

CONTENTS

I. EXECUTIVE ORDERS

BR 89-6—Amends BR 88-46 to appointment members to the Special Task Force from the Senate	143
BR 89-7—Creates a Task Force on Criminal Justice	143
BR 89-8—Declares a state of emergency for repairs to T.H. Harris Voc.-Tech School	144
BR 89-9—Appoints additional members to the Task Force on Criminal Justice	144

II. EMERGENCY RULES

Economic Development Department:	
Office of Commerce and Industry—Finance Division—Industrial Tax Equalization Program (LAC 13)	144
Louisiana Capital Companies Tax Credit Program	147
Governor's Office:	
Office of Eldery Affairs—Amends FY 1988-1991 State Plan on Aging	150
Health and Hospitals Department:	
Office of the Secretary—Bureau of Health Services Financing—Medicare standards for Hospice care	155
Reimbursement methodologies for inpatient hospital services	155
Social Services Department:	
Office of Eligibility Determinations—AFDC-Essential persons defined	156
Food Stamp Program—Allows residents of public institutions to jointly apply for food stamps and SSI prior to release	157
Transportation and Development Department:	
Office of the Secretary—Real Estate	157

III. RULES

Education Department:	
Board of Elementary and Secondary Education - 8(g) Policy and Procedure Manual revision	181
Environmental Quality Department:	
Office of Solid and Hazardous Waste—Hazardous Waste Division—Permits: Closure requirements: Ignitable/reactive wastes: Incompatible wastes: Discarded commercial chemical products, containers, etc.; Wastewater exclusions (LAC 33:V. Sub- part 1)	181
Governor's Office:	
Division of Administration—Office of State Planning—LCDBG 1989 final statement	182
Health and Hospitals Department:	
Board of Examiners for Nursing Home Administrators—Certified nurse assistant (LAC 46:XLIX. Chapter 16)	194
Emergency license (LAC 46:XLIX.1102)	195
License refusal, suspension, revocation (LAC 46:XLIX.1105)	195
Reciprocity (LAC 46:XLIX.1107)	195
Office of Public Health—Sanitary Code-Mechanical wastewater treatment plants	196
Office of the Secretary—Infectious disease notification (LAC 48:XI.Chapter 43)	196
Treasury Department:	
Bond Commission—Deadline for filing applications	197
Wildlife and Fisheries Department:	
Office of Fisheries—Oyster leases (LAC 76:VII.501)	197
Wildlife and Fisheries Commission—Guidelines for determining wildlife values	200

IV. NOTICES OF INTENT

Agriculture and Forestry Department:	
Office of Marketing—Crawfish Promotion and Research Board-Crawfish bags (LAC 7:V.Chapter 23)	200
Civil Service Department:	
Civil Service Commission—Public hearing amending certain rules	201
Public hearing regarding pay adjustments	202
Economic Development Department:	
Racing Commission—Disqualified horse recognized as winner (LAC 35:I.1739)	202

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Education Department:	
Board of Elementary and Secondary Education—8(g) Annual Program and Budget (FY 1989-90)	203
Bulletin 741—Sex education policy	204
Bulletin 1191—School Transportation Handbook-Age requirements.	204
Bulletin 1191—School Transportation Handbook-Driver experience/record	205
Criterion-referenced test and graduation test passing scores	206
Implementation of Act 832	207
Test security policy	207
Proprietary School Commission—Application for associate in occupational studies degree	209
Exemption from licensure	210
School staff qualifications	210
Environmental Quality Department:	
Office of Solid and Hazardous Waste—Hazardous Waste Division-Act 803 regulations	211
Governor's Office:	
Division of Administration—Office of State Planning-LCDGB FY 1988 final statement amendment	212
Office of Elderly Affairs—GOEA Policy Manual-Long-Term Care Ombudsman Program	213
GOEA Policy Manual-Title III-C Nutrition Services	214
Health and Hospitals Department:	
Board of Physical Therapy Examiners—Licensing and certification; Practice; Fees (LAC 46:LIV. Subparts 1, 3, 5)	214
Office of the Secretary—Bureau of Health Services Financing-Facility Need Review Program	220
Bureau of Health Services Financing-MAP-Increase in OSS payments	221
Child placing agency licensing	222
Day care center licensing	222
Justice Department:	
Office of the Attorney General—Electronic Video Bingo Panel	223
Natural Resources Department:	
Office of Conservation—Hazardous liquids pipeline regulations-Docket No. PL 89-33.	224
Injection and Mining Division—Statewide Order No. 29-N-2, Docket UIC 89-1.	225
Social Services Department:	
Office of Eligibility Determinations—AFDC Program - Bona fide loans	225
Food Stamp Program-Earned income tax credits (EITC) payments.	226
Food Stamp Program-Foster care	227
Wildlife and Fisheries Department:	
Wildlife and Fisheries Commission—Toledo Bend Reservoir-Prohibition of taking black bass by scuba divers.	227

V. POTPOURRI

Natural Resources Department:	
Fishermen's Gear Compensation Fund—Claims.	228
Office of Conservation-Injection and Mining Division-UIC 89-2-Public hearing	230
UIC 89-3-Public hearing.	230
UIC 89-4 Public hearing.	231

Executive Orders

EXECUTIVE ORDER BR 89-6

Executive Order No. BR-88-46 is hereby amended so as to provide in Section 3, paragraph 2 thereof as follows:

The following are appointed members of the Special Task Force from the Senate: Messrs. Dennis Bagneris, Larry Bankston, Oswald Decuir, Randy Ewing, John Hainkel and J. E. Jumboville, Jr.

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 14th day of February, 1989.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER BR 89-7

WHEREAS, the Criminal Justice System exists to protect Louisiana citizens from the danger and loss caused by criminal behavior; and

WHEREAS, the system is being severely strained by, among other things, the significant increase in crime occasioned by Louisiana's strategic position as a crossroads in illicit drug traffic, the increase in the number of people in the "crime-prone" areas and the current difficulties in the Louisiana economy; and

WHEREAS, the Criminal Justice System will need careful and explicit direction during the next several years if it is to be fair and efficient;

NOW THEREFORE I, BUDDY ROEMER, governor of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: That there shall be a Task Force on Criminal Justice.

SECTION 2: The purpose of the Task Force shall be to review, evaluate and recommend to the Governor an overall state policy including solutions to problems and developments within the Louisiana criminal justice system.

SECTION 3: The Task Force shall be composed of the following members:

- a. Chairman, Louisiana Commission on Law Enforcement and the Administration of Criminal Justice;
- b. Commissioner of Administration or his designee;
- c. Chairman, Louisiana Sentencing Commission;
- d. Secretary of the Department of Public Safety and Corrections or his designee;
- e. The Attorney General or his designee;
- f. The Executive Counsel to the Governor or his designee;

g. The Chairman of the House Committee on the Administration of Criminal Justice;

h. The Chairman of Senate Judiciary C;

i. A District Court Judge;

j. President or Executive Director of the Louisiana District Attorneys Association;

k. President or his designee of the Louisiana Association of Chiefs of Police;

l. President or Executive Director of the Louisiana Sheriffs Association;

m. Superintendent of State Police.

n. Two at-large members from the general public.

SECTION 4: The Governor shall appoint the Chairman and Vice-Chairman of the Task Force.

SECTION 5: The Task Force shall be staffed by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

SECTION 6: The duties of the Task Force shall include:

a. Provide full information to the Governor at regular intervals concerning impending problems, decisions, and actions which will or may effect state level criminal justice policy decisions;

b. Advise the Governor on key policy issues affecting the criminal justice system of the state (e.g., status of prison overcrowding at the local and state level. Impact of drug usage within state, effectiveness of drug counter measures);

c. Review proposed legislation, not originating in the Governor's Office, which will affect policy/decisions relative to the criminal justice system within the state;

d. Review the fiscal and programmatic impact of such legislation including providing the Office of the Governor with specific recommendations relative to the proposed legislation or specific recommendations for legislation which would more effectively respond to the problems or conditions prompting the original legislation;

e. Review proposed policy changes at the state level which impact the State's criminal justice system and provide the Governor with specific recommendations as to the suitability or non-suitability of the policy.

SECTION 7: Policies reviewed by the Task Force will include policies which affect more than one state agency or which affect both state and local criminal justice agency operations. It is the responsibility of each affected state agency head to submit subject policies to the Board for review in a timely manner.

SECTION 8: Each department within the executive branch shall provide the Task Force with such data, information, and statistics as are requested by the Task Force.

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 28th day of February, 1989.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER BR 89-8

WHEREAS, the Board of Elementary and Secondary Education has certified to me that the deterioration of the roof at the T. H. Harris Vocational Technical School is worsening; and

WHEREAS, the said deterioration has progressed to the point where further damage to the interior of the school will escalate the cost of necessary repairs and expose staff and students to unsafe working conditions.

NOW THEREFORE I, BUDDY ROEMER, governor of the state of Louisiana, and in conformity with the provision contained in R.S. 39:57.1, do hereby declare a state of emergency to exist at the T. H. Harris Vocational Technical School.

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 2nd day of March, 1989.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER 89-9

WHEREAS, Executive Order No. 89-7 was signed February 28, 1989, establishing a Task Force on Criminal Justice; and

WHEREAS, it is necessary to expand that Task Force to include more members from the general population;

NOW THEREFORE I, BUDDY ROEMER, governor of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The membership of the Task Force on Criminal Justice shall be increased from 2 at-large members to 7 at-large members appointed by the governor.

SECTION 2. The Louisiana Commission on Law Enforcement and the Administration of Criminal Justice shall be represented by either its chairman or its executive director.

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 3rd day of March, 1989.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of Commerce and Industry Finance Division

The Department of Economic Development, Office of Commerce and Industry, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953B, in order to make revisions and re-promulgate new rules and procedures in the administration of the Industrial Tax Equalization Program.

The department finds that prior rules hampered the effectiveness of the Industrial Tax Equalization Program. The method for determining the tax equalization exemption amount has been changed from a five-year estimated exemption amount, to an exemption based on an annual compilation of all state and local taxes.

The emergency rules streamline the process of application and enhances the value of the program to companies which qualify. The increased effectiveness of the program under the emergency rules will lead to greater economic activity in Louisiana.

The effective date of these emergency rules is March 10, 1989, for 120 days, or until new rules are promulgated.

Title 13

ECONOMIC DEVELOPMENT

Part II. Industrial Tax Equalization Program

R.S. 47:3201-3206

Rule 1 - Louisiana Manufacturers and Suppliers

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 2 - Minority Set-Aside

A. Any new manufacturing establishment, and their contractor, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to minority-owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added ex-

pense; provided such minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant company should contact and request the list of the certified minority-owned businesses from the Department of Economic Development, Division of Minority and Women's Business Enterprise.

C. The affected manufacturing establishment shall submit evidence of compliance to the Board of Commerce and Industry, (along with the affidavit of final cost) within six months of completion of the project.

D. The set-aside amount shall be at least 10 percent of the total procurement of goods and services including construction for the exempted project. If compliance cannot be accomplished during the construction period, due to insufficient qualified minority-owned bidders, compliance with the total amount may be accomplished at any time during the five-year duration of the exemption contract. A proposal for compliance, should be submitted instead, six months after construction completion.

E. If compliance is not accomplished within the first four years of the contract period, the Board of Commerce and Industry may recommend a proportioned reduction of the exemption amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 3 - Eligibility for Submission of Application

A. The applicant for tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed manufacturing operations.

C. A new manufacturing establishment at the time it is locating in Louisiana must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of Department of Economic Development must have made a recommendation of the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 4 - Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee

submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 5 - Application Procedure

A. Prior to the formal plant announcement, an "Advance Notification" of intent to file for Industrial Tax Equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The secretary of Department of Economic Development, after favorable review of the advance notification, shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within 10 days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 6 - Application Contents

The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information:

A. The chief financial officer of the applicant company requesting Tax Equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

1. Plant Construction Cost
2. Annual Labor Cost
3. Annual Raw Materials Cost
4. Annual Transportation Cost
5. Annual Power Cost
6. Site Cost

B. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

1. State Sales/Use Tax
2. State Corporate Income Tax
3. State Corporate Franchise Tax
4. State Ad Valorem Property Tax (where applicable)
5. State Inventory Tax (where applicable)
6. Any other state taxes

C. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

1. Local Sales/Use Tax
2. Local Ad Valorem Property Tax
3. Local Inventory Tax
4. Any other local taxes

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 7 - Yearly Determination of Tax Equalization Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish, to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state;

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent Certified Public Accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data

furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation shall be granted in the following priority:

1. state sales and use taxes on machinery and equipment to be used in the manufacturing process;
2. state corporation franchise tax;
3. state corporation income tax;
4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;
5. any other tax imposed by the state of Louisiana to which the applicant is subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 8 - Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. the first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 9 - Affidavit of Final Cost

Within six months after completion of construction or the purchase of facility, the owner of the new manufacturing establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 10 - Contract Renewals

Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a com-

pany wishing an additional five year contract period shall file with the Board of Commerce and Industry the information required in Rule 6 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 11 - Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Rule 12 - Environmental Report Requirement

Any new commercial manufacturing establishment whose primary business is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana shall submit with the application:

A. information relative to the impact the new manufacturing establishment will have on the environment;

B. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3206.

Robert Paul Adams
Director

DECLARATION OF EMERGENCY

Department of Economic Development Office of Commerce and Industry Finance Division

The Department of Economic Development, Office of Commerce and Industry, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953B, in order to make revisions and re-promulgate new rules and procedures in the administration of the Louisiana Capital Companies Tax Credit Program rules.

The program rules were suspended by an emergency rule effective November 10, 1988. It was necessary to amend certain rules which conflicted with the statutes. Also, a portion of a rule concerning transfer of tax credits, which was a barrier to out-of-

state investments, is removed. The First Extraordinary Session of the 1989 Legislature passed a new law regarding tax credits for investors in "certified" Capital Companies. That law, which will become effective with the governor's signature, has also been included in these rules.

