ac-

count or rental trust account until such time as all deposits therein have been properly disbursed according to law.

#### **LAC 11-15:16 Change of Address**

§16.1 Within ten days following the effective date licensees shall report any change in their business or residence address and/or telephone number to the Commission. Failure to do so within ten days of said effective date shall subject the licensee to a twenty-five dollar penalty and/or revocation or suspension of license.

#### **LAC 11-15:17 Multiple Representation**

§17.1 Real estate licensees represent one or another party to a transaction and shall not accept compensation from more than one party without the full knowledge of all parties to the transaction.

#### **LAC 11-15:18 Licensee Ownership Disclosure**

§18.1 A real estate licensee shall not acquire an interest in or buy for himself, his firm or any member thereof, or a corporation in which he has an interest, properties listed with him, or his company or firm, without making his true position known in writing to the owner.

#### **LAC 11-15:19 Cooperative Transactions**

§19.1 All written offers which are presented to a listing broker by a cooperating broker shall be presented to the owner of the listed property for his consideration and decision immediately.

§19.2 The listing brokers shall present all offers immediately, without delay, and/or as soon as possible without regard to consideration of other possible or pending offers of which he may be aware.

§19.3 Negotiations concerning property listed exclusively with one broker shall be carried on with the said listing broker, not the owner, except with the expressed consent of the said listing broker.

§19.4 All written offers presented by a cooperating broker to a listing broker shall provide for insertion for time of day, date, and acknowledgment of receipt by listing broker.

§19.5 All written offers presented to the owner and not accepted shall be clearly marked as rejected and signed by the owner (seller).

§19.6 In the event that the owner (seller) is not available and grants authority to listing broker to reject, the listing broker shall sign in lieu of owner (seller) but the listing broker shall nevertheless forward to owner a copy of the written offer to be signed by owner (seller) and said signed copy returned for files of both listing broker and selling (cooperating) broker.

#### **LAC 11-15:20 Contract Tampering**

§20.1 No broker or salesman shall induce any party to a contract to act in such a manner as to break such contract for the purpose of substituting in lieu thereof, a new contract with another real estate broker or salesman.

#### **LAC 11-15:21**

##### **Payment to Nonlicensees**

§21.1 Real estate licensees, in accordance with the provisions of R. S. 37:1455, shall not offer or pay a fee or any other compensation of any kind to any unlicensed person for the purpose of obtaining any listings, sales, or other real estate or business chance transactions.

#### **LAC 11-15:22**

##### **Report of Legal Action**

§22.1 Real estate licensees, in addition to the provisions of R. S. 37:1450 and in accordance with the provisions of R. S. 37:1455, shall report to the Commission:

§22.1.1 Any conviction, except minor traffic offenses, of any violation of the criminal laws of the United States or the State of Louisiana, regardless of the method used to arrive at the conviction and/or whether the conviction is appealed.

§22.1.2 Institution of any proceedings under the Federal Bankruptcy Act in which such licensee is named as debtor,

whether classified as voluntary, involuntary, individual, corporate, partnership, or in any way connected with such licensee's real estate business activities.

§22.2 The time and method for reporting required by this Rule shall be as specified in R. S. 37:1450.

#### **LAC 11-15:23 Broker Records**

§23.1 Brokers shall retain, readily available and properly indexed, copies of all documents which in any way pertain to real estate transactions wherein they have appeared in licensed capacity for at least five years.

#### **LAC 11-15:24 Complaints**

§24.1 Complaints involving violation of the Louisiana Real Estate Licensing Law and/or the rules and regulations of the Commission shall be signed by the complainant or his legal representative before any action thereon will be taken by the Commission.

§24.2 The Commission, on its own motion, may investigate any violations of the Louisiana Real Estate Licensing Law and/or the rules and regulations of the Commission.

#### **LAC 11-15:25**

##### **Investigations and Hearings**

§25.1 Licensees shall be prepared to answer all investigative questions propounded by authorized Commission investigative personnel.

§25.2 A licensee shall be required to cooperate fully with authorized Commission investigative personnel into any investigation conducted by the Louisiana Real Estate Commission.

§25.3 Failure to comply with the requirements of this Rule may be considered as contempt of the Louisiana Real Estate Commission as provided for in R. S. 37:1435(E).

§25.4 All investigations and hearings shall be held pursuant to and under the auspices of R. S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

#### **LAC 11-15:26 Broker and Salesman's Responsibilities**

§26.1 It shall be the duty of all licensees to have knowledge and be aware of all laws regulating the real estate industry in Louisiana including, but not limited to, these rules and regulations and the Louisiana licensing laws as set forth in Chapter 17 of Title 37 of the Louisiana Revised Statutes.

§26.2 It shall be further the responsibility and duty of the sponsoring brokers to inform their salesmen of any changes of the Real Estate License Law and/or rules and regulations of the Commission.

#### **LAC 11-15:27 Interstate Land Sales**

§27.1 Unless registered in Louisiana as hereinafter specified, no person, partnership, or corporation shall sell or offer for sale in Louisiana any out-of-state real estate in a subdivision which is subject to the Federal Interstate Land Sales Full Disclosure Act except through a licensed resident Louisiana real estate broker.

§27.2 Prior to the time when subject real estate is offered for sale, such person, partnership, or corporation shall make application to the Commission for registration in this state. Applications for registration shall contain the following information and supporting documents:

§27.2.1 Name, address, and whether the applicant is a person, partnership, or corporation.

§27.2.2 Partnership: the names and addresses of the individual members thereof.

§27.2.3 Corporation: names and addresses of officers and members of board of directors and place of incorporation.

§27.2.4 Legal description of the real estate offered for sale, including area maps and recorded plats.

§27.2.5 Name and address of legal owner of the subject real estate.

§27.2.6 A certified, audited financial statement disclosing the current financial condition of the developer.

§27.2.7 A statement of title to the property including all encumbrances with recording data on the day of application.

§27.2.8 Copies of the instruments by which the property was acquired and documentary evidence stating whether mortgagee or trustee of a deed of trust will or will not subordinate his interest in the real estate to the interest of a purchaser.

§27.2.9 Sales contracts intended to be used which shall contain a provision entitling the purchaser, if he has not seen the land, to an unconditional right of refund of all payments made under the contract after inspecting the land if inspection is made within thirty days from the date of the contract. Such contracts shall also contain a provision granting to the purchaser an unconditional right to rescind the contract for a period of fourteen days if he has not inspected the land.

§27.2.10 A zoning or other governmental regulations statement disclosing whether or not such regulations have been satisfied.

§27.2.11 A copy of an offering statement which sets forth the material facts with respect to the subject real estate.

§27.3 After receiving the application, the Commission may require such additional information deemed necessary.

§27.4 The Commission shall require a personal inspection of the property by a person(s) designated by it to determine whether, in general, the property can be utilized as indicated by the subdivider. All such inspection expenses incurred shall be borne by the applicant who shall deposit with the inspector in advance a sum sufficient to cover such expenses.

§27.5 Applicants shall appoint the Louisiana Secretary of State to act as the applicant's agent for the service of all judicial process or legal notices directed to such applicant. Service upon the agent so designated shall be equivalent to personal service upon the applicant.

§27.6 If the requirements set forth herein are met, the Commission shall register the subdivision for a period of one year. The subdivider shall renew each year by furnishing the Commission with all information as would modify or change the information previously submitted. Should the Commission deem that an additional inspection is necessary, the cost of making same shall be paid by the subdivider in the manner provided for initial registration.

§27.7 Neither the subdivider nor any representative of the subdivider shall in any manner refer to the Commission or any member or employee thereof in selling, offering for sale, advertising, or otherwise promoting the sale, mortgage, or lease of such real estate, nor make any representation whatsoever that such real estate has been inspected, approved, endorsed or in any way recommended by the Commission or any Louisiana official, department, or employee.

§27.8 The Commission shall have the power to withdraw any registration and/or issue a cease and desist order to any subdivider subject to these rules and regulations, upon determination that any federal or state law or Commission rule has been or will be violated.

#### **LAC 11-15:28**

##### **Corporations and Partnerships**

§28.1 A real estate broker's license shall not be granted to a corporation or partnership unless said corporation or partnership designates only one qualifying broker who shall own a substantial interest in and shall represent the said corporation or partnership. The qualifying broker shall sign the application for the corporation or partnership and all applications for the salesmen. All directors and officers of a broker corporation or partnership who actively participate in the real estate business of said corporation or partnership shall be licensed as individual real estate brokers. Upon termination of the qualifying broker's affiliation with the

broker corporation or partnership, for any reason, the qualifying broker shall immediately notify the Commission, and the broker corporation or partnership shall name a new qualifying broker and notify the Commission within ten days thereof. Every person who acts as a salesman for such corporation or partnership shall be licensed as a real estate salesman.

§28.2 Individuals who elect to become licensed as a corporation or partnership are subject to all requirements of the Louisiana Real Estate License Law and/or rules and regulations of the Commission that are imposed upon individual broker licensees.

§28.3 Upon dissolution of a corporation or partnership, the qualifying broker shall return the corporation or partnership broker's license to the Commission, accompanied by all exclusively affiliated broker and salesman licenses held by the broker corporation or partnership, within ten days following the date of corporation or partnership dissolution.

§28.4 Exemption: The provisions of this Rule which require a qualifying broker to own a substantial interest in the broker corporation or partnership shall be waived in those cases where ownership of stock in such corporations or partnerships, licensed prior to September 1, 1974, is precluded. The waiver outlined by this Section must be claimed by licensees and approved by the Commission in connection with renewal of licenses for 1975 and thereafter.

#### **LAC 11-15:29 Franchise Operations**

§29.1 Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership or corporation shall offer for sale, lease, rent, or use in any way, any franchise name to be publicly utilized or used by a licensed Louisiana real estate broker.

§29.2 Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, or corporation engaged in a franchise operation of real estate brokerage firms shall operate in Louisiana.

§29.3 Any person, partnership, or corporation which intends to operate or do business as a franchiser of real estate brokerage firms in Louisiana shall make application to the Louisiana Real Estate Commission for registration. Applications for registration shall contain the following information and supporting documents:

§29.3.1 Name, address, and whether the applicant is a person, partnership or corporation.

§29.3.2 Partnership: the names and addresses of the individual members thereof.

§29.3.3 Corporation: names and addresses of officers and members of board of directors and place of incorporation.

§29.3.4 If a partnership or corporation: a certified copy of the articles of partnership or incorporation should be attached to the application, along with a copy of the charter of the same.

§29.3.5 A certified, audited financial statement disclosing the current financial condition of the applicant.

§29.3.6 A statement of the business activities of the applicant, including a description of the franchise agreement to be used in connection with the Louisiana real estate brokers, and a list of the states in which the franchiser is qualified to do and/or is doing business.

§29.4 Upon receipt of the application for registration, the Commission may require such additional information as it deems necessary.

§29.5 If the applicant is not a resident of Louisiana, it shall appoint the Louisiana Secretary of State to act as the applicant's agent for the service of all judicial process or legal notices directed to such applicant. Service upon the agent so designated shall be equivalent to personal service upon the applicant.

§29.6 If the requirements set forth herein are met the Commission shall register the franchiser for a period of one year. The franchiser shall then renew each year by furnishing the Commis-

sion with all information as would modify or change the information previously submitted.

§29.7 Upon application for renewal each year by the franchiser, the Commission shall also be furnished with a statement of the gross dollar earnings by the franchiser in the State of Louisiana for the preceding year.

§29.8 Each application for renewal by a franchiser shall be submitted on or before January 15 of each year and shall reflect the information required by the Commission for the preceding year.

§29.9 Any application for renewal by the franchiser shall also include the name and address of any licensed Louisiana broker that is operating under a franchise agreement with the franchiser.

§29.10 Any person, partnership, or corporation which operates in Louisiana as a franchiser of real estate brokerage firms, without the specific authority to do so as granted by the Louisiana Real Estate Commission, shall be subject to a penalty of the refusal by the Commission to allow said person, partnership, or corporation to operate or do business in Louisiana for a period of at least one year.

§29.11 Any person, partnership or corporation which operates or does business in Louisiana as a franchiser of real estate brokerage firms, who fails to make application for renewal to the Louisiana Real Estate Commission on or before January 15 of each year shall be subject to revocation and/or suspension of registration.

§29.12 The Commission shall have the power to withdraw any registration and/or issue a cease and desist order, after a hearing, to any franchiser that is subject to these rules and regulations, upon determination that any federal or state law or Commission regulation has been or will be violated.

#### **LAC 11-15:30 Deceased Broker**

§30.1 A licensee who is appointed or selected to assume the position of a deceased broker for the purpose of completing the pending business of the broker, shall notify the Commission of said appointment within ten days.

§30.2 If one hundred eighty days is not sufficient to complete the pending business of the deceased broker, the Commission may grant an extension of time where justified or needed.

§30.3 In those cases where it is necessary to appoint a licensee that was not a salesman or broker-affiliate of the deceased broker, the appointee shall be a broker.

§30.4 Transfer fees are waived in the event that the transfer is required due to the death of a sponsoring broker.

#### **LAC 11-15:31 Veteran Waiver**

§31.1 Licensees who are inducted into military service or those licensees in the military who are transferred out of state shall, upon furnishing appropriate evidence of their honorable discharge, be entitled to renewal of their licenses, without penalty, provided application is filed within six months following discharge. The provisions of this Section shall extend to spouses of persons described hereinabove who were licensed at the time of such induction or transfer.

#### **LAC 11-15:32 Reciprocity**

§32.1 The Louisiana Real Estate Commission may enter into reciprocal agreements with other states allowing for a nonresident, licensed in his resident state and whose resident state permits a licensed Louisiana resident to obtain a broker's or salesman's license and engage in the real estate business in that state, to obtain a nonresident Louisiana broker's or salesman's license, under the following terms and conditions:

§32.1.1 The resident state must recognize, by said reciprocal agreement, Louisiana real estate brokers and salesman and grant to them the same privileges afforded by Louisiana to a resident of the other state.

§32.1.2 The nonresident must be licensed in his/her resident state either as a broker or a salesman.

§32.1.3 The nonresident must be a resident of the state from which the resident license is issued.

§32.1.4 The nonresident must make application to the Louisiana Real Estate Commission for issuance of a nonresident broker's or salesman's license.

§32.1.5 The nonresident must provide the Louisiana Real Estate Commission with sufficient proof to determine that the person is licensed in his/her nonresident state and has satisfactorily passed the resident state's broker's or salesman's examination.

§32.1.6 The nonresident must pay a license fee of one hundred dollars for brokers and fifty dollars for salesmen.

§32.1.7 The nonresident must provide, with the application, a twenty thousand dollar surety bond for each nonresident license.

§32.1.8 The nonresident must file an irrevocable power of attorney with the Louisiana Secretary of State as required by law.

§32.1.9 The nonresident must provide an affidavit that when the Louisiana Real Estate Commission has received a complaint against him, that he authorizes the governing licensing authority of the state from which he is licensed to investigate any allegations made against him as a broker or salesman.

§32.2 A nonresident licensee must provide the Louisiana Real Estate Commission with a detailed analysis and account of real estate transactions conducted by him or his representative in Louisiana for the year in question before his nonresident license is renewed for the succeeding year.

§32.3 The nonresident licensee is bound by, in all other respects, the provisions of the Louisiana Licensing Laws and these rules and regulations.

#### **LAC 11-15:33**

##### **Out-of-State Broker Cooperation**

§33.1 A Louisiana broker may cooperate with a licensed broker of another state on appraisals or sales of real property within the limits provided in the Louisiana Real Estate License Law, and under the following conditions:

§33.1.1 The appraisal or sale of real property shall be handled under the direct supervision of Louisiana broker who shall take full responsibility for all actions of the nonresident broker.

§33.1.2 Both the Louisiana broker and the nonresident broker agree to sign the written reports and agreements and to comply with the Louisiana Real Estate License Law and with the rules and regulations of the Louisiana Real Estate Commission.

§33.1.3 In each instance herein where a Louisiana broker enters into a cooperating agreement with a nonresident broker for the appraisal or sale of Louisiana real estate, the Louisiana broker must file two copies of the cooperating agreement with the Louisiana Real Estate Commission prior to the appraisal or sale being made. A written cooperating agreement is required to be filed for each separate appraisal or sale.

§33.1.4 Any fee or commission received under this Rule wherein a licensed Louisiana broker cooperates with a licensed broker of another state, must be divided on a basis wherein the licensed Louisiana broker shall receive at least fifty percent thereof.

#### **LAC 11-15:34 Education; Real Estate Schools**

§34.1 The following regulations are applicable to real estate schools seeking approval to conduct a course of education in real estate subjects as prescribed under R.S. 37:1460.

§34.2 Real estate schools include any place or institution certified by the Louisiana Real Estate Commission which is open to the public for the instruction or training of individuals to engage in

the practice of real estate. All real estate schools shall satisfy the requirements of R.S. 37:1459, R.S. 37:1460 and R.S. 37:1464 and the rules and regulations of the Commission.

#### **Division of Education**

§34.3 The Louisiana Real Estate Commission does hereby create the Division of Education which shall be responsible for school certification, instruction, and other matters pertaining thereto, which Division of Education shall administer on behalf of the Louisiana Real Estate Commission, through its director thereof, all rules and regulations and laws pertaining to the real estate schools in Louisiana as defined in Section 34.2.

#### **Certificate of Authority**

§34.4 Effective January 1, 1979, no person, partnership, or corporation or other legal entity shall operate a real estate school in Louisiana unless the Louisiana Real Estate Commission has issued to it a certificate of authority.

§34.5 Real estate schools certified and approved by the Louisiana Real Estate Commission prior to January 1, 1979, shall be issued a certificate of authority by the Commission.

§34.6 A certificate of authority issued or renewed under this Rule shall be valid for a maximum of one year and shall expire on February 1 next following such issue or renewal.

§34.7 Applications for renewal of certificate of authority shall be submitted not later than December 1 of each year.

§34.8 Failure to submit a timely application for renewal of a certificate of authority shall automatically suspend such certification on December 1 and any continued activities by a real estate school subsequent to such suspension shall be deemed a violation of these rules and regulations, and penalties as provided in R.S. 37:1458 shall apply.

§34.9 Any applications for a certificate of authority which are submitted subsequent to suspension under Section 34.8 herein, shall be treated as an initial application.

§34.10 All original applications for a certificate of authority and any application for renewal of a certificate of authority which was issued on or prior to January 1, 1979, shall contain the following information and documents:

§34.10.1 The full name, address, telephone number of the individuals, partners, stockholders, officers, and directors of the person, partnership, corporation, or other legal entity of the applicant.

§34.10.2 A full and complete description of the premises, facilities, and equipment that will be utilized in the operation of the proposed real estate school.

§34.10.3 A financial statement of the person, partnership, corporation, or the legal entity which is seeking the certificate of authority or the renewal of the same.

§34.10.4 A notarized statement that all sponsors of a proposed or existing real estate school, and in the case of a corporation, firm, or limited partnership, each member or stockholder, officer or director of the corporation who would have an interest or be connected with the program of education to conduct real estate courses, are at least twenty-one years of age with a background of good moral character, including the absence of any conviction for the certain crimes or other like offenses, specified under the provisions of R.S. 37:1437.

§34.10.5 Each sponsor of a proposed or existing school shall attach to his application for a certificate of authority or the renewal of a certificate of authority, letters of reference from responsible persons with information relating to such person's integrity, character, and responsibility, including at least two letters from licensed Louisiana brokers.

§34.10.6 A statement of the present or intended exact location of the school and the complete geographical area which the school intends to serve.

§34.10.7 The number of students that are projected to be served by the proposed or existing school on an annual basis.

§34.10.8 The name and address of instructors that will be or are employed by the school.

§34.10.9 The tuition cost of each of the courses that are being offered by the proposed or existing school.

§34.10.10 A description of the courses that are to be offered.

§34.10.11 A proposed student contract to be used by the school.

§34.11 Applications for certificate of authority or renewal of certificate of authority shall be accompanied by a surety bond as issued by an insurance company authorized to do business in this state, conditioned for the protection of the contractual rights of those real estate students attending such school and in the amount of ten thousand dollars.

§34.12 If the school is the owner of the premises to be utilized then it shall furnish to the Louisiana Real Estate Commission an affidavit setting forth the names of the true owners, book and page and parish where the deed is recorded. Where premises are leased, then such school shall furnish a copy of the lease and receipted statement executed by the owner or lessor that all rent has been paid for the term of course of instruction for which it seeks approval.

§34.13 Where a school is to be conducted in the name of a corporation, then a certified copy of certificate of incorporation shall accompany the application. Where a school is to be conducted under a trade name, whether a sole proprietorship, firm, partnership or limited partnership, then a true copy of the certificate of trade name or articles of the limited partnership as filed in the office of the parish clerk shall accompany the application. A school shall not apply to itself, either as part of its name or in any manner, the designation of "college" or "university" unless it in fact meets the standard and qualifications and is approved by the state agency having jurisdiction.

§34.14 The administrative requirements for an application for certificate of authority or an application for the renewal of a certificate of authority which was issued on or prior to January 1, 1979, shall meet the following requirements:

§34.14.1 Each application for school approval shall designate an individual as director of the school who shall be in responsible charge of all its operations and the specific courses of education to be conducted.

§34.14.2 Such director shall be certified as an instructor by the Louisiana Real Estate Commission, and shall provide the Commission letters from previous employers showing previous experience in educational administration or supervision or other activities related to education and possessing experience in those fields for at least three years.

§34.14.3 In the case of a college or university head, the head of the real estate department shall be conclusively presumed to meet the foregoing requirements. This presumption shall also apply to the director of any existing school who has acted in said capacity for the past three years and written evidence thereof filed with the Commission.

§34.15 An application for certificate of authority which is received by the Commission and is in proper form shall be docketed for a hearing on said application by the Louisiana Real Estate Commission or its duly appointed hearing examiner. Said hearing shall be conducted pursuant to R.S. 37:1456 and Title 13 of Chapter 49 of the Louisiana Revised Statutes.

§34.16 A hearing on an application for certificate of authority shall be for the purpose of determining, by competent evidence presented by the applicant, whether there exists a public demand and necessity for the establishment of a real estate school. If, after a hearing, the Commission shall determine that there exists a public

demand and necessity for the establishment of a real estate school, then a certificate of authority shall be issued.

§34.17 No real estate school granted a certificate of authority shall establish a branch of the school without the prior approval by the Louisiana Real Estate Commission, which approval shall be granted after an application and hearing only upon a showing by the applicant that there exists a public demand and necessity for the same.

§34.18 Anyone that has an interest in an application for certificate of authority may notify the Commission of its desire to appear at a hearing and present competent and relevant evidence either in support or in opposition thereto.

§34.19 Any holder of a certificate of authority issued by the Louisiana Real Estate Commission to conduct a real estate school that desires to sell, lease, convey, or any way transfer the certificate of authority, must obtain prior approval of the Louisiana Real Estate Commission.

§34.20 Anyone desiring to purchase, lease or otherwise obtain a certificate of authority issued by the Louisiana Real Estate Commission, must obtain the prior approval of the Commission, and further must comply with all the regulations herein as an original applicant before the Commission can consider or approve the transfer.

§34.21 The Commission shall consider an application to transfer a certificate of authority as an original application in all respects including a hearing on the same to determine whether it would be in the public interest to approve the transfer.

§34.22 There shall be an annual certification fee of three hundred dollars for 1979, and five hundred dollars thereafter, to be paid by each private commercial real estate school. Said fee shall be made payable to the Louisiana Real Estate Commission and shall be remitted with each initial and/or renewal application for certificate of authority.

§34.23 All Louisiana state and private colleges and universities are exempt from the regulations imposed on privately owned real estate schools.

§34.24 State vocational-technical schools or parish school boards which conduct courses in real estate shall comply and meet the necessary requirements of the Commission as to the qualifications of instructors and course content.

§34.25 No certificate of authority shall be issued or renewed to any broker-applicant whose courses are designed and intended for instruction of that same broker-applicant's future salesmen or broker affiliates.

§34.26 When the Commission has approved a school based upon its application and submissions, then a certificate of authority is executed by the Chairman of the Commission as attested by the Director. Approval is directed to the specific ownership, constituency, specific school location, specific curriculum, and term of course.

#### **Instructor Qualifications**

§34.27 In order to qualify with the Louisiana Real Estate Commission as an instructor at a real estate school a person must possess the following qualifications:

§34.27.1 Have actively practiced as an attorney at law for a minimum of five years in the area of study he proposes to teach; or

§34.27.2 Hold a degree as evidence of having majored in real estate from an accredited college or university; or

§34.27.3 Hold a degree from an accredited college with at least two years of teaching experience and/or possess a minimum of two hundred classroom hours in the area of study he proposes to teach; or

§34.27.4 Be a licensed real estate broker in the State of Louisiana with a minimum of five years experience in the area of study he proposes to teach; or

§34.27.5 In the case of a college or university, have qualified as an instructor or professor in subjects dealing with, or related to, real estate and such other required subjects as taught; or

§34.27.6 Have a minimum of three years of professional or educational experience in an area of study he proposes to teach and/or have passed an examination to be administered by or under the direction of the Louisiana Real Estate Commission in the area of study he proposes to teach.

§34.28 The above requirements shall not apply to any guest speaker as heretofore provided. Individuals qualifying within Subsections 34.27.1-6 above shall provide proof to the Louisiana Real Estate Commission of evidence of past experience in the areas of study proposed to be taught.

#### **Limitation of Instruction**

§34.29 Each course of instruction herein provided shall be under the supervision of an instructor qualified as provided for herein who shall be present in the classroom at all sessions. Additional instructors possessing the qualifications elsewhere herein required may be utilized for instruction with respect to given subjects provided that not more than twenty percent of the prescribed respective instruction is done by persons other than the instructor in whom all overall responsibility is vested. Limitations shall not apply where courses in real estate subject cover one hundred and twenty classroom hours or more.

§34.30 Each course of instruction shall be conducted for a period of not less than five days.

#### **Course Reporting**

§34.31 Certified real estate schools, with the exception of Louisiana colleges and universities, shall designate their courses as Real Estate I (thirty hour statutory requirement for salesmen), Real Estate II and III (balance of ninety hour statutory requirement for brokers).

§34.32 For each course it conducts, each school shall furnish the exact location, time and date schedule, including time of final examination; a list of all instructors participating in course, number of hours allocated to each topic, and a detailed outline of those subjects to be covered. The information required by Section 34.32 shall be filed by the school to be received by the Commission at least ten days prior to the date of beginning of a course.

§34.33 Within ten days following the completion of each course conducted, all schools shall furnish a notarized affidavit containing the names, addresses, and test scores of those persons satisfactorily completing course(s) and also the signatures of the supervising instructors attesting that the named students personally attended the minimum required statutory classroom instruction and passed a comprehensive final examination; a copy of the final examination (questions and answers).

#### **Facilities**

§34.34 Every school shall have and maintain facilities meeting the following standards:

§34.34.1 The premises, equipment, and facilities of the school shall comply with all local, city, parish, and state regulations, such as fire codes, buildings and sanitation codes. A certificate from proper authority covering these requirements shall accompany application for school approval.

§34.34.2 A certificate applicable to fire safety based upon the maximum number of students which may be accommodated shall be procured from the proper authority and accompany application for school purposes.

§34.34.3 There shall be adequate space, seating, equipment, and instructional material. Facilities are subject to inspection by one or more representatives of the Commission prior to approval or subsequent thereto during regular school hours.

#### **Tuition and Fees**

§34.35 The tuition and fees shall be specifically set forth in a student contract. The contract shall expressly state the school's

policy regarding the return of unearned tuition when a student is dismissed or withdraws voluntarily or through hardship.

§34.36 All tuition charged by a school shall be specified separately. If additional fees are to be charged for supplies, materials or books needed in course of work, they shall be itemized by the school and such items shall become the property of the student upon payment.

#### **School Records**

§34.37 Each school shall permanently establish and maintain for each student, a complete, accurate and detailed record, which shall include the total number of hours of instruction undertaken; completed areas of study in real estate subjects prescribed by these regulations and student attendance; test scores of the students.

§34.38 Each school shall furnish to the Commission the school policy and regulations relative to the required standards for the issuance of a certificate of satisfactory completion, conditions for dismissal of a student and conditions for reinstatement of those students dismissed for unsatisfactory completion. School regulations and policy to the contrary, failure of a student to attend a minimum of the required hours of study during term of enrollment shall conclusively be construed as having unsatisfactorily completed course of study.

§34.39 Real estate schools must maintain accurate files and records on enrolled students and school activities and make these reports available upon request of the Commission or its representative.

#### **Minimum Courses**

§34.40 A real estate school, at its principal location, must conduct a minimum of two approved real estate courses per year in order to be eligible for renewal.

§34.41 A branch of a real estate school must conduct at least one approved real estate course per year in order to be eligible for renewal.

#### **Limitation During Renewal Period**

§34.42 Real estate schools shall not schedule courses which will begin during the renewal period and which will terminate after February 1 unless renewal of a certificate of approval has been applied for and approved by the Commission prior to that date that such courses are scheduled to begin.

#### **Certificate of Completion**

§34.43 In accordance with Chapter 17 of Title 37 of the Revised Statutes, all certified schools shall provide an individual certificate of completion to all students upon successful completion of statutory course and attendance requirements.

§34.44 All certificates of completion shall bear the original signature of the director of the school and said certificate shall indicate number of hours completed and course designation (Real Estate I, II, or III).

§34.45 Certificates required by this Section shall be attached by applicants to their initial or renewal application and submitted to the Commission. Individuals who have undertaken course(s) approved by the Commission for university or college credit and desire to apply for a real estate license shall obtain a certified extract of their transcript from their university or college registrar indicating the title and number of the course(s), date of completion, and final grade, and submit this transcript to the Commission in lieu of the required certificate of completion.

§34.46 No certificate of completion will be accepted from any real estate school that is not in good standing with the Commission on the date that such certificate of completion is issued.

#### **Certification of Instruction**

§34.47 The Louisiana Real Estate Commission reserves the right to administer examinations or tests to instructors certified by it to determine if they possess sufficient knowledge to instruct in the areas that they are certified to instruct in.

#### **Change of Address**

§34.48 Any change of address of a school, its director or instructors must be reported to the Louisiana Real Estate Commission within ten days of the change. Failure to comply with the provisions of this regulation shall subject the school director or instructor to a twenty-five dollar penalty and/or suspension or revocation.

#### **Prohibition Against Recruiting**

§34.49 No person shall use, at any time, the school premises to discuss salesmen or broker sponsorship with students in such a manner as to induce or recruit applicants for any brokerage firm.

§34.50 Any brokerage firm that knowingly allows any of its employees or representatives to utilize a school premises to discuss salesmen or broker sponsorship with the student shall be subjected to the revocation or suspension of their license.

#### **Hiring Practices**

§34.51 No student who has been enrolled in a real estate school may be hired as a salesman or broker by the individuals, partnership, or corporation, who own and/or operate the school, and who also own and/or operate a brokerage firm for at least a period of one year from the date of the completion of the school requirements.

§34.52 No brokerage firm may operate a real estate school under the same legal entity as the brokerage firm.

§34.53 No real estate school shall be operated in a facility that is also utilized for the operation of a brokerage firm.

#### **School Advertising**

§34.54 Advertising by certified real estate schools shall be clear, concise, and accurately represent the facilities and charges which are offered.

§34.55 Prior to registration for a course, real estate schools shall state the tuition fee and any additional cost to be incurred by students enrolling in the course.

§34.56 A real estate broker also owning a real estate school shall not combine advertisement of his school with any advertisement for his brokerage business and vice versa.

#### **School Investigation and Hearings**

§34.57 The Commission shall have the authority, on its own motion or following the consideration of a complaint made to it, to investigate any real estate school certified or licensed by it to determine whether a school is complying with the rules and regulations of the Commission.

§34.58 The Commission shall have the power and authority to revoke and/or suspend the certification of any school which it has previously licensed, if there is a violation of these regulations. In determining whether there has been a violation of the rules and regulations of the Commission, as they may relate to real estate schools, the Commission shall follow the provisions of R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes insofar as notice of charges, hearing, and suspension or revocation of certification.

§34.59 All private real estate schools shall be subject to periodic visits by an official representative(s) of the Commission who will observe classroom activities, evaluate course content and instructor proficiency to insure that courses are being taught in accordance with the provisions set forth in R.S. 37:1459 and R.S. 37:1460.

#### **Course Outline**

§34.60 *The Instructor's Manual on Real Estate Principles and Practices, I, II, and III*, copyright 1977, by the Louisiana Real Estate Commission shall be utilized as a guide by certified real estate schools in their course of instruction.

Stanley Passman, Executive Director  
Real Estate Commission

## RULES

### Department of Corrections Office of Adult Services

#### Regulation 30-14(A) Work Release Selection of Inmates

1. Purpose: The purpose of this regulation is to establish the Secretary's policy regarding the assignment of inmates to work release status.

2. Responsibility: It is the responsibility of the Assistant Secretary for Adult Services and all wardens to implement this regulation and convey its contents to the inmate population and all affected employees.

3. Legal authority: R.S. 15:711, 15:833, 15:893.1(B), 15:1111

4. General: Selection of inmates to participate in work release programs must be made with the greatest of care. Selected inmates should be able to benefit from the program and should have demonstrated their ability to conform to the rigid standards of conduct expected of those who associate with the general public.

The guidelines set forth herein are the outside limits on eligibility and should not prevent the denial of work release privileges to inmates whose records and observable behavior indicate that approval would not be appropriate or who, in the discretion of the Secretary, are not otherwise acceptable.

5. Procedure:

A. Inmates must apply through their institutional classification officers for work release pending parole or pending discharge. Applications should be filed eight months prior to parole or discharge dates and arrive at the Office of Adult Services before the beginning of the seventh month prior to parole or discharge. The warden of the institution or supervisor of the unit will indicate his recommendation prior to forwarding of the application to the Office of Adult Services.

B. The Office of Adult Services shall ascertain that:

1. The applicant is approved by his warden and is eligible for work release under the criteria set forth in this regulation.

2. That a bed space exists at a department facility or at a facility under contract to provide such services to the Department and that the inmate may be housed there in conformity with Department Regulation 30-14.

3. That the inmate is referred to the Parole Board for a hearing, if applicable.

4. That all applicants are notified of approval or rejection of the application and the reasons for rejection.

5. Upon approval of the Parole Board or in the case of approved applicants pending discharge, the Office of Adult Services shall arrange transfers when necessary and notify the Office of Finance and Management of the assignment.

6. That the inmate has acknowledged all conditions of work release prior to transfer and signed documents indicating his notification of such conditions, such documents to be received at the Office of Adult Services prior to transfer or assignment to work release.

7. Applications for inmates presently participating in a department maintenance program may be approved by the Assistant Secretary/Adult Services; all other approvals are to be by the Secretary.

8. That employment has been verified in the area where the inmate is to be assigned.

C. A three-member committee appointed by the Assistant Secretary for Adult Services will review each application and a recorded vote shall be taken and kept in the inmate's record. Any member of the committee voting against approval shall

explain his vote on the voting form. A majority of votes shall constitute approval.

D. Inmates sentenced to the Department of Corrections who are in the custody of a sheriff shall not be eligible for a sheriff's work release program unless those inmates would be eligible for work release under the terms of this regulation. Upon application of those inmates either in person or by a sheriff, the Office of Adult Services shall ascertain the applicant's eligibility by law and regulation and certify the eligibility to the Secretary for his written approval.

E. Inmates assigned to a nondepartmental facility such as the State Police Barracks, upon application and recommendation of the supervisor of the unit, will be processed under provisions of this regulation.

F. Inmates assigned to work release either within the Department of Corrections or in a sheriff's program may not be employed in an occupation requiring out-of-state travel.

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

6. Selection criteria:

A. Only inmates within six months of their earliest release eligibility date are eligible.

B. Inmates must be approved by the Parole Board where eligibility is based on the parole release date.

C. Inmates must have the recommendation of the warden or appropriate nondepartment supervisor.

D. (1) Inmates convicted of the following offenses are not eligible:

- a. Aggravated arson.
- b. Aggravated kidnapping.
- c. Aggravated or attempted aggravated rape.
- d. Forcible rape.
- e. Murder (First degree).
- f. Habitual offenders sentenced under R.S. 15:529.1.

(2) Inmates, other than first offenders, serving sentences for the following offenses are not eligible:

- a. Armed robbery
- b. Attempted armed robbery
- c. Attempted murder
- d. Second degree murder

E. Inmates with arrest or institutional records which reveal compulsive or habitual use of violence against the person are not eligible.

F. Inmates currently requiring frequent medical treatment are not eligible.

G. Inmates found guilty by a court or institutional disciplinary board of escape or attempted escape within the last seven years are ineligible.

H. Inmates who have demonstrated an overt-aggressive pattern of homosexual behavior to the extent it would disrupt the smooth daily operation of the program are ineligible.

I. Inmates whose institutional records reflect consistent signs of bad work habits, lack of cooperation or good faith, or other undesirable behavior are ineligible.

K. First offenders will have priority for work release. Should vacancies exceed the requirements for first offenders, selection would be made from second offenders and so on.



7. **Effective date:** The effective date of this regulation is January 1, 1979. It will not apply to inmates approved for work release prior to that date.

C. Paul Phelps  
Secretary of Corrections

## **RULES**

### **Department of Corrections Board of Pardons**

#### **Rule 4**

An application may be considered by the Board any time after it is received, but no application will be considered by the Board until it deems the application to have been completed and proper notice given, as required by the next Rule.

However, in determining which cases are ready to be heard, the Board may, in its discretion, refuse to grant a hearing if an applicant has not served one-fifth of his sentence. In cases of life sentences and sentences of forty-five years or longer, the applications may be heard at the discretion of the Board. Additionally, the Board can refuse a hearing to an applicant because of his past criminal record or his poor conduct while incarcerated. If good cause is shown, nothing in this article shall prevent the Board from hearing the types of cases mentioned hereinabove.

John D. Hunter, Chairman  
Board of Pardons

## **RULES**

### **Department of Corrections Office of the Secretary**

#### **Regulation 30-31 Weapons—Authorization to Carry**

1. **Purpose:** To establish the Secretary's policy regarding the use of firearms by employees of the Department of Corrections.

2. **Legal authority:** R.S. 15:825.2.

3. **Responsibility:** It is the responsibility of the Assistant Secretaries, and all wardens and superintendents, to ensure that this regulation is implemented and enforced.

4. **General:**

A. No employee may carry a firearm of any nature during the course of his employment, except in accordance with this regulation.

B. Employees assigned to guard towers may carry firearms while so assigned, only.

C. Other employees whose assigned duties require them to carry firearms may do so, on Department of Corrections property and while performing their duties, only.

D. Only employees designated "special agents" may carry firearms outside Department property, and then only to the extent set forth in their commissions.

E. All employees required to use firearms shall receive appropriate firearms training prior to being issued a weapon.

F. During a riot, or other large-scale declared emergency, any employee designated by the warden or superintendent may carry a firearm.

5. **Procedures—special agents:**

A. Only full-time permanent employees of the Department may be appointed special agents.

B. Applications must be initiated by executive level supervisors within the Department of Corrections and forwarded to the appropriate Assistant Secretary for screening.

C. **Applications must include:**

1. A current record (rap) sheet for the individual applicant.

2. A precise statement by the supervisor, warden, or superintendent, of the need for the commission and the extent to which it should apply (escape only, court trips, etc.)

3. A certification by the recommending authority that the individual has been trained with the weapon with which he will be armed.

6. **Restrictions:**

A. Employees may carry firearms only while performing the duties for which they have been authorized to do so.

B. No use is to be made of a commission issued by the Secretary of Corrections other than the performance of the specific duties for which the commission is issued.

C. Special agent commissions will be issued and in effect solely at the discretion of the Secretary of Corrections and may be denied or cancelled with or without stated cause.

7. **Effective date:** This regulation shall take effect on January 1, 1979.

C. Paul Phelps  
Secretary of Corrections

## **RULES**

### **Department of Corrections Office of the Secretary**

#### **Regulation 30-7**

##### **Inmate Furloughs and Temporary Releases**

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

2. **Responsibility.** Wardens and correctional treatment administrators of each adult correctional institution and the Office of Adult Services and directors of work release programs are responsible for implementing this regulation and advising all inmates and affected employees of its contents.

3. **Legal authority.** R.S. 15:811 (C), 15:831 and 15:833.

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

5. **Definitions.**

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

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

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

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

6. **Procedures.**

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

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

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

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

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

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

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

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

B. Must not be serving a sentence for any of the following crimes (cannot be waived (R.S. 15:833(B)):

1. First or second degree murder or attempted murder.
2. Aggravated or attempted aggravated rape.
3. Forcible rape.
4. Aggravated kidnapping.
5. Aggravated arson.
6. Armed robbery.
7. Attempted armed robbery.
8. Producing, manufacturing, distributing or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance classified in Schedule I or Schedule II of R. S. 40:964.

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

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

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

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

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

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

of Adult Services. In cases of extreme emergency, portions of this requirement may be waived by the Secretary.

8. Length and frequency of furloughs.

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

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

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

D. In addition to the furloughs specified above, inmates on work release may be granted two additional furloughs of no more than forty-eight hours each during the final forty-five days of their confinement. These furloughs will serve as an aid to reintegration into society.

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

9. Administrative requirements.

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

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

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

10. Effective date and cancellation. The effective date of this regulation is December 20, 1978. It replaces Department Regulation 30-7 dated October 10, 1978.

C. Paul Phelps, Secretary  
Department of Corrections

## RULES

### Board of Trustees for State Colleges and Universities

At its regular meeting on November 11, 1978, the Board of Trustees for State Colleges and Universities deleted the following paragraphs from its *Policies and Procedures Manual*.

Part VIII, Student Personnel Policies and Procedures:

In Section 8.10 delete no. 7 of Paragraph A which read:

7. No student who is a recipient of other financial aid from state funds shall be eligible for one of these scholarships.

In Section 8.10 delete Paragraph C which read:

C. An academic scholarship recipient is restricted from receiving a second scholarship involving state funds, except in the case of the Louisiana High School Rally Scholarship since it is funded by the state Legislature under the provisions of a special Act of the 1972 Legislature.

Bill Junkin, Executive Director  
Board of Trustees for State  
Colleges and Universities

**RULE**

**Board of Elementary and Secondary Education**

**Rule 4.03.43**

All Comprehensive Employment Training Act (CETA) projects pertaining to vocational education and contracted by the Department of Education will be submitted to the Vocational Division of the Department of Education for coordination with the vocational technical school directors in the surrounding areas.

**Rule 3.01.70.v(22)**

The Board adopted the following schedule of minimum scores on the National Teacher Examination to determine the levels at which the examination shall be satisfactorily completed for certification purposes, as recommended by the Superintendent of Education with the addition of minimum score of 534 in the Commons area examination.

Area Examination	Minimum Score
Agriculture	1078
Art Education	1062
Biology and General Science	1154
Business Education	1178
Chemistry, Physics, and General Science	1114
Early Childhood Education	1100
Education in the Elementary School	1131
Education of the Mentally Retarded	1140
English Language and Literature	1052
French	1108
German	1091
Home Economics Education	1101
Industrial Arts Education	1122
Mathematics	1202
Media Specialist	1148
Music Education	1120
Physical Education	1135
Social Studies	1149
Spanish	1124
Speech-Communication and Theatre	1126

James V. Soileau, Executive Director  
Board of Elementary and Secondary Education

**RULES**

**Board of Regents**

**State Appropriation Formula**

**Section I-Authority**

This formula is submitted in accordance with Article VIII, Section 5-(D)(5) of the Louisiana Constitution of 1974 which mandates the Board of Regents "to formulate and make timely revision of a master plan for higher education. As a minimum, the plan shall include a formula for equitable distribution of funds to the institutions of higher education." Additionally, there have been repeated requests in the past from the Executive and Legislative branches of state government and the institutions themselves for the development of an equitable method for determining funding levels for each institution.

**Section II-Introduction**

The complex character of educational institutions, combined with increasing enrollments and operational costs in the last decade, exerted a demand for a more uniform method to distribute tax generated funds to state institutions of higher learning. These pressures resulted in the development of numerous higher education formulae in numerous states using various factors of measurement as input for calculations to derive state appropriations to public colleges and universities. The number of states adopting this approach of "formula funding" has continually increased since the early 1960's; one survey indicated that twenty-five states utilized this method in 1973, and indications are that the trend is continuing. In computing the required amount of state funding, these formulae range in complexity from those using a few factors to those using many factors.

There are inherent advantages in using the formula approach to determine state appropriations. The formula method results in the accumulation of measurable data from institutions; it permits the use of mathematical calculations that remove the necessity for subjective evaluation; and it is objective in nature and identifies the needs of all institutions in comparable terms. Primarily, the formula concept is equitable. This formula uniformly places financing on a per-student credit hour basis for each institution. Equity, and not necessarily equality, is the basic objective of the formula.

The intention of this formula does not extend to the internal allocation of funds for any functional category, specific discipline or program. The internal allocation necessary for the development of an effective program of higher education on each campus remains a prerogative of that campus administration and its governing board. It should be explicitly understood that dollar values used in this formula do not in any way correlate to budgetary levels or actual expenditures in any program area.

**Section III-Basic Factor Chart**

**(Dollars Per Student Credit Hour)  
Effective For 1979-80 Fiscal Year**

Program Area	Hegis Taxonomy Codes	Level of Offering				
		Lower Level Undergraduate	Upper Level Undergraduate	Master's	Specialist/ Professional	Doctorate
Agriculture	0101-0199	\$ 28.62	\$45.16	\$121.99		\$242.09
Engineering	0901-0999	31.80	52.28	128.64		253.17
Fine Arts & Architecture	0201-0299 1001-1099	38.04	52.69	121.99		253.17
Law	1401-1499				\$ 70.21	
Nursing	1203	147.93	147.93	203.32		

**Section III-Basic Factor Chart—(continued)**

**(Dollars Per Student Credit Hour)  
Effective For 1979-80 Fiscal Year**

Program Area	Hegis Taxonomy Codes	Level of Offering				
		Lower Level Undergraduate	Upper Level Undergraduate	Master's	Specialist/ Professional	Doctorate
Allied Health & Pharmacy Sciences	1208, 1211-1215 1220, 1223-1225 0401-0499 and 0700-0799 and 1901-1999	31.80 27.26	52.28 43.25	128.64 128.64		253.17 253.17
Technology	5300-5399	31.80				
All Other: 1st 20,000 SCH's All in Excess of 20,000 SCH's		34.53 23.03	29.64	121.99	159.56	242.09

**Definitions and Interpretations**

1. Values—The values in the chart are based upon assignments for average academic year (nine month) salaries, pupil/teacher ratios (P/T), and definitions of full-time equivalent students in student credit hours (SCH's) per academic year. The value for veterinary medicine will not be determined or be effective until after the fiscal year in which a full complement of students has been accepted by the School of Veterinary Medicine. The value in the "All Other" program area under the level of "specialist/professional," refers to SCH's produced by education specialist candidates only. The conversion of contact hours to credit hours for those laboratory courses offered in the vocational trades division of Delgado Junior College will be calculated on a 4:1 ratio (contact hours/credit hours).

2. Level—The assignments in the chart were stratified by level of offering and by program area. In the reporting of SCH productivity, the level of offering for a given SCH will be determined by the classification of the student pursuing the course.

3. Student Classification Structure.

Classification Structure	Earned Credits
Lower Level Undergraduate	0-59 semester hours
Upper Level Undergraduate	60 semester hours-graduation
Masters	Accepted for Graduate Study; Masters and Masters plus thirty
Specialist	Formally admitted to study toward Education Specialist
Doctorate	Formally admitted to study toward the Doctorate

4. Additional Student Classification Definitions.

A. A post-baccalaureate student enrolled in a state institution of higher learning, but not officially admitted to graduate school, is to be counted as "upper level undergraduate."

B. The categories presently recognized as "professional" are law (only those courses taught in a professional school of law), veterinary medicine, dentistry and medicine. Of these, only law is currently included in this formula.

C. "Deferred credit" is defined as credit earned by students when credit is granted at a later date, such as graduation from high school. These "deferred credits" may be counted in an institution's SCH production during the period in which the student is officially registered in the class, and must be recorded in the proper classification for that student.

D. SCH credit earned in courses taught out-of-state and out of the continental United States are to be counted for student

classification purposes and are to be included on the SCH production report for formula purposes, also. Records must be kept by course and location indicating the students and the SCH's produced for each such course, and upon completion of that course be reported to the Board of Regents.

E. An institution may not count audits in its SCH production report.

F. Credit by examination, transfer credit, or correspondence student credit taken at another institution may be used only in the classification of the student and not in an institution's SCH production report. An institution may accept a provisional student's classification on the basis of the best knowledge available during the first semester of enrollment at the institution.

G. Credit earned in a cooperative institution (hospital, etc.) by a student enrolled in medical technology (or any curriculum requiring such arrangement) may not be counted in an institution's SCH production report.

H. Student classification must be updated each semester.

5. Program Area—The program areas and taxonomy codes used in the Basic Factor Chart have not been expanded for this revision. The areas used are specific ones extracted from the taxonomy developed by the Western Interstate Commission for Higher Education (WICHE) for the United States Office of Education. Future revisions of the formula may utilize more program areas, but not to the extent of having a complicated or unwieldy formula.

**Section IV-Salary Base**

A. After extensive examination of the levels of operation in Louisiana, a comparison of levels of operation in other states, and an analysis of average faculty salaries in the states comprising the Southern Regional Education Board and the Southern Association of Colleges and Schools, a structure for the assessment of salaries associated with instruction was evolved. It was recognized that the salary base is not supported from state appropriations alone; however, through the solution of some relatively simple algebraic relationships it can be used to derive the required state appropriation to fund the recognized functions of higher education.

B. To determine the salary base, student credit hours that remain scheduled on the fourteenth class day are separated into program areas and levels, using the HEGIS Taxonomy and student classification respectively. At the time legislative budget requests are prepared, summer and fall productivity data are complete. The approaching spring session production estimate should be based on the experience of the previous spring. Actual spring

data will be available prior to the regular legislative session and all institutions must submit adjusted reports by February 23, 1979, (Louisiana Tech by April 6, 1979). The SCH's used for the three sessions shall be net, reflecting all transactions (drops, adds, resignations, etc.), occurring prior to the cutoff date. The resulting net SCH's are multiplied by the appropriate values on the Basic Factor Chart, and the sum of these products establishes the salary base, which is calculated on State Budget Request Form BRC-1A. (For further details on SCH reporting dates, refer to Appendix A.)

**Section V-State Appropriation**

A. For 1977-78 state appropriations represented 72.3% for the Louisiana State University System, 76.8% for the Southern University System, and 75.9% for the Board of Trustees System, of education and general expenditures. Previous analysis of a number of other statewide systems indicates corresponding percentages ranging from 49.5% to 75.1% with an average of 63.1%—generally much lower than Louisiana's figures. This formula derives 73% of education and general expenditure funds from the state. In order to relate these factors to the previously determined salary base, an additional factor has been established. This factor is the percent of expenditures for resident instruction and related activities represented by faculty salaries (salary base). Analysis of several statewide systems indicated a range from 58.1% to 71.5%, with an average of 63.4%. The factor of 66% has been chosen for all institutions in Louisiana.

The solution of a set of relatively simple algebraic equations (Appendix C), simultaneously satisfying all of the relationships advanced in the previous statements, indicates that the formula generated state appropriation portion of the total budget is related to the salary base (faculty salaries) by the relationship: state appropriation equals salary base plus 62.65% of the salary base.

B. An adjustment factor of ten percent has been established to recognize the existence of certain overhead costs that are disproportionately higher in small two-year institutions. To qualify as small, a two-year institution shall have a fall full-time equivalent enrollment of 1,500 or less. (One full-time equivalent (FTE) will be fifteen semester credit hours.) This adjustment factor is to be incorporated into the algebraic equation so that the state appropriation portion of the total budget is related to the salary base (faculty salaries) by the relationship: state appropriation equals salary base plus 78.92% of the salary base. This will effectively recognize the higher overhead cost of small two-year institutions and will allow one percentage level of implementation for all institutions.