The effective date of these emergency rules is March 13, 1989, for 120 days, or until new rules are promulgated.

Title 13

ECONOMIC DEVELOPMENT

Part 1. Louisiana Capital Companies Tax Credit Program R.S. 51:1921-1932

Rule 1. Capital Company

For the purpose of this program, a "certified" capital company shall mean any partnership or corporation, whether organized on a profit or non-profit basis, that has as its primary business activity the investment of funds in return for equity in other companies that are in need of capital for survival, expansion, new product development, or similar business purposes and that may be certified by the secretary of Economic Development.

Rule 2. Louisiana Business

Any business owned solely by a Louisiana resident (a person who has lived in Louisiana a minimum of 90 days, or possessing three of the following: a valid Louisiana motor vehicle operator's license, a valid Louisiana motor vehicle registration certificate, a valid Louisiana voter registration certificate or proof that Louisiana is the state where their federal income taxes were paid), any partnership, association, or corporation, domiciled in Louisiana, or any corporation, even if a wholly owned subsidiary of a foreign corporation that has a Louisiana office and employs Louisiana residents, that does business primarily in Louisiana (majority employment in Louisiana), or does substantially all of its production (75 percent or more of the value or volume) in Louisiana.

Rule 3. Who Qualifies For Tax Credit

A credit may be claimed by an investor in a "certified" Louisiana Capital Company, a person, either natural or artificial, against the person's income tax in the year in which the department certifies to the Department of Revenue and Taxation that the person is qualified for the credit and in every year thereafter to the full income tax liability of the person until the credit is exhausted.

Rule 4. The Tax Credit For An Eligible Individual

The credit shall be calculated by the department as 35 percent of the person's cash, not the value of property or services contributed, investment into a certified Louisiana capital company, if said company's initial capitalization at the time of seeking certification or within one year thereafter is \$200,000 or more, up to a total of \$20 million.

Rule 5. Exemptions for Corporate Income and Franchise Tax

A. Any corporation that is a certified Louisiana capital company shall be exempt from the corporation income tax and the corporation franchise tax for five consecutive taxable periods. The exemption from corporation income tax shall commence with the taxable period in which certification as a Louisiana capital company is obtained from the department. The exemption from corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a Louisiana capital company is obtained from the department.

B. In the case of a corporation obtaining certification as a

Louisiana capital company prior to the beginning of its first taxable period, the exemption from corporation income tax provided for above shall commence with the corporation's first taxable period and shall continue through its next four consecutive taxable periods. The exemption from corporation franchise tax shall commence with the corporation's second taxable period and shall continue through its next four consecutive taxable periods.

Rule 6. Notice of Intent

An "Advance Notification" of intent to seek certification shall be filed by a capital company prior to filing an application. An advance notification fee of \$100 shall be submitted with the advance notification form.

Rule 7. Application Process

A. A company organized and existing under the laws of Louisiana, created for the purpose of making venture or risk capital available for qualified investments as required in R.S. 51:1921 shall make written application for certification to the secretary of the Department of Economic Development on application forms provided by the Office of Commerce and Industry.

B.1. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amounts of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5000 per project.

2. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications and applications which have been accepted, will not be refundable.

C. Said application shall be signed by a duly authorized officer, or partner, and contain the following information and evidence:

1. the full legal name of the company;
2. the address of the applicant's principal office in Louisiana;
3. the names and respective addresses of the applicant's directors and officers or general and managing partners including street number in any city or town, state and zip code;
4. a certified copy of the certificate of incorporation, and articles of incorporation, or a certified copy of the certificate of formation of a limited partnership, or trust documents, or other evidence that the company is organized and existing under the laws of Louisiana, as required by the Secretary of State;
5. information and evidence that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Louisiana businesses and to provide maximum opportunities for the employment of Louisiana residents, by making venture or risk capital available to Louisiana businesses;
6. information and evidence that the applicant has filed with the Louisiana Securities Commission a disclosure document and a consent to service of process as required by R.S. 51:701-720 or information and evidence that the applicant has registered the securities offering pursuant to the Louisiana Securities Act or information and evidence that the securities offering is exempt from registration under the Securities Act et seq. of Louisiana;

7. information and evidence that the applicant has disclosed or will disclose to all investors that a tax credit is not available for an investment in a company until the company has been designated a "certified" Louisiana capital company and the investor has received a certificate approving the credit from the secretary of the Louisiana Department of Economic Development;

8. information and evidence that the applicant has disclosed or will disclose to all investors that a tax credit will not be made available until the company raises at least \$200,000 in equity capital and all statutory limits on tax credits are disclosed;

9. information and evidence that the applicant has disclosed or will disclose to all investors that the state of Louisiana is not liable for damages to an investor in a "certified" Louisiana capital company that fails to become designated as a "certified" Louisiana capital company;

10. a statement that if the investors in the company or partnership receive a tax credit under Title 51, Chapter 26, then the company will use the capital base included by such tax credit to make qualified investments as required in R.S. 51:1926;

11. a statement that the company will comply with all requirements of Title 51, Chapter 26, including the filing of quarterly reports of new investors and qualified investments that include the name of each investor in a "certified" Louisiana capital company who has applied for a tax credit, the amount of each investor's investment, the amount of tax credit allowed to the investor and the date on which the investment was made.

D. Information stating the total capital account of the applicant and how the value has been determined and how the equity portion has been determined for both the period before July 1, 1984 and after.

E. The form for applying to become a "certified" Louisiana capital company may be obtained from the Office of Commerce and Industry, Finance Division, Box 94185, Baton Rouge, Louisiana 70804-9185 and shall be filed at the same address.

F. The time and date of filings shall be recorded at the time of filing in the office of the Finance Division and shall not be construed to be the date of mailing.

B. The secretary of Economic Development shall cause all applications to be reviewed by the department and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 15 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the department.

H. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration.

Rule 8. Requirements for Continuance of Certification

The secretary shall conduct an annual review of each "certified" Louisiana capital company to determine the company's compliance with the requirements for continuance of certification.

The company will receive notice of the annual review 45 days in advance. A review fee of \$100 must be returned and received 15 days prior to the appointment date of the annual review.

A. To continue in certification, a "certified" capital company must:

1. invest at least 30 percent of its initial capitalization at the end of the initial four years in such a manner as to acquire equity in the companies in which the investments are made;

2. have invested 50 percent total in the same fashion at the end of seven years;

3. have a total of 75 percent of its initial capitalization invested in the acquisition of equity at the end of nine years under the program.

B. At the fourth year, seventh year, and ninth year investment levels, at least 60 percent of the total investment of the "certified" capital company must be in Louisiana businesses in which the funds so invested were to be used solely for the purpose of enhancing their productive capacity or ability to do business within the state or to generate value added within the state to goods or services for export to out-of-state markets.

C. No investment in equity may be made at a cost to a "certified" capital company of greater than 25 percent of the total assets under management of the "certified" capital company at the time of investment.

D. The use of invested funds by a Louisiana business for oil and gas exploration and development, for real estate development or appreciation, or for banking or lending operation shall not be counted for purposes of the continuance of certification.

E. All investments in equity, (as defined in Rule 1) including any losses, will be considered in the calculation of the percentage requirements under Subsections A and B of this rule.

F. The term "initial capitalization", in this Section, shall not be misconstrued as the \$200,000 capitalization requirement under Rule 4. Initial capitalization is defined for Rule 8 as any investment in a "certified" capital company for which an income tax credit is claimed.

Rule 9. Decertification

A. The secretary shall conduct an annual review of each "certified" capital company certified under the program to determine if the capital company is abiding by the requirements of certification, to advise the "certified" capital company as to the certification status of its investments, and to ensure that no investment has been made in violation of R.S. 51:1926(C).

B. Any violation of R.S. 51:1926(C) shall be grounds for decertification under this Section. At the end of the fourth year, seventh year, and ninth year of each company's participation in the tax credit program, if the secretary determines that a company is not in compliance with any requirements for continuing in certification, he shall, by written notice, inform the officers of the company and the board of directors or partners that they will be decertified in 120 days from the date of mailing of the notice unless they correct the deficiencies and are once again in compliance with the requirements for certification.

C. At the end of the 120-day grace period, if the "certified" capital company is still not in compliance, the secretary shall send a notice of decertification to the company and to the secretary of the Department of Revenue and Taxation. Decertification of a "certified" capital company shall cause the forfeiture of any right or interest to a tax credit under the program and shall cause the total amount of tax credit previously claimed by persons under the program to be due and payable with that year's income tax liability. These amounts are due notwithstanding the fact that the years for which the credits were originally taken may have prescribed.

D. The Department of Revenue and Taxation shall send written notice to the address of each person whose tax credit has been forfeited, using the address last shown on the person's last income tax filing.

E. Records, documents and any other materials submitted to the Office of Commerce and Industry by a "certified" capital company shall be exempted from release under the Public Records Act, R.S. 4:1 et seq., specifically Section 44:4 that refers in part to "records that pertain to the business of the private person, firm or corporation, and are in their nature confidential." Rule 10. Voluntary Decertification

A. At any time a "certified" capital company may voluntarily decertify itself by sending written notice of decertification to the secretary and by remitting to the secretary of the Department of Revenue and Taxation full payment of all tax credits claimed by investors under its participation in the certification program. These amounts are due notwithstanding the fact that the years for which the credits were originally taken may have prescribed. Thereafter the company shall be a full subrogee to the state of Louisiana through the Department of Revenue and Taxation for such sums as were remitted by the company against its investors or equity owners.

B. After 10 years of continual certification, a capital company may voluntarily decertify itself by sending written notice of decertification to the secretary and shall be exempt thereafter from repaying the tax credits claimed by investors under this program.

Rule 11. Capital Companies Program Termination

The secretary shall not certify a "certified" capital company to begin the program later than December 31, 1989.

Rule 12. Exemptions from Premium Taxes for Insurance Companies

A. A premium tax reduction for insurers investing in certified capital companies shall be computed as 120 percent of the amount of the investment at the time the investment is made. The investment shall be in the form of cash and/or debt instruments which are obligations of the investing insurance company to the certified capital company. Such debt instruments shall be converted into cash at a rate of not less than 10 percent per year from the date of the investment.

B. The premium tax reduction shall be subject to the following limitations:

1. For investments made during any taxable year beginning on or after January 1, 1989 and before January 1, 1990, the tax reduction shall not exceed 40 percent of the tax liability for that taxable year.

2. For investments made during any taxable year beginning on or after January 1, 1990 and before January 1, 1991, the tax reduction shall not exceed 30 percent of the tax liability for the respective year.

3. For investments made during any taxable year beginning on or after January 1, 1991 and before January 1, 1993, the tax reduction shall not exceed 25 percent of the tax liability for the respective taxable year.

4. For investments made during any taxable year beginning on or after January 1, 1993, no tax reduction shall be allowed.

C. The tax reduction shall be applied to the premium tax liability not to exceed 10 percent of the premium tax reduction in any one year until 100 percent of the premium tax reduction has

been claimed by the insurer; provided, however, that the reduction in any taxable year shall not exceed the premium liability for such taxable year.

Robert Paul Adams
Director

DECLARATION OF EMERGENCY

Office of the Governor Office of Elderly Affairs

The Office of the Governor, Office of Elderly Affairs, has exercised those powers conferred by the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend the FY 1988 - FY 1991 Louisiana State Plan on Aging, effective October 1, 1988. The amendment has been prepared pursuant to Administration on Aging Program Instruction PI-88-04, dated September 1, 1988.

The purpose of this amendment is to make changes in the State Plan on Aging which are required by the Older Americans Act Amendments of 1987 (the Act) and 45 CFR 1321, published in the *Federal Register*, Vol. 53, No. 169, dated Wednesday, August 31, 1988 (the regulations).

This amendment incorporates assurances specified in Sections 305 and 307 of the Act and Section 1321.17 of the regulations; and substantive provisions which arise from the Act. A new Section 1325, entitled "Priority Services and Targeting Requirements", has been added to the State Plan on Aging to include the latter as identified below:

1. The amendment specifies a minimum percentage of Title III-B funds which each area agency will expend, in the absence of a state agency waiver, for access services, in-home services and legal assistance. [307(a)(22)]

2. The amendment identifies the number of low-income minority older individuals residing in Louisiana during FY 1988; and describes the methods used to satisfy the service needs of such minority older individuals. [307(a)(23)]

3. The amendment describes the methods used in FY 1988 to satisfy the service needs of older individuals who reside in rural areas. [307(a)(29)]

4. The amendment includes proposed methods of carrying out preference for providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals. [305(a)(2)(E)]

The Notice of Intent to amend the FY 1988 - FY 1991 Louisiana State Plan on Aging was published in the February 20, 1989 issue of the *Louisiana Register*, Vol. 15, No. 2.

§1303. Assurances

The Governor's Office of Elderly Affairs makes the following assurances:

A. STATE AGENCY DESIGNATION

1. The Governor's Office of Elderly Affairs shall develop and administer the State Plan on Aging and serve as the effective visible advocate for the elderly within the state. [45 CFR 1321.9(a)]

B. STATE AGENCY ADMINISTRATION, ORGANIZATION AND STAFFING

The Governor's Office of Elderly Affairs:

1. has an adequate number of qualified staff to carry out the functions prescribed in 45 CFR 1321. [45 CFR 1321.9(b)]

2. The Governor's Office of Elderly Affairs will use such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis as are necessary for the proper and efficient administration of the plan, and, where necessary, provide for reorganization and reassignment of functions to assure efficient administration. [OAA Sec. 307(a)(4)]

3. The Governor's Office of Elderly Affairs has and follows written policies governing all aspects of programs operated under 45 CFR Part 1321, including the manner in which the ombudsman program operates at the state level and the relation of the ombudsman program to area agencies. [45 CFR 1321.17(F)(7)]

4. Subject to the requirements of merit employment systems, the Governor's Office of Elderly Affairs gives preference to individuals aged 60 or older for any staff positions (full time or part time) in state and area agencies for which such individuals qualify. [OAA Sec. 307(a)(11)]

5. The Governor's Office of Elderly Affairs has assigned personnel to provide state leadership in developing legal assistance programs for older individuals throughout the state; to provide for the coordination of the furnishing of legal assistance to older individuals within the state; to provide advice and technical assistance in the provision of legal assistance to older individuals within the state; and to support the furnishing of training and technical assistance for legal assistance for older individuals. [OAA Sec. 307(a)(15)(C), 307(a)(18)]

6. The Governor's Office of Elderly Affairs provides inservice training opportunities for personnel of agencies and programs funded under the Older Americans Act. [OAA Sec. 307(a)(17)]

7. The Governor's Office of Elderly Affairs will make such reports, in such form, and containing such information, as the Commissioner may require, and comply with such requirements as the Commissioner may impose to insure the correctness of such reports. [OAA Sec. 307(a)(6)]

8. The state agency employs appropriate procedures for data collection from area agencies on aging to permit the state to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs. [45 CFR 1321.17(f)(9)]

C. STATE AGENCY FISCAL MANAGEMENT RESPONSIBILITIES

The Governor's Office of Elderly Affairs:

1. has adopted such fiscal control and fund accounting procedures as may be necessary by the Commissioner or the Secretary to assure proper disbursement of, and accounting for, federal funds paid under Title III to the state, including any such funds paid to the recipients of a grant or contract. [OAA Sec.307(a)(7)];

2. will spend in each fiscal year, for services to older individuals residing in rural areas in the state assisted under Title III, an amount not less than 105 percent of the amount expended for such services (including amounts expended under Title V and Title VII) in fiscal year 1978. [OAA Sec. 307(a)(3)(B)];

3. will not fund program development and coordination activities as a cost of supportive services for the administration of the area plans until it has first spent 10 percent of the total of its

combined allotments under Title III on the administration of area plans. [45 CFR 1321.17(f) (14) (i)];

4. submits the details of any proposals to pay for program development and coordination as a cost of supportive services, to the general public (including older persons, government officials, and the aging services network) for review and comment. [45 CFR 1321.17(f) (14) (ii)];

5. requires area agencies on aging to submit the details of their proposals to pay for program development and coordination as a cost of supportive services, to the general public (including older persons, government officials, and the aging services network) for review and comment. [45 CFR 1321.17(f) (14) (ii)];

6. certifies that any expenditure by an area agency for program development and coordination will have a direct and positive impact on the enhancement of services for older persons in the planning and service area. [45 CFR 1321.17(f) (14) (iii)];

7. requires that area plans be amended annually to include details of the amount of funds expended for each priority service during the past fiscal year. [45 CFR 1321.17(f) (6)];

8. each fiscal year, to meet the required non-federal share applicable to its allotments under 45 CFR 1321, spends under the state plan for both services and administration at least the average amount of state funds it spent under the plan for the three previous fiscal years. [45 CFR 1321.49]

9. from funds allotted under Section 304(a) for Part B and for Paragraph (12) (relating to the State Long-Term Care Ombudsman) shall expend to carry out for Paragraph (12), for each fiscal year in which the allotment for Part B for the state is not less than the allotment for fiscal year 1987 for Part B for such state, and amount which is not less than the amount expended by such state in fiscal year 1987 to carry out Paragraph (12) as in effect before the effective date of the Older Americans Act Amendments of 1987. [OAA Sec. 307(a) (21)]

10. will use funds under Section 303(e) for Part E relating to the special needs of older individuals, the state agency will use such funds for Part E purposes, if such funds are received. [OAA Sec. 307 (a) (28)]

11. will use funds for Part G relating to abuse, neglect, and exploitation of older individuals, the state agency will use funds for Part G purposes, if such funds are received. [OAA Sec. 307(a) (30)]

12. Governor's Office of Elderly Affairs will comply with requirements of Section 306(a) (6) (P) and other requirements in Subsection 307(a), if the state agency receives funds for SSI/Food Stamp Medicaid outreach. [OAA Sec. 307(a) (31)]

13. If the state agency proposes to use funds received under Section 303(f) of the Act for services other than those for preventive health specified in Section 361, the state plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities. [45 CFR 1321.17(f) (10)]

D. STATE AGENCY ADVOCACY RESPONSIBILITIES

The Governor's Office of Elderly Affairs:

1. reviews and, where appropriate, comments on all state plans, budgets, and policies which affect older persons;

2. solicits comments from the public on the needs of older persons;

3. coordinates statewide planning and development of

activities related to the purposes of the Older Americans Act and assures that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

4. provides technical assistance to agencies, organizations, associations, or individuals representing older persons;

5. has established and is operating an Office of the State Long-Term Care Ombudsman Program and shall carry out through the office a long-term care ombudsman program which meets all statutory and regulatory provisions concerning establishment and operation of the program. [OAA Sec. 307(a) (12)]

6. reviews and comments, upon request, on applications to state and federal agencies for assistance relating to meeting the needs of older persons. [45 CFR 1321.13 (a) (3)]

E. STATE AGENCY SYSTEMS DEVELOPMENT RESPONSIBILITIES

1. Development of the State Plan on Aging

The state plan will be based upon area plans developed by area agencies on aging within the state. The state will prepare and distribute a uniform format for use by Area Agencies in developing area plans under Section 306. [OAA Sec.307(a) (1)]

2. Amendments to the State Plan

The state amends the State Plan whenever necessary to reflect:

a. new or revised federal statutes or regulations;

b. a material change in any law, organization, policy, or state agency operation; or

c. information required annually by Sections 307(a)(23) and (29) of the Act. [45 CFR 1321.19(a)]

3. Designation of Planning and Service Areas

a. The Governor's Office of Elderly Affairs approves or disapproves the application of any unit of general purpose local government with a population of 100,000 or more, region with the state recognized for areawide planning, metropolitan area, or Indian reservation which makes application to be designated as a planning and service area, in accordance with state agency procedures. [45 CFR 1321.29(b)]

b. The Governor's Office of Elderly Affairs provides an opportunity for a hearing on the denial of any application submitted under Subparagraph (a) above, if requested by the applicant, and issues a written decision. [45 CFR 1321.29 (d)]

4. Uniform Format for Area Plans

The Governor's Office of Elderly Affairs will prepare and distribute a uniform format for use by area agencies in developing area plans. [OAA Sec. 307(a) (1)]

5. Area Plans

Each area agency will develop and submit to the state agency for approval an area plan which complies with Section 306 of the Act. [OAA Sec. 307(a)(2)]

6. Public Participation

a. The Governor's Office of Elderly Affairs has established rulemaking procedures to consider the views of older persons in developing and administering the State Plan. [45 CFR 1321.27]

b. The Governor's Office of Elderly Affairs will take into account, in connection with matters of general policy arising from the development and administration of the State Plan for any fiscal year, the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under such plan. [OAA Sec. 305 (a) (2) (B)]

7. Intrastate Funding Formula

a. The Governor's Office of Elderly Affairs has developed

an intrastate funding formula for the allocation of funds to area agencies.

b. The formula has been published for review and comments by older persons and the general public.

c. The formula reflects the proportion among the planning and service areas of persons age 60 and over in greatest economic need with particular attention to low income minority individuals.

d. The Governor's Office of Elderly Affairs reviews and updates the intrastate funding formula every four years. [45 CFR 1321.37]

8. Needs Assessment

The Governor's Office of Elderly Affairs will evaluate the need for supportive services (including legal assistance), nutrition services, and multipurpose senior centers and determine the extent to which existing public or private programs meet the need. [OAA Sec. 307 (a) (3) (A)]

9. Project Evaluation

The Governor's Office of Elderly Affairs will conduct periodic evaluations of activities and conduct public hearings on projects carried out under this plan. The state agency will evaluate its effectiveness in reaching older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals. [OAA Sec.307(a) (8)];

10. Withdrawal of Area Agency Designation

The Governor's Office of Elderly Affairs withdraws the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(i) an area agency does not meet the requirements of 45 CFR 1321;

(ii) an area plan or plan amendment is not approved;

(iii) there is substantial failure in the provisions or administration of an area plan to comply with any provisions of the Older Americans Act or 45 CFR 1321 or policies and procedures established and published by GOEA; or

(iv) activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement that it function only as an area agency on aging. [45 CFR 1321.35(a)]

11. Hearing Provisions

The Governor's Office of Elderly Affairs will afford an opportunity for a hearing upon request to any area agency on aging submitting a plan under Title III, to any provider of a service under such a plan, or to any applicant to provide a service under such a plan. [OAA Sec. 307 (a) (5)]

12. Residence

No requirements as to duration of residence or citizenship will be imposed as a condition of participation in the state's program for the provision of services.

13. Services for Older Individuals with Disabilities

The Governor's Office of Elderly Affairs will coordinate planning, identification, assessment of needs, and services for older individuals with disabilities. Particular attention will be given to those persons with severe disabilities. Coordination will take place with the state agency(s) that has (have) primary responsibility for individuals with disabilities, including severe disabilities. Where appropriate, collaborative programs will be developed to meet the needs of older individuals with disabilities. [OAA Sec. 307(a) (25)]

14. Community-Based Long-Term Care Services

Governor's Office of Elderly Affairs will require Area

Agencies on Aging to facilitate the coordination of community-based long-term care services for older individuals at risk. These are individuals at risk of institutionalization, or of prolonged institutionalization, or who could leave a long-term care facility and return home, if community-based services are provided to them. [OAA Sec. 307 (a) (26)]

15. In-Home Services for Frail Older Individuals

The state agency will consult and coordinate in the planning and provision of in-home services under Section 341 of the Act with state and local agencies and private nonprofit organizations which administer and provide services relating to health, social services, rehabilitation, and mental health services. [OAA Sec. 307(a) (27)]

16. Area Agency Activities

Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in state policies under 1321.11; [45 CFR 1321.17(f) (1)]

17. Coordination with Title VI Services

The services provided under this Part will be coordinated, where appropriate, with the services provided under Title VI of the Act. [45 CFR 1321.17(f) (13)]

18. Outreach to Older Indians

Where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by Section 306(a) (6) (N) of the Act. [45 CFR 1321.17(f) (15)]

F. STATE AGENCY SERVICE DEVELOPMENT RESPONSIBILITIES

1. Direct Delivery of Services

No supportive services, nutrition services or in-home services, (as defined in Section 342(1)), will be directly provided by the state agency or an area agency on aging, except where, in the judgment of the Governor's Office of Elderly Affairs, provision of such services by the state agency or an area agency on aging is necessary to assure an adequate supply of such service, or where such services are directly related to the state or area agency on aging's administrative functions, or where such services of comparable quality can be provided more economically by such state or area agency on aging. [OAA Sec. 307(a) (10)]

2. Preference in the Delivery of Services

Preference is given to older persons in greatest social or economic need in the provisions of services under the plan, with particular attention to low-income minority individuals. [45 CFR 1321.17(f)(2)]; [OAA Sec. 305(a) (2) (E)]

3. Means Tests

The Governor's Office of Elderly Affairs has established procedures to ensure that all services under Title III are provided without use of any means tests. [45 CFR 1321.17(f) (3)]

4. Confidentiality and Disclosure of Information

a. The Governor's Office of Elderly Affairs has procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures ensure that no information about an older person, or obtained from an older person by a service provider or the state or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized federal, state, or local monitoring agencies. [45 CFR 1321.51(a)]

b. Neither the state agency nor the area agencies may disclose those types of information that are exempt from disclosure by a federal agency under the Federal Freedom of Information Act. [45 CFR 1321.51(c)]

5. Licensure, Health and Safety Requirements

All services provided under Title III meet any existing state and local licensing, health and safety requirements for the provision of those services. [45 CFR 1321.17(f) (4)]

6. Voluntary Contributions by Participants

Older persons are provided opportunities to contribute voluntarily to the cost of services. [45 CFR 1321.17(f) (5)]

7. Information and Referral Services

The Governor's Office of Elderly Affairs shall provide for the establishment and maintenance of information and referral services in sufficient numbers to assure that all older individuals in the state who are not furnished adequate information and referral services under Section 306(a) (4) will have reasonably convenient access to such services. [OAA Sec. 307(a)(9)]

8. Education and Training Services

a. Area agencies on aging may enter into grants and contracts with providers of education and training services which can demonstrate the experience or capacity to provide such services (except that such contract authority shall be effective for any fiscal year only to such extent, or in such amounts, as are provided in appropriations Acts). [OAA Sec. 307(a) (19)]

b. Area agencies shall compile available information, with necessary supplementation, on courses of post-secondary education offered to older individuals with little or no tuition. Area agencies shall make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places. [45 CFR 1321.17(f) (11)]

9. Services for the Prevention of Abuse of Older Individuals

a. Area agencies on aging shall coordinate efforts with those agencies in their respective planning and service areas responsible for prevention, identification, and treatment of abuse, neglect, and exploitation of older individuals in accordance with R.S. 14:403.2, the Adult Protective Services Act.

b. The state will not permit involuntary or coerced participation in the program of services described in this Subparagraph by alleged victims, abusers, or their households.

c. All information gathered in the course of receiving reports and making referrals shall remain confidential unless all parties to the complaint consent in writing to the release of such information, except that such information may be released to a law enforcement or public protective service agency. [OAA Sec. 307(a) (16)]

10. Multipurpose Senior Centers

With respect to multipurpose senior centers, all statutory and regulatory requirements concerning the purpose of making awards; health and safety and construction requirements; federal labor standards; length of use of an acquired or constructed facility; special conditions for acquiring by purchase, or constructing a facility; prohibition on sectarian use of a facility; and funding and use requirements will be met. [OAA Sec. 307(a) (14)]

11. Nutrition Services

With respect to nutrition services, all statutory and regulatory provisions concerning nutrition services eligibility, selection of nutrition service providers, special requirements for nutrition services providers and food requirements for all nutrition services

providers will be met. [OAA Sec. 307(a)(13); CFR 1321.17(f) (12)]

12. Legal Assistance

With respect to legal assistance, all statutory and regulatory provisions concerning the purpose of making the awards; the definition of legal assistance; the conditions legal assistance providers must meet; case priorities; and limitations on information about income and resources will be met. [OAA Sec. 307(a) (15)]

13. Outreach

The state agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, older individuals residing in rural areas, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act. [OAA Sec. 307(a) (24); 45 CFR 1321.17(f) (8)]

14. Provisions for Limited English-Speaking Elderly

The Governor's Office of Elderly Affairs requires the area agency on aging for any planning and service area in the state where a substantial number of the older individuals are of limited English-speaking ability:

a. to utilize, in the delivery of outreach services under Section 306(a) (2) (A) and 306(a) (6) (P), the services of workers who are fluent in the language spoken by a predominant number of such older individuals who are of limited English-speaking ability; and

b. to designate an individual employed by the area agency on aging, or available to such area agency on aging on a full-time basis, whose responsibilities will include:

(i) taking such action as may be appropriate to assure that counseling assistance is made available to such older individuals who are of limited English-speaking ability in order to assist such older individuals in participating in programs and receiving assistance under this Act; and

(ii) providing guidance to individuals engaged in the delivery of supportive services under the area plan involved to enable such individuals to be aware of cultural sensitivities and to take into account effectively linguistic and cultural differences. [OAA Sec. 307(a) (20)]

G. STATE AGENCY CIVIL RIGHTS RESPONSIBILITIES

1. Equal Employment Opportunity

The Governor's Office of Elderly Affairs has an equal employment opportunity policy, implemented through an affirmative action plan for all aspects of personnel administration as specified in 45 CFR Part 74.