**Section VI-Functional Category Distribution**

A. Allocations to Educational and General Expense—Dr. John Dale Russell ("Budgetary Analysis," *College Self-Study*, Richard Axt and Hall T. Sprague, Eds. Boulder, Colorado: Western Interstate Commission for Higher Education, 1959, p. 106.) recommended allocations of expenditures to the eight functional categories of the Educational and General function. These categories, in use until recently, were: (1) resident instruction; (2) organized activities related to instruction; (3) organized research; (4) extension and public service; (5) libraries; (6) general administration; (7) general expense; and (8) maintenance and operation of physical plant. If the first four are grouped under one heading his recommendations are reduced to four groups as follows:

Resident Instruction and Related Activities (RIRA)	At least 63%
Libraries	5% to 6%
General Administration (GA)	15% or less
Operation and Maintenance of Physical Plant (OMPP)	16% or less

Further analysis in conjunction with Dr. Russell's research led to the selection of the following suggested allocations of total educational and general expenditures:

Resident Instruction and Related Activities	68%
Libraries	5%
General Administration and General Expense	15%
Operation and Maintenance of Physical Plant	12%
	<hr/> 100%

Recent developments will have a definite impact on these allocations. Two such developments are: (1) the establishment of new functional categories within the Education and General Function by the National Association of College and University Business Officers (NACUBO); and (2) the energy crisis has sent utility costs soaring which may change the physical plant allocation. Recognizing these disparities, but not having sufficient data to support new recommended allocations, the old percentages shall be retained as broad guidelines.

The new functional categories as established by NACUBO and how they should be converted for percentage allocation purposes are as follows:

NACUBO New Categories	Conversion to Russell's Percentage Allocations
(1) Instruction	RIRA
(2) Research	RIRA
(3) Public Service	RIRA
(4) Academic Support (Libraries)	RIRA Libraries
(5) Student Services	GAGE
(6) Institutional Support	GAGE
(7) Scholarships and Fellowships	GAGE
(8) Operation and Maintenance of Plant	OMPP

(For comparative purposes, libraries are to be extracted from Academic Support.)

It should be noted that staff benefits (related benefits) costs are to be reported as a cost in the department (category) in which an individual is employed. This is as recommended by NACUBO in the most recent publication of the handbook, *College and University Business Administration*, 1974.

**Section VII-Funding Requests**

A. Because the budgetary process requires considerable planning and effort, it is necessary that the requests be both reasonable and adequate to meet institutional needs and to be within the state's funding capabilities. Therefore, these requests are to be prepared as set forth in this formula document. The Regents reserve the prerogative to make the final recommendation for funding levels of all segments of higher education. These recommendations will be based upon a complete evaluation of all requests, projected state revenues and the development of a consolidated budget to be presented to the Executive and Legislative branches of state government.

B. The 1979-80 budget requests for all institutions subject to the formula are to be based on an implementation rate of one hundred percent. However, no institution has to request less than the 1978-79 amount of state appropriations received for formula purposes. Funding requests for areas excluded from the formula shall be reached on an individual basis as set forth in Section X—Exclusions.

C. Funding requests for management boards and their staff, i.e., the Louisiana State University System, the Southern University System, and the Board of Trustees System will be as set forth in Section X—Exclusions. The funds for the operations of these management boards are an actual cost allocable to each segment of the respective boards. Therefore, an institution's pro rata share of system costs plus that individual institution's state appropriation shall be used to determine the attainment of the one hundred percent level of implementation.

D. The inclusion of an inflation factor for partial allocation of any new funds for higher education is to promote an equitable distribution of inflationary support. The inflation factor amount for every institution, funded on SCH production, will be calculated by the Regent's staff. This computation will be based upon information institutionally supplied on budget "Form A's" for the 1978-79 operating budgets. Note: For fiscal 1979-80 only, all schools are to receive the inflation factor regardless of their level of implementation. This is done to discourage allocations outside the formula process.

**Inflation Factor Calculation**  
**Current Year (1978/79) Budgeted Operating**  
**Other Support Expenditures**

Institutional Support	\$ _____
Student Services	_____
Scholarships & Fellowships	_____
Operational & Maintenance of Physical Plant	_____
Total Other Support	_____
State Appropriation Share	_____ x .75
Inflation Percentage	_____ x .08
Inflation Factors	\$ _____
	=====

E. Effective in fiscal 1980-81, all state appropriations not conforming to the formula allocation process shall neither be considered in the continuing base appropriations nor will these funds be considered in the application of the inflation factor computation. For comparative purposes in all formula schedules, analyses, etc., such funds will be included for determining implementation levels; funds appropriated that do not conform to the formula process shall be footnoted to indicate their amount, source and purpose. The purpose of this section is to encourage equitable allocation of all funds for higher education through the formula.

**Section VIII-Special Requests**

Justification for extraordinary expenditures, for a limited, pre-determined period, should reference this section. The purpose of this section is to provide a means of requesting funds extraneous to the formula, for items particular and peculiar to a specific situation, e.g., a land purchase, large equipment purchase to meet accreditation requirements, etc. Each request is to be supported by a separate, concise report giving the purpose, the necessity, the expected results, and minimum amount needed, and the method of determining this amount. In addition, if the possibility exists that special funding will be required for more than one year, the expected duration shall be given with a complete explanation. Requests for unending, continuous functions, to avoid inclusion in formula funding, will not be granted.

If a special request is granted for a program that will produce SCH's then the funds received will be included in calculating the level of implementation for the recipient institution.

**Section IX-Other Means of Financing**

All annually recurring revenues, regardless of source, shall be budgeted by each institution. There are several reasons for this requirement: (1) the 1974 Constitution requires the annual appropriation of all funds for budgetary purposes; (2) budgeting provides responsible fiscal control over funds; and (3) budgeting requires planning in advance which, if properly done, normally results in more efficient and economical use of available resources. Institutions are the recipients of revenues from many varied sources. Some examples of what should be included in the annual budgets, both the request and operating, are tuition and student fees; parking fees and fines; library fines; income from publications; income from sales and services; recurring federal funds such as George Barden, Vocational Education, McIntire-Stennis, etc.; user fees in continuing education, correspondence study, and extension courses; and auxiliary income, if expenditures are made for auxiliary operations from state appropriations.

**Section X-Exclusions**

A. Two primary reasons for this section providing funding outside formula-generated appropriations:

1. A method of measurement has not been devised for those certain institutions or operations that do not utilize student credit hours as a determinant of productivity. These are the Louisiana State University Medical Center and the Louisiana State University Center for Agricultural Sciences and Rural Development. A newly designed, modified program budget approach supported by substantiating statistical and narrative data, will be used by the Medical Center in requesting funds for 1979-80.

2. Other exclusions consist of specific items that do not fall within the normal scope of operations of all institutions. For that reason they are separated from formula consideration to provide a more sound basis of comparison between institutions. Included in this category are bond service and special funds for capital outlay (for those institutions that include these funds in the operating budget), Louisiana State University Fireman Training Program Dedicated Funds, Organized Research and Public Service performed by Louisiana State University-Baton Rouge, the annual livestock show at Southern University-Baton Rouge, and laboratory schools at Louisiana State University-Baton Rouge and Southern University-Baton Rouge.

B. Method of determining recommended funding level:

1. Funding of these exclusions that are not otherwise provided for will be based upon fully documented and justified need as required to fulfill their duties and responsibilities as set forth in the role, scope and mission charge of the respective units. In the following category are the units for this year:

- a. Southern University Board and system staff.
- b. Board of Trustees and staff.
- c. Louisiana State University Board and system staff.
- d. Louisiana State University Medical Center.
- e. Center for Agricultural Sciences and Rural Development.
- f. Organized Research and Public Service, Louisiana State University-Baton Rouge Campus.

2. The School of Veterinary Medicine is to prepare a budget request consistent with the actual needs for establishing the program, including anticipated costs relative to occupancy of their new facilities.

3. Louisiana State University has received dedicated revenues for a number of years which could be bonded and expended for capital facilities. Capital outlay in the Board of Trustees and Southern University Systems has been handled outside of operating budgets, whereas the Louisiana State University System has used a combination approach. Because commitments are already made requiring the expenditures of annual appropriation funds to service these commitments, it is recommended that these funds be received by Louisiana State University above the formula amounts until these commitments are retired. In compliance with the Constitution and laws of this state, additional commitments cannot be made without approval of the Board of Regents.

4. It is recommended that each public college or university operating a public Laboratory School receive the proper allocation of funds based on the minimum foundation formula of the State Department of Education. For Louisiana State University-Baton Rouge and Southern University-Baton Rouge, these funds should be specifically appropriated to the institutions.

5. The Louisiana State University-Baton Rouge Fireman Training Program receives funds dedicated from fire insurance premiums by Act 32 of 1970. This Act provides that one-fourth of one percent of premiums received annually by insurers for fire coverage within Louisiana be used solely for this program. Since this amount is subject to fluctuation, the requested budget amount should be based on the previous year's receipts adjusted for any

anticipated changes. These funds are to be received in addition to formula funds.

6. Southern University-Baton Rouge annual livestock show is to be separately funded outside of the formula appropriation.

7. The Southern University-Baton Rouge allocation for the Scotlandville Fire District is an annual fixed amount charged the campus for the provision of fire department coverage. This is necessary since the campus is not located within the jurisdiction of a municipal fire department. These funds are to be exclusive of formula funding.

### Section XI—Audit Procedure

The use of a state appropriation formula results in Student Credit Hours becoming dollars through the conversion using the basic factor chart. The audit procedure previously established will continue to be used for this revision. This will insure correct and consistent interpretation and application of the procedure for recording and receiving credit for SCH production and will facilitate the use of the State Appropriation Formula. Every affected institution shall be visited each year to provide any required assistance and to validate the methods and procedures used and the resultant data. The auditors shall use a predetermined audit outline including statistically proven record search patterns and those record areas requiring comparisons. Records to be examined shall include but not be limited to the following: class rolls; final grade reports; drop/add records; transcripts; student schedules; withdrawals and resignations; and any other relevant data sources.

Discrepancies shall be noted and reconciled and the necessary corrective action shall be taken. Should a particular situation warrant it, the audit will be expanded so that the extent of the problem can be determined and the SCH production reports amended to indicate the correct production figures. Official notification of the adjustment shall be given to all concerned parties.

The audit process will also include a review of off-campus SCH production to verify compliance with Board of Regents' Policy 4.2, Guidelines for the Conduct of Off-Campus Activities. Non-compliance will be noted in the audit report.

### Appendix A Standardized Reporting Forms

The student credit hour audit procedure as it exists presently takes fourteenth class day data (department, course, section, credit hours, number enrolled, student identification, and SCH's produced) and compares them to final grade reports. Any exceptions must be substantiated with support documentation, i.e., properly prepared drop, add, or resignation forms. This provides a uniform reporting system to put all institutions of higher education in the state on a common base, primarily utilizing four standardized report formats. These reports, the (1) class roster, (2) final grade report, (3) detail formula level report, and (4) summary formula area report, are to be prepared by all institutions.

The reports should be prepared as of the close of the fourteenth class day during the regular semesters and the seventh class day during the summer session (Louisiana Tech by the ninth class day). One copy of the summary formula area report should be sent to the Board of Regents by the twenty-fourth class day of each regular semester and the seventeenth class day of the summer session (Louisiana Tech by the nineteenth class day). For new classes beginning after the fourteenth (seventh, ninth) class day, each institution will be required to file a supplementary report of SCH's produced. These classes are to be reported in the session in which they are completed or in the following session if they are conducted totally in an interim period. The SCH production is to be reported in keeping with the two preceding requirements, with SCH production being counted on a date that is equivalent to the fourteenth or seventh class day (Louisiana Tech the ninth) of courses offered during a regular semester. These supplemental reports will be due upon issuance of final grades in the reporting session and should

include beginning and ending dates and equivalent cut-off dates for each class. A class day is defined as a regular class schedule day; Saturday and Sunday are to be excluded as class days.

A common sequence arrangement of the various reports is to be used by all institutions; this method will simplify the audit procedure and provide for a uniform communication basis. The class roster, detail formula level report, and the final grade report are to all be arranged in the same sequence, alpha by course name or title/or alpha by course name or title within college.

All exceptions between the fourteenth class day (ninth class day for Louisiana Tech) and the final grade report must be supported by properly prepared and authorized drop, add, or resignation forms which are to be maintained for all courses by semester, filed in alphabetical order by student's last name. The summary formula area report is a summary report and should be arranged in alpha order and course number within each formula area breakdown.

Note: Each institution will be required to identify all off-campus SCH production either on the above required reports or on a special supplementary report. Each course offered off campus and the parish(es) in which it is taught must be reported. Parish codes are provided in Appendix D.

### Appendix B Reporting of Final SCH Production

To facilitate further research and study for the possible formula revisions, it will be necessary for each institution to furnish end-of-year reports on an annual basis. Information of this nature is necessary in the evaluation of measurement factors to determine effectiveness of programs. It will also point out areas where special formula consideration may be required. These reports, at a minimum, are to consist of recalculated BRC-1 and BRC-1A budget forms reflecting SCH production based on the final grade report.

### Appendix C Simple Algebraic Relationships and

#### Special 10% Factor for Use by Qualifying Institutions Only

A. Represent Educational and General Expenditures as E & G  
Represent Resident Instruction and Related Activities as RIRA

- (1) Salary Base = 66% of RIRA
- (2) RIRA = 68% of E & G
- (3) State Appropriation = 73% of E & G

From statement (2)

$$(4) \quad E \& G = \frac{RIRA}{0.68}$$

From Statement (1)

$$(5) \quad RIRA = \frac{Salary\ Base}{0.66}$$

Substituting in Statement (4) from Statement (5)

$$(6) \quad E \& G = \frac{Salary\ Base}{\frac{0.66}{0.68}} = \frac{Salary\ Base}{0.4488}$$

Substituting in Statement (3) from Statement (6)

$$(7) \quad State\ Appropriation = 0.73 \left( \frac{Salary\ Base}{0.4488} \right)$$

$$State\ Appropriation = 1.6265\ Salary\ Base$$

$$State\ Appropriation = Salary\ Base + 62.65\% \text{ of Salary Base}$$

B. Special 10% Factor

- (1) State Appropriation = 1.6265 Salary Base
- (2) 10% (state appropriation) = special 10% factor
- (3) State Appropriation = 110% (1.6265 Salary Base)
- (4) State Appropriation = 1.7892 Salary Base
- (5) State Appropriation = Salary Base + 78.92% of Salary Base.

**Appendix D  
Parish Codes**

Acadia .....	.01	Madison .....	.33
Allen .....	.02	Morehouse .....	.34
Ascension .....	.03	Natchitoches .....	.35
Assumption .....	.04	Orleans .....	.36
Avoyelles .....	.05	Ouachita .....	.37
Beauregard .....	.06	Plaquemines .....	.38
Bienville .....	.07	Pointe Coupee .....	.39
Bossier .....	.08	Rapides .....	.40
Caddo .....	.09	Red River .....	.41
Calcasieu .....	.10	Richland .....	.42
Caldwell .....	.11	Sabine .....	.43
Cameron .....	.12	St. Bernard .....	.44
Catahoula .....	.13	St. Charles .....	.45
Claiborne .....	.14	St. Helena .....	.46
Concordia .....	.15	St. James .....	.47
DeSoto .....	.16	St. John .....	.48
E. Baton Rouge .....	.17	St. Landry .....	.49
E. Carroll .....	.18	St. Martin .....	.50
E. Feliciana .....	.19	St. Mary .....	.51
Evangeline .....	.20	St. Tammany .....	.52
Dranklin .....	.21	Tangipahoa .....	.53
Grant .....	.22	Tensas .....	.54
Iberia .....	.23	Terrebonne .....	.55
Iberville .....	.24	Union .....	.56
Jackson .....	.25	Vermilion .....	.57
Jefferson .....	.26	Vernon .....	.58
Jefferson Davis .....	.27	Washington .....	.59
Lafayette .....	.28	Webster .....	.60
Lafourche .....	.29	W. Baton Rouge .....	.61
LaSalle .....	.30	W. Carroll .....	.62
Lincoln .....	.31	W. Feliciana .....	.63
Livingston .....	.32	Winn .....	.64

William Arceneaux  
Commissioner of Higher Education

**RULES**

**Office of the Governor  
Architects Selection Board**

Pursuant to the provisions of Act 721, 1975 Regular Legislative Session (R.S. 38:2310 through R.S. 38:2316, Revised Statutes of 1950) effective date, September 12, 1978, the Louisiana Architects Selection Board, hereinafter referred to as Board, has promulgated such rules and procedures as it deemed necessary to carry out the provisions of the said statutes. These rules are established by the Board, and are subject to change by said Board, in accordance with the Administrative Procedures Act.

**Article I. Name**

The name of this Board is the "Louisiana Architects Selection Board," hereinafter referred to as "Board," and its domicile shall be in Baton Rouge, Louisiana.

**Article II. Authority**

The Louisiana Architects Selection Board shall be organized in accordance with the provisions of Act 721, 1975 Regular Legislative Session (R.S. 38:2310 through R.S. 38:2316, Revised Statutes of 1950) effective date September 12, 1975, as amended by Act 525, 1976 Regular Legislative Session.

**Article III. Objective**

The objective of this Board is to provide a system for the procurement of services rendered by architects, licensed to practice in the State of Louisiana, that is impartial, equitable and in the best public interest of the citizens of Louisiana.

**Article IV. Members**

Section 1. The Board shall be composed of seven members, serving terms in accordance with the provisions of the authority stated in Article II.

Section 2. Any member desiring to resign from the Board shall submit his resignation in writing by registered mail, to the Governor of Louisiana and the President of State Board of Architectural Examiners, with copies addressed to the Chairman of the Board. The effective date of resignation shall be the date of registered mailing to the Governor's office.

Section 3. The filling of a Board vacancy for the unexpired term due to resignation, or death, or removal from office by just cause, shall be made in accordance with the provisions of the authority stated in Article II.

**Article V. Officers**

Section 1. The officers of this Board shall be a Chairman and a Secretary, elected by the Board at the first regular meeting following each January 1st and July 1st.

Section 2. The duties of the Chairman shall be as follows:

- a. Be the presiding officer at meetings of the board.
- b. Call meetings of the Board.
- c. Coordinate the activities of the Board.
- d. Appoint all committees and serve as an ex officio member thereof.
- e. Be responsible for implementing all orders and resolutions of the Board.
- f. Have the authority to issue the official advertisement of the intent of an agency to contract for design services.

Section 3. The duties of the Secretary shall be as follows:

- a. In the event of absence or incapacity of the Chairman, assume his duties as outlined above.
- b. Authenticate by his signature when necessary all acts, orders and proceedings of the Board, including the minutes.
- c. Tabulate and record the results of all balloting at the meetings.

**Article VI. Meetings**

Section 1. A regular meeting of the Board shall be held on the last Friday of January and July, in the State Capitol Building.

Section 2. Special meetings may be called by the Chairman or shall be called upon the written request of a simple majority of the total membership of the Board. Except in cases of emergency, at least three days notice shall be given for special meetings.

Section 3. A simple majority of all members of the Board shall constitute a quorum.

Section 4. All meetings shall be held in public.

**Article VII. Committees**

Committees, standing or special, shall be appointed by the Chairman of the Board as he shall deem necessary to carry on the work of the Board.

**Article VIII. Parliamentary Authority**

The rules contained in the current edition of *Robert's Rules of Order, Newly Revised* shall govern the Board except as modified herein or as provided for in Article X "Amendments to Rules."

**Article IX. Voting**

Only the votes of members present at the meeting shall be counted in the Board's official actions. Proxy votes are not allowed.

**Article X. Amendments to Rules**

These rules may be amended in accordance with the Louisiana Administrative Procedures Act.

**Article XI. Application**

Section 1. Any applicant (proprietorship, partnership, corporation, or joint venture of any of these) meeting the requirements of Title 38 of the Louisiana Revised Statutes of 1950, R.S. 38:2310 through R.S. 38:2316, may submit an application for selection consideration for a particular project upon which official adver-



tisement has been published. The information submitted shall contain data concerning its experience, previous projects undertaken, present state projects now being performed, scope and amount of work on hand, and any other information that the Board deems appropriate.

Section 2. The Louisiana Architects Selection Board adopts the use of Form LA-1 as the format for submitting a firm's experiences to the Board. In this Form LA-1, the principal listed in 2A, shall be defined as follows: "Principal: a licensed architect who has the right and authority to exercise control over the project; who shares in profits, losses, and responsibility for incurred liabilities." The Board has the right to require proof of compliance with the above definition.

Section 3. Consultants may be listed at the option of the applicant.

Section 4. All applications to be considered shall be received by the Board at the office of Facility Planning and Control Department during the time prescribed in the advertisement.

Section 5. The Board may, at its option and with the concurrence of the Division of Administration and the user agency, conduct design competitions in accordance with nationally accepted professional standards. Final selection of the applicant from among the competition submissions will be made within thirty days of deadline date of receipt of the entries. No closed competitions will be allowed.

#### **Article XII. Selection**

Section 1. After the deadline for applications, the office of Facility Planning and Control shall forward copies of the applications together with any available description of the job to the Board members.

Section 2. The selection procedure shall be as follows:

a. User agency shall give scope of project and make recommendations with supporting data, of a firm or firms for the project under consideration.

b. Discussion of applications and recommendation by the Board members.

c. The Board shall then take a vote. Each Board member present shall by written ballot vote for up to three applicants. This vote is a weighted vote, first choice three points, second choice two points, third choice one point.

d. The Secretary shall tabulate these ballots aloud and report to the Board the results of the balloting.

e. The two applicants receiving the most votes shall be considered nominated then be voted on by written ballot, each Board member—one vote.

f. The results of this balloting shall be announced by the Secretary. The applicant selected must receive a majority vote.

g. In case of a tie for nomination, there shall be a run-off election to reduce the nominees to two in accordance with procedures prescribed in "c" of this Section.

h. In case no applicant receives a majority vote for selection, a discussion will be held, and new balloting for selection shall take place.

#### **Article XIII. Severability**

If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules which can be given effect without the invalidated provisions, items, or applications and to this end the provisions of these rules are hereby declared severable.

#### **Article XIV. Information**

Any person may obtain information concerning the Board, its rules, regulations and procedures from the Board's secretary at the offices of Facility Planning and Control Department, Office of the Governor, 5th Floor, State Capitol Building, Post Office Box 44095, Baton Rouge, Louisiana 70804. Request for infor-

mation shall be made verbally or in writing. There may be a nominal fee charged to defray the cost of information furnished. Said fee shall be set by Facility Planning and Control Department, with the approval of the Board.

#### **Article XV.**

All rules or parts of rules previously adopted by this Board are hereby repealed and superseded.

Lee R. Connell, Jr., Chairman  
Architects Selection Board

### **RULES**

#### **Office of the Governor Office of Contractual Review**

#### **State Professional, Personal and Consulting Services Proposed Procurement Rules and Regulations**

##### **LAC 1-4:1 Delegation of Authority**

§1.1 The Director of the Office of Contractual Review may, in accordance with R.S. 39:1435 and 1437 B (1), delegate to other State agencies certain responsibilities in the review and approval process of professional, personal and consulting service contracts, to specifically include purchase of professional, personal and consulting services under one thousand dollars. Such delegations of authority shall be made upon written request by the head of the using agency and shall be provided for in a written memorandum of agreement between the Office of Contractual Review and each agency receiving such a delegation. All provisions of law and of these guidelines not delegated remain applicable.

##### **LAC 1-4:2 Requests for Proposals**

§2.1 Advertisements and written notices shall contain a general description of the consulting service desired and state the name and address of agency desiring to contract for consulting services; where and how the request for proposal (RFP) may be obtained and where proposals are to be sent; in the event of a proposer's conference, the date, time, and place it will be held; the date and time not later than which proposals must be received; and the date, time, and place that a proposal will be accepted.

§2.2 Questions to be received from potential contractors must be in writing, and all responding answers must also be in writing. All questions and answers must be provided to all potential contractors participating in the selection process. A proposer's conference may be provided in lieu of the above question-and-answer process. However, copies of the proceedings shall be made available to all those who are participating in the selection process.

§2.3 Supplemental and in addition to the requirements of R.S. 39:1450(B), a request for proposals (RFP) must:

§2.3.1 Specifically define the task and desired results of the project;

§2.3.2 Identify agency liaison personnel and what resources are available to the consultant, both in preliminary studies and the project itself;

§2.3.3 State approximately when the consultant can begin the study, plus an estimate of the time necessary to accomplish the work;

§2.3.4 Specify applicable procedures concerning billing, documentation requirements, progress reports, and final reports;

§2.3.5 Specify that a minimum of two copies of the proposal be submitted;

§2.3.6 Inform the potential contractors of the criteria and the selection methodology and weight (if weighting is used) which will be applied to each significant evaluation criteria to be used in evaluating the proposals' responsiveness to the RFP; and

§2.3.7 Require potential contractors to include the following information in their proposals:

A. A description of the consultant firm's qualifications, to include a specific list of personnel to be used on this project and their qualifications (at least list the number and the qualifications of each position). However, a resume will be required on each of the key personnel. Additionally, consultant must stipulate that these personnel will not be removed from the contract without prior approval of the using agency.

B. A list of the agencies, with names and contact persons, for whom similar work has been done (list of business firms may be substituted if no similar work has been done for governmental agencies).

C. The length of time needed for the project, broken down by phases, if phasing is necessary.

D. The proposed methodology for accomplishing the project with a precise statement of what the State will receive as an end product of the project (this is sometimes referred to as the technical section of the proposal).

E. An itemized cost statement showing various classes of man-hours at appropriate rates, delineated by phase, if phasing is used. Also included should be an itemized listing of all other expenses or fees that are expected to be paid by the State and a complete breakdown of consultant overhead rate.

§2.4 The final selection of a contractor shall be made by the using agency in accordance with the selection criteria established in the RFP. However, no contract can be awarded until final approval of the selection has been granted by the Director of the Office of Contractual Review. When a final selection has been made by the using agency, the contract file and the proposed contract along with a selection memorandum justifying the final selection shall be sent to the Office of Contractual Review for final concurrence.

§2.5 No contract shall be valid, nor shall the State be bound by the contract, until it has first been executed by the head of the using agency which is a party to the contract, and the contractor, and has been approved in writing by the Director of the Office of Contractual Review (R.S. 39:1449).

#### **LAC 1-4:3 Prequalification of Offerors**

§3.1 The Office of Contractual Review will prepare and maintain a prequalified list of offerors to be used in the request for proposal (RFP) procedure as provided for in R.S. 39:1453.

§3.2 Potential contractors who are interested in being placed on this list must submit a statement of qualifications to the Office of Contractual Review. This statement must describe the potential contractor's current qualifications by subject area to include key personnel currently employed or associated, accompanied by a resume on each. Additionally, a list should be provided describing previous work done by subject area, with whom (governmental agency or private business) and the names of contact persons for each client listed.

§3.3 Each statement of qualifications should have attached to it a financial statement or other representation of financial solvency.

§3.4 Finally, any other current information or material which would further describe a potential contractor's qualifications will be accepted.

#### **LAC 1-4:4 Determinations of Responsibility**

§4.1 In order to qualify as responsible, an offeror must meet the following standards as they relate to the particular procurement under consideration:

§4.1.1 Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;

§4.1.2 Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

§4.1.3 Is able to comply with the proposed or required time of delivery or performance schedule;

§4.1.4 Has a satisfactory record of integrity, judgement, and performance (contractors which are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement);

§4.1.5 Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

§4.2 Acceptable evidence of ability to obtain financial resources, experience, organization, technical qualifications, skills, and facilities, generally shall be a firm commitment or arrangement for the rental, purchase, or other acquisition thereof.

§4.3 No contract for consulting services for \$75,000 or more shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible within the meaning of Sections 4.1-4.2.

§4.4 In any case where a contract for consulting services is for \$75,000 or more, the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of offeror or potential subcontractors should be filed with the statement.

§4.5 Before making a determination of responsibility, the head of the using agency shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Sections 4.1-4.2. Information from the following sources should be utilized before making a determination of responsibility:

§4.5.1 Information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

§4.5.2 Other existing information within the agency, including financial data, the list of debarred and ineligible bidders (see LAC 1-4:5) and records concerning contractor performance;

§4.5.3 Publications, including credit ratings and trade and financial journals;

§4.5.4 Other sources, including banks, other financial companies, and State departments and agencies.

§4.6 To the extent that a prospective contractor cannot meet the standard in Section 4.1.2 except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the head of the using agency to satisfy that standard.

#### **LAC 1-4:5 Debarred, Suspended, and Ineligible Offerors**

(Reserved)

#### **LAC 1-4:6 Cost Principles**

(Reserved)

#### **LAC 1-4:7 Contract Contents**

§7.1 Each contract for professional, personal, and consulting services shall follow the provisions of R.S. 39:1445.1.

§7.2 Every contract shall contain a date upon which the contract is to begin and upon which the contract will terminate.

§7.3 Contracts funded fully or in part by Federal funds, in addition to meeting all the requirements of these guidelines and R.S. 39:1428-1473, shall meet all applicable Federal standards and shall contain all necessary clauses required by Federal statutes, rules or regulations. The burden of assuring compliance with Federal regulations shall rest with the using agency.

§7.4 All contracts for professional, personal, and consulting services shall contain a clause providing that the contractor shall

not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the using agency thereto, provided, however, that claims for money due or to become due to the contractor from the using agency under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to both the using agency and the Director of the Office of Contractual Review.

§7.5 When a contract is to include travel and/or other reimbursable expenses, it shall contain language to effect the following:

§7.5.1 Travel and other reimbursable expenses shall constitute part of the total maximum payable under the contract; or

§7.5.2 No more than (a certain sum) of the total maximum amount payable under this contract shall be paid or received as reimbursement for travel and other reimbursable expenses; and

§7.5.3 Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the State General Travel Regulations).

§7.6 Exceptions to Section 7.5.3 shall be granted on a limited basis when there is shown to be compelling cause and written justification is provided showing that such an exception would be in the best interest of the State.

#### **LAC 1-4:8 Submission of Contracts**

§8.1 The Office of Contractual Review will not accept for review and approval any contract for professional, personal or consulting services which is not accompanied by a fully completed and signed copy of Budget Form BA-22 PS.

#### **LAC1-4:9 Early Contract Termination**

§9.1 Whenever a contract is terminated prior to the termination date stated in the contract, the Office of Contractual Review shall be notified in writing by the using agency of such prior termination.

#### **LAC1-4:10 Amendments**

§10.1 All amendments to contracts for professional, personal and consulting services shall be submitted to the Office of Contractual Review for prior approval. All such amendments shall become effective only upon approval by the Director of the Office of Contractual Review.

#### **LAC 1-4:11 Revised Statutes**

§11.1 These guidelines shall be read and interpreted jointly with R.S. 39:1428-1473.

Paul R. Mayer, Jr., Director  
Office of Contractual Review

### **RULES**

**Office of the Governor  
Facility Planning and Control Department**

**Capital Improvement Projects  
Procedure Manual for Design and Construction**

#### **Article 1. Condition of the Contract.**

1.1 The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 1978 Edition, herein referred to as the "Procedure Manual" and any amendments thereto, as published by Facility Planning and Control Department, shall be a part and condition of the contract between owner and designer.

#### **Article 2. Definitions**

2.1 The owner is the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or his designated representative, Facility Planning and Control Department.

2.2 The user agency is the agency, department, division, board, or institution which will be the principal user of and for which the facility is being constructed, as named in the contract.

2.3 The designer is a person or organization professionally qualified and licensed to practice architecture, landscape architecture or engineering, in accordance with the laws of the State of Louisiana, who is to perform basic services for the project, as named in the contract.

2.4 Consultants are individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the State of Louisiana. The owner reserves the right to engage or have the designer furnish as part of the designer's services the services of consultants as deemed necessary on the project.

2.5 The project is a capital outlay project for which funds have been appropriated or other public governmental project for which funds are available, as specifically defined in the program attached to and stated in the contract between owner and designer.

2.6 The total construction budget (TCB) is the sum of the funds available for construction plus the designer's fee.

#### **Article 3. Owner-User Agency Responsibilities**

3.1 The owner's designated representative shall be the Facility Planning and Control Department. The user agency shall designate a representative authorized to act in its behalf with respect to the project.

3.2 After selection of the designer the owner shall hold a pre-design conference at the offices of Facility Planning and Control Department to initiate the general review and discussion of the project. This conference shall be attended by the selected designer, applicable consultants, and representatives of the owner and user agency.

3.2.1 At this, or other predesign conferences held, the owner in conjunction with the user agency shall present to the designer information as to their requirements for the project. This information is to include:

(1) The preliminary program defining: (a) the type, number, and sizes of spaces required; (b) the type and number of people using the facility; and (c) the activities to be held in the facility.

(2) The site location of the facility.

(3) The total construction budget stating the amount available for construction and the designer's fee.

(4) The time schedule outlining completion of critical phases of the designer's services.

3.2.2 The designer shall obtain, as required, proposals from, and recommend employment of, a registered land surveyor, soils engineer, and testing laboratories, to the owner. The scope of services to be performed by these consultants shall be approved by the owner prior to requesting proposals. These services shall be paid for by the owner.

3.3 The owner and user agency shall examine documents submitted by the designer and shall render decisions pertaining thereto, to avoid unreasonable delay in the progress of the designer's services.

#### **Article 4. Total Construction Budget**

4.1 The total construction budget is the amount of funds available for construction and the designer's fee for the project as fixed by the owner and stated in the contract between owner and designer.

4.2 The total construction budget, unless otherwise provided in the contract, shall not include land cost, movable equipment, furnishings, advertising, recordation, builders risk insurance, surveys, soil borings, testing and resident supervision.

4.3 It shall be incumbent on the designer to determine that the total construction budget is realistic for the project when compared with the completed program.

4.4 The designer shall be responsible for designing the project so that total construction budget is not exceeded. The designer shall include in the construction documents additive alternate bids, in the amount of ten percent or more if approved by the owner, of those funds available for construction as a bidding contingency.

4.5 When the available for construction is exceeded by the designer's statement of probable cost during any phase of the designer's services, the owner shall have the option to (1) revise the program to be within the amount available for construction, (2) provide additional funds to increase the total construction budget, or (3) approve the designer's use of major additive alternates so that the base bid is within the amount available for construction.

4.6 When the lowest bona fide base bid exceeds the amount available for construction, the owner shall have the option to (1) have the designer, without additional compensation, modify the construction documents as required in order to rebid the project to be within the amount available for construction, (2) provide additional funds to award the construction contract, or (3) abandon the project.

#### Article 5. Compensation

Compensation to be paid the designer for services shall be as follows:

5.1 Fixed fee for basic design services shall be calculated as the product of the fee percentage and the total construction budget (TCB). The fee percentage shall be computed by the formula:

$$\text{Fee Percentage} = \frac{40}{\log \text{TCB}}$$

5.1.1 Compensation to be paid the designer on the fixed fee basis shall remain constant for the duration of the project without regard to the actual construction cost, except if the:

(1) Owner changes the total construction budget prior to the receipt of bids, the designer's contract will be amended to reflect the new total construction budget and resultant fixed fee.

(2) Owner and designer agree in writing prior to the receipt of bids, that the designer's contract will be amended after receipt of bids to adjust the fixed fee to the amount of the construction contract.

(3) Owner approves the use of major additive alternates as outlined in 4.5, the designer's contract will be amended after bidding to adjust the fixed fee on only those alternates awarded for construction.

5.1.2 Compensation to be paid the designer on the fixed fee basis shall be appropriately modified for certain projects as follows:

(1) Complex projects factor of 1.05 shall be multiplied by the fee percentage to arrive at the fixed fee for complex projects as determined by the owner.

(2) Renovation factor of up to 1.25 shall be multiplied by the fee percentage to arrive at the fixed fee for renovation projects as determined by the owner.

(3) Duplicated work factor shall be subject to negotiation between the owner and designer on an individual project basis.

5.2 Direct personnel expense for additional services as contracted for by the owner, is defined as the payroll salaries of professional, technical, and clerical employees engaged in the performance of additional services by the designer multiplied by 2.5.

5.3 Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expendi-

tures made by the designer, his employees or his professional consultants in the interest of the project as directed and authorized by the owner.

5.3.1 Reimbursable expenses may include, but not be limited to the following:

(1) Expense of transportation and living when traveling in connection with the project.

(2) Fees paid for securing approval of authorities having jurisdiction over the project.

(3) Expense of renderings or models for the owner's use.

#### Article 6. Payments to the Designer

6.1 Payments on account of the designer's services shall be made as follows:

6.1.1 Basic services performed up to the following percentages of the fixed fee:

(1) Upon satisfactory completion and furnishing required documents to the owner for the following phases:

Program Completion Phase . . . . . 5%

Schematic Design Phase . . . . . 15%

Design Development Phase . . . . . 30%

Construction Documents Phase . . . . . 70%

Bidding and Contract Phase . . . . . 75%

(2) Monthly, in proportion to the contractor's certificate for payment for the following phase:

Construction Phase . . . . . 95%

(3) Upon satisfactory completion and furnishing required documents to the owner for the following phase:

Construction Close-Out Phase . . . . . 100%

6.2 Payments on account of the designer's additional services shall be as stated in the contract or as otherwise arranged for and approved by the owner.

6.3 Payments on account of the designer's reimbursable expenses shall be as arranged for and approved by the owner.

#### Article 7. Designer's Services

7.1 Basic services. The designer's basic services consist of the phases described as follows and include the normal services of the designer and normal complementing or supplementary services of his consultants, and any other service included in the contract. Review documents of each phase shall be submitted in duplicate to the owner and to the user agency.

7.1.1 Program completion phase.

(1) After the initial predesign conference the designer shall meet and work with the user agency to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the owner.

(2) The designer shall determine that the completed program is in agreement with the total construction budget, site location, time schedule and other information provided and shall advise the owner in writing if he thinks any of these are unrealistic when compared to the completed program.

(3) The completed program shall be submitted to the owner and user agency for their written approval and thereafter only the owner shall have authority to alter the program. Any authorization by the owner to alter the completed program shall be in writing.

7.1.2 Schematic design phase.

(1) Based on the mutually agreed completed program, total construction budget, site location and time schedule, the designer shall prepare schematic design studies, in such format and detail as required by the owner, consisting of drawings and other documents illustrating the scale and relationship of the project components for the written approval of the owner and user agency.

(2) The designer shall submit to the owner and user agency a statement of probable costs based on area, volume or other unit costs method.

(3) A preliminary analysis of energy conservation measures to be employed on the project shall be prepared by the designer and submitted for review.

(4) An analysis of requirements of the Louisiana Code for State Owned Buildings as they relate to this project shall be prepared by the designer and submitted for review.

#### 7.1.3 Design development phase.

(1) The designer and his consultants shall prepare from the approved schematic design documents, the design development documents, in such format and detail as required by the owner, consisting of, but not necessarily limited to, a site plan, floor plans, exterior elevations, wall sections, building sections, furniture and equipment layout, foundation and structural framing plans, mechanical and electrical plans, the location of all rated walls and partitions on all architectural, mechanical and electrical plans, and outline specifications, based on the sixteen divisions of the uniform construction index, all developed to a point to show the materials and systems proposed for the project, for written approval by the owner and user agency.

(2) The designer shall submit to the owner and user agency a statement of probable costs based on the sixteen divisions of the uniform construction index.

(3) The designer shall submit a more detailed analysis of energy conservation measures to be employed on the project.

(4) The designer shall submit a more detailed analysis of the codes required by the Louisiana Code for State Owned Buildings, consisting of but not necessarily limited to statements of (1) classification of occupancy, (2) classification of construction, (3) code allowable area for occupancy and construction type, and calculations of (a) actual building area and (b) code allowable area increase for exceptions.

#### 7.1.4 Construction document phase.

(1) The designer shall prepare from the approved design development documents, for written approval by the owner, user agency, and other state regulatory agencies as required by law, the following documents all sufficiently complete and clear to define the quantity and quality of the work to bid and build the project:

a. Working drawings—dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping, structural, mechanical and electrical work in the project in general conformity with Chapter 12, latest edition, of the *A.I.A. Handbook of Professional Practice* or as the owner may require.

b. Technical specifications—performance or proprietary specifications on the materials, processes, or systems to be incorporated in the work, using the sixteen divisions format of the uniform construction index.

c. Bidding and construction contract forms—the owner will furnish to the designer policy requirements that the designer must include in his documents on the following: advertisement for bids, instructions to bidders, bid form, general conditions, supplementary general conditions, contract between owner and contractor and performance and payment bond, and noncollusion affidavit. If the probable construction cost of the project is \$25,000.00 or more, the designer shall obtain a prevailing wage determination from the Commissioner of Labor for inclusion in the documents.

(2) The designer shall submit to the owner and user agency a revised statement of probable costs based on the sixteen divisions of the uniform construction index.

(3) The designer shall submit one bound copy of all design calculations on the project for the owner's files.

#### 7.1.5 Bidding and contract phase.

(1) Upon receipt of written approval from the user agency and other state regulatory agencies, receipt of corrected and completed construction documents, and approval of the latest statement of probable cost, the owner shall advertise the project for bids and shall be assisted by the designer in obtaining bids.

(2) The designer shall be responsible for the furnishing and distribution of copies of construction documents to (1) all contractors licensed in accordance with state law who desire to bid the project, subject to deposit requirements as provided for in the advertisement for bids, (2) to recognized construction trade organizations as directed by the owner at no cost, (3) to the user agency, or other state agencies and regulatory authorities as required or directed by the owner, at no cost.

(3) The designer shall prepare and issue all addenda, in accordance with the contract documents, as required to modify or clarify the construction documents.

(4) The designer shall arrange and conduct a prebid conference in accordance with the contract documents.

(5) The designer shall be present for the opening of bids by the owner and shall provide a form for assisting the owner in tabulating the bids.

(6) After receipt of bids, the designer shall consult with the owner and user agency to analyze the bids and make written recommendation to the owner (1) to award the construction contract to the lowest responsible bidder if within the available for construction in order that the owner may prepare and award the construction contract, or (2) to reject all bids.

#### 7.1.6 Construction phase.

(1) The designer shall provide administration of the construction contract as set forth herein and in the construction documents.

(2) The designer, as the representative of the owner during the construction phase, shall advise and consult with the owner and all of the owner's instructions to the contractor shall be issued through the designer. The designer shall have authority to act on behalf of the owner to the extent provided herein or as provided for in the contract documents unless otherwise modified in writing.

(3) After the execution of the construction contract the owner will issue a notice to proceed to the contractor and notify the designer to arrange for and conduct a preconstruction conference.

(4) The designer shall visit the project as often as necessary to promote compliance with the contract documents, however, not less than once per week while the work is in progress. On the basis of the designer's on-site observations, he shall endeavor to guard the owner against defects and deficiencies in the work of the contractors. A written report of each visit by the designer to the project shall be filed with the owner and user agency as soon as possible after each visit.

(5) The designer agrees that his representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the construction documents and interpretations shall be binding upon the designer as if made by him. All such decisions shall be confirmed in writing at the earliest reasonable date with copies to the owner, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents. If in the opinion of the owner such representatives are either negligent or unqualified to perform their duties, the designer's representative shall be replaced promptly, without protest.

(6) Based on observations at the site and on the contractor's applications for payment, the designer shall determine the amount owing to the contractor and shall issue certificates for payment in such amounts. The issuance of a certificate for payment shall constitute a representation by the designer to the owner, that the work has progressed to the point indicated and that to the best of the designer's knowledge, information and belief, the quality of the work is in accordance with the contract documents and that the contractor is entitled to payment in the amount certified. By issuing a certificate for payment, the designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the contractor has used the moneys paid on account of the contract sum. The designer shall process certificates as promptly as possible. If a certificate is held up for any reason, written notice stating the reasons for the delay must be given to the contractor and owner.

(7) The designer shall establish and conduct a regular schedule of monthly meetings, to be held on the job site each month throughout the construction period, and shall require attendance at the meetings by representatives of his consultants, the contractor and his subcontractors. The owner shall be notified of such meetings and may be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation, and assistance in every practical way to the end of maintaining progress of the project on schedule and completing the project within the contract time.

(8) The designer shall prepare and submit to the owner and using agency a monthly progress report on the project. The form of the report shall be supplied to the designer at the preconstruction conference. The designer's progress report shall be submitted to the owner monthly along with the contractor's certificate for payment and designer's statement for professional services.

(9) The designer shall be the interpreter of the requirements of the contract documents and the impartial judge of the performance thereunder by both the owner and contractor. The designer shall make decisions on all claims of the owner or contractor relating to the execution and progress of the work and on all other matters or questions related thereto.

(10) The designer shall have authority to reject work which does not conform to the contract documents. If the designer considers it necessary or advisable to insure the proper implementation of the intent of the contract documents, he shall request the owner to authorize special inspection or testing of any work in accordance with the provisions of the contract documents whether or not such work be then fabricated, installed, or completed.

(11) The designer shall promptly review and approve shop drawings, samples, and other submissions of the contractor only for conformance with the design concept of the project and for compliance with the information given in the contract documents.

(12) Only with the written authorization of the owner, shall the designer prepare change orders. The designer shall obtain from the contractor his estimate of cost and time changes in accordance with the contract documents for the change order, review and approve same, and submit it to the owner for approval before any change is made in the contract. No additional compensation shall be due the designer for preparation of change orders without the written prior approval for such compensation by the owner.

(13) Upon completion of the work, the designer shall arrange for, give adequate notice to and conduct an inspection of the project with the owner, user agency and contractor for the purpose of determining if the contractor's work is in

compliance with the contract documents. The designer shall prepare a list of items for correction or completion on the project and shall distribute same to all parties concerned. The designer shall not issue the final certificate of payment to the contractor until a final inspection of the work is conducted and the work has been determined to be corrected, and completed in accordance with the contract documents. The designer shall furnish the owner and the user agency written recommendation of acceptance of the work and shall receive, review, and forward to the owner, guarantees, operation and maintenance manuals, keys, final certificate of payment and other closing documents as required by the contract document prior to acceptance of the work.

#### 7.1.7 Construction close out phase.

(1) After acceptance of the project by the owner, the designer shall prepare and furnish to the owner (1) a final report in the format and containing information as required by the owner, and (2) two sets of record drawings on reproducible film sepia for the owner and user agency files.

(2) Compliance with all of the above will constitute completion of the designer's basic services for compensation purposes, however, the designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an inspection of the project prior to expiration of the one year warranty period and shall be required to inform the owner, user agency and contractor of any items to be corrected and shall inspect the project as required until the work is completed, without additional compensation.

7.2 Additional services. Additional services, as required by the owner, shall be provided by the designer only when authorized in writing by the owner, and shall be paid for by the owner as hereinbefore provided. Additional services may include, but are not limited to the following:

7.2.1 Preparation of a detailed, formal program after analysis of the user agency needs and requirements.

7.2.2 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the project.

7.2.3 Providing interior design and other services required or the selection of furniture and furnishings.

7.2.4 Providing services of consultants other than those required for the designer's basic services for the project.

7.2.5 Providing any other special services not otherwise included in the contract or not customarily furnished in accordance with generally accepted designer's practice.

### **Article 8. Designer's Accounting Records**

8.1 Records of direct reimbursable expenses, and expenses pertaining to additional services on the project, and for services performed on the basis of multiplier times direct personnel expense shall be kept on a general recognized accounting basis and shall be furnished to the owner upon request.

### **Article 9. Termination of Contract**

9.1 The contract between owner and designer may be terminated by either party upon seven days written notice to the other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party.

9.2 In event of termination by the owner due to failure of the designer to perform satisfactorily, the designer shall receive no additional compensation beyond that already due and any work done shall become the property of the owner.

### **Article 10. Abandonment or Suspension**

10.1 If any work designed or specified by the designer is abandoned or suspended in whole or in part, by the owner, the designer is to be paid for the services rendered up to receipt of written notice from the owner, together with any terminal expense resulting from abandonment or suspension. Should the project be reactivated,

the new base fixed fee will be computed on the basis of a revised construction budget. The new fixed fee may be reduced, based on previous fees paid, but in no case will the new fixed fee be reduced by more than the fees paid prior to abandonment or suspension, not including terminal expenses.

#### **Article 11. Ownership of Documents**

11.1 Drawings and specifications, as instruments of service, are and shall remain the property of the designer whether the project for which they are made is executed or not. They are not to be used by the owner on other projects except by agreement in writing and with appropriate compensation to the designer.

11.2 Upon completion of the project, construction documents shall be reserved by the designer for exclusive use of the state of Louisiana and shall be used again only for the benefit of the state. Tracings shall remain in the files of the designer.

#### **Article 12. Successors and Assigns**

12.1 The owner and the designer each binds himself, his partners, successors, assigns and legal representatives to the other party to this contract and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this contract. Neither the owner nor the designer shall assign, sublet or transfer his interest in this contract without the written consent of the other.

#### **Article 13. Extent of Agreement**

13.1 This contract and the referenced conditions represents the agreement between the owner and the designer. This contract may be amended only by written instrument signed by the owner and designer.

#### **Article 14. Governing Law**

14.1 This contract shall be governed by the laws of the State of Louisiana.

#### **Article 15. Other Conditions**

Prior to the signing of the contract between owner and designer, the designer shall furnish to the owner, proof of professional liability insurance general coverage in an amount no less than \$100,000 and normal deductions. Insurance premiums shall be paid for by the designer.

The prime designer shall be fully responsible to the owner for his associates and his professional consultants work. Professional liability coverage for the total project design (including all professional consultants) rests solely with the prime designer. In the case of joint ventures, joint venture professional liability coverage shall be required.

On certain projects which are unique by size and value, the owner may require that the designer obtain professional liability insurance with limits that are higher than \$100,000 with proportional deductions.

### **Appendix A**

#### **Louisiana Building Code for State Owned Buildings**

In accordance with Act 706, all building projects undertaken by the State of Louisiana shall be designed to conform to the specific code requirements of the Louisiana Building Code for State Owned Buildings. This code is described as follows, effective September 12, 1975.

To amend Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950 by adding thereto a new Part to be designated as Part IV thereof, comprising Sections 1721 through 1724, relative to the standardization of a building code for the construction of state buildings or extensions thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, comprising Sections 1721 through 1724, is hereby enacted to read as follows:

Part IV. Louisiana Building Code for State Owned Buildings

1721. Declaration of policy

In order to insure the public health and safety and to facilitate the efficient use of state funds in the new construction, alterations, additions or renovations of state buildings, there is hereby created a Louisiana Building Code for State Owned Buildings consisting of the various building codes and standards designated in this Part.

The provisions of this Part should not be construed to supercede any local building codes or standards except as they apply to state owned buildings.

#### **1722. Louisiana Building Code**

A. The new construction, alteration, addition or renovation of all state owned buildings for which bids are let after the effective date of this Part must comply with the rules and regulations to be promulgated by the Facilities Planning and Control Department of the Division of Administration in conformity with the Administrative Procedures Act, which rules and regulations shall establish as minimum standards the provisions of the Louisiana Building Code provided in Subsection B hereof.

B. The Louisiana Building Code shall consist of the following designated and described codes and standards:

(1) *The Life Safety Code*, Standard 101, 1973 Edition as published by the National Fire Protection Association.

(2) Chapter 10-A of the *State Sanitary Code* (Plumbing)—as promulgated by the Commissioner of the Louisiana Health and Human Resources Administration.

(3) *The Standard Building Code*—1973 Edition with 1975 Revisions as published by the Southern Building Code Congress.

(4) *The Standard Mechanical Code*—1971 Edition as published by the Southern Building Code Congress.

(5) *The National Electric Code*—1975 Edition (NFPA No. 70-1975) as published by the National Fire Protection Association.

C. All of the above designated and described codes and standards shall include all later editions and revisions as now or hereinafter provided.

D. In all cases of conflict between the *State Sanitary Code* and the *Standard Mechanical Code*, the provisions of the *State Sanitary Code* shall be used. In all cases of conflict between the *Life Safety Code* and any of the above codes, the provisions of the *Life Safety Code* shall be used.