2. Services Delivery

The Governor's Office of Elderly Affairs has developed and is implementing a system to ensure that benefits and services available under the State Plan are provided in a non-discriminatory manner as required by Title VI of the Civil Rights Act of 1964, as amended.

3. Non-Discrimination on the Basis of Handicap

All recipients of funds from the Governor's Office of Elderly Affairs are required to operate each program so that, when viewed in its entirety, the program or activity is readily accessible to and useable by handicapped persons. Where structural

changes are required, these changes will be made as quickly as possible, in keeping with 45 CFR Part 84.

§1325. Priority Services and Targeting Requirements

The plan shall specify a minimum percentage of Part B funds which each area agency will expend, in the absence of a waiver, for access services, in-home services and legal assistance. (307)(a)(22).

The following chart illustrates the minimum percentages of available funds area agencies will be required to expend in each category:

	FY 1990	FY 1991
Access Services	25%	30%
In-home Services	10%	15%
Legal Assistance	3%	5%
TOTALS	38%	50%

The area agencies will be required to expend at least 25 percent of available Title III-B funds for access services (transportation, outreach, and information and referral), beginning with FY 1990, increasing to 30 percent in FY 1991.

The area agencies will be required to expend at least 10 percent of available Title III-B funds for in-home services (homemaker and home health aide, visiting and telephone reassurance, chore maintenance, and supportive services for families of elderly victims of Alzheimer's disease and related disorders with neurologic and brain dysfunction), beginning with FY 1990, increasing to 15 percent in FY 1991.

Beginning with FY 1990, and annually thereafter, GOEA will operate a statewide Ombudsman Legal Assistance Program designed to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities. GOEA has determined that this will ensure compliance with Sec. 307(a) (12) (G) (ii) of the Act.

Each area agency will be required to expend a minimum of 3.0 percent of available Title III-B funds for Legal Assistance for elderly not residing in long-term care facilities in FY 1990, increasing to 5.0 percent in FY 1991.

Maintenance of effort will be required for all priority services after FY 1991.

In approving area plans, GOEA shall waive this requirement for any category of services described above if the area agency demonstrates that services being furnished for all services in such category are sufficient to meet the need for such services in the planning and service area. Waivers must be requested in accordance with Paragraph (2) of Subsection 306(b) of the Older Americans Act Amendments of 1987.

The State Plan must, with respect to the fiscal year preceding the fiscal year for which the plan is prepared, identify the number of low-income minority older individuals in the state; and describe the methods used to satisfy the service needs of such minority older individuals. 307(a) (23)

The most recent statistical information available concerning the elderly in Louisiana is the 1986 update of the 1980 Census by the United States Bureau of the Census. The following chart illustrates the total number of individuals age 60 and older in each minority group; the percentage of the total population in each minority group having incomes at or below the poverty level; the estimated number older individuals in each minority group with incomes at or below the poverty level; and the estimated number of older minority individuals with incomes at or below the poverty level:

GROUP	TOTAL 60 +	% BELOW POVERTY	# BELOW POVERTY
Black	162,359	38.0	61,696
Asian	1,390	26.4	366
Indian	926	22.8	211
TOTAL NUMBER OF LOW-INCOME MINORITY AGE 60 +			62,273
PERCENTAGE OF OLDER MINORITY INDIVIDUALS BELOW POVERTY			%37.81

During FY 1988, GOEA provided information to the AAAs concerning proposed changes in the rules governing the Medicaid and Food Stamp programs, allowing them to review and comment in a timely manner.

For the second time, GOEA provided written comments on the Community Services Block Grant proposal, contesting the exclusion of "diseases related to aging" as eligibility criteria for respite care.

GOEA and the Department of Natural Resources co-authored a proposal which was approved by the U.S. Department of Energy. The \$1.6 million project, called the "Louisiana Outreach Energy Program," will serve low-income elderly and Indians. The objectives of the program are to identify individuals in the target population, and educate them on energy conservation practices and services available to them, such as the LI-HEAP Weatherization Program. The outreach program will incorporate the assistance of local volunteer groups and non-profit associations to implement the program.

The plan shall include proposed methods of carrying out preference for providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority older individuals. 305(a)(2) (E)

GOEA will establish criteria for service priorities which will lead to increased participation by the target population. For example, service procurement guidance will encourage AAAs to award service contracts to minority owned and operated businesses; businesses with service delivery sites located in neighborhoods occupied by minority elderly; businesses which customarily recruit, hire, train and promote the elderly in paid employment; and businesses which provide volunteer opportunities for socially or economically needy older individuals. AAAs will be encouraged to consider the relative percentage of minority elderly participation, both as service recipients and as volunteers, as a factor in evaluating service provider performance.

During FY 1990, GOEA will review the configuration of PSAs, taking into consideration the location and incidence of older citizens with "greatest economic or social needs, with particular attention to low-income minority older individuals." Criteria for the designation of PSAs will include the incidence of low-income minority individuals.

In reviewing and updating the intrastate funding formula, emphasis shall be placed on serving those with "greatest economic or social needs, with particular attention to low-income minority older individuals."

The Louisiana Aging Advisory Board will seek to bring about policy and social change on behalf of the target population by acting as a policy advisor to GOEA; reviewing and commenting on proposed rules and regulations affecting the elderly; participating in policy conferences, legislative and other public hearings; and consulting with decision makers and other advocates outside of government.

At the sub-state level, efforts will be conducted in each PSA to identify older individuals with the greatest economic or social needs, with particular attention to low-income minority older individuals; and assist them in applying for entitlement programs such as Medicare, Medicaid and Food Stamps. Such activities will include reviewing intake forms for possible eligibility, personal and telephone contacts with older individuals to inform them of the programs, assisting in the preparation of applications, providing transportation to apply for and/or receive benefits, explaining the programs in agency newsletters and newspaper articles, and making emergency referrals, as appropriate.

The plan shall, with respect to the fiscal year preceding the fiscal year for which the plan is prepared, described the methods used to satisfy the service needs of older individuals who reside in rural areas. 307(a) (29)

Rural parishes in Louisiana have been unable to obtain satisfactory legal services for the elderly either through the Legal Services Corporations or the private bar. The few efforts to contract were successful in providing only community legal education but no direct representation. Last year, the Legal Services Developer worked with the state and local Bars to meet this need. There is now in place in Morehouse, Franklin, Richland, Caldwell, West Carroll and Jefferson Davis Parishes, a pro bono project which furnishes lawyers for both direct representation and community legal education. Morehouse, Franklin, Richland and West Carroll have legal services contracts with the Pro Bono projects and the other two, Jefferson Davis and Caldwell, probably will do so next year. Efforts continue in other rural areas to promote the pro bono concept.

Also GOEA distributed information on projected needs for certain services from a special study conducted by Savant, Inc. to all parishes (including rural parishes) during FY 1988.

Vicky Hunt
Director

DECLARATION OF EMERGENCY

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953 B to adopt the following rule.

Act 941 of the 1988 Regular Session of the Legislature enacted R.S. 40:2181 through 2191 relative to hospices. This measure provides for the licensing and regulation of all hospices which operate in the state of Louisiana and empowers the department to adopt rules and regulations for the administration of the law consistent with Medicare hospice guidelines. Under this Act, the department is mandated to develop and implement rules and regulations necessary for administration of the law no later than February 20, 1989.

This rule is necessary to implement regulations mandated by State statute to protect the health and welfare of terminally ill

Louisiana residents who elect to receive Hospice care. Under this emergency rule, the Bureau of Health Services Financing is adopting the Medicare standards for Hospice care effective February 20, 1989.

RULE

The Bureau of Health Services Financing shall follow the criteria developed and published in 42 CFR 418.3 - .310 by the Health Care Financing Administration for the licensure and regulation of Hospice care provided to individuals in Louisiana.

David L. Ramsey
Secretary

DECLARATION OF EMERGENCY

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953B to adopt the following rule in the Title XIX Hospital Program.

Prior to passage of Section 4112 of the Omnibus Reconciliation Act of 1987 (Public Law 100-203), states had an option to implement a disproportionate share payment adjustment in reimbursement methodologies for inpatient hospital services but were not mandated to do so. Section 4112 mandates that all state Medicaid reimbursement methodologies for inpatient hospital services incorporate provisions for disproportionate share adjustments similar to Medicare's provisions for such payments. This rule was previously declared effective July 1, 1988 and published in the *Louisiana Register* (Vol 14, No. 7) dated July 20, 1988. A redeclaration was published in the *Louisiana Register* dated November 20, 1988 (Vol 14, No. 11) as a result of clarifications from the Health Care Financing Administration which required additional review to ensure compliance with federal law and regulations. This rule is necessary to implement disproportionate payment provisions for inpatient hospital services mandated by federal law. This rule shall become effective March 1, 1989 for final determination of disproportionate share adjustments made under Louisiana's Title XIX State Plan agreement with the federal government.

RULE

The reimbursement methodology for inpatient hospital services shall incorporate a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients (DSH). This provision shall be implemented in the following manner:

A. Qualifying Criteria for a Disproportionate Share Hospital

1. The hospital has at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligibles. In the case of a hospital located in a rural area (i.e. an area outside a Metropolitan Statistical Area), the term "obstetrician" includes any physician

with staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. The hospital treats inpatients who are predominantly individuals under 18 years of age; or

3. The hospital did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. The hospital has a utilization rate in excess of either of the below-specified minimum utilization rates:

a. Medicaid Utilization Rate - means a fraction (expressed as a percentage), the numerator of which is the hospital's number of Medicaid (Title XIX) days and the denominator of which is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean plus one standard deviation, of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. Low-income Utilization Rate - means the sum of:

i. the fraction (expressed as a percentage), the numerator of which is the sum (for the period) of the total Medicaid (Title XIX) patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator of which is the total amount of patient revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

ii. the fraction (expressed as a percentage), the numerator of which is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in b.i. above, which are reasonably attributable to inpatient hospital services; and the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. The above numerator shall not include contractual allowances and discounts (other than for indigent patients not eligible for Medicaid), that is, reductions in charges given to other third party payers, such as HMOs, Medicaid, or Blue Cross; nor charges attributable to Hill-Burton obligations. Hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent.

B. Payment Adjustments for Disproportionate Share Hospitals

The higher of the below-specified payment adjustment factors shall be applied to the cost limits and then to the total allowable Medicaid inpatient costs for those hospitals qualifying as disproportionate share providers (DSH) as specified above for inpatient hospital services provided on or after July 1, 1988:

1. Medicaid Utilization Rate - for each percentage, or portion thereof, in excess of the Medicaid mean plus one standard deviation, a payment adjustment factor of 1 percent shall be applied; or

2. Low-income Utilization Rate - for each percentage, or portion thereof, of the low income utilization rate defined above, in excess of 25 percent, a payment adjustment factor of two percent shall be applied; or

3. Medicare DSH Rate - that percentage determined by the Medicare intermediary as a qualifying provider's disproportionate share adjustment factor for the purposes of Medicare reimbursement in accordance with rules established under Section

1886(d)(5)(F)(iv) of the Social Security Act.

Adjustment of the cost per discharge limitation and per diem limitations for carve-out units (NICU/PICU/Burn/Transplants) shall be the product of the applicable limit and the appropriate disproportionate share adjustment factor. The disproportionate share payment adjustment shall then be the product of the appropriate disproportionate share adjustment factor and the hospital's Medicaid total allowable inpatient costs.

David L. Ramsey
Secretary

DECLARATION OF EMERGENCY

Department of Social Services Office of Eligibility Determinations

The Department of Social Services, Office of Eligibility Determinations, has exercised the emergency provision of the Administrative Procedure Act, LA R.S. 49:953-B to adopt the following rule in the Aid to Families with Dependent Children Program.

Emergency rulemaking is necessary because federal regulations as published in the *Federal Register* of Tuesday, January 24, 1989, Vol. 54, No. 14, pages 3448-3452, mandate an effective date of January 24, 1989.

Rule

Effective immediately, the individuals who may be included as essential persons are defined as follows:

◦ A person providing child care which enables the qualified relative to work full time outside the home.

◦ A person providing full-time care for an incapacitated family member living in the home.

◦ A person providing child care that enables the qualified relative to receive full-time training.

◦ A person providing child care that enables a qualified relative to attend high school or General Education Development (GED) classes full time.

◦ A person providing child care for a period not to exceed two months that enables a caretaker relative to participate in Employment Search or another AFDC work program.