#### **1723. Administration; exceptions**

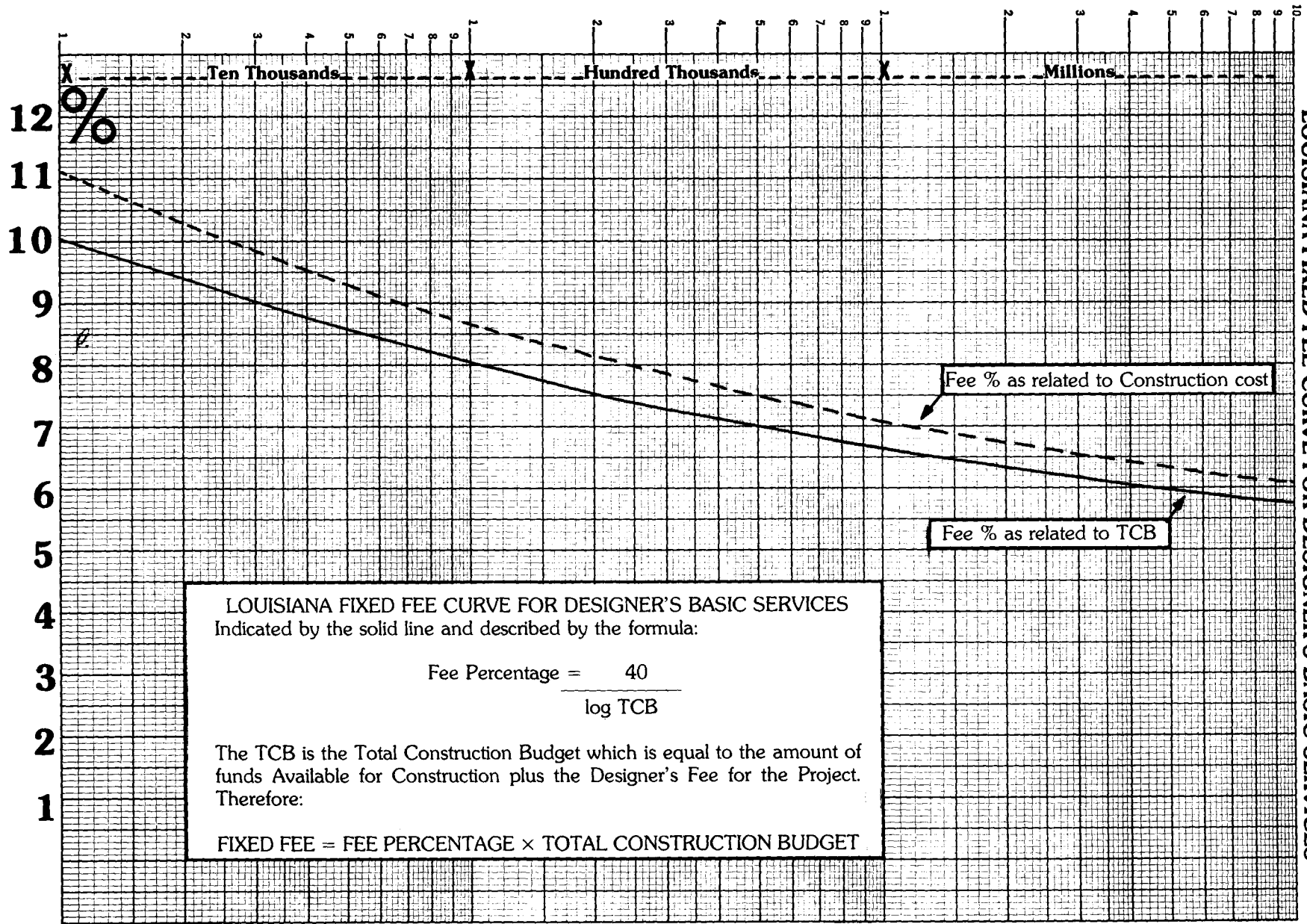
The Louisiana Building Code shall be administered by the Facilities Planning and Control Department of the Division of Administration. Provided, however, that nothing contained herein shall affect the State Fire Marshal and his jurisdiction on matters of life safety and related areas as provided by Part III of Chapter 7 of this Title, and provided further that the Commissioner of the Louisiana Health and Human Resources Administration shall administer the provisions of Chapter 10-A of the *State Sanitary Code* relative to plumbing.

#### **1724. Building permits and Occupancy permits**

The building permit will be issued to the building contractor by the parish or the municipality when the plans and specifications have been approved by the State Fire Marshal, Commissioner of the Louisiana Health and Human Resources Administration, Facilities Planning and Control Department and the permit fee has been paid in full by the contractor to the parish or municipality.

The occupancy permit will be issued to the using agency when the building construction has been approved by the State Fire Marshal, Commissioner of the Louisiana Health and Human Resources Administration and the Facilities Planning and Control Department.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions,



LOUISIANA FIXED FEE CURVE FOR DESIGNER'S BASIC SERVICES  
 Indicated by the solid line and described by the formula:

$$\text{Fee Percentage} = \frac{40}{\log \text{TCB}}$$

The TCB is the Total Construction Budget which is equal to the amount of funds Available for Construction plus the Designer's Fee for the Project. Therefore:

**FIXED FEE = FEE PERCENTAGE × TOTAL CONSTRUCTION BUDGET**

LOUISIANA FIXED FEE CURVE FOR DESIGNER'S BASIC SERVICES



items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Note: It shall be the responsibility of the designer to verify (with Facility Planning and Control, the State Fire Marshal and the Division of Health) the latest edition of the described codes and standards in effect for use on a project.

Appendix B—see page 502

J. Ben Meyer, Jr., Director  
Facility Planning and Control Department

## RULES

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

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*(Editor's Note: These rules were adopted and promulgated in the Louisiana Register, Volume 3, Number 11, pages 447-455 and became effective November 30, 1977. LAC 1-18:6 has been extensively revised. Although this was the only substantive change, the rules are reprinted in their entirety. This reprinting was necessitated because the numbers were changed to reflect the transfer of the Commission on Law Enforcement and Administration of Criminal Justice from the Department of Public Safety to the Office of the Governor. Thus, what was originally LAC 17-3 is now LAC 1-18. All changes will become effective December 20, 1978.)*

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#### Preface

These regulations governing the privacy and security of criminal history record information in the State of Louisiana are effective after November 30, 1977. Full implementation is required by December 31, 1977.

The regulations were drafted by the Privacy and Security Steering Committee of the Louisiana Criminal Justice Information System (LCJIS) Advisory Board and members of the LCJIS Staff in accordance with a Federal and State executive mandate to the Louisiana Commission on Law Enforcement. The Commission approved the regulations on October 26, 1977.

A separate set of guidelines and implementation instructions has also been published. These should provide significant assistance in understanding and adapting the regulations to local needs and peculiarities. Questions concerning the regulations or guidelines may be addressed to Louisiana Criminal Justice Information System, Office of Management and Planning, 1885 Wooddale Boulevard, Suite 502, Baton Rouge, Louisiana 70802, Telephone: (504) 389-7411.

#### Privacy and Security Regulation LAC 1-18: 1 Purpose and Scope

In keeping with Congressional findings that the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information;

Recognizing that to the extent that the maintenance of personal information is necessary for the efficient functioning of the government, it is the moral and legal obligation of the government to assure that the personal information maintained is, to the maximum extent feasible, complete and accurate;

Being convinced that it is of utmost importance that the integrity of personal information records be zealously protected;

Recognizing that the increasing use of computers and sophisticated information technology, while essential to the operations of government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

Realizing that opportunities for an individual to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

Acknowledging that the right to privacy is a personal and fundamental right protected by the Constitution of the United States;

Responding to the authority granted in 42 United States Code 3701, et seq.; 28 United States Code 534; 28 Code of Federal Regulations, Chapter 1, Section 20; R.S. 15:575 et seq.; 49:951 et seq. and Executive Designation dated November 14, 1975; and

Acting with the intent of protecting and furthering the interests of the citizens of the State of Louisiana, the Privacy and Security Committee of the Criminal Justice Information System Division of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE) does hereby issue these Privacy and Security Regulations for the following purposes, and with the following scope and limitations:

It is the purpose of these regulations to provide safeguards for an individual against an invasion of his personal privacy, and to promote, to the maximum extent feasible, the adoption of procedures to ensure the completeness, accuracy, and integrity of criminal history record information collected, maintained, and disseminated by criminal justice agencies. This will be accomplished by requiring those agencies affected to permit an individual to determine what criminal history record information pertaining to him is collected, maintained, used, or disseminated by such agencies; permit an individual to gain access to criminal history record information pertaining to him in the records of affected agencies, to have a copy made of all or any portion thereof, and to correct or amend such records; and collect, maintain, use, or disseminate any record of criminal history information in a manner that assures that such action is for a lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent the misuse or unauthorized alteration or destruction of such information.

§1.1 These regulations apply to all criminal justice agencies organized under the Constitution or laws of the State of Louisiana which were awarded Law Enforcement Assistance Administration (LEAA) monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information. The regulations do not directly apply to agencies which have received LEAA funds for general purposes other than the collection, storage, or dissemination of criminal history record information. For example, an agency receiving funds to implement and operate automated noncriminal history record information systems (e.g., personnel, resource allocation, performance evaluation) would not by such funding be included under these regulations.

§1.2 These regulations apply to all criminal justice agencies organized under the Constitution or laws of the State of Louisiana which are or become signatories to a user's agreement. In such instances, the user's agreement shall control the extent to which these regulations are applicable.

§1.3 Nothing contained in any of these Privacy and Security Regulations shall be construed to reduce, eliminate, or otherwise adversely affect any rights which individuals may have under any existing Louisiana law, court decision, or administrative rule.

§1.4 These regulations apply to criminal history record information, as defined in regulation LAC 1-18:1.10. The following types of record information that might contain or otherwise be included within the definition of criminal history record information are specifically excluded:

A. Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

B. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically

and required by law or long-standing custom to be made public, if such records are accessed solely on a chronological basis.

C. Court records of public judicial proceedings.

D. Published court or administrative opinions.

E. Public judicial, administrative, or legislative proceedings.

F. Records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses.

G. Announcements of executive clemency.

H. Juvenile records.

I. Any other specific exemptions as may from time to time be provided by Federal regulations, State statute or which may be particularly specified in any of these regulations.

§1.5 These regulations shall be effective after November 30, 1977.

§1.6 Under Federal law, an affected agency which willfully and knowingly violates these regulations may be subject to termination of funds made available by the Law Enforcement Assistance Administration, and a ten thousand dollar fine. Additionally, future eligibility for receipt of Law Enforcement Assistance Administration funds may be suspended until the violating agency furnishes proof of compliance with these regulations.

§1.7 Under Louisiana law (R.S. 15:575 et seq.) an officer or official of a criminal justice agency may be subject to a fine between fifty dollars and five hundred dollars for violating any rules or regulations issued by the Louisiana Criminal Justice Information System.

§1.8 A violating agency may be barred from receiving information from the Central State Repository until such agency furnishes proof of compliance with these regulations.

§1.9 "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

§1.10 "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

§1.11 "Criminal justice agency" means only those public agencies at all levels of government which perform as their primary function activities relating to:

A. The apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

B. The collection and analysis of crime statistics pursuant to statutory authority.

C. The collection, storage, processing, dissemination, or usage of information originating from agencies described in LAC 1-18:1 of this regulation.

§1.12 The "administration of criminal justice" means performance of any of the following activities: detention, detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

§1.13 "Affected agency" means:

A. Any criminal justice agency which was awarded Law Enforcement Assistance Administration monies after July 1, 1973,

for manual or automated systems which collect, store, or disseminate criminal history record information.

B. Any criminal justice agency which is or becomes a signatory to a user's agreement.

C. Any noncriminal justice agency which is or becomes a signatory to a user's agreement.

§1.14 "Primarily affected agency" means any criminal justice agency organized under the Constitution or laws of the State of Louisiana which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information.

§1.15 "Secondarily affected agency" means:

A. Any criminal justice agency organized under the Constitution or laws of the State of Louisiana which is or becomes a signatory to a user's agreement.

B. Any noncriminal agency which is or becomes a signatory to a user's agreement.

§1.16 "User's agreement" means a written agreement entered into by a certified criminal justice agency and/or a requesting noncriminal justice agency and/or a criminal justice agency that has not received LEAA funds for system support since July 1, 1973. The agreement shall specify the basis of eligibility for receipt of criminal history records, and an acknowledgement by the recipient agency that it is subject to the terms and conditions of the Louisiana Commission on Law Enforcement Privacy and Security Regulations.

§1.17 "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed. Dispositions shall include, but not be limited to: acquittal, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, placed on probation, paroled, or released from correctional supervision.

§1.18 "Statute" means an Act of Congress or State Legislature or a provision of the Constitution of the United States or of a state.

§1.19 "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§1.20 An "executive order" means an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

§1.21 "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

§1.22 "Dissemination" means the release by transmission of criminal history record information by an agency to another agency or individual by oral, written, or electronic methods.

§1.23 "Dissemination log" means an automated or manual record of information relating to the individual or agency to which criminal history record information has been disseminated. This record should contain the following data elements: a tracking, serial, or identification number, the agency or individual to whom criminal history record information is released, the address of the

agency or individual, the date of release or notification, the individual to whom the information relates, the items of information released and how furnished, the original entry or correction, and the name of the releasing official.

§1.24 "Central State Repository" means that collection of criminal history record information within the Louisiana Department of Public Safety, which is jointly collected, stored, and managed pursuant to mutual agreement between the Division of State Police, Bureau of Criminal Identification and the Louisiana Commission on Law Enforcement, Criminal Justice Information System Division.

§1.25 "Direct access" means individual access to personal criminal history record information contained in the manual or automated files of an affected criminal justice agency, excepting the Central State Repository, when such access is sought under the provisions of LAC 1-18:3.3, and the individual requesting access or his personal representative is physically present at the place where the records are kept or at the office of the custodian of the record sought.

§1.26 "Eligible noncriminal justice agency" means a noncriminal justice agency, individual, or individuals having:

A. Official authority, pursuant to a statute, executive order, administrative rule, or court order;

B. Formal authority, pursuant to a written agreement with a criminal justice agency, to perform a service or function within the scope of the legitimate activities of a criminal justice agency.

§1.27 "Personal representative" means any person, including, but not limited to legal counsel, who possesses a sworn authorization empowering him to represent an individual in the viewing or challenging of the authorizing individual's criminal history record information.

#### **LAC 1-18:2 User's Agreement**

§2.1 It is the purpose of this regulation to insure statewide compliance with Privacy and Security Regulations by requiring all recipients of criminal history record information from primarily affected agencies to sign user's agreements, and to provide for the minimum terms and conditions of such user's agreements.

§2.2 Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to any criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a user's agreement, provided that upon presentation of proof that it is already a signatory to a valid user's agreement, the information requesting agency may not be required to sign an additional user's agreement.

§2.3 Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to an eligible noncriminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a user's agreement.

§2.4 An eligible noncriminal justice agency, for purposes of this part, shall constitute every noncriminal justice agency receiving access to criminal history records on a regular and recurring basis or on any basis other than the established procedures under the Louisiana Public Records Law.

§2.5 Whenever a primarily affected agency, excluding official custodians of court records, signs a user's agreement with an otherwise nonaffected agency, the primarily affected agency shall immediately forward a copy of the signed user's agreement to the Privacy and Security Committee. Copies of all user's agreements shall be kept on file by the signatory agencies, and shall be made available for public inspection upon demand.

§2.6 Every primarily affected agency or secondarily affected agency, excluding courts, which enters into an agreement permitting an eligible agency access to criminal history record information

shall employ LCLE—Privacy and Security Form No. 7 for the purpose of fulfilling the obligation imposed by this regulation.

#### **LAC 1-18:3 Individual Rights of Access to Automated and Manual Criminal History Record Information**

§3.1 It is the purpose of this regulation to extend individual rights of access to personal criminal history records beyond the rights currently provided by the Louisiana Public Record Act, as required by Federal regulations, and to provide a mechanism for the implementation of those rights.

§3.2 Each individual shall have the right to view the automated or manual criminal history record information which specifically relates to him, provided that only individual criminal history record information contained in the records of affected criminal justice agencies organized under the Constitution or laws of the State of Louisiana shall be accessible under this regulation.

§3.3 Any individual electing to seek direct access to his automated or manual personal criminal history record under this subpart shall be granted such access upon fulfillment of the following conditions:

A. The request for access must be in writing, and must be presented to an affected criminal justice agency.

B. The request for access must be presented to the official having custody or control of the record sought, or a designated representative of such an official.

C. The request for access must be presented during the regular office or working hours of the agency which has custody or control of the record.

D. The request for access must be specific enough to enable the person charged with the care or custody of the record to reasonably ascertain the identity of the precise record sought. Specificity requirements may include fingerprints and such personal identifiers as may be essential to the location and retrieval of the record sought.

§3.4 Individuals or their personal representatives seeking access under this subpart shall be allowed to view the desired individual criminal history record within a reasonable time, not to exceed three days, provided that where fingerprint classification is an essential prerequisite to the location and retrieval of the record sought, the time period within which viewing must be made possible may be extended by an additional thirty days.

§3.5 An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the records of the Central State Repository shall be granted the right to view such records upon:

A. Submitting a written and signed request for viewing to an affected criminal justice agency, other than the Central State Repository, as outlined in LAC 1-18:3.8;

B. Submitting to fingerprinting for the purpose of positively establishing the identity of the requesting individual; and

C. Paying a ten dollar fee.

§3.6 An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the file of any affected criminal justice agency, other than the Central State Repository or the agency to which the request is submitted, may gain access to such information by:

A. Presenting a written and signed request for viewing to any affected agency, other than the Central State Repository, as outlined in LAC 1-18:3.8. Such request shall describe with reasonable particularity the records of which viewing is sought, and shall at a minimum state the places where it is believed such records may be kept, and the approximate date of occurrence of the incidents which form the subject of the records requested. Individuals or personal representatives seeking to query criminal justice agencies which maintain criminal history files accessible solely by fingerprint classification numbers must provide the

querying agency with a set of fingerprints of the individual seeking access. LCLE-Privacy and Security Form No. 1 shall be used for this purpose;

B. Submitting any required positive identifiers, including fingerprints, for the purposes of establishing both the identity of the requesting individual and correctly locating the records sought;

C. Paying a five dollar fee for each affected criminal justice agency to be queried. An additional five dollar fee may be levied by the querying agency for each query forwarded.

§3.7 When criminal history record information is requested by a personal representative under LAC 1-18:3.3 through LAC 1-18:3.6, the representative must present positive proof of the identity of the individual actually involved as well as a sworn authorization from the involved individual. Positive proof of identity in this subsection shall be understood to mean fingerprints. Upon presentation of the authorization and positive identifier, the representative shall be permitted to request, examine, and/or challenge the criminal history record information specifically relating to the involved individual.

§3.8 Queries directed to any criminal justice agency shall be launched from any affected sheriff's office or police department. In the parish of Orleans, individuals shall initiate queries through the New Orleans Police Department.

§3.9 If the information requested by the individual must be obtained from the Central State Repository (CSR), the CSR shall forward the information to the requesting agency within forty-five days of receipt of the request, and the requesting agency shall permit the viewing of the information within a reasonable time after receipt. The viewing individual may make a written summary of the information viewed, and may take with him such a summary. A copy of the record obtained from the Central State Repository shall be furnished to the individual upon request. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 United States Code Section 3771.

§3.10 Every affected criminal justice agency shall post a public notice informing individuals of their right to access and to administratively challenge the completeness or accuracy of their individual criminal history records. Additionally, every individual seeking to avail himself of the querying procedures set forth in this regulation shall be provided with a list of all affected agencies, and informed of the significance of querying a nonaffected agency.

§3.11 Every affected criminal justice agency which has custody of, control over, or access to automated or manual individual criminal history record information shall make available facilities and personnel necessary for such viewing, and shall in all respects maintain a cooperative attitude toward individuals requesting viewing. Viewing shall occur only within the facilities of a criminal justice agency, and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency.

§3.12 Every affected criminal justice agency shall, in every instance, diligently seek to provide the information requested. Every out-of-parish criminal justice agency listed on the request for viewing shall be contacted by mail, communication device, or personally within seven days of receipt of the request for viewing. Five dollars shall be assessed for each agency queried by the agency to which the individual submits his request, and shall be forwarded to each queried agency along with the request for viewing. An additional five dollar fee may be levied by the querying agency for every query forwarded. Querying agencies shall provide positive identifiers in accordance with LAC 1-18:3.6.

§3.13 Every affected criminal justice agency which receives a request for information must make every effort to locate the information requested, and shall in any event forward a reply to the requesting agency within seven normal working days of receipt of

the request, except as provided for requests to the Central State Repository. In such instances where the responding agency maintains criminal history record files accessible solely by fingerprint classification numbers, the response time may be extended up to a maximum of thirty days to allow for the classification of the fingerprints accompanying the query. Such classification may be performed by the responding agency or by the Central State Repository.

§3.14 Every affected sheriff's office or police department shall fingerprint individuals requesting that the Central State Repository be queried. In such instances where an authorized representative is presenting a query to the Central State Repository on behalf of an individual, the representative shall supply at least two sets of the represented individuals' fingerprints on standard fingerprint cards. The fee charged for querying the Central State Repository and supplying a copy of the results of such query shall be ten dollars. Five dollars of this amount shall be forwarded to the Central State Repository along with the query, and the remaining five dollars shall be placed in the treasury of the criminal justice agency to which the individual submits the request for viewing.

§3.15 Individual viewing may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

§3.16 A record of each individual viewing shall be maintained by each affected criminal justice agency by the completion and preservation of LCLE—Privacy and Security Form No. 2. Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be required to certify by his signature that he has viewed the criminal history record information requested.

#### **LAC 1-18:4 Individual Right to Administrative Review of the Content, Completeness or Accuracy of Individual Criminal History Record Information**

§4.1 It is the purpose of this regulation to provide a means for administrative challenge, and ultimate correction of incomplete or inaccurate individual criminal history records.

§4.2 Each viewing individual shall have the right to challenge and request correction of the content, completeness, or accuracy of his individual criminal history record. Each individual shall be informed at the time of viewing of his rights of challenge under this regulation. Individuals shall have a right of administrative appeal under this regulation to seek redress for the denial of rights granted by any of these regulations.

§4.3 This regulation provides the exclusive means for initial challenge of the content, completeness, or accuracy of individual criminal history record information, provided that where the individual criminal history record information under challenge originated from any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings, this regulation shall not be applicable. In the instance last provided for, the sole formal means of challenge or correction shall be a civil suit filed in a State or Federal district court.

§4.4 If after viewing his individual criminal history record, the individual wishes to challenge or request correction of such record, he may do so by submitting to the criminal justice agency which originated the challenged entries LCLE-Privacy and Security Form No. 3, a complaint which shall contain particularized written exceptions to the criminal history record's contents, completeness, or accuracy. The complaint shall include an affidavit, signed by the individual or his legal representative, that the exceptions are made in good faith and are true to the best of the affiant's knowledge, information, and belief. A copy of the complaint shall be forwarded to the LCLE Privacy and Security Committee. If, subsequent to viewing, an individual who was not previously fingerprinted wishes to challenge or correct his record, he must submit to fingerprinting so that it can be absolutely assured that the challenging individual is the subject of the record which he seeks to challenge or correct.

§4.5 Within each affected criminal justice agency, a review officer shall be designated as the person responsible for receiving and processing complaints received under LAC 1-18:4.4 above. Upon receipt of such complaints, each review officer shall, within forty-five days, conduct an audit of the individual's criminal history record to determine the validity of the exceptions. The Privacy and Security Committee and the challenging individual or his legal representative shall be informed in writing of the results of the audit within fifteen days after such results are final. LCLE-Privacy and Security Form No. 4 shall be used for this purpose.

§4.6 Should the audit referred to in subsection LAC 1-18: 4.5 disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to LCLE, the individual involved, and to any other criminal justice agencies or private organizations to which that individual's criminal history record information has been disseminated within the previous ninety days, and in every instance the Central State Repository shall be notified of the substance of the alteration or addition.

§4.7 If the criminal justice agency declines to modify or supplement the individual's criminal history record in whole or in part, the individual or his legal representative may require review of the criminal justice agency's decision by perfecting, within thirty days of the mailing of the audit results, an appeal to the LCLE Privacy and Security Committee. The Privacy and Security Committee shall appoint hearing officers to hear such appeals. Failure to timely perfect an appeal shall bar subsequent challenges of that portion of the individual criminal history record in controversy.

§4.8 Appeals shall be perfected upon actual delivery to the Privacy and Security Committee of a petition for review. The petition for review shall be signed and in writing and shall include a concise statement of the alleged deficiencies or inaccuracies of the individual's criminal history record, shall state the date and result of any review by the criminal justice agency, and shall be accompanied by a sworn verification of the facts alleged in the petition for review. LCLE-Privacy and Security Form No. 5 may be used for perfecting the appeal.

§4.9 Upon receipt of the petition for review, the hearing officer shall docket the case and notify the criminal justice agency and the individual or his legal representative of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the particular statutes, rules, and regulations involved; the nature of the matters asserted in the petition for appeal. Both the individual and the criminal justice agency shall have adequate opportunity to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§4.10 Rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, confidential privileged information, examination of evidence by agency, decisions and orders, rehearings, ex parte consultations and recusations, judicial review and other such matters shall be governed by the provisions of the Louisiana Administrative Procedures Act, R.S. 49:951 et seq.

§4.11 A record of all proceedings shall be preserved and provided as required by R.S. 49:955(E) and (F).

§4.12 Parties shall be entitled to notice of the final decision of the hearing officer, LCLE-Privacy and Security Form No. 6 may be used by the hearing officer to direct such notice to the parties.

§4.13 If, after receiving notice of the decision or order of the hearing officer, the individual or the involved criminal justice agency is reasonably convinced that grounds exist in the record for reversal or modification of the hearing officer's decision or order, a petition for review accompanied by a bond (set by the hearing officer) sufficient to pay the cost of transcribing the record, may be

submitted within thirty days to the Privacy and Security Committee. Failure to so petition shall bar subsequent challenges of that portion of the individual criminal history record contested.

§4.14 If the petition for review, accompanied by adequate bond for transcription costs, is timely submitted to the Privacy and Security Committee, copies of the petition for review shall be sent to three members of the Privacy and Security Committee, such members being selected on a rotating basis. Within fourteen days of submission of the petition for review, the same three members shall decide by personal or telephonic vote whether full review by the Privacy and Security Committee will be granted. If full review is denied, the petitioning party may pursue rights of judicial review granted under R.S. 49:964. If full review is granted, the record shall be transcribed and circulated among at least seven members of the Privacy and Security Committee. A time and a date, within thirty days of transcription of the record, shall be set for the presentation of written or oral argument to a quorum of at least five of the seven Privacy and Security members who have read the transcribed record.

§4.15 Decisions, orders, rehearings, and appeals from decisions or orders of the Privacy and Security Committee shall be in accordance with subsections LAC 1-18:4.10 and LAC 1-18:4.12.

§4.16 The Privacy and Security Committee is hereby authorized to seek writs of mandamus or injunction to enforce final, nonappealable orders and decisions of the Committee and the hearing officers.

§4.17 Individual criminal history records challenged under the provisions of this regulation shall be deemed to be accurate, complete, and valid until otherwise ordered.

§4.18 Upon final determination that the content of an individual criminal history record is inaccurate or incomplete, the affected agency which originated the inaccurate or incomplete entry shall provide the individual or his legal representative with a list of the noncriminal justice agencies to which the inaccurate or incomplete criminal history record information has been disseminated within a ninety day period immediately preceding the final disposition of the challenge.

#### **LAC 1-18:5 Completeness and Accuracy**

§5.1 It is the purpose of this regulation to establish minimum standards for reporting criminal dispositions and updating criminal history records to include such dispositions. It is intended that this regulation supplement and reinforce the LCJIS Complete Disposition Reporting System. Because inaccurate or incomplete criminal history record information presents a serious danger to individual rights of privacy and due process, every criminal justice agency should strive to maintain accurate, up-to-date criminal history records.

§5.2 Every affected agency shall report dispositions (as defined in LAC 1-18:1.17) which occur as a result of a transaction initiated by such agency within ninety days of the occurrence of the disposition. Dispositions shall be reported as required by the Louisiana Criminal Justice Information System.

§5.3 Every affected agency shall establish procedures for updating criminal history records using disposition data which shall be distributed by the Louisiana Criminal Justice Information System.

§5.4 Every affected agency shall establish procedures providing for a minimal external search for a disposition prior to disseminating criminal history record information relative to a specific arrest or charge when it appears from the nature of the arrest or charge that a disposition should have occurred, and none is noted in the record.

#### **LAC 1-18:6 Dissemination and Corrections Records and the Maintenance of Logs**

§6.1 It is the purpose of this regulation to provide direction and guidance concerning the control of dissemination and correction of criminal history record information (CHRI) to individuals or agen-

cies as required by the Federal regulations (Title 28), through the maintenance of certain logs, and to provide a vehicle for correcting erroneous information. Since dissemination records are viewed by the regulations as a key restraint on erroneous dissemination, a deterrent to the illegal use of information disseminated and a supporting document to quality assurance audit trails (LAC 1-18:7), the maintenance of logs is mandatory.

§6.2 These regulations impose no restrictions on the dissemination of CHRI where the court transactions or dispositions have included a conviction or convictions. However, where CHRI contains nonconviction data, i.e. where records contain arrest data, citation, summons, or bill(s) of information which have not resulted in a conviction or guilty plea, and acquittals; dismissals; information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed; and records of arrest unaccompanied by disposition that are more than one year old and in which no prosecution is actively pending, these regulations now impose restrictions against dissemination of that portion of CHRI containing nonconviction data to noncriminal justice agencies not otherwise permitted access to such information by state statute. (LAC 1-18:6.3B and LAC 1-18:6.5).

§6.3 Nonconviction data may only be disseminated to:

A. Criminal justice agencies for criminal justice activity and employment.

B. Public and private agencies authorized by state and federal statute, executive order, local ordinance or court decision. (See LAC 1-18:6.5).

C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services. (e.g. consultants)

D. Individuals and agencies engaged in research, evaluative or statistical activities.

§6.4 Nothing in this regulation abrogates the right of individuals (or their authorized representatives) to access, review, challenge, or appeal criminal history information about themselves as provided for in LAC 1-18:3 and LAC 1-18:4.

§6.5 Upon application, the Central State Repository (Bureau of Criminal Identification) may furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the Bureau has a record or any other necessary information to any federal, state, or local government regulatory, investigative, licensing, or bonding agencies which may require fingerprinting, in connection with their authorized duties, functions and powers.

§6.6 In order to maintain accountability over the full scale of collection, storage, and dissemination of CHRI, dissemination transactions records in the form of a log shall be kept by each criminal justice agency. The logging is required both to support the audit process and as a means of correcting erroneous dissemination. Logs may be kept as shown on LCLE Privacy and Security Form No. 8 but must, as a minimum, contain the following data elements:

A. A tracking, serial, or identification number in order to provide positive identification linkage between CHRI disseminated and the record from which extracted.

B. Agency or individual to which or whom CHRI released.

C. Address of agency or individual.

D. Date of release or notification.

E. Individual to whom information relates.

F. Items of information released and how furnished (i.e., copy provided, written out by hand, mailed, teletype or computer terminal printout).

G. Original entry or correction (indicate "O" or "C" as appropriate).

H. Releasing official.

§6.7 Since identification of agencies or individuals receiving erroneous CHRI is possible from the dissemination log and since Federal regulations require notification of each recipient of inaccurate or erroneous CHRI (unless it falls outside of the ninety day limit specified in LAC 1-18:4.6) a corrections record will also be kept using the dissemination log. The minimum data elements for a correction entry are essentially similar to those specified for a dissemination entry. The tracking or serial number will be identical to the identification number provided for the original information on the dissemination log. The log page number of the original entry will be placed next to the "C" in the "Original or Correction" column of the log in order to maintain audit trail continuity.

§6.8 All logs are to be preserved for a period of not less than one year from the earliest date of release of information or notification of correction. Logs will be made available for audit and verification of compliance with the regulations by the Commission, the Privacy and Security Committee or their designated staff members at such time as they may require.

§6.9 When a response to an inquiry is "No Record" or essentially negative, no logging of the response is required.

§6.10 Corrections to records shall be forwarded in hardcopy form such as letter, teletype, or computer terminal printout within fourteen days after determining erroneous information has been disseminated. If the original dissemination is older than ninety days and the ninety day record maintenance notification has been imposed, and a correction is indicated, the correction should be made but need not be transmitted, except to the Central State Repository.

#### **LAC 1-18:7 Audits and Quality Control**

§7.1 It is the purpose of this regulation to interpret the requirements of the Federal regulations as they pertain to: (a) the quality of the information the criminal justice agencies collect, store, and disseminate; and, (b) the systematic and annual audits to be performed in order to verify adherence to the Privacy and Security Regulations.

§7.2 The quality of information which the criminal justice agencies collect and use is an important privacy consideration. Quality information issues usually fall into one or both of two categories; namely, completeness and/or accuracy. Achieving high quality record information is largely a matter of good procedures; it requires a rigorous, systematic approach to record-keeping and a high degree of cooperation among the participating agencies. Agencies shall therefore, institute procedures which implement these requirements.

§7.3 Agencies shall likewise develop written procedures which comply with the basic provisions of LAC 1-18:5.

§7.4 There are basically two types of quality assurance audits required periodically. The systematic audit is required of an agency which collects, maintains and disseminates CHRI as a means of minimizing errors or omissions in the completeness and accuracy of the records. This audit is actually a quality control mechanism and will usually be performed on a periodic and regular basis by the agency itself. In contrast, the annual audit is an examination by an outside agency of the extent to which an agency is complying with the regulations.

§7.5 The systematic audit refers to a combination of systems and procedures employed both to ensure, to the extent possible, completeness and to verify accuracy. The systematic audit is also an internal procedure which basically provides for a comparison between CHRI and source documents or reporting forms, as appropriate, in order to check accuracy and completeness. In addition, this audit provides for an inspection of an agency's systematic record keeping practices. Accordingly, agencies shall implement a systematic audit procedure in accordance with the guidelines furnished by the Louisiana Criminal Justice Information System

(LCJIS) staff and utilizing LCLE-Privacy and Security Form No. 9 (Agency Systematic Audit Checkoff List).

§7.6 The annual audit will be performed on a random sample of all affected agencies in the state. All affected agencies must fully cooperate in the conduct of the annual audit.

§7.7 LCJIS shall audit, on a periodic basis, a random sampling of agencies to provide statistically significant examinations of the accuracy and completeness of data maintained and to verify adherence to the regulations. Sampling and detailed audit procedures will be as indicated in LCJIS furnished guidelines and implementing directives.

§7.8 The annual audit will be performed by members of the LCJIS staff who are familiar with the agencies and the requirements of the regulations. Agencies to be audited will be given a minimum of thirty days written notice prior to an annual audit being conducted. On conclusion of the annual audit, the staff will give the agency an oral debriefing and subsequently, within thirty days, a written, formal critique highlighting deficiencies and recommending corrective action. Field agents making regular, subsequent visits will verify corrective action taken.

§7.9 At the time of the audit, the audited agency will have ready to present to the audit team such documentation as may be required by LCJIS, including but not limited to:

- A. Evidence of procedural compliance including security.
- B. Copies of systematic audits performed.
- C. Source records as may be requested.
- D. Dissemination logs.
- E. Right of access, appeals, and certification forms.

§7.10 Audited agencies with serious deficiencies as indicated in the formal critique must correct these deficiencies and will render written, corrective action reports to LCJIS monthly until the deficiency is eliminated.

### **LAC 1-18:8 Security of Criminal History Information**

§8.1 It is the purpose of this regulation to establish minimum standards governing the achievement and maintenance of physical security, personnel security and programming security within agencies maintaining criminal history records.

§8.2 Affected agencies shall institute procedures for the protection of criminal history records from environmental hazards including fire, flood, and power failure. Appropriate measures may include: adequate fire detection and quenching systems, protection against water and smoke damage, fire resistant materials on walls and floors, air conditioning systems, emergency power sources, and backup files.

§8.3 Affected agencies shall adopt security procedures which limit access to criminal history files. These procedures may include use of guards, badges, keys, passwords, sign-in logs or similar controls. Facilities housing criminal history records shall be so designed and constructed as to reduce the possibility of physical damage to the records. Appropriate measures may include physical limitations on access, security storage for information media, adequate lighting, detection and warning devices, perimeter barriers, heavy-duty, nonexposed walls and closed circuit television.

§8.4 Applicants for employment and those presently employed in the maintenance of criminal history records shall consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation, and honesty. Giving false information shall disqualify an applicant from employment and subject a present employee to dismissal.

§8.5 Investigations should be conducted in such a manner as to provide sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a

preemployment basis and the resulting reports used as a personnel selection device.

§8.6 Systems personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

§8.7 Each affected agency should prepare a security manual which delineates procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. Each person working with or have access to this information should know the contents of the manual.

§8.8 The management of each affected agency should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce these standards.

§8.9 Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by the imposition of appropriate disciplinary measures.

§8.10 Where any affected agency is found by the Louisiana Privacy and Security Committee to have willfully or repeatedly violated the requirements of this standard, the Committee may prohibit the dissemination of criminal history record information to that agency for such periods and such conditions as the Committee deems appropriate.

§8.11 There shall be a terminal identification code number for each remote terminal as a precondition for entering the files. Within each agency, terminal use shall be assigned to a limited and identified group of individuals. Each individual terminal user shall identify himself by a personal identification number or authorization code. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for twelve months. (See LAC 1-18:6.) Each remote terminal user shall establish a computerized or written log of terminal use, which shall be audited periodically.

§8.12 Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data automatically whenever purging is required by these regulations. Duplicate computer files shall be created as a countermeasure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for backup.

§8.13 Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying these forms after the data is entered in the computer. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.

§8.14 A monitor program shall be developed to report attempts to violate the system security software or files. Edit programs shall be created to periodically audit record alteration transactions.

### **LAC 1-18:9 Segregation of Computerized Files and Their Linkage to Intelligence Files**

§9.1 It is the purpose of this regulation to establish minimum standards governing the maintenance of the security and integrity of computerized criminal history record information.

§9.2 Data files and programs used by the criminal justice system for the collection, maintenance or dissemination of criminal history record information shall be under the management control of a criminal justice agency and shall be supervised and maintained in the following manner.

A. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by noncriminal justice terminals.

B. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

C. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all accesses and all attempts to penetrate and all accesses of any criminal offender record information system, program, or file. This program shall be available only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.

D. Nonterminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

§9.3 Criminal history record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.

§9.4 A criminal history record inquiry response shall not include information which indicates that an intelligence file exists.

#### **LAC 1-18:10 Training of System Personnel**

§10.1 It is the purpose of this regulation to establish a training program whereby all personnel working with or having access to criminal history record information are made familiar with the substance and intent of the Louisiana Privacy and Security Regulations.

§10.2 The Louisiana Criminal Justice Information System shall be primarily responsible for planning, coordinating, presenting, and approving the privacy and security training programs. The objective of the training program shall be to instruct key employees of affected agencies as to the substance and intent of the Louisiana Privacy and Security Regulations. Every affected agency shall, to the maximum extent possible, avail itself of such training as may be provided by LCJIS.

§10.3 Every affected agency shall institute an internal training program to familiarize personnel with the proper use and control of criminal history record information. Each such program must contain provisions for specific instructional sessions on Louisiana Privacy and Security Regulation LAC 1-18:8 which establishes minimum security standards for criminal history record information. This training program would be primarily directed to employees who work with or have access to criminal history record information.

§10.4 Each affected agency shall maintain a written record describing the training procedures employed by the agency and indicating the number of training meetings per year. This record shall be made available to LCJIS staff audit personnel during scheduled annual audits.

Bailey Grant, Chairman  
Louisiana Commission on Law Enforcement  
and Administration of Criminal Justice

## **RULE**

### **Department of Health and Human Resources Air Control Commission**

6.1.5 When and if the Louisiana Air Control Commission (LACC) Technical Secretary or staff detects construction or operation prior to issuance of a permit or variance authorizing such, the owner shall be advised to stop all construction or operation immediately.

If construction or operation stops promptly and does not resume, the staff will begin or resume review of permit applications for Commission action and shall file a report indicating all such events at the next Commission meeting. The Commission may:

A. Accept the owner's explanation of circumstances, or order a formal complaint on the regulation violation, with hearing for the next LACC meeting.

B. Act on, or defer action on, permit application, if pending.

If construction or operation continues after conference, conciliation, and persuasion efforts of the staff to obtain immediate cessation, the Technical Secretary shall file a formal complaint for hearing at the next LACC meeting. All staff work on processing permit requests shall cease until the formal complaint issue is resolved to the satisfaction of the Commission. The Commission will thus: (1) automatically defer permit issuance, or (2) prepare promptly for injunctive action and/or penalties as specified in R.S. 40:2214.

James F. Coerver, Technical Secretary  
Air Control Commission

## **RULE**

### **Department of Health and Human Resources Board of Embalmers and Funeral Directors**

Rule 4, Funeral Establishments, Section D. (2) is amended as follows:

Each funeral establishment licensed by this Board to conduct the business of funeral directing as defined in R.S. 37:831-861 must have as its owner, partner, or shareholder, a person or persons licensed by this Board.

If the funeral establishment is a sole proprietorship, then the sole proprietor must be licensed by this Board.

Should the funeral establishment be a partnership, then a partner who is in charge of the conduct of said business must be engaged in the practice of the science of embalming or the business of funeral directing or both and licensed by this Board. He must have at least a financial interest in the partnership, which financial interest shall be fixed at a minimum of ten percent.

Should the funeral establishment be a corporation, then a shareholder of said corporation who is in charge of the conduct of the business of said corporation must be engaged in the practice of the science of embalming or the business of funeral directing or both and licensed by this Board, and have a financial interest in said corporation fixed at a minimum of ten percent.

Lloyd E. Eagan, Secretary  
Board of Embalmers and Funeral Directors



**RULE**

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

The Department of Health and Human Resources, Office of Family Security, Medical Assistance Program, has adopted policy effective January 1, 1979, that will require that physician claims be submitted to the fiscal intermediary for the Medical Assistance Program within six months from the date of service.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

**RULES**

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

The Department of Health and Human Resources, Office of Family Security, has adopted, effective January 1, 1979, increases in the Aid to Families with Dependent Children (AFDC), and General Assistance (GA) need standards.

**AFDC Need Standards**

Size of Household	Non-Urban	Urban
1	\$ 125 (115)	\$ 136 (125)
2	234 (215)	261 (240)
3	330 (303)	363 (333)
4	412 (378)	446 (410)
5	490 (450)	526 (483)
6	561 (515)	599 (550)
7	635 (583)	670 (615)
8	706 (648)	741 (680)
9	773 (710)	809 (743)
10	842 (773)	877 (805)
11	915 (840)	951 (873)
12	991 (910)	1027 (943)
13	1071 (983)	1100 (1010)
14	1149 (1055)	1179 (1083)
15	1228 (1128)	1258 (1155)
16	1307 (1200)	1343 (1233)
17	1386 (1273)	1408 (1293)
18	1465 (1345)	1497 (1375)
	For each additional person, add \$85 (78)	For each additional person, add \$93 (85)
	<b>GA Need Standard</b>	
	1 person—\$207 (190)	
	2 persons— 261 (240)	

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

**RULE**

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

The Department of Health and Human Resources, Office of Family Security (OFS) has adopted rules and regulations regarding the implementation of the Food Stamp Act of 1977, effective January 1, 1979, and March 1, 1979, in accordance with federal regulations as specified in the *Federal Register*, Volume 43, Number 201, Tuesday, October 17, 1978, pages 47846-47934.

The Department of the State Register has determined that publication of these rules would be unduly cumbersome and has exercised its privilege to omit them from the *Louisiana Register*, as per R.S. 49:954.1C. The new Food Stamp Manual may be obtained from the Office of Family Security, Box 44065, Baton Rouge,

Louisiana 70804. Also, copies of the Food Stamp Manual are available for public inspection at each OFS parish office.

The most significant revision is elimination of the purchase requirement, (i.e., households will no longer have to purchase their food coupons but shall receive a monthly allotment equal to the Thrifty Food Plan for the household's size reduced by thirty percent of the household's set monthly income). Also, the Office of Family Security will implement lump sum restoration of food stamp benefits in those cases where an administrative error was made by the agency and the recipient did not receive all benefits to which he was entitled.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

**RULES**

**Department of Health and Human Resources  
Office of Health Services and Environmental Quality**

The Department of Health and Human Resources, Office of Health Services and Environmental Quality, has adopted the following regulation pursuant to R.S. 40:4 pertaining to preparation, cooking and procedures following preparation of seafoods, more particularly crabs. This regulation will enable the Department of Health and Human Resources, Office of Health Services and Environmental Quality to aid in protecting the public from diseases which may be transmitted through said seafoods. Several diseases exist which have the propensity to be transmitted through those products sought to regulated here and do exhibit an imminent peril to the public health. In connection herewith it has become necessary to issue the following:

Amend Chapter Six of the *State Sanitary Code* by adding thereto the following new paragraphs:

**Seafood Processing**

6.1315. Cooked and raw marine and fresh-water animal food products, hereafter referred to as seafoods, must be kept separate in the establishment. Containers such as crates, boxes, plastic or metal containers that are used for handling raw seafoods must not be used for handling cooked seafoods.

6.1316. Crabs shall be boiled for a minimum time of fifteen minutes or equivalent process in commercial retort (for eight minutes at fifteen pounds pressure and a temperature of 250°F), before being processed or served as food. Employees who handle raw or live seafoods must wash their hands thoroughly before touching, picking or handling cooked seafoods, in order to prevent cross contamination.

6.1317. Cooked seafoods must be rapidly cooled to 45°F, or below, in small quantities. Ice to be used on cooked seafoods must not come into contact with raw seafoods or containers or equipment used for handling raw seafoods.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

**RULE**

**Department of Health and Human Resources  
Office of Health Services and Environmental Quality  
Division of Vital Records Registry**

The Department of Health and Human Resources, Office of Health Services and Environmental Quality, Division of Vital Records Registry, has adopted the following regulation pursuant to R.S. 40:33 pertaining to the issuance of a short form birth certifica-

tion card containing a true certification of name and birth facts as recorded in the Vital Records Registry, and for use as legal proof of recorded facts of birth. This regulation will enable the Division of Vital Records Registry to serve the needs of the public by implementation of a computerized reproductive process, and will result in faster and more efficient service to the public.

#### **Short Form Birth Certificate Form**

The Division of Vital Records Registry of the Office of Health Services and Environmental Quality of the Department of Health and Human Resources, upon receipt of written request for a certified copy of a birth certificate shall proceed to do so by preparing a birth certification card containing a true certification of name and birth facts as recorded on the registrant's original birth certificate, for a required fee of two dollars.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

### **RULE**

#### **Department of Health and Human Resources Office of Human Development**

The Department of Health and Human Resources (DHHR) has adopted amendments to the Final Social Services (Title XX) Comprehensive Annual Services Plan (CASP) for the program year July 1, 1978, through June 30, 1979.

All of the final amendments are included in the State Plan under Eligibility (Page 11).

Final amendments:

The DHHR, Office of Human Development, Division of Youth Services (DYS) determines eligibility for Title XX social services on a group basis. The services of counseling; education, training and treatment; and health related are provided to those children adjudicated delinquent and/or in need of supervision by the court and placed under the supervision of the DHS. In addition, their families are eligible for Title XX services on a group basis. The geographic area designated as group eligible is statewide.

This final amendment is retroactive to October 1, 1978, which is permissible under federal regulations.

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The Society of The Roman Catholic Church of the Diocese of Lafayette provides the services of employment; education, training and treatment; health related; housing improvement; and counseling on a group basis to Indo-Chinese refugees admitted to the United States under the authority of the Indochina Migration and Refugee Assistance Act of 1975 (Public Law 94-23, as amended by P.L. 94-313, and P.L. 95-145, and any laws passed subsequently to amend or extend the provisions of existing laws). The geographic area served covers the following parishes: St. Mary, St. Martin, Iberia, Lafayette, St. Landry, Evangeline, Acadia, Vermilion, Jefferson Davis, Calcasieu, and Cameron.

This final amendment is retroactive to October 1, 1978, which is permissible under federal regulations.

(Note: Although social services are provided to Indo-Chinese Refugees through the framework of Title XX and must meet all Title XX requirements, funds for such services are available through the Indochina Migration and Refugee Assistance Act at a one hundred percent federal financial participation level. Therefore, no Title XX funds are used to provide these services.)

\* \* \* \* \*

The New Orleans Health Corporation provides the service of counseling on a group basis to clients residing in the following census tract areas in Orleans Parish: 67, 68, 69, 70, 79, 80, 84, 85, 86, 91, 92, 93, 94, 11, 14.01, 14.02, 15, 16, 17.03, 17.04, 17.05,

17.06, 7.01, 9.01, 9.02, 9.03, and 9.04. (This service was provided prior to approval for provision on a group basis.)

This final amendment is retroactive to July 1, 1978, which is permissible under federal regulations.

\* \* \* \* \*

The Boy Scouts of America, Metairie, Louisiana, provides recreation services on a group basis to clients in the following additional census tracts: 11, 16, and 69. Refer to the CASP for program year 1978-79 for the approved geographic area served on a group basis prior to this amendment.

This final amendment is retroactive to July 1, 1978, which is permissible under federal regulations.

\* \* \* \* \*

The DHHR, Office of Human Development, Exceptional Children's Act (ECA) Program provides the services of counseling and education, training and treatment on a group basis to children placed by ECA in private residential facilities. The geographic area of service provision is statewide.

This final amendment is retroactive to October 1, 1978, which is permissible under federal regulations.

The amendments provide for administrative simplicity in the determination of eligibility for Title XX.

Copies of the Title XX State Plan for the program year July 1, 1978-June 30, 1979, and the final amendments are available without charge upon written or telephone request to 1-800-272-9868 (8:00 a.m.-noon; 1:00 p.m.-5:00 p.m.); Public Assistance Line, Division of Administration, Box 44095, Baton Rouge, Louisiana 70804.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

### **RULES**

#### **Department of Health and Human Resources Office of Management and Finance**

The Department of Health and Human Resources has amended existing rules and regulations relative to the payment of cost-related reimbursement rates to facilities providing care and treatment for children. The rules are being amended under the authority granted to the Department by R.S. 46:1757(6) and R.S. 40:2125. The amendments are necessitated by Act 786 of 1978, Sections 1081-1086. These sections are at variance with the payment plan for private providers which was adopted by the Department of Health and Human Resources in this past year. Therefore, the payment plan is being amended to conform with the mandates of the Legislature.

#### **Introduction**

The Department of Health and Human Resources (DHHR) currently places clients whose needs cannot be appropriately met through other State programs in private residential facilities and day programs. Placement may be under the supervision of any one of several different agencies of the Department.

Children, youths, and other handicapped individuals placed in such programs include three major, broad client categories: (1) children and youth who are legally adjudicated abandoned, neglected, and/or abused, and those in need of care due to the inability of the parent or caretaker to adequately provide for them, (2) adjudicated delinquents and children in need of supervision, and (3) children, youths, and other individuals who are handicapped physically, mentally, emotionally, or neurologically to such an extent that they cannot satisfactorily participate in community living.

The determination of appropriate placement for any client in any of these broad categories is made by the placing agency within

DHHR and all referrals for placement must originate through one of the placing agencies of the Department. Private facilities from which placement services are purchased retain the right of acceptance or rejection of the clients referred by the Department's supervising agencies with the exception of emergency shelter care facilities which do not have the right of rejection.

The procedures and proposed rules set forth herein have been developed to assure an equitable, cost-related reimbursement for the services purchased from private providers for the care and treatment of these clients. The foundation of these procedures rests upon a classification of each facility, and each distinct program within a facility, based on the level of care required by the residents and provided by the facility and/or by a distinct program within a facility.

Major objectives of DHHR in developing and proposing to implement these procedures are to provide an incentive to the private sector to expand and improve the quality and quantity of services available, and to accommodate the presently existing variety of treatment modalities needed to provide appropriate care for the Department's clients.

These procedures shall apply to all facilities wherein Department funds are spent for the purchase of services for the Department's clients, regardless of the procedures whereby a facility is approved for funding. Certain facilities within the state are required to adhere to licensing regulations established and administered by DHHR. All facilities are required to conform to the *Minimum Standards for Certification of Facilities*. These procedures apply to facilities in both categories.