As a result of this change, the following groups of persons who have been considered as essential persons will no longer be eligible for inclusion in the assistance unit:

◦ Children not within the degree of relationship to be AFDC eligible who live in the home and who meet all other AFDC requirements.

◦ The incapacitated non-legal spouse of the qualified relative who is unrelated to anyone in the assistance unit.

May Nelson
Secretary

DECLARATION OF EMERGENCY

Department of Social Services Office of Eligibility Determinations

The Department of Social Services, Office of Eligibility Determinations, has exercised the emergency provision of the Administrative Procedure Act, LA R.S. 49:953-B to adopt the following rule in the Food Stamp Program.

Emergency rulemaking is necessary because federal regulations as published in the *Federal Register* of Monday, January 30, 1989, Vol. 54, No. 18, pages 4249-4253 mandate an effective date of March 1, 1989 and an implementation date of May 1, 1989.

Rule

Effective May 1, 1989 residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383) shall be permitted to apply for food stamps at the same time they apply for SSI.

When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by Office of Eligibility Determinations (OED) on the application is the date of release of the applicant from the institution.

The Office of Eligibility Determinations shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food stamps within 30 days (or five days if expedited processing is appropriate) following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution. SSA shall notify OED of the date of release of the applicant from the institution. If, for any reason, OED is not notified on a timely basis of the applicant's release date, OED shall restore benefits to such applicant back to the date of release.

May Nelson
Secretary

DECLARATION OF EMERGENCY

Department of Transportation and Development Office of the Secretary

Under the authority of R.S. 49:953 (B), the Department of Transportation and Development has by Emergency Rule, to be published in the March 20, 1989, issue of the *Louisiana Register*, adopted the following Rule.

This rule, effective March 20, 1989, is being implemented by emergency rule so that the Federal Highway Administration will not hold highway funding for acquisitions or displacements or disapprove new activity projects or programs which will result in acquisition or displacement. Such withholding and disapproval will occur if the state is not in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act by April 2, 1989.

Title 70 DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT Part XV. Real Estate

Chapter 1. Uniform Relocation Assistance and Real Property Acquisition for Federally and Federally Assisted Programs and State Programs

§101. General

A. Purpose

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

a. To ensure that owners of real property to be acquired for federal and federally-assisted projects and state projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted and state land acquisition programs; and

b. To ensure that persons displaced as a direct result of federal or federally-assisted or state projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

c. To ensure that agencies implement these regulations in a manner that is efficient and cost effective.

B. Definitions

1. Agency. The term *Agency* means the federal agency, state, state agency, or person that acquires the real property or displaces a person.

a. Federal agency - The term *Federal agency* means any department, agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under federal law.

b. State agency - The term *State agency* means any department, agency or instrumentality of a state or of a political subdivision of a state, any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states, and any person who has the authority to acquire property by eminent domain under state law.

c. Lead agency - The term *lead agency* means the Department of Transportation acting through the Federal Highway Administration.

d. Acquiring agency - The term *acquiring agency* means a state agency, as defined in Paragraph 1, Subparagraph b of this Section, which has the authority to acquire property by eminent domain under state law, and a state agency or person which does not have such authority, unless any such agency or person is acquiring property pursuant to the provisions of Section 103, Subsection A, Paragraph 1, Subparagraph a, b, c.

e. Displacing agency - The term *displacing agency* means any federal agency carrying out a program or project, and any state, state agency, or person carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

2. Appraisal - The term *appraisal* means a written statement independently and impartially prepared by a qualified ap-

praiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

3. Business - The term *business* means any lawful activity, except a farm operation, that is conducted:

a. Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

b. Primarily for the sale of services to the public; or

c. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

d. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

4. Comparable replacement dwelling - The term *comparable replacement dwelling* means a dwelling which is:

a. Decent, safe and sanitary as described in Paragraph 6 of this Section;

b. Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the department may consider reasonable trade-offs for specific features when the replacement unit is *equal to or better than* the displacement dwelling. (See Section 115 of this Part);

c. Adequate in size to accommodate the occupants;

d. In an area not subject to unreasonable adverse environmental conditions;

e. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

f. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See Section 109, Subsection C, Paragraph 1, Subparagraph b.);

g. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Section 115 of this Part.); and

h. Within the financial means of the displaced person.

i. A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described in Section 109, Subsection A, Paragraph 3, all increased mortgage interest costs as described at Section 109, Subsection A, Paragraph 4 and all incidental expenses as described at Section 109, Subsection A, Paragraph 5, plus any additional amount required to be paid under Section 109 of this Part, last resort housing.

ii. A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this Part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at Section 109, Subsection B, Paragraph 2, Subparagraph b.

iii. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the department pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income. Such rental assistance must be paid under last resort housing provisions in Section 109 of this Part for a period of 42 months.

5. Contribute materially - The term *contribute materially* means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the department determines to be more equitable, a business or farm operation:

a. Had average annual gross receipts of at least \$5000; or

b. Had average annual net earnings of at least \$1000; or

c. Contributed at least 33¹/₃ percent of the owner's or operator's average annual gross income from all sources.

d. If the application of the above criteria creates an inequity or hardship in any given case, the department may approve the use of other criteria as determined appropriate.

6. Decent, safe and sanitary dwelling - The term *decent, safe and sanitary dwelling* means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the federal agency funding the project. The dwelling shall:

a. Be structurally sound, weathertight, and in good repair.

b. Contain a safe electrical wiring system adequate for lighting and other devices.

c. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climate conditions do not require such a system.

d. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a house-keeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

e. Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

f. For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or

use of the dwelling by such displaced person.

7. Displaced person

a. General. The term *displaced person* means any person who moves from the real property or moves his or her personal property from the real property:

i. As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project. This includes a person who does not meet the length of occupancy requirements of Section 105, Subsection C or D of the Uniform Act.

ii. As a direct result of rehabilitation or demolition for a project; or

iii. As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this Paragraph applies only for purposes of obtaining relocation assistance advisory services under Section 105, Subsection E, Paragraph 2, and moving expenses under Section 107, Subsection A, B, or C.

b. Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this Part:

i. A person who moves before the initiation of negotiations (see also Section 109, Subsection C, Paragraph 5), unless the department determines that the person was displaced as a direct result of the program or project;

ii. A person who initially enters into occupancy of the property after the date of its acquisition for the project;

iii. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

iv. A tenant-occupant of a dwelling who has been notified on a timely basis that he or she will not be displaced by the project, provided that:

a. The tenant is offered a reasonable opportunity to lease and occupy a suitable decent, safe and sanitary dwelling in the same building or nearby building on the real property;

b. The terms and conditions of continued occupancy are reasonable and set forth in a lease which is offered to the tenant; and

c. If the tenant is required to relocate temporarily, the conditions of the temporary relocation shall be reasonable; the tenant shall be reimbursed for the actual reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent/utility costs; and the temporarily occupied dwelling shall be decent, safe and sanitary.

v. An owner-occupant who moves as a result of an acquisition that is not subject to the requirements of Section 103 of this Part or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a federal or federally-assisted project is subject to this Part.);

vi. A person whom the department determines is not displaced as a direct result of a partial acquisition;

vii. A person who, after receiving a notice of relocation eligibility (described at Section 105, Subsection C, Paragraph 2), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual reloca-

tion obligations entered into after the effective date of the notice of relocation eligibility;

viii. An owner-occupant who voluntarily sells his or her property, as described at Section 103, Subsection A, Paragraph 1, Subparagraph a or c, after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the department will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this Part;

ix. A person who retains the right of use and occupancy of the real property for life following its acquisition by the department;

x. A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

xi. A person who is determined to be in unlawful occupancy (see Clause v of this Section) or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property.

8. Dwelling - The term *dwelling* means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

9. Farm operation - The term *farm operation* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

10. Federal financial assistance - The term *Federal financial assistance* means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

11. Initiation of negotiations - Unless a different action is specified in applicable federal program regulations, the term *initiation of negotiations* means the following:

a. Whenever the displacement results from the acquisition of the real property by a federal agency or the department, the *initiation of negotiations* means the delivery of the initial written offer of just compensation by the department to the owner or the owner's representative to purchase the real property for the project. However, if the federal agency or department issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the *initiation of negotiations* means the actual move of the person from the property.

b. Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a federal agency or a state agency), the *initiation of negotiations* means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

c. In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environ-

mental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or *Superfund*) the *initiation of negotiations* means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the federal government later decides to conduct a permanent relocation.

12. Mortgage - The term *mortgage* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.

13. Nonprofit organization. The term *nonprofit organization* means an organization that is exempt from paying federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

14. Owner of a dwelling - A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

a. Fee title, a life estate, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

b. An interest in a cooperative housing project which includes the right to occupy a dwelling; or

c. A contract to purchase any of the interests or estates described in Paragraph 14, Subparagraph a or b of this Section, or

d. Any other interest, including a partial interest, which in the judgment of the department warrants consideration as ownership.

15. Person - The term *person* means any individual, family, partnership, corporation, or association.

16. Project - The term *project* means any action or series of actions undertaken by a federal agency or with federal financial assistance that are designed primarily to further or complete an activity or program that will benefit the public as a whole. It does not include an action or series of actions undertaken by an individual or family with federal financial assistance if such assistance is intended primarily to assist or benefit such individual or family.

17. Salvage value - The term *salvage value* means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

18. Small business - A business having not more than 500 employees working at the site being acquired or permanently displaced by a program or project.

19. State - Any of the several states of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

20. Tenant - The term *tenant* means a person who has the temporary use and occupancy of real property owned by another.

21. Uneconomic remnant - The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's prop-

erty, and which the department has determined has little or no value or utility to the owner.

22. Unlawful occupancy - A person is considered to be in unlawful occupancy when such person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations for the acquisition of the occupied property. At the discretion of the department, squatters who occupy real property without the permission of the owner may be considered to be in unlawful occupancy. Technical violations of law and unlitigated violations of the terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not render a person's occupancy unlawful for purposes of this Section.

23. Uniform Act - The term *Uniform Act* means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

24. Utility costs - The term *utility costs* means expenses for heat, lights, water and sewer.

25. Utility facility - The term *utility facility* means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

26. Utility relocation - The term *utility relocation* means the adjustment of a utility facility required by the program or project undertaken by the department. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

C. No duplication of payments

No person shall receive any payment under this Part if that person receives a payment under federal, state, or local law which is determined by the department to have the same purpose and effect as such payment under this Part. (See Section 115 of this Part, Paragraph 4.)

D. Assurances, monitoring and corrective action

1. Assurances

a. Before a federal agency may approve any grant to, or contract or agreement with, the department under which federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act (Public Law 91-646 [1971]), the department must provide appropriate assurances that it will comply with the Uniform Act and this Part. The department's assurances regarding displacements shall be in accordance with Section 210 of the Uniform Act. The department's assurances regarding acquisition shall be in accordance with Section 305 of the Uniform Act and must contain specific reference to any state law which the department believes provides an exception to Sections 301 or 302 of the Uniform Act. If, in the judgment of the federal agency, Uniform Act compliance will be served, the department may provide these assurances at one time to cover all subsequent

federally-assisted programs or projects. The department may combine its Section 210 and Section 305 assurances in one document.

b. If a federal agency or the department provides federal financial assistance to a *person* causing displacement, such federal agency or the department is responsible for ensuring compliance with the requirements of this Part, notwithstanding the person's contractual obligation to the grantee to comply.

c. As an alternative to the assurance requirement described in Paragraph 1, Subparagraph a of this Section, a federal agency may provide federal financial assistance to the department after it has accepted a certification by the department in accordance with the requirements in Section 113 of this Part.

2. Monitoring and corrective action. The federal agency will monitor compliance with this Part, and the department shall take whatever corrective action is necessary to comply with the Uniform Act and this Part. The federal agency may also apply sanctions in accordance with applicable program regulations. (Also see Subsection C, Section 113.)

3. Prevention of fraud, waste, and mismanagement. The department shall take appropriate measures to carry out this Part in a manner that minimizes fraud, waste, and mismanagement.

E. Manner of notices

Each notice which the department is required to provide to a property owner or occupant under this Part, except the notice described at Section 103, Subsection B, Paragraph 2, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in department files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

F. Administration of jointly-funded projects

Whenever two or more federal agencies provide financial assistance to an agency or agencies, other than a federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the federal agencies may by agreement designate one such agency as the cognizant federal agency. In the unlikely event that agreement among the agencies cannot be reached as to which agency shall be the cognizant federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally-assisted activities which are subject to its terms and cite any policies and procedures, in addition to this Part, that are applicable to the activities under the agreement. Under the agreement, the cognizant federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this Part. All federally-assisted activities under the agreement shall be deemed a project for the purposes of this Part.

G. Federal agency waiver of regulations

The federal agency funding the project may waive any requirement in this Part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this Part. Any request for a waiver shall be justified on a case-by-case basis.

H. Compliance with other laws and regulations

The implementation of this Part shall be in compliance

with all applicable laws and implementing regulations, including the following:

a. Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.);

b. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

c. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended;

d. The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

e. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.);

f. Executive Order 12250 Leadership and Coordination of Non-Discrimination Laws;

g. Executive Order 11063 - Equal Opportunity and Housing, as amended by Executive Order 12259;

h. Executive Order 11246 - Equal Employment Opportunity;

i. Executive Order 11625 Minority Business Enterprise;

j. Executive Order 12259 - Leadership and Coordination of Fair Housing in Federal Programs;

k. The Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

l. Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands;

m. The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

I. Recordkeeping and reports

1. Records. The department shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this Part. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this Part.

2. Confidentiality of records. Records maintained by the department in accordance with this Part are confidential regarding their use as public information, unless applicable law provides otherwise.

3. Reports. The department shall submit a report of its real property acquisition and displacement activities under this Part if required by the federal agency funding the project. A report will not be required more frequently than every three years, or as the Uniform Act provides, unless the federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Section 117 of this Part.