While these various standards may vary in certain respects, each has as an objective the assurance of a high quality of the overall level of care. Consequently, each approval procedure can accommodate the development of cost-related reimbursement procedures. However, in conjunction with the development of a uniform rate structure, as herein proposed, efforts will continue to systematize the licensing/certification/approval procedures of various agencies of DHHR which are affected by these rate provisions.

#### **Levels of Care**

A description of the various levels of care which will be utilized for classification purposes appears below. Level of care classifications will apply to all facilities and will identify program requirements.

Each facility which is required to conform to the *Minimum Standards for Certification of Facilities* will be visited during each fiscal year by a certification representative to determine compliance with previously established standards for certification. Concurrently with the certification determination, the certification representative will make a determination of the appropriate level(s) of care provided in each facility.

In facilities which offer more than one distinct program, i.e., level of care, the certification representative shall make a determination with respect to the proper classification of each distinct program within the facility. Facilities which provide services for more than one type of client group must also meet certification standards for each distinct client group and/or program.

Classification of level(s) of care shall be based upon actual staff ratios, actual care and supervision needed by the resident population, programs provided, ancillary support services required by the resident population, and such other indices as shall be developed during a pilot program to be conducted prior to implementation of these proposed rules.

Facility administrators should feel free to discuss level of care determinations with the certification representative. In the absence of a resolution of differences between the facility administrator and the certification representative, should differences exist, the determination of the certification representative shall be final and shall not be changed except as a result of procedures set below.

A facility administrator who does not concur with the classification established by the certification representative should first set forth his objections to the classification in writing, fully documenting reasons for the objections. Such statements of facility position should be directed to Licensing Section, Department of Health and Human Resources, P. O. Box 3767, Baton Rouge, Louisiana 70821.

Upon receipt of such a statement of facility position, the Licensing Section shall immediately convene an appropriately constituted body to re-examine the certification representative's determination of the facility's classification. The decision of this body shall be rendered within fifteen days of the date of receipt of the statement of facility position, and the facility administrator shall be immediately notified in writing of the decision.

A facility administrator who does not agree with the results of this preliminary redetermination may officially appeal the level of care classification. This appeal shall be made within thirty days after receipt of the Licensing Section's final decision as to the level of care. This written appeal must be directed to the Secretary of DHHR and must request a formal hearing to appeal the decision of the Licensing Section. The Secretary, or his designee, shall set a hearing to be held within thirty days after receipt of such request.

The hearing shall be held in the immediate vicinity of the appellant. The Secretary, or his representative, shall conduct the hearing. The facility administrator, and/or his legal counsel, shall have the right to be present and to present evidence for consideration by the Secretary or his designee. Within ten days after the hearing, the appellant shall be advised, by registered mail, of the decision of the Secretary, either confirming or amending the original decision.

#### **Definition of Levels of Care**

Cost-related reimbursement rates paid to facilities shall be based upon expenditures directly related to the level of care, as determined in the certification process, assigned to each facility and/or distinct program within a facility, as follows:

##### **Non-Residential**

Level I—This type of facility serves a population which requires minimal supervision and little or no medical attention. No academic training is given and clients of school age usually attend public schools. Specific treatment(s) is given for specific problem(s) of a mental and/or physical nature. Individual treatment goals are written. Staffing ratio meets the minimum requirements for certification and/or licensure. Treatment is planned and supervised by qualified professionals, but may be implemented by paraprofessional staff.

Level II—The population served requires moderate or close supervision and may also possess some medical disabilities. Academic training may be given and clients may also attend public schools. Specific treatment(s) is given for specific problem(s) of a mental and/or physical nature. Individual treatment plans, procedures, and goals are written. Direct-care staffing ratio meets minimum requirements for certification and/or licensure. Treatment is planned and supervised by qualified professionals, with professional services implemented by the appropriate professional. Other services may be implemented by paraprofessional staff.

##### **Residential**

Level III—The population served requires minimal supervision and care, and possess no significant medical disabilities. No academic training is given and clients of school age usually attend public schools. Planned habilitation and treatment programs are usually of a recreational or therapeutic nature. Counselling and psychotherapy may be given. Individual treatment goals are written. Direct-care staffing ratio must meet minimum requirements for certification and/or licensure. Treatment is planned and supervised by qualified professionals, with implementation by para-

professionals. Professional support services provided on a consultant/contractual basis.

Level IV—Population served requires minimal to moderate supervision and may possess medical disabilities. Some academic training may be given and clients may also attend public schools. Planned individual habilitation and treatment programs may include academic and recreational services, as well as specific treatments for emotional and/or physical disabilities. Individual treatment plans, procedures, and goals are written. Direct-care staffing ratio is 5:16. Treatment is planned and supervised by qualified professionals, with implementation by paraprofessional staff. Professional services of a medical or psychological nature are implemented by qualified professionals, although supportive services may be provided by paraprofessional staff.

Level V—Population served requires moderate supervision and some medical disabilities are usually present. Academic training is given and clients do not attend public schools although some clients may use specific services of the public school system. Habilitation and treatment plans are individual and comprehensive, covering all areas of a client's needs. Evidence is given of implementation of plans, procedures, and goals, with an individual's response to the treatment program. Direct-care staffing ratio is 8:16. Treatment is planned and supervised by qualified professionals. Any necessary professional services are provided on a regular basis by qualified professionals on the facility staff or on a contractual basis. Medical personnel are available on seven-day, twenty-four-hour call.

Level VI—Population served requires close supervision and/or total medical care. Academic training may be given and clients do not utilize the public school system. The focus of treatment is largely of a medical nature. Habilitation may also include recreational and therapeutic programs. Individual plans, procedures, and goals are written. Direct-care staffing ratio is 12:16. Treatment is planned and supervised by qualified professionals. Professional staff must be adequate to supervise and deliver all professional services as needed on a regular basis and for emergency treatment. Doctors and nurses constitute a part of the full-time staff.

### **Cost-Related Reimbursement**

The following procedures have been developed with the intent of guaranteeing to private providers of services for clients placed through any agency of DHHR a direct cost-related reimbursement rate commensurate with the actual costs of providing appropriate client care.

Implicit in these procedures is the intention that actual costs shall be paid only to the extent that the costs claimed for reimbursement are reasonable, that all facilities will seek to minimize actual costs, and that actual costs will not exceed that which a prudent and cost-conscious buyer would pay. Only allowable costs directly related to client care will be used in cost computations to establish reimbursement rates. No payments above the facility's established cost-reimbursement rate will be paid, except in cases where a child's unique needs necessitate a prior special contractual agreement with the placing agency.

The following requirements apply to any established facility housing any client placed by DHHR.

Prior to approval for receipt of DHHR funds, a new facility shall be required to submit a projected annual budget based on allowable costs as set forth in this manual, which projected budget shall form the basis for the establishment of the rate for the facility's initial year of operation.

Facilities which provide several distinct programs, i.e., levels of care, must segregate and report actual direct expenditures on a program-by-program basis.

The following general instructions apply to all facilities which are subject to these requirements. Specific limitations of reimburse-

ment appear both in these general instructions and in the following section entitled "Limitations of Reimbursement."

### **General Instructions for Cost Reporting**

1. Effective January 1, 1979, each facility must provide a cost report, together with a statement of intent to participate, no later than August 1 of each year, as follows:

A. The cost report must be submitted within three months after the end of its fiscal year or August 1 whichever comes first.

B. The statement of intent to participate shall include the anticipated number of client days for which DHHR funds will be requested.

2. Delinquent Cost Reports.

A. If a cost report is not received by August 1 of each year the most recent cost report on file will be used for revising the rate for reimbursement for the succeeding year.

B. If a cost report is still not received within six months after the end of the cost reporting period, a recommendation will be made to the Assistant Secretary of the appropriate office that a one hundred percent suspension of the current claim payments be implemented. A thirty day warning of this action will also be sent.

C. Cost reports will be sent to: Health Services Audit Director, Office of Management and Finance, P. O. Box 3776, Baton Rouge, Louisiana 70804.

3. Accounting records must be kept (or converted at year end) on an accrual basis.

4. Accounting records must be kept (or converted at year end) in accordance with the attached Chart of Accounts.

5. Each facility must maintain all accounting records, books, invoices, cancelled checks, payroll records, and other documents relative to client-care costs for a period of six years.

6. All fiscal and other records pertaining to client-care costs shall be subject at all times to inspection and audit by DHHR, the Legislative Auditor, and auditors of appropriate Federal funding agencies.

7. Each facility must maintain statistical information related to the daily census and/or attendance records for all clients receiving care in the facility.

8. Purchase discounts, allowances, and refunds will be recorded as a reduction of the cost to which it relates.

9. Cost to related organizations: Cost applicable to services, facilities, and supplies furnished to the facility by related organizations are allowable costs at the cost to the related organization. However, such cost must not exceed the price of comparables purchased in the open market and the goods and services must be common to and generally purchased by client-care facilities.

### **Allowable Cost for Services Provided**

1. Shelter Costs.

A. Living space (both indoor and outdoor) used by the clients, including rent, depreciation, or building use allowance. Depreciation must be computed by the straight-line method only. The estimated useful life of fixed assets will be based on the Internal Revenue Service's approved useful life of fixed assets. Depreciation will be allowed only on buildings and equipment used to provide direct client-care services. Facilities must maintain adequate records to determine cost, value, and reasonable useful life of buildings and equipment.

B. Depreciation of furniture and upkeep for items related directly to shelter space used by the clients, e.g., living, dining room and bedroom equipment and furniture, and furnishings, such as draperies, blinds, rugs, etc.

C. Fuel and utilities for space used by the clients, e.g., heat, air conditioning, electricity, etc., if these charges are not a part of the rent.

D. Routine maintenance and upkeep of property and equipment used in daily living activities of the clients. This

includes staff and supplies for janitorial services, maintenance, and minor repairs to grounds and equipment.

2. Food Costs. Actual food costs and kitchen and dining room operational costs including personnel, depreciation of equipment, and supplies associated with planning meals, ordering, preparing, and serving food, cleanup work, and the cost of planned meals away from the facility.

3. Clothing and Other Personal Need Costs.

A. Clients' personal wardrobe, including initial and replacement clothing, not to exceed, on an average, four hundred dollars per client annually; such items will be the client's personal property which he may take with him upon discharge.

B. Expenses incurred in the upkeep of clients' clothing, including staff and supplies on grounds, and for services provided off grounds, such as shoe repair, mending, dry cleaning, alterations, etc.

C. Medicine chest supplies, personal hygiene items, such as comb, brush, toothbrush, soap, shampoo, deodorant, sanitary needs and other sundries and incidentals.

D. Cost of hair grooming, limited to two haircuts per month for males and a comparable expenditure for females.

4. Recreation Costs.

A. Recreational program and services, including, but not limited to, such items as reading materials, athletic equipment, games, etc.

B. Individual client's dues for youth clubs, scouts, community centers, etc., if not financed from personal allowance.

C. Clients' admission fees to sporting or other recreational and cultural events, including cost of snacks and treats purchased on outings, if not financed from personal allowance.

D. Client's personal allowance, not to exceed five dollars per week for clients age 13 and up and two dollars and fifty cents per week for clients below age 13.

5. Education Costs.

A. School supplies.

B. Activity fees, class dues, and other miscellaneous costs, if not financed from personal allowance.

C. Transportation to school or training programs if not provided or paid for by other public funds or tax monies.

D. Fees or costs of special training programs, instruction in daily living skills, or other specialized training, if not provided or paid for from other public funds or tax monies.

E. Specialized educational programs required by a client that are essential to his/her individualized program of care if no other source of funding is available.

6. Care Costs.

A. Client care staff, social workers, other specialized staff and direct line supervisors of staff responsible for the twenty-four hour program of care and supervision of the clients, including salary, wages, maintenance and fringe benefits if not met through the State's program under Titles XIX, XX, IV-B, or other publicly funded programs.

B. Transportation intrinsic to the well-being of the client, including but not limited to, visits with relatives, prospective foster or adoptive parents, and other activities or events that are an integral part of the twenty-four hour program of care. Expenses for an attendant, when required, may be met if not already charged to the State's program under Titles XIX, XX IV-B, or other publicly funded programs.

7. Health Cost if Not Met Through Title XIX as Specified in the Individual State's Plan.

A. Routine physical examinations.

B. Required medical care and treatment, including, but not limited to, immunizations, injections, laboratory tests, emergency room and infirmary care, nursing care in the institution.

C. Psychological testing.

D. Psychiatric examination and treatment.

E. Dental care and treatment.

F. Eye glasses and other corrective appliances not provided by another public program.

8. Administrative Costs.

A. Interest on current obligations and mortgage loans reasonably related to client care. The interest rate must not be in excess of what a prudent borrower would pay.

B. Allowance shall be permitted for a salary for an owner-administrator of a proprietary facility only if he/she is performing the duties of an administrator and would otherwise have to employ another individual to perform these duties. Allowance for a salary of an owner-administrator shall be limited to the national average of salaries for owner-administrators of similarly sized, similarly staffed facilities. Operating cost of living quarters and automobiles provided an administrator for his/her convenience will be considered part of their compensation. The administrators who are not owners are also limited to the national average of salaries for administrators of similarly sized, similarly staffed facilities.

C. The premium for the officer/owner's life insurance is allowable only if the beneficiary is the officer/owner's family. Premiums will be included as part of the officer/owner's compensation and subject to the limitations set forth in B.

D. With the following specific exceptions, taxes are an allowable cost:

(1) Federal income or excess profit tax.

(2) State income or excess profit tax.

(3) Taxes relating to financing.

(4) Special assessments. (This would be capitalized and amortized.)

(5) Taxes for which exemptions are available.

(6) Taxes on property not related to direct client care.

(7) Self-employment (FICA) taxes applicable to individual proprietors, partners, etc.

(8) Fines or penalties of any kind.

E. Cost for the following types of advertising are allowable:

(1) Classified newspaper advertising to recruit personnel or solicit bids.

(2) Telephone "Yellow Page" advertising, except in the event that such advertisement is promotional in nature.

F. Membership costs and costs for conferences and meetings are allowable if related to client-care activities and efficient operation of the facility. Allowable costs include dues, registration fees, travel, meals, and lodging only for the period of a conference. Membership dues and other expenditures related to civic or social organizations are specifically disallowed.

G. Accident or hospitalization insurance for the clients. Insurance claim reimbursements should be credited to the respective expense account for health care.

H. Audit costs are allowable but certified audits are not required by DHHR.

I. Clerical salaries and costs related to general administration.

J. Attorneys' fees. Actual fees incurred for nonlitigation legal services which are directly related to child care will be allowed.

#### **Unallowable Costs for Services Provided**

1. In-kind contributions.

2. Fund raising; public relations.

3. No monies paid to an attorney or a law firm as a retainer, rather than as legal fees for services actually performed, will be allowed.

4. Payments made by the facility as gifts, assessments, or paybacks to parent organization.

5. Income producing expenses, including depreciation of equipment to secure self-generated revenue.

### Limits of Reimbursement

1. Fiscal Limitation. The availability of State and Federal funds may result in a uniform rateable reduction of fees.

2. Reasonable Cost Limits. Payments to facilities for client services shall be based on the lesser of the reasonable cost of services or the customary charges to the general public for such services.

3. Profit Limits. An allowance of a reasonable return on equity capital invested and used in the provision of client care is allowable as an element of the reasonable cost of covered services. The amount allowable on an annual basis will be determined by applying to the provider's equity capital a percentage basis equal to one and one half times the average of the rates of interest on special issues of public debt obligations issued by the Federal Hospital Insurance Trust Fund. A profit factor will be allowed only for proprietary facilities.

4. Occupancy Limits. The determination of the reimbursement rate for each facility shall be based upon the costs at ninety-three percent of total occupancy. An incentive return has been built into the formula for facilities which operate above ninety-three percent of capacity, since the costs attributable to an occupancy level above ninety-three percent will not affect actual client days. Conversely, facilities will be penalized for operating at less than ninety-three percent occupancy levels. New facilities and/or newly established programs within existing facilities will be allowed one full fiscal year from opening date before the ninety-three percent occupancy level is enforced. All facilities licensed and/or certified for an occupancy of fifteen or less will be exempted from this rule.

5. Other Limits. Costs which are unallowable for Federal participation will be paid by the State up to the maximum allowable under the section entitled "Allowable Costs for Services Provided." Payment procedures do not include a year-end settlement. Revised rates are effective July 1 of each year based upon the actual expenditures per cost reports received August 1 of the preceding year. Retroactive adjustment will not be made except for overpayments which result from the inclusion of unallowable costs in the cost report. Therefore, management decisions which increase cost will not affect the current rate and will increase future rates only if justified. To determine the 1979-1980 rate, the cost report on file will be revised by using current economic indicators to reflect inflation.

### Definitions

1. Equity Capital. The term "equity capital" means the net worth of a facility, excluding those assets and liabilities which do not relate to direct client care. Specifically, equity capital includes: (1) a facility's investment in plant, property, and equipment (net of depreciation) related to direct client care, plus funds deposited by a facility which leases plant, property, or equipment related to client care and is required by the lease to deposit such funds, and (2) net working capital maintained for necessary and proper operation of client-care activities.

2. Fiscal Year. The facility's fiscal year is the twelve-month period used by the facility for Federal income tax purposes. This does not apply to State or Federal fiscal year.

3. Net Working Capital. Working capital is the difference between current assets and current liabilities. Net working capital is working capital reduced by any amount determined to be excessive for the necessary and proper operation of client-care activities.

4. Plant, Property, and Equipment. Fixed assets related to client care are, for example, building, land, fixtures and equipment, goodwill, and other assets not part of current assets.

5. Proprietary Facilities. The term "proprietary facilities" means a facility, whether sole proprietorship or corporation, organized and operated with the expectation of earning profit for the owners, as distinguished from facilities organized and operated on a non-profit basis, as confirmed by the Internal Revenue Service.

6. Related organizations.

A. "Related to facility" means that the facility, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies.

B. Common ownership exists when an individual or individuals possess significant ownership or equity in the facility or organization serving the facility.

C. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or facility.

7. New Facility.

A. Any facility not receiving funds from DHHR the entire preceding fiscal year.

B. Or, any facility which has a change in ownership.

C. Or, any facility which has been certified by DHHR for a change in its level of care.

8. Client. Any person receiving services in the facility.

Ronald F. Falgout, Undersecretary  
Office of Management and Finance

### RULE

#### Department of Transportation and Development Board of Registration for Professional Engineers and Land Surveyors

##### Rule 7.3.4-Re-Examination

A person who fails an examination for the first time is eligible to apply to retake the examination.

A person who has failed an examination on two occasions, regardless of the elapsed time between exams, will not be eligible to apply to retake the examination until two years after his last failure. Upon application he is expected to present evidence that he has made a serious effort to increase his knowledge of the subject matter covered by the examination.

A person who has failed an examination three times or more than three times will not be eligible to apply to retake the examination until four years after his last failure. Upon application he must present evidence that he has made a serious effort to increase his knowledge of the subject matter covered by the examination. Before the applicant is given approval to retake the examination he must appear before the Board or a committee of the Board for an interview and oral examination.

Daniel H. Vliet, Executive Secretary  
Board of Registration for Professional  
Engineers and Land Surveyors

### RULES

#### Department of Urban and Community Affairs Office of Consumer Protection

##### Title 2: Procedures Chapter I—General Procedural Rules

##### Section 4. Notice

Prior to the adoption, amendment, or repeal of any rule, the Office shall give at least fifteen days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the name of the person within the Office who has the responsibility for responding to inquiries about the intended action, and the time when, the place where, and the manner in

which interested persons may present their views thereon. The notice shall be published at least once in the Louisiana Register and shall be mailed to all persons who have made timely request of the Office for advance notice of its rulemaking proceedings, which notice shall be mailed at the earliest possible date and in no case later than the date when the proposed action is submitted to the Louisiana Register. At the same time notice is given, a report relative to such action shall be submitted to the House Committee on Municipal and Parochial Affairs and the Senate Committee on Municipal and Parochial Affairs. For the purpose of timely notice, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the first page of said issue.

\* \* \* \*

#### **Section 6. Emergency rules**

If the Office finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than fifteen days notice and within five days of adoption states in writing to the Governor of the State of Louisiana, the Attorney General of Louisiana, and the Department of the State Register its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. Any emergency rule shall be published in full in the Louisiana Register with the reasons for the finding of the emergency submitted by the Office.

#### **Section 7. Filing of certified copy of rule**

The Office shall file with the Department of the State Register a certified copy of each rule as adopted, amended, or repealed by it.

#### **Section 8. Effective date of rule**

Each rule hereafter adopted is effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

1. If a later date is required by statute or specified in the rule, the later date is the effective date; or

2. Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or a date specified by the Office to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the Governor of Louisiana, the Attorney General of Louisiana, and the Department of the State Register as provided in CPR 2:6. Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than one hundred twenty days, but the adoption of an identical rule under CPR 2:4 and CPR 2:5 is not precluded. The Office shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

#### **Section 9. Substantial compliance**

No rule adopted shall be valid unless adopted in substantial compliance with these rules. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Department of the State Register. No rule, adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committees of the Legislature as provided in CPR 2:4. The inadvertent failure to mail notice to persons making request for mail notice shall not invalidate any rule adopted he-

reunder. A proceeding under R.S. 49:963 to contest any rule on the ground of noncompliance with the procedural requirements of law must be commenced within two years from the effective date of the rule.

\* \* \* \*

### **Chapter V—Final Formulation**

#### **Section 74. Filing by Assistant Secretary**

The Assistant Secretary shall file the final form of the adoption, amendment, or repeal of a rule with the Department of the State Register within three days after such has been returned to him in final form bearing all necessary approval signatures.

Charles W. Tapp, Assistant Secretary  
Office of Consumer Protection

# **Notices of Intent**

## **NOTICE OF INTENT**

### **Department of Agriculture Office of Agricultural and Environmental Sciences**

In accordance with the authority vested in the Louisiana Department of Agriculture by Parts 2 and 3 of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:951-49:968, notice is hereby given of intent to permanently amend the Sweet-potato Weevil Quarantine and Regulations as follows. These amendments were previously adopted as an emergency rule effective October 25, 1978.

Section VI. Requirements for sweet-potato dealer's certificate permit.

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

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

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

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

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

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

Written comments and inquiries may be addressed to Mr. Richard Carlton, State Entomologist, Office of Agricultural and Environmental Sciences, Box 44153, Baton Rouge, Louisiana 70804.

Richard Carlton, State Entomologist  
Office of Agricultural and  
Environmental Sciences

## NOTICE OF INTENT

### Department of Agriculture Office of Agricultural and Environmental Sciences

In accordance with the provisions of the Revised Statutes of 1950, Title 3, Part 1, Chapter 11, as amended by Act 439 of 1954, the following regulations are proposed to govern all classes of certified seed and their sampling and tagging. These regulations will be supplemental and will not supercede or cancel paragraphs covering sampling and tagging contained in the individual regulations governing the different crops.

The purpose of this proposed regulation is to increase the effectiveness of the certified seed tag by providing an inspection system to eliminate abuse of the tagging privilege and to be sure that the tags issued are applied to the seed from which the certified samples are drawn.

#### I. Definition of terms.

A. "Certified Laboratory Sample" shall mean the sample drawn by inspectors of the Louisiana Seed Commission after a lot of seed has been cleaned and bagged, to determine if it meets the laboratory certification standards of the particular class of seed and crop in question.

B. "Marking" shall mean the identification of the sacks by lot number either by stenciling the sacks or by sewing into the sacks a tag with the lot number printed on it.

C. "Lot" shall mean the permanent identity given to a certain quantity of seed entered for certification, which is uniform in its quality, and was produced in its entirety from one field or unit of land.

#### II. Size of lot entered for certification.

A. A lot of clean bagged seed from which laboratory sample is to be drawn shall consist of no more than 108,000 pounds or 1,500 bags, whichever is smaller.

#### III. Marking of lots.

A. Any individual, firm or corporation applying for certification of seed must, at the time of cleaning, processing, and bagging of a lot of certified seed, immediately assign a lot number to each lot and mark the bags with the lot number. This must be done before Seed Commission Inspector will take laboratory sample of the lot of seed. The lot must be stacked so as to permit the inspector to make an accurate count of the bags in the lot.

#### IV. Tagging requirements.

A. Before any seed sold as certified seed leaves the premises of the certified grower or processor of certified seed, each bag must be tagged and sealed with the official seal, and the lot numbers on the certified tags must conform to the lot numbers already marked on the bags.

B. All unused certified tags must be returned to the certifying agency or destroyed in the presence of an inspector of the certifying agency.

#### V. Tagging records and inspection privileges.

A. Every certified grower or processor of certified seed must maintain for every lot of certified seed for which tags are received, an inventory record and record of disposition. These records must be kept for a period of at least one year. This record shall show every shipment of each lot of certified seed to which tags are affixed, and the name of the party to whom each delivery was made.

B. The above records shall be made available to certification inspectors at all times. Evidence to support these records must also be made available in the form of permitting the inspector to see the actual seed, if the inventory record shows it to be still on hand, to see the actual tags if the record shows them not to have been affixed to bags, and to see invoices or delivery records

attesting to the shipments or disbursements claimed on the inventory records.

#### VI. Penalties.

A. Breeders, Foundation, Registered or Certified seed which has been mistagged in violation of this regulation and/or the individual crop regulation with reference to tagging, shall be placed on stop sale until all certified tags or other identification as certified seed has been removed and the tags destroyed. Any person, firm, or corporation found guilty of violating the provisions of this regulation shall be subject to the penalties provided for by Revised Statutes of 1950, Title 3, Part I, Chapter 11, Section 1447.

VII. The above regulation may be revised or amended at any time that conditions warrant.

\* \* \* \*

The purpose of this proposed regulation is to retain the effectiveness of the certified seed tag while providing the seedsman with a means of having his certified seed sampled in bulk.

I. Type of storage facility. Any storage facility suitable for storing and maintaining germination and varietal purity will be acceptable provided it is so constructed that a representative sample can be drawn.

#### II. Sampling procedure.

A. Sampling cleaned seed. Sampling from top of grain only. In facilities that lend themselves to drawing a sample from the top of the grain only, the grain depth should be no greater than can be sampled with sampling equipment being used. Individual samples shall be taken at each four foot depth. All of the samples from a bin will be submitted to the seed at the same time, labeled so as to identify the bin from which they were drawn and serially numbered. If any one of these samples fails germination by more than the established tolerance (three percent), the entire bin fails for certification in bulk. If any one sample fails by three percent or less and all samples average eighty percent or better, the bin can be certified in bulk.

The same requirements for certification in bulk will apply for all other mechanical or quality standards.

After the seed have passed laboratory tests, appropriate tags can be issued based on the estimated quantity of seed in the lot as determined by the inspector at the time of sampling. The inspector's report should show the size bags the seed will be put in, i.e., fifty pounds, one hundred pounds, etc. After seed have been bagged and tagged, the number of bags must be counted by the inspector. The inspector should pick up any surplus tags issued based on estimated quantity and destroy them.

B. Sampling uncleaned seed. If a producer so desires, he can have uncleaned seed officially sampled by following this procedure:

1. A certified sample of uncleaned seed can be drawn for purposes of determining moisture content and germination percentage only.

2. After the seed have been cleaned, a second certified sample must be drawn on the same lot for purity testing.

3. If a lot of seed is favorable for certification (based on these two samples), seed tags can be issued.

The time between the drawing of the first certified sample and the second certified sample must not be over sixty days. If it is, the germination percentage found on the first sample will not be valid.

III. Moisture content. No lot of seed that has been sampled in bulk will be eligible for certification if the moisture content as determined by the State Seed Laboratory is over 12.5 percent. Moisture content should be determined as soon as the sample is received in the laboratory. When two samples are submitted under the uncleaned seed provision, moisture content must be deter-



mined on the first sample. Samples drawn from bulk seed should be sent to the State Seed Laboratory in moisture-proof containers. Satisfactory moisture-proof containers must be furnished by the person desiring to have his seed sampled in bulk.

IV. Penalties. Any person, firm or corporation found guilty of violating the provisions of this regulation shall be subject to the penalties provided for the Title 3, Parts I, II, and III, Chapter 11 of the Louisiana Revised Statutes of 1950.

V. The above regulation may be revised or amended at any time that conditions warrant.

Written comments and inquiries may be addressed through January 3, 1979, to Mr. Richard Carlton, State Entomologist, Office of Agricultural and Environmental Sciences, Box 44153, Baton Rouge, Louisiana 70804.

Richard Carlton, State Entomologist  
Office of Agricultural and  
Environmental Sciences

## NOTICE OF INTENT

### Department of Agriculture Office of Agricultural and Environmental Sciences Seed Commission

In accordance with the authority vested in the Louisiana Seed Commission by Parts 1 of Chapter II of Title 3 of the Louisiana Revised Statutes of 1950, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:951-49:968, notice is hereby given of intent to amend the Louisiana Seed Law Regulations.

Section VI. List and limitations of noxious weed seed (Section 1433)

Name	Limitations
1. Field Bindweed ( <i>Convolvulus arvensis</i> )	Prohibited
2. Hedge Bindweed ( <i>Convolvulus sepium</i> )	Prohibited
3. Nutgrass ( <i>Cyperus rotundus</i> )	Prohibited
4. Wild Onion and/or Wild Garlic ( <i>Allium sp.</i> )	9 per lb.
5. Johnson Grass ( <i>Sorghum halepense</i> )	100 per lb.
6. Blueweed ( <i>helianthus ciliaris</i> )	200 per lb.
7. Dodders ( <i>Cuscuta sp.</i> )	100 per lb.
8. Canada Thistle ( <i>Cirsium arvense</i> )	100 per lb.
9. Quack Grass ( <i>Agropyron repens</i> )	100 per lb.
10. Russian Knapweed ( <i>Centaurea picris</i> )	100 per lb.
11. Bermuda Grass ( <i>Cynodon dactylon</i> )	300 per lb.
12. Cheat or Chess ( <i>Bromus secalinus</i> ) ( <i>B. commutatus</i> )	300 per lb.
13. Darnel ( <i>Lolium temulentum</i> )	300 per lb.
14. Corncockle ( <i>Agrostemma githago</i> )	300 per lb.
15. Horsenettle ( <i>Solanum carolinense</i> )	300 per lb.
16. Purple Nightshade ( <i>Solanum elaeagnifolium</i> )	300 per lb.
17. Buckhorn Plantain ( <i>Plantago lanceolata</i> )	300 per lb.
18. Bracted Plantain ( <i>Plantago aristata</i> )	300 per lb.
19. Dock ( <i>Rumex sp.</i> )	300 per lb.
20. Sheep Sorrel ( <i>Rumex acetosella</i> )	300 per lb.
21. Red Rice ( <i>Oryza sativa var.</i> )	9 per lb.
22. Cocklebur ( <i>Zanthiur sp.</i> )	5 per lb.
23. Purple Moon Flower ( <i>Ipomoea turbinata</i> )	9 per lb.
24. Spearhead ( <i>Rhynchospora sp.</i> )	5 per lb.
25. Balloon Vine ( <i>Cardiospermum halicacabum</i> )	18 per lb.
26. Morning Glory ( <i>Ipomoea spp.</i> )	Name and number per lb. on label
27. Wild Poinsettia ( <i>Euphorbia heterophylla</i> , <i>E. dentata</i> )	Name and number per lb. on label
Sum total noxious weed (Subject to above limitations)	500 per lb.

Limitations on noxious and prohibited weeds are listed on individual certified crop seed regulations. Noxious weed seed tolerance of one for regulatory action on certified seed being offered for sale in Louisiana for those noxious weed seed which are prohibited by the Louisiana Certified Seed Regulations for the specific seed kind in question.

Written comments and inquiries may be addressed through January 3, 1979, to Mr. Richard Carlton, State Entomologist, Office of Agricultural and Environmental Sciences, Box 44153, Baton Rouge, Louisiana 70804.

Richard Carlton, State Entomologist  
Office of Agricultural and  
Environmental Sciences

## NOTICE OF INTENT

### Board of Trustees for State Colleges and Universities

The Board of Trustees for State Colleges and Universities intends to amend the rule regarding Section 7.6 of Part VII, Faculty and Staff Personnel Policies and Procedures, dealing with advanced degree adjustments and date of implementation thereof.

A public hearing will be held on the above on January 26, 1979, at 9:30 a.m., in the Mineral Board Hearing Room, State Land and Natural Resources Building, Baton Rouge, Louisiana.

Interested persons may comment on the proposed policy in writing through January 5, 1979, at the following address: Ms. Susan Sheets, Supervisor of Publications and Governmental Relations, Board of Trustees for State Colleges and Universities, Suite 1412, One American Place, Baton Rouge, Louisiana 70825.

The public is made aware of the proposed policies and procedures in compliance with the Administrative Procedures Act.

All interested persons will be afforded reasonable opportunity to submit data, views, comments or arguments at the regular January Board meeting.

Bill Junkin, Executive Director  
Board of Trustees for  
State Colleges and Universities

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education intends to adopt at its January 25, 1979 meeting the following:

1. Amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, page 30, requiring an additional three hours in audio-visual education for certification in library science. Implementation date for enrolling freshmen would be the fall of 1979 and those persons who are having their certification updated would be excluded from the requirement.

2. Addition to Board Policies and Procedures relative to federal funds used in education projects and/or programs.

3. Consideration of approval of teacher education programs at Tulane University for a four-year Second Language Specialist program and the five-year bilingual training program, both for Spanish.

4. Amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, relative to alternatives to the general education requirements.

5. Consideration of acceptance of National Teacher Examination in lieu of the completion of a regular education curriculum.

Interested persons may comment on the proposed policy changes and/or additions, in writing, until 4:30 p.m., January 10,

1979, at the following address: James V. Soileau, State Board of Elementary and Secondary Education, Box 44064, Baton Rouge, Louisiana 70804.

James V. Soileau, Executive Director  
Board of Elementary and Secondary Education

## NOTICE OF INTENT

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

The Department of Health and Human Resources, Office of Family Security, intends to permanently adopt a rule placing limitations in the Medical Assistance Program (MAP). The limitations were adopted as an emergency rule, effective January 1, 1979, and are published elsewhere in this issue. The following limitations are proposed.

(1) Inpatient hospital services. The number of days payable for inpatient hospital service are reduced from fifteen to ten. The present procedure for applying Professional Studies Activities/Length of Stay criteria to every admission may extend the number of inpatient hospital days if the patient is admitted with at least one eligible day remaining.

(2) Outpatient hospital services. The number of outpatient hospital visits are limited to three per calendar year.

(3) Physician services. The number of inpatient physician visits are reduced from fifteen to ten per calendar year. There is no provision for extension of visits beyond the ten visit limit.

(4) Home health services. Before payment can be made for all home health services, prior approval of the treatment plan by the MAP will be required. This prior approval will be secured directly from the MAP by the home health agency.

(5) Durable medical equipment. The existing program is being closely reviewed and a very restrictive criteria is being applied for approval of all durable medical equipment. Hearing aid batteries will no longer be a covered service.

(6) Drug services.

(a) The Medical Assistance Program will implement a "lock-in" procedure whereby a recipient suspected of overutilizing the pharmacy program is limited to services from one physician and one pharmacy.

(b) The following maintenance type drugs shall be dispensed in a month's supply or one hundred unit doses: anti-coagulants; anti-convulsants; oral anti-diabetics; calcium gluconate, calcium lactate, and calcium phosphate; cardiovascular drugs, including diuretics and antihypertensives; estrogens; ferrous gluconate and ferrous sulfate; potassium supplements; thyroid and antithyroid drugs; vitamins A, D, K, B<sub>12</sub> injection, folic acid, and nicotinic acid. Claims submitted for quantities less than a month's supply are to be rejected.

(c) The therapeutic class of antilipemics are to be excluded from payment. Examples of nonpayable drugs in this class are Athemol—N, Atromid—S, Choloxin, Colestid, Cytellin, Lorelco, Nicalax, and Questran.

(d) The following specific drugs are also to be excluded:

Amitriptyline Tab. 150 mg.	Motrin
Amoxicillin, All Forms	Nalfon
Clinoril	Naprosyn
Darvocet-N 50	Propoxyphene 32 mg.
Darvocet-N 100	Propoxyphene Comp. 32 mg.
Darvon-N	Propoxyphene with aspirin
Darvon N with ASA	Stero-Darvon with ASA

Indocin  
Meclizine (Antivert)

Robaxinal  
Tetrex, All Forms  
Tolectin

(e) The program has established a price listing under which a payment will not be made in excess of the established maximum cost for certain drugs that are available from more than one manufacturer.

Interested persons may comment on the proposed regulation, in writing, through January 3, 1979, at the following address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Post Office Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about the proposed rule.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

## NOTICE OF INTENT

### Department of Health and Human Resources Office of Human Development

The Department of Health and Human Resources, Office of Human Development (OHD), proposes to permanently increase the monthly rate of payment to licensed vendor payment day care centers and family day care homes. This increase has been adopted as an emergency rule effective January 1, 1979, and is published elsewhere in this issue. The proposed maximum rate of monthly payment to family day care homes is \$69.30 for each eligible child. OHD proposes to increase the maximum rate of monthly payment to licensed day care centers to \$104.72 for each eligible child. However, the payment rate for eligible children in licensed day care centers shall not exceed the amount the center charges for private paying children up to the maximum of \$104.72.

In addition, OHD proposes to revise the eligibility criteria for day care which will result in more children who are Title XX eligible to receive the service. Specifically, the criteria in regard to provision of day care will be expanded to provide that the service may be utilized in a formerly active protective service case when recommended by the service worker at the time the case is transferred to another OHD service unit. In addition, in former foster care cases the service of day care may be utilized to facilitate child and family adjustment immediately after the child is returned home from placement.

Interested persons may submit written comments on the proposed policy changes from December 20, 1978, through January 3, 1979, to Mr. Melvin Meyers, Jr., Assistant Secretary, Office of Human Development, Department of Health and Human Resources, 1755 Florida Boulevard, Baton Rouge, Louisiana 70808.

William A. Cherry, M.D., Secretary  
Department of Health and Human Resources

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

In accordance with the laws of the State of Louisiana, R.S. 30:1, et seq., and R.S. 49:951, et seq., a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana, at 9:00 a.m., Tuesday, January 9, 1979.

At such hearing the Commissioner will consider evidence relative to the issuance of permanent statewide rules and regulations

pertaining to the Practices and Procedures for all Applications and Proceedings for Determination of Well Categories under Natural Gas Policy Act of 1978.

The emergency rules adopted November 29, 1978, and published elsewhere in this issue of the Louisiana Register, represent the views of the Commissioner as of this date; however, the Commissioner reserves the right to propose additions or amendments thereto prior to final adoption.

The Commissioner of Conservation, on or after January 9, 1979, will promulgate statewide rules and regulations pertaining to the Natural Gas Policy Act of 1978.

Comments and views regarding the proposed statewide rules and regulations should be directed in written form to be received not later than 5:00 p.m., January 9, 1979. Oral comments will be received at the hearing, but should be brief and not cover the entire matter contained in the written comments.

Direct comments to R. T. Sutton, Commissioner, Office of Conservation, Box 44275, Capitol Station, Baton Rouge, Louisiana 70804, Re: Proposed Rules and Regulations—NGPA of 1978.

The proposed statewide rules and regulations may be reviewed or obtained from Commissioner R. T. Sutton's Office in Baton Rouge, Louisiana. In addition, copies of these rules and regulations are in each of the six Conservation District Offices: 960 Jordan Street, Box 3250, Shreveport, Louisiana; State Office Building, Drawer 1651, Monroe, Louisiana; 1206 Tunnel Boulevard, Box 4097, Houma, Louisiana; P. O. Box 51285, Lafayette, Louisiana; 716 Hodges Street, P. O. Box 1716, Lake Charles, Louisiana; and 307 Louisiana State Office Building, Civic Center, New Orleans, Louisiana.

R. T. Sutton  
Commissioner of Conservation

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

The Commissioner of Conservation hereby gives notice of intention to consider and give approval of a revision to Part E, "Radiation Safety Requirements for Industrial Radiographic Operations," of the Louisiana Radiation Regulations, formerly promulgated by the Louisiana Board of Nuclear Energy by the authority of R.S. 51:1051 et seq., such authority having been invested in the Commissioner by the Natural Resources and Energy Act of 1973, now R.S. 30:501 et seq.

Such regulations in this part establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

The proposed regulations will be available for public inspection between the hours of 8:00 a.m. and 4:45 p.m. on any working day after January 15, 1979, in the Public Documents Room at the offices of the Nuclear Energy Division, 4845 Jamestown Avenue, Baton Rouge, Louisiana.

Interested persons may submit, in writing, their views and opinions in support of or in opposition to approval on or before February 5, 1979, to Mr. Ronald L. Wascom, Office of Conservation, Nuclear Energy Division, Box 14690, Baton Rouge, Louisiana 70808, Re: Docket NED 79-1. Comments may also be presented orally (must be relevant and should not cover any matter contained in any written comments) or in writing by appearing before the Commissioner at a public meeting on Thursday, February 15, 1979, at 1:30 p.m. in the Conservation Auditorium,

First Floor of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana.

R. T. Sutton  
Commissioner of Conservation

## NOTICE OF INTENT

### Department of Public Safety Office of Alcoholic Beverage Control

Notice is hereby given pursuant to the requirements of R.S. 49:953 that on January 5, 1979, the Commission on Alcoholic Beverages plans to adopt amendments to its Rule Prohibiting Certain Unfair Business Practices in the Malt Beverage Industry in Louisiana.

The proposed Amendments will modify and effect a change in certain exceptions to the general prohibitions against "tied house" arrangements which are now permitted under Section IV of the Rule.

Interested persons may submit written testimony on this subject to the Commission on Alcoholic Beverages, Box 66404, Baton Rouge, Louisiana 70896, through January 4, 1979. The person responsible for responding to inquiries about the proposed amendments in Lynn E. Williams.

#### Proposed Amendments

The Rule Prohibiting Certain Unfair Business Practices in the Malt Beverage Industry in Louisiana which was adopted on November 6, 1978, by the Commission and which became effective on November 20, 1978 after publication in the Louisiana Register is hereby amended as follows:

#### Amendment Number 1

Subsection A of Section IV, Exceptions, is hereby amended and readopted to read as follows:

A. Equipment. In order to provide proper dispensing of draught malt beverages by retail dealers, industry members may provide, without charge, coil cleaning service and tapping equipment such as rods, tavern heads, vents, taps, hoses, washers, couplings, vent tongues and check valves.

Accessories such as CO<sub>2</sub> tanks, regulators and other draught equipment accessories with a reasonable open market price of more than five dollars but less than one hundred dollars must be sold to retailers at a price no less than the cost to the wholesaler as defined in R.S. 51:421(G). Such sales shall be made for cash only.

Draught equipment accessories with a reasonable open market price of one hundred dollars or more are not included under this exception.

#### Amendment Number 2

Subsection B of Section IV, Exceptions, is hereby amended and readopted to read as follows:

B. Inside Signs. Signs, posters, placards, designs, devices, clocks, calendars, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business or as a brewer, importer, or wholesaler of malt beverages if the total value of such materials does not exceed one hundred fifty dollars during any one calendar year to any one retail establishment, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto, provided, that the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

#### Amendment Number 3

Subsection C of Section IV, Exceptions, is hereby amended and readopted to read as follows:

C. Supplies. Carbonic acid gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality where sold. Industry members may price, stock, shelve and rotate their products at retail premises under the express authority of the retail owner or manager of said establishment.

#### **Amendment Number 4**

Subsection D of Section IV, Exceptions, is hereby amended and readopted to read as follows:

D. Retailer Advertising Specialties. Trays, coaster, matches and paper napkins may be sold to retailers by industry members but the price charged for such items must be no less than the cost to the wholesaler as defined in R.S. 51:421(G).

Other retailer advertising specialties, such as beer mats, menu cards, meal checks, foam scrapers, back bar mats, tap markers, thermometers, ash trays, corkscrews, paper bags, blotters, pencils and key rings which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed twenty-five dollars.

After the delivery of such retailer advertising specialties with an aggregate cost to an industry member of twenty-five dollars has been made by such industry member to a particular retail establishment during any one calendar year, any future deliveries of such items to that particular retail establishment by such respective industry member during the remainder of such calendar year must be effected only by the sale of such items at their reasonable open market price in the locality where sold.

#### **Amendment Number 5**

Subsection F of Section IV, Exceptions, is hereby amended and readopted to read as follows:

F. Fairs and Festivals and Special Events. When a retail dealer calls upon an industry member to service a particular limited event where malt beverages will be sold or given away, the industry member must charge the retail dealer a price at least equal to the cost to the wholesaler as defined in R.S. 51:241(G) for the product, and charge for all equipment used and services given in an amount at least equal to that listed as follows:

1. Labor, at a rate equal to that required under the Federal Wage and Hour Law.
2. Self contained electric units in which the beer container is refrigerated within the unit, fifteen dollars per day.
3. Electric unit in which the beer container sits outside the cooling unit, five dollars per day.
4. Picnic pumps, one dollar per day.
5. Tubs, one dollar per day.
6. Cold plates, two dollars per day.
7. Trucks, designed to handle packaged or draught beer, thirty dollars per day.
8. Mobile draught units such as trailers or other vehicles, thirty dollars per day.

Lynn E. Williams  
Commissioner of Alcoholic Beverages

### **NOTICE OF INTENT**

#### **Department of Wildlife and Fisheries Stream Control Commission**

Notice is hereby given that the Louisiana Stream Control Commission will hold a public hearing in the Mineral Board Auditorium of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana, on January 25, 1979, at 9:30 a.m.

The Commission intends to adopt an addendum to the State of Louisiana *Water Quality Criteria* relative to wastewater discharges to intermittent streams and man-made drainage channels.

Copies of proposed addendum may be obtained in Room 135, Geology Building, Louisiana State University Campus, Baton Rouge, Louisiana, or inspected in each parish library of the State.

Interested persons may comment on the proposed addendum at the hearing or in writing, through January 25, 1979, to Mr. Robert A. Lafleur, Executive Secretary, Louisiana Stream Control Commission, Post Office Drawer FC, Baton Rouge, Louisiana 70893. Mr. Lafleur is the person responsible for responding to inquiries about the proposed policy guidance.

Robert A. Lafleur, Executive Secretary  
Stream Control Commission

### **NOTICE OF INTENT**

#### **Department of Wildlife and Fisheries Stream Control Commission**

Notice is hereby given that the Louisiana Stream Control Commission will hold a public hearing in the Mineral Board Auditorium of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana, on January 25, 1979, at 9:30 a.m.

The Commission intends to adopt the following proposed effluent limitations relative to process generated wastewater discharges associated with extraction of sand and/or gravel, including pit run operations, from natural deposits in the State of Louisiana.

Comments received prior to, during, and subsequent to the Commission public hearing of December 8, 1978, have been reviewed and incorporated, where applicable, in the proposed effluent limitations.

Copies of the proposed rules may be obtained in Room 135, Geology Building, Louisiana State University Campus, Baton Rouge, Louisiana, or inspected in each parish library of the State.

Interested persons may comment on the proposed addendum at the hearing or in writing, through January 25, 1979, to Mr. Robert A. Lafleur, Executive Secretary, Louisiana Stream Control Commission, Post Office Drawer FC, University Station, Baton Rouge, Louisiana 70893. Mr. Lafleur is the person responsible for responding to inquiries about the proposed policy guidance.

- I. All such discharges shall not exceed the following limitations:
  - A. Total suspended solids, mg/l: twenty-five and forty-five daily average and maximum, respectively. (Certain operations on the Mississippi River may be granted a variance.)
  - B. pH, standard units: not less than 6.0 nor greater than 9.0.
  - C. Turbidity, nephelometric or formazin turbidity units:
    1. Fifteen and twenty-five daily average and maximum, respectively, for Scenic Streams and their tributaries.
    2. Twenty-five daily maximum for primary contact recreation waterbodies.
    3. For other water use classifications, with the exception of cases where numerical turbidity effluent limitations may be imposed to preserve downstream usages, the general criteria contained in the existing State of Louisiana Water Quality Criteria shall apply.
  - D. Oil and grease, mg/l: fifteen daily maximum where applicable.

II. Any overflow from facilities governed by this rule shall not be subject to the preceding effluent limitations if the facilities are designed, constructed and maintained to contain or treat the volume of wastewater which would result from a ten-year twenty-four-hour precipitation event.

III. Any overflow from facilities governed by this rule shall not be subject to the preceding effluent limitations if the facilities are designed, constructed and maintained to avert inundation which would result from a  $Q_5$  stream flow (defined below).

IV. In the case of a discharge into receiving waters for which the pH, if unaltered by man's activities, is or would be less than 6.0 and water quality criteria in water quality standards approved under the Act authorize such lower pH, the pH limitation for such discharge may be adjusted downward to the pH water quality criterion for the receiving waters. In no case shall a pH limitation outside the range 5.0 to 9.0 be permitted.

V. Analytical procedures shall conform to the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published jointly by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation. Tests may also be in accordance with other acceptable methods which have proven to yield reliable data and meet with the approval of the Louisiana Stream Control Commission.

VI. Specialized definitions:

A. The term "mine dewatering" shall mean any water that is impounded or that collects in the mine and is pumped, drained, or otherwise removed from the mine through the efforts of the mine operator. This term shall also include wet pit overflows caused solely by direct rainfall and ground water seepage. However, if a mine is also used for treatment of process generated wastewater, discharges of commingled water from the mine shall be deemed discharges of process generated wastewater.

B. The term "ten-year twenty-four-hour precipitation event" shall mean the maximum twenty-four-hour precipitation event with a probable reoccurrence interval of once in ten years. This information is available in "Weather Bureau Technical Paper No. 40," May 1961 and "NOAA Atlas 2," 1973 for the eleven Western states, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, United States Department of Commerce.

C. The term "mine" shall mean an area of land, surface or underground, actively mined for the production of sand and gravel from natural deposits.

D. The term "process generated wastewater" shall mean any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining. The term shall also include any other water which becomes commingled with such wastewater in a pit, pond, lagoon, mine or other facility used for treatment of such wastewater. The term does not include wastewater used for the suction dredging of deposits in a body of water and returned directly to the body of water without being used for other purposes or combined with other wastewater.

E. The term " $Q_5$  stream flow" shall mean the stream flow or discharge expected to be equaled or exceeded on the average of once each five years. This information (or an acceptable estimate for a particular location on a stream) may be obtained from the Geological Survey, United States Department of the Interior.

F. The "daily average" concentration means the arithmetic average (weighted by flow value) of all the daily determinations of concentration made during a calendar month. Daily determinations of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily determination of concentration shall be arithmetic average (weighted by flow value) of all the samples collected during that calendar day.

G. The "daily maximum" concentration means the daily determination of concentration for any calendar day.

Robert A. Lafleur, Executive Secretary  
Stream Control Commission

## Potpourri

### Department of Corrections Office of the Secretary

Pursuant to R.S. 15:830.1, I hereby certify the Louisiana State Penitentiary Hospital as a treatment facility for the care and treatment of mentally ill and mentally retarded inmates.

C. Paul Phelps, Secretary  
Department of Corrections

### Department of Health and Human Resources Air Control Commission

The Federal Clean Air Act Amendments of 1977 require states not meeting Federal Ambient Air Standards to revise their State Implementation Plans (SIP) to expeditiously achieve compliance. The current Federal law requires that SIP revisions must be submitted to the Environmental Protection Agency by January of 1979.

To comply with these Federal requirements, the Louisiana Air Control Commission will revise its implementation plan for hydrocarbon control. This revision process will take place at the following Commission meetings: December 28, 1978, at the Tulane University School of Medicine Auditorium, 1430 Tulane Avenue, New Orleans, and January 30, 1979, at the New Orleans City Hall Council Chamber, 1300 Perdido St., New Orleans, beginning at 10:00 a.m.

Backup data concerning these SIP revisions is available for review at the following locations:

1. State Office Building, 325 Loyola Avenue, New Orleans, Room 409.
2. East Baton Rouge Health Unit, 353 N. 12th Street, Baton Rouge, Room 83.
3. State Office Building, 1525 Fairfield Avenue, Shreveport, 5th Floor.

James F. Coerver, Technical Secretary  
Air Control Commission

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E—Errata    EO—Executive Order    ER—Emergency Rule  
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