J. Appeals

1. General. The department shall promptly review appeals in accordance with the requirements of applicable law and this Part.

2. Actions which may be appealed. Any aggrieved person may file a written appeal with the department in any case in which the person believes that the department has failed to properly consider the person's application for assistance under this Part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under Section 103, Subsection F or G, or a relocation payment required under this Part. The department shall consider a written appeal regardless of form.

3. Time limit for initiating appeal. The department may set a reasonable time limit for a person to file an appeal. The

time limit shall not be less than 60 days after the person receives written notification of the department's determination on the person's claim.

4. Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

5. Review of files by person making appeal. The department shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the department. The department may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

6. Scope of review of appeal. In deciding an appeal, the department shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

7. Determination and notification after appeal. Promptly after receipt of all information submitted by a person in support of an appeal, the department shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the department shall advise the person of his or her right to seek judicial review.

8. Department official to review appeal. The department official conducting the review of the appeal shall be either the head of the department or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

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§103. Real Property Acquisition

A. Applicability of acquisition requirements

1. General. The requirements of this Subpart apply to any acquisition of real property for a department project, and to projects where there is department financial assistance in any part of project costs except for:

a. Voluntary transactions when the department or the acquiring agency has the power of eminent domain, but it will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

b. The acquisition of real property from a federal agency, state, or state agency, if the department or the acquiring agency does not have the authority to acquire the property through condemnation.

c. Projects or programs undertaken by the department or an acquiring agency or person that receives federal financial assistance but does not have authority to acquire property by eminent domain, provided that the department or the acquiring agency shall:

i. Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

ii. Inform the owner of what it believes to be fair market value of the property, based on an appraisal.

2. Less-than-full-fee interest in real property. In addition to fee simple title, the requirements of this Subpart apply to the

acquisition of fee title, subject to a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See Section 115, Subsection B, Paragraph 1.)

3. Federally-assisted projects. For projects receiving federal financial assistance the provisions of Section 103, Subsections B, C, D, and E apply to the extent practicable under state law. (See Section 101, Subsection D, Paragraph 1.)

B. Basic acquisition policies

1. Expeditious acquisition. The department shall make every reasonable effort to acquire the real property expeditiously by negotiation.

2. Notice to owner. As soon as feasible, the owner shall be notified of the department's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this Part. (See also Section 105, Subsection C.)

3. Appraisal, waiver thereof, and invitation to owner.

a. Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in Subsection B, Paragraph 3, Subparagraph b of this Section, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

b. An appraisal is not required if the owner is donating the property and releases the department from this obligation, or the department determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.

4. Establishment and offer of just compensation. Before the initiation of negotiations, the department shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also Subsection D.) Promptly thereafter, the department shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

5. Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

a. A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

b. A description and location identification of the real property and the interest in the real property to be acquired.

c. An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

6. Basic negotiation procedures. The department shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, includ-

ing the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Subsection F. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The department shall consider the owner's presentation.

7. Updating offer of just compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the department shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the department shall promptly reestablish just compensation and offer that amount to the owner in writing.

8. Coercive action. The department shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

9. Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized department official approves such administrative settlement as being reasonable, prudent, and in the public interest. When an administrative settlement is approved, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

10. Payment before taking possession. Before requiring the owner to surrender possession of the real property, the department shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the department's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the department may obtain a right-of-entry for construction purposes before making payment available to an owner.

11. Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the department shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See Section 101, Subsection B, Paragraph 21.)

12. Inverse condemnation. If the department intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

13. Fair rental. If the department permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the department on short notice, the rent shall not exceed the fair market rent for such occupancy.

C. Criteria for appraisals

1. Standards of appraisal. The format and level of docu-

mentation for an appraisal depend on the complexity of the appraisal problem. The department shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

a. The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

b. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property.

c. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the department, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

d. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

e. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

f. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

2. Influence of the project on just compensation. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

3. Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at Section 101, Subsection B, Paragraph 17.) of the retained improvement.

4. Qualifications of appraisers. The department shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The department shall

review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

5. Conflict of interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the department that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the department may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

D. Review of appraisals

The department shall have an appraisal review process and, at a minimum:

a. A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

b. If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with Subsection C to support an approved or recommended value.

c. The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

E. Acquisition of tenant-owned improvements

1. Acquisition of improvements. When acquiring any interest in real property, the department shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

2. Improvements considered to be real property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

3. Appraisal and establishment of just compensation for tenant-owned improvements. Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at Section 101, Subsection B, Paragraph 20.)

4. Special conditions. No payment shall be made to a tenant-owner for any real property improvement unless:

a. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the department all of the tenant-owner's right, title, and interest in the improvement; and

b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

c. The payment does not result in the duplication of any

compensation otherwise authorized by law.

5. Alternative compensation. Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

F. Expenses incidental to transfer of title to the Department

1. The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

a. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the department. However, the department is not required to pay costs solely required to perfect the owner's title to the real property; and

b. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

c. The pro rata portion of any prepaid real property taxes which are allocable to the period after the department obtains title to the property or effective possession of it, whichever is earlier.

2. Whenever feasible, the department shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the department.

G. Certain litigation expenses

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

a. The final judgment of the court is that the department cannot acquire the real property by condemnation; or

b. The condemnation proceeding is abandoned by the department other than under an agreed-upon settlement; or

c. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the department effects a settlement of such proceeding.

H. Donations

An owner whose real property is being acquired may, after being fully informed by the department of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the department as such owner shall determine. The department is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the department from such obligation, except as provided in Subsection B, Paragraph 3, Subparagraph b of this Section.

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§105. General Relocation Requirements

A. Purpose

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this Part.

B. Applicability

These requirements apply to the relocation of any displaced person as defined at Section 101, Subsection B, Paragraph 7.

C. Relocation notices

1. General information notice. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the department's relocation program which does at least the following:

a. Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

b. Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

c. Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see Paragraph (3) of this Section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

d. Describes the person's right to appeal the department's determination as to a person's application for assistance for which a person may be eligible under this Part.

2. Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Section 101, Subsection B, Paragraph 11.) for the occupied property. When this occurs, the department shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

3. Ninety-day notice

a. General. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

b. Timing of notice. The department may issue the notice 90 days before it expects the person to be displaced or earlier.

c. Content of notice. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See Subsection D, Paragraph 1.)

d. Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the department determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the department's determination shall be included in the applicable case file.

D. Availability of comparable replacement dwelling before displacement

1. General. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at Section 101, Subsection B, Paragraph 4.) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

a. The person is informed of its location; and

b. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

c. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

2. Circumstances permitting waiver. The federal agency funding the project may grant a waiver of the policy in Paragraph (a) of this Section in any case where it is demonstrated that a person must move because of:

a. A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

b. A presidentially declared national emergency; or

c. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

3. Basic conditions of emergency move. Whenever a person is required to relocate for a temporary period because of an emergency as described in Paragraph 2 of this Section, the department shall:

a. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

b. Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

c. Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

E. Relocation planning, advisory services, and coordination

1. Relocation planning. During the early stages of development, federal and federal-aid and state programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the department which will cause displacement, and should include an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

a. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

b. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of last resort housing actions should be instituted.

c. An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

d. Consideration of any special relocation advisory serv-

ices that may be necessary from the displacing agency and other cooperating agencies.

2. Loans for planning and preliminary expenses. In the event that the department elects to consider using the duplicative provision in Section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the department will establish criteria and procedures for such use upon the request of the federal agency funding the program or project.

3. Relocation assistance advisory services

a. General. The department shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in Paragraph 3, Subparagraph b of this Section. If the department determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

b. Services to be provided. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

i. Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

ii. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Section D, Paragraph 1.

(a) As soon as feasible, the department shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Section 109, Subsection C, Paragraph 1 and 2) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(b) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See Section 101, Subsection B, Paragraph 4 and 6.) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(c) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(d) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

iii. Provide current and continuing information on the

availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

iv. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

v. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

vi. Any person who occupies property acquired by the department, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the department.

4. Coordination of relocation activities. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see Section 101, Subsection F.)

F. Eviction for cause

Eviction for cause must conform to applicable state and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this Part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later. This Section applies only if the department had intended to displace the person.

G. General requirements -- claims for relocation payments

1. Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

2. Expeditious payments. The department shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

3. Advance payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the department shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

4. Time for filing

a. All claims for a relocation payment shall be filed with the department within 18 months after:

i. For tenants, the date of displacement;

ii. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

b. This time period shall be waived by the department for good cause.

5. Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

6. Deductions from relocation payments. The department shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a federal agency shall, and the department may, deduct from relocation payments any rent that the displaced person owes the department; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Subsection D of this Section. The department shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

7. Notice of denial of claim. If the department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination and the procedures for appealing that determination.

H. Relocation payments not considered as income

No relocation payment received by a displaced person under this Part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law, except for any federal law providing low-income housing assistance.

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§107. Payments for Moving and Related Expenses

A. Payment for actual reasonable moving and related expenses--residential moves

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at Section 101, Subsection B, Paragraph 7) is entitled to payment of his or her actual moving and related expenses, as the department determines to be reasonable and necessary, including expenses for:

a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the department determines that relocation beyond 50 miles is justified.

b. Packing, crating, unpacking, and uncrating of the personal property.

c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other per-

sonal property.

d. Storage of the personal property for a period not to exceed 12 months, unless the department determines that a longer period is necessary.

e. Insurance for the replacement value of the property in connection with the move and necessary storage.

f. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

g. Other moving-related expenses that are not listed as ineligible under Subsection E of this Section, as the department determines to be reasonable and necessary.

B. Fixed payment for moving expenses -- residential moves

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under Subsection A of this Section. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration, except that the expense and dislocation allowance to a person occupying a furnished one-room unit shared by more than one other person, or a person whose residential move is performed by the department at no cost to the person, shall be limited to \$50.

C. Payment for actual reasonable moving and related expenses--nonresidential moves

1. Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at Section 101, Subsection B, Paragraph 7) is entitled to payment for such actual moving and related expenses, as the department determines to be reasonable and necessary, including expenses for:

a. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the department determines that relocation beyond 50 miles is justified.

b. Packing, crating, unpacking, and uncrating of the personal property.

c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at Subsection C, Paragraph 1, Subparagraph l. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

d. Storage of the personal property for a period not to exceed 12 months, unless the department determines that a longer period is necessary.

e. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

f. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

g. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or neg-

ligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

h. Professional services necessary for:

i. Planning the move of the personal property,

ii. Moving the personal property, and

iii. Installing the relocated personal property at the replacement location.

i. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

j. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

i. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

ii. The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

k. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

l. Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

i. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

ii. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the department's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

m. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the department determines to be reasonable, which are incurred in searching for a replacement location, including:

i. Transportation;

ii. Meals and lodging away from home;

iii. Time spent searching, based on reasonable salary or earnings;

iv. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

n. Other moving-related expenses that are not listed as ineligible under Section E of this Section, as the department determines to be reasonable and necessary.

2. Notification and inspection. The following requirements apply to payments under this Section:

a. The department shall inform the displaced person, in writing, of the requirements of Paragraph 2, Subparagraph a and b of this Section as soon as possible after the initiation of negotiations. This information may be included in the relocation infor-

mation provided to the displaced person as set forth in Subsection C of this Section.

b. The displaced person must provide the department reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the department may waive this notice requirement after documenting its file accordingly.

c. The displaced person must permit the department to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

3. Self-moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the department may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the department or prepared by qualified staff. At the department's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

4. Transfer of ownership. Upon request and in accordance with applicable law, the claimant shall transfer to the department ownership of any personal property that has not been moved, sold, or traded in.

5. Advertising signs. The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

a. The depreciated reproduction cost of the sign, as determined by the department, less the proceeds from its sale; or

b. The estimated cost of moving the sign, but with no allowance for storage.

D. Fixed payment for moving expenses --nonresidential moves

1. Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by Subsection C and F of this Section. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with Paragraph 5 of this Section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the department determines that:

a. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

b. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the department determines that it will not suffer a substantial loss of its existing patronage; and

c. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the department, and which are under the same ownership and engaged in the same or similar business activities.

d. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

e. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement (see Section 101, Subsection B, Paragraph 5).

2. Determining the number of businesses. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- a. The same premises and equipment are shared;
- b. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- c. The entities are held out to the public, and to those customarily dealing with them, as one business; and
- d. The same person or closely related persons own, control, or manage the affairs of the entities.

3. Farm operation. A displaced farm operation (defined at Section 101, Subsection B, Paragraph 9) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with Paragraph 5 of this Section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the department determines that:

- a. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- b. The partial acquisition caused a substantial change in the nature of the farm operation.

4. Nonprofit organization. A displaced nonprofit organization may choose a fixed payment of \$2,500, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the department determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the department demonstrates otherwise.

5. Average annual net earnings of a business or farm operation. The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the department determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the department proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the department determines is satisfactory.

E. Ineligible moving and related expenses

A displaced person is not entitled to payment for:

- a. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under Section 109, Subsection A, Paragraph 3, Subparagraph d, Clause iii; or
- b. Interest on a loan to cover moving expenses; or
- c. Loss of goodwill; or

- d. Loss of profits; or
- e. Loss of trained employees; or
- f. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in Subsection F, Paragraph 1, Subparagraph j of this Section; or
- g. Personal injury; or
- h. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the department; or
- i. Expenses for searching for a replacement dwelling; or
- j. Physical changes to the real property at the replacement location of a business or farm operation except as provided in Subsection C, Paragraph 1, Subparagraph c and Subsection F, Paragraph 1 of this Section; or
- k. Costs for storage of personal property on real property already owned or leased by the displaced person.

F. Reestablishment expenses -- nonresidential moves

In addition to the payments available under Subsection C of this Section, a small business, as defined in Section 101, Subsection B, Paragraph 18, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

- a. Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the department. They may include, but are not limited to, the following:
 - i. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.
 - ii. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - iii. Construction and installation costs, not to exceed \$1,500 for exterior signing to advertise the business.
 - iv. Provision of utilities from right-of-way to improvements on the replacement site.
 - v. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.
 - vi. Licenses, fees and permits when not paid as part of moving expenses.
 - vii. Feasibility surveys, soil testing and marketing studies.
 - viii. Advertisement of replacement location, not to exceed \$1,500.
 - ix. Professional services in connection with the purchase or lease of a replacement site.
 - x. Increased costs of operation during the first two years at the replacement site, not to exceed \$5,000, for such items as:
 - (a) Lease or rental charges;
 - (b) Personal or real property taxes;
 - (c) Insurance premiums; and
 - (d) Utility charges, excluding impact fees.
 - xi. Impact fees or one-time assessments for anticipated heavy utility usage.
 - xii. Other items that the department considers essential to the reestablishment of the business.
 - xiii. Expenses in excess of the regulatory maximums set forth in Subsection F, Subparagraph a, Clause iii, viii, and x of this Section may be considered eligible if large and legitimate

disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the department, be waived by the federal agency funding the program or project, but in no event shall total costs payable under this Section exceed the \$10,000 statutory maximum.

b. Ineligible expenses. The following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

i. Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.

ii. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

iii. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in Subsection F. Subparagraph a, Clause v of this Section.

iv. Interest on money borrowed to make the move or purchase the replacement property.

v. Payment to a part-time business in the home which does not contribute materially to the household income.

vi. Payment to a person whose sole business at a displacement dwelling is the rental of such dwelling to others.

G. Discretionary utility relocation payments

1. Whenever a program or project undertaken by the department causes the relocation of a utility facility (see Section 101, Subsection B, Paragraph 25 and 26) and the relocation of the facility creates extraordinary expenses for its owner, the department may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

a. The utility facility legally occupies state or local government property, or property over which the state or local government has an easement or right-of-way; and

b. The utility facility's right of occupancy thereon is pursuant to state law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

c. Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the department; and

e. There is no federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the department's program or project; and

e. State or local government reimbursement for utility moving costs or payment of such costs by the department is permitted by state statute.

2. For the purposes of this Section the term *extraordinary expenses* means those expenses which, in the opinion of the department, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

3. A relocation payment to a utility facility owner for moving costs under this Section may not exceed the cost to functionally restore the service disrupted by the federally-assisted

program or project, less any increase in value of the new facility and salvage value of the old facility. The department and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Section 115, Subsection D, Paragraph 1.)

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§109. Replacement Housing Payments

A. Replacement housing payment for 180-day homeowner-occupants

1. Eligibility. A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

a. Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

c. Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the department may extend such one year period for good cause):

i. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

ii. The date the person moves from the displacement dwelling.

2. Amount of payment. The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also Subsection D of this Section.) The payment under this Subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

a. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Subsection A, Paragraph 3 of this Section; and

b. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Subsection A, Paragraph 4 of this Section; and

c. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Subsection A, Paragraph 5 of this Section.

3. Price differential

a. Basic computation. The price differential to be paid under Subsection A, Paragraph 2, Subparagraph a of this Section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

i. The reasonable cost of a comparable replacement dwelling as determined in accordance with Subsection C, Paragraph 1 of this Section; or

ii. The purchase price of the decent, safe, and sanitary

replacement dwelling actually purchased and occupied by the displaced person.

b. Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

c. Insurance proceeds. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see Section 101, Subsection C.)

d. Owner retention of displacement dwelling. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

i. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

ii. The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at Section 101, Subsection B, Paragraph 6); and

iii. The current fair market value for residential use of the replacement site (see Section 115 of this Part, Section 109, Subsection A, Paragraph 3, Subparagraph d, Clause iii), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

iv. The retention value of the dwelling, if such retention value is reflected in the acquisition cost used when computing the replacement housing payment.

4. Increased mortgage interest costs. The department shall determine the factors to be used in computing the amount to be paid to a displaced person under Subsection A, Paragraph 2, Subparagraph b of this Section. The payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Subsection A, Paragraph 4, Subparagraphs a-e of this Section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

a. The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly. (See Section 115.)

In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

b. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling regardless of the term of the new mortgage.

c. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

d. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

i. They are not paid as incidental expenses;

ii. They do not exceed rates normal to similar real estate transactions in the area;

iii. The department determines them to be necessary; and

iv. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this Section.

e. The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and the payment shall be made available at the time of closing on the replacement dwelling.

5. Incidental expenses. The incidental expenses to be paid under Subsection A, Paragraph 2, Subparagraph c of this Section or Subsection B, Paragraph 3, Subparagraph a are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

a. Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

b. Lender, FHA, or VA application and appraisal fees;

c. Loan origination or assumption fees that do not represent prepaid interest;

d. Certification of structural soundness and termite inspection when required;

e. Credit report;

f. Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling;

g. Escrow agent's fee;

h. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling);

i. Such other costs as the department determines to be incidental to the purchase.

6. Rental assistance payment for 180-day homeowner. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under Paragraph 1 of this Subsection but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with Subsection B, Paragraph 2.

B. Replacement housing payment for 90-day occupants

1. Eligibility. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with Paragraph 2 of this Subsection, or downpayment assistance, as computed in accordance with Paragraph 3 of this Subsection, if such dis-

placed person:

a. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

b. Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year (unless the department extends this period for good cause) after:

i. For a tenant, the date he or she moves from the displacement dwelling, or

ii. For an owner-occupant, the later of:

(a) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(b) The date he or she moves from the displacement dwelling.

2. Rental assistance payment

a. Amount of payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also Subsection D of this Section.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

i. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

ii. The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

b. Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is the lesser of:

i. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the department. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or

ii. Thirty percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in Paragraph 2, Subparagraph b, Clause i of this Subsection. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.)

c. Manner of disbursement. A rental assistance payment may, at the department's discretion, be disbursed in either a lump sum or in installments. However, except as limited by Subsection C, Paragraph 6 of this Section, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

3. Downpayment assistance payment

a. Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under Paragraph 2 of this Subsection if the person rented a comparable replacement dwelling. At the discretion of the department, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner

would receive under Subsection A, Paragraph 2 of this Section if he or she met the 180-day occupancy requirement. The department's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under Subsection A, Paragraph 1 of this Section is not eligible for this payment. (See also Section 115 of this Part, Section B, Paragraph 3 of this Section.)

b. Application of payment. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

C. Additional rules governing replacement housing payments

1. Determining cost of comparable replacement dwelling. The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at Section 101, Subsection B, Paragraph 4).

a. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Section 105, Subsection E, Paragraph 1, Subparagraph b). An obviously overpriced dwelling may be ignored.

b. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the department may offer to purchase the entire property. If the owner refuses to sell the remainder to the department, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

c. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

2. Basic rights of persons to be displaced. Notwithstanding any provision of this Subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this Part. The department shall not require any displaced person to accept a dwelling provided by the department under these procedures (unless the department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

3. Purchase of replacement dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

a. Purchases a dwelling; or

- b. Purchases and rehabilitates a substandard dwelling; or
- c. Relocates a dwelling which he or she owns or purchases; or
- d. Constructs a dwelling on a site he or she owns or purchases; or
- e. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

f. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

4. Occupancy requirements for displacement or replacement dwelling. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

a. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the department; or

b. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the department.

5. Conversion of payment. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Subsection B, Paragraph 2 of this Section is eligible to receive a payment under Subsection A or B, Paragraph 3 of this Section if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Subsection A or Subsection B, Paragraph 3.

6. Payment after death. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

a. The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

b. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

D. Replacement housing of last resort

1. Determination to provide last resort housing. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in Subsection A or Subsection B, as appropriate, the department shall provide additional or alternative assistance under the provisions of this Subpart. Any decision to provide last resort housing assistance must be adequately justified either:

a. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

i. The availability of comparable housing in the project or program area; and

ii. The resources available to provide comparable hous-

ing; and

iii. The individual circumstances of the displaced person; or

b. By a determination that:

i. There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore a case-by-case justification for last resort housing assistance is not necessary; and

ii. A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

iii. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting for less expensive replacement housing to become available?)

2. Basic rights of persons to be displaced. Notwithstanding any provision of this Subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this Part. The department shall not require any displaced person to accept a dwelling provided by the department under these procedures (unless the department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

3. Methods of providing replacement housing. The department shall have broad latitude in implementing this Subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

a. The methods of providing housing of last resort include, but are not limited to:

i. A replacement housing payment in excess of the limits set forth in Subsection A or B or this Section. A rental assistance subsidy under this Section may be provided in installments or in a lump sum at the department's discretion.

ii. Rehabilitation of and/or additions to an existing replacement dwelling.

iii. The construction of a new replacement dwelling.

iv. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

v. The relocation, and, if necessary, rehabilitation of a dwelling.

vi. The purchase of land and/or a replacement dwelling by the department and subsequent sale or lease to, or exchange with a displaced person.

vii. The removal of barriers to the handicapped.

viii. The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

b. Under special circumstances, modified methods of providing housing of last resort permit consideration of:

i. Replacement housing based on space and physical characteristics different from those in the displacement dwelling. (See Section 115, Section 109, Subsection D.)

ii. Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence.

iii. The financial means of a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements when comparable replacement rental housing is not available at rental rates within 30 percent of the person's gross monthly household income.

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§111. Mobile Homes

A. Applicability

This Section describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this Part. Except as modified by this Section, such a displaced person is entitled to a moving expense payment in accordance with Section 107 and a replacement housing payment in accordance with Section 109 to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

B. Moving and related expenses - mobile homes.

1. A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Section 107, Subsection A. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Section 107, Subsection C. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at Subsection C, Paragraph 1, Subparagraph C, the owner is not eligible for payment for moving the mobile home.

2. The following rules apply to payments for actual moving expenses under Section 107, Subsection A:

a. A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility hook-up charges.

b. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the department determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

c. A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the department determines that payment of the fee is necessary to effect relocation.

C. Replacement housing payment for 180-day mobile homeowner-occupants

1. A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under Section 109, Subsection A if:

a. The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

b. The person meets the other basic eligibility requirements at Section 109, Subsection A, Paragraph 1; and

c. The department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the department but the owner is displaced from the mobile home because the department determines that the mobile home:

i. Is not and cannot economically be made decent, safe, and sanitary; or

ii. Cannot be relocated without substantial damage or unreasonable cost; or

iii. Cannot be relocated because there is no available comparable replacement site; or

iv. Cannot be relocated because it does not meet mobile home park entrance requirements.

2. If the mobile home is not acquired, and the department determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at Section 109, Subsection A, Paragraph 3, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

D. Replacement housing payment for 90-day mobile home occupants

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under Section 109, Subsection B if:

a. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

b. The person meets the other basic eligibility requirements at Section 109, Subsection B, Paragraph 1; and

c. The department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the department but the owner or tenant is displaced from the mobile home because of one of the circumstances described at Subsection C, Paragraph 1, Subparagraph C.

E. Additional rules governing relocation payments to mobile home occupants

1. Replacement housing payment based on dwelling and site. Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also Section 109, Subsection C, Paragraph 2.)

2. Cost of comparable replacement dwelling

a. If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable

replacement dwelling.

b. If the department determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the department may determine that, for purposes of computing the price differential under Section 109, Subsection A, Paragraph 3, the cost of a comparable replacement dwelling is the sum of:

- i. The value of the mobile home,
- ii. The cost of any necessary repairs or modifications, and
- iii. The estimated cost of moving the mobile home to a replacement site.

3. Initiation of negotiations. If the mobile home is not actually acquired, but the occupant is considered displaced under this Part, the *initiation of negotiations* is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this Part.

4. Person moves mobile home. If the owner is reimbursed for the cost of moving the mobile home under this Part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

5. Partial acquisition of mobile home park. The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the department determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this Part.

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§113. Certification

A. Purpose

This Section permits the department to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with state laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by Section 101, Subsection D, of this Part.

B. Certification application

1. General

a. The state governor, or his or her designee, on behalf of any state agency or agencies may apply for certification in accordance with this Section.

b. The governor may designate a lead agency to administer certification in accordance with this Section.

2. Responsibilities of the Department

a. The department's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

b. The department application shall contain a statement that the department shall carry out the responsibilities imposed by the Uniform Act. The department application shall include a copy of the state laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

3. Responsibilities of governor or his or her designee

a. The governor, or his or her designee, shall approve or disapprove the department's application.

b. The governor, or his or her designee, shall have discretion to disapprove any state agency application.

c. The governor, or his or her designee, shall analyze state law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

d. The governor, or his or her designee, shall determine in writing whether the department's professional staffing is adequate to fully implement the state law and regulations.

e. If the department's application is approved by the governor, or his or her designee, it shall be transmitted to the federal agency providing financial assistance to the department, with an information copy to the federal lead agency.

f. When a determination is received from the federal funding agency, the governor, or his or her designee, shall notify the state agency.

4. Responsibilities of federal funding agency

a. The federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

b. The federal funding agency shall transmit all complete, approved applications, for certification to the federal lead agency.

c. At the same time as transmission to the federal lead agency or during the public comment period, the federal funding agency shall provide its written assessment of the department's capabilities to operate under certification.

d. The federal funding agency shall promptly notify the governor, or his or her designee, of the federal lead agency's determination described in Paragraph 5, Subparagraph b of this Section.

e. The federal funding agency shall recognize the department's certification within 30 days of the federal lead agency's finding.

5. Responsibilities of federal lead agency

a. The lead agency shall:

i. accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in Clauses ii, iii and iv, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

ii. analyze the extent to which the provisions of the applicable state laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

iii. provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the state, as well as the views of interested federal and state agencies; and consider all comments received as a result;

iv. consider any extraordinary information it believes to be relevant.

b. After considering all the information provided, the lead agency shall either make a finding that the department will carry

out the federal agency's Uniform Act responsibility in accordance with state laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the federal funding agency.

C. Monitoring and corrective action

1. The federal lead agency shall, in coordination with other federal agencies, monitor from time to time department implementation of programs or projects conducted under the certification process and the state agency shall make available any information required for this purpose.

2. A federal agency that has accepted the department's certification pursuant to this Subpart may withhold its approval of any federal financial assistance to or contract or cooperative agreement with the department if it is found by the federal agency to have failed to comply with the applicable state law and regulations.

3. A federal agency may, after consultation with the lead agency, and notice and consultation with the governor, or his or her designee, rescind any previous approval provided under this Subpart if the certifying state agency fails to comply with its certification or with applicable state law and regulations.

4. Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on state agency implementation of Section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected federal or state agencies.

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§115. Additional Information

A. General

1. Definition of comparable replacement dwelling

a. The requirement in Section 101, Subsection B, Paragraph 4, Subparagraph 6 that a comparable replacement dwelling be *functionally equivalent* to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

b. For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is *adequate to accommodate* the displaced person) may be found to be *functionally equivalent* to a larger but very run-down substandard displacement dwelling.

c. Section 101, Subsection B, Paragraph 4, Subparagraph g requires that a comparable replacement dwelling for a person who is not receiving assistance under any government

housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

d. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

e. However, nothing in this Part prohibits the department from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the department is obligated to inform the person of his or her options under this Part. (If a person accepts assistance under a government housing program, the rental assistance payment under Section 109, Subsection B would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

2. Persons not displaced

Section 101, Subsection B, Paragraph 7, Subparagraph b, Clause iv, recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered *displaced persons* under this Part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation. It is also noted that any person who disagrees with the department's determination that he or she is not a displaced person under this Part may file an appeal in accordance with Section 101, Subsection J.

3. Initiation of negotiations

This Section of the Part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

4. No duplication of payments

This section prohibits the department from making a pay-

ment to a person under these regulations that would duplicate another payment the person receives under federal, state, or local law. The department is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the department's knowledge at the time a payment under these regulations is computed.

5. Reports

This Paragraph allows federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this Part, a basic report form (see Section 117 of this Part) has been developed which, with only minor modifications, would be used in all federal and federally-assisted programs or projects.

B. Real Property Acquisition

1. Less-than-full-fee interest in real property

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the department may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

2. Establishment of offer of just compensation

The initial offer to the property owner may not be less than the amount of the department's approved appraisal, but may exceed that amount if the department determines that a greater amount reflects just compensation for the property.

3. Basic negotiation procedures

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this Section is not intended to require such contact in all cases.

4. Administrative settlement

a. This Section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

b. All relevant facts and circumstances should be considered by the department official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

5. Payment before taking possession

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

6. Fair rental

Section 301(6) of the Uniform Act limits what the department may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the department on short notice. Such rent may not exceed *the fair rental value . . . to a short-term occupier*. The department's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

7. Standards of appraisal

In Section 103, Subsection C, Paragraph 1, Subpara-

graph C, it is intended that all relevant and reliable approaches to value be utilized. However, where the department determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

8. Influence of the project on just compensation

a. As used in this Section, the term *project* is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

b. Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

9. Conflict of interest

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, Section 103, Subsection C, Paragraph 5 provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with Section 103, Subsection D. This includes appraisals of real property valued at \$2,500, or less.

10. Review of appraisals

a. This Section recognizes that agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within department discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

b. Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

11. Expenses incidental to transfer of title to the department.

Generally, the department is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the department's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

C. General Relocation Requirements

1. Availability of comparable replacement dwelling before displacement

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Section 105,

Subsection D, Paragraph 1 requires that, *Where possible, three or more comparable replacement dwellings shall be made available.* Thus the basic standard for the number of referrals required under this Section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the department make fewer than three referrals.

2. Relocation assistance advisory services

Section 105, Subsection E, Paragraph 3, Subparagraph b, Clause ii, Subclause (c) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

3. Eviction for cause

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the department has determined that a person has satisfied such requirements, there is no basis for changing that determination.

4. General requirements - claims for relocation payments

Section 105, Subsection G, Paragraph 1 allows the department to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in Section 107, Subsection C, Paragraph 3.

D. Payment for Moving and Related Expenses

1. Discretionary utility relocation payments.

Section 107, Subsection G, Paragraph 3, describes the issues which must be agreed to between the department and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

E. Replacement Housing Payments

1. Replacement housing payment for 180-day homeowner-occupants.

a. The provision in Section 109, Subsection A, Paragraph 3, Subparagraph d, Clause iii to use the current fair market value for residential use does not mean the department must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

b. The provision in Section 109, Subsection A, Paragraph 4 set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages.

c. In any case where the person elects to obtain a replacement mortgage of a lesser amount than the one computed in the buydown determination, then the amount computed as the *buydown* payment must be adjusted to reflect the change in mortgage amount. This can be done through proration by dividing the amount of the actual replacement mortgage by the computed eligible replacement mortgage amount. This calculation provides a percentage factor which can then be applied to the computed *buydown* amount resulting in an adjusted increased mortgage interest payment.

2. Replacement housing payment for 90-day occupants

a. The downpayment assistance provisions in Section 109, Subsection B, Paragraph 3 are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for department discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such department discretion may be exercised in a selective or indiscriminate fashion. The department should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the department's programs or projects.

b. For purposes of this Section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the department determines is necessary.

3. Basic rights of persons to be displaced

This Paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under Section 109, Subsection A, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at Section 101, Subsection B, Paragraph 14. The department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the department would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the department may provide additional purchase assistance or rental assistance.

4. Methods of providing replacement housing

a. The use of cost effective means of providing replacement housing is implied throughout the Subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

b. Section 109, Subsection D, Paragraph 3, Subparagraph b, permits the use of last resort housing, in special cases, which may vary from the usual standards of comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

c. One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

d. Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

F. Mobile Homes

1. Replacement housing payment for 180-day mobile homeowner-occupants

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under Section 109, Subsection A and a replacement housing payment for a site computed under Section 109, Subsection B. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under Section 109, Subsection A to assist in the purchase of a replacement site or, under Section 109, Subsection B, to assist in renting a replacement site.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 4601-4655, 52 FR 45667, 49 CFR 1.48 (dd), and R.S. 38:3107.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR (March 20, 1989).

§117. Statistical Report Form

A. General

1. Report coverage. This report covers all relocation and real property acquisition activities under a federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. Report period. Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1 - September 30.

3. Where and when to submit report. Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. How to report relocation payments. The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. How to report dollar amounts. Round off all money entries in Parts B and C to the nearest dollar.

6. Statutory references. The references in Part B indicate the Section of the Uniform Act that authorizes the cost.

B. Persons displaced

Report in Part A the number of persons (*households, businesses, including nonprofit organizations, and farms*) who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category *households* includes all families and individuals. A family shall be reported as *one* household, not by the number of people in the family unit. Persons shall be reported according to their status as *owners* or *tenants* of the property from which displaced.

C. Relocation payments and expenses

1. Columns (A) and (B). Report in Column (A) the number of claims approved during the report year. Report in Column (B) the total amount represented by the claims reported in Column (A).

2. Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

3. Lines 12A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with Section 206(a) of the Uniform Act. Report in Column (B) the total financial assist-

ance under Section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under Section 203 or Section 204 as well as under Section 206(a) of the Uniform Act, report the household as a claim in Column (A), but in Column (B) report only the amount of financial assistance allocable to Section 206(a). For example, if a tenant-household receives a payment of \$7000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

4. Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under Section 205 of the Uniform Act.

5. Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

D. Real property acquisition subject to Uniform Act

1. Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without federal financial assistance, if there was or will be federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

2. Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL (A)	OWNERS (1B)	TENANTS (1C)
1. HOUSEHOLD (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF CLAIMS (A)	AMOUNT (B)
4. PAYMENTS FOR MOVING HOUSEHOLDS		'ACTUAL EXPENSES-SEC.202(A)
5. PAYMENTS FOR MOVING HOUSEHOLDS		'SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC.202(B)
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/MPD		'ACTUAL EXPENSES-SEC.202(A)
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/MPD		'IN LIEU PAYMENTS-SEC.202(C)
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES		
8. REPLACEMENT HOUSING PAYMENTS FOR 180 DAY HOMEOWNERS-SEC.203(A)		
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS		
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(1)		
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(2)		
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC.206(A) OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC.206(A) TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC.205		
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		
15. RELOCATION BRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM		

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. PARCELS (A)	COMPENSATION (B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		

[FR Doc. 88-16304 Filed 7-20-88; 8:45 a.m.]

BILLING CODE 4910-22-C

AUTHORITY NOTE: Promulgated in accordance with 42 USC 4601-4655, 52 FR 45667, 49 CFR 1.48 (dd), and R.S. 38:3107.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR (March 20, 1989).

Joseph L. Wax
Deputy Secretary

Rules

RULE

Board of Elementary and Secondary Education

Notice is hereby given that the Board of Elementary and Secondary Education, pursuant to Notice of Intent published December 20, 1988 and under the authority contained in Louisiana State Constitution (1974), Article VIII, Section 3, Act 800 of the 1979 Regular Session, adopted the rule listed below:

Rule- 1.10.00.c

The Board adopted an amendment to the 8(g) Policy and Procedure Manual, page 5, definition 23 to read:

Exemplary Program - defined as a model program or project which is worthy of imitation and which provided the following results:

- a. there was ample objective evidence of effectiveness;
- b. the state objectives were obtained;
- c. the educational needs of the students were met, and
- d. there was a clear and attributable connection between treatment and effect.

Page 29, #162

Provisions Relative to Exemplary Programs in Elementary and Summer Schools and Postsecondary Vo-Tech Institutions:

Delete paragraph "A" and renumber subsequent paragraphs accordingly.

Em Tampke
Executive Director

RULE

Department of Environmental Quality Office of Solid and Hazardous Waste Hazardous Waste Division

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions in the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Environmental Quality adopted revisions to the Louisiana Hazardous Waste Rules and Regulations (LHWRR). The effective date of these regulations will be March 21, 1989.

The amendments to the Louisiana Hazardous Waste Regulations are to conform to federal regulations and correct existing citations.

LAC 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality – Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

D. Exemptions, Exceptions and/or Modifications to otherwise Applicable Provisions of these Regulations

1. - 32. . . .

33. The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous wastes:

a. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

b. Waste from burning any of the materials in 33:V.4105, B.8, B.9, B.10, B.11, B.12, B.13, B.14.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 15: (March 1989).

Chapter 5. Permit Application Contents

Subchapter D. Part II General Permit Information Requirements

§517. Part II Information Requirements (the Formal Permit Application)

G. a copy of the general inspection schedule required by LAC 33:V.1509.B; including, where applicable, as part of the inspection schedule. specific requirements in LAC 33:V.1911, 2109, 2703.G, 2907, 3119.B, and C, 2309, 2507.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987), LR 15: (March 1989).

Chapter 7. Administrative Procedures for Treatment, Storage and Disposal Facility Permits

Subchapter A. Permits

§705. Issuance and Effective Date of Permit

B. A final permit decision shall become effective 30 days after the service of notice of the decision under LAC:V.705.A, unless:

1. a later effective date is specified in the decision; or
2. review is requested under R.S. 30:2024; or
3. no comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15: (March 1989).

Chapter 43. Interim Status

Subchapter F. Closure and Post-Closure

§4379. Closure Performance Standard

The owner or operator must close his facility in a manner that:

- A. minimizes the need for further maintenance, and
- B. controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate,

contaminated rainfall, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

C. complies with the closure requirements of these regulations including but not limited to LAC 33:V.1915, 4457, 4475, 4489, 4501, 4521, and 4543.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended in LR 13:433 (August 1987), LR 15: (March 1989).

Subchapter I. Tanks

§4442. Closure and Post-Closure Care

Interim Status facilities are subject to the requirements of LAC 33:V.1915.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15: (March 1989).

§4443. Special Requirements for Ignitable or Reactive Wastes

Interim status facilities are subject to the requirements of LAC 33:V.1917.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15: (March 1989).

§4444. Special Requirements for Incompatible Wastes

Interim status facilities are subject to requirements of LAC 33:V.1919.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15: (March 1989).

Chapter 49. Lists of Hazardous Wastes

§4901. Category I Hazardous Waste

D. Discarded Commercial Chemical Products, Off-Specification Species, Containers and Spill Residues Thereof

1. - 3. . . .

4. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of:

a. any commercial chemical product or manufacturing chemical intermediate having the generic name listed in LAC 33:V.4901.D or E, or

b. any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications would have the generic name listed in LAC 33:V.4901.D or E.

[Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in ..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in LAC 33:V.4901.E or F. Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in LAC

33:V.4901.E or F such waste will be listed in either LAC 33:V.4901.B or C or will be identified in a hazardous waste by the characteristics set forth in LAC 33:V.4903.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 15: (March 1989).

§4905. Exclusions for Wastewaters

A. 8. The administrative authority may require analysis of a monthly grab sample indicative of the materials and hazardous degradation products for the materials covered in LAC 33:V.4905.A.1 and 2 if not covered in the water discharge permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:1136 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 15: (March 1989).

Paul Templet
Secretary

RULE

Office of the Governor Division of Administration Office of State Planning

Louisiana Community Development Block Grant (LCDBG) Program

FY 1989 Final Statement

I. PROGRAM GOALS AND OBJECTIVES

The LCDBG Program, as its primary objective, provides grants to units of general local government in nonentitlement areas for the development of viable communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, not less than 60 percent of the aggregate of fund expenditures shall be for activities that benefit low and moderate income persons.

Each activity funded must meet one of the following two national objectives:

A. Principal benefit (at least 60 percent) to low/moderate income persons.

B. Elimination or prevention of slums and blight. In order to justify that the proposed activity meets this objective, the following must be met. An area must be delineated by the grantee which:

1. meets the definition of slums and blight as defined in Act 590 of the 1970 Parish Redevelopment Act, Section Q-8 (See Appendix 1); and

2. contains a substantial number of deteriorating or dilapidated buildings or public improvements throughout the area delineated.

The grantee must describe in the application the area boundaries and the conditions of the area at the time of its designation and how the proposed activity will eliminate the conditions which qualify the area as slum/blight. If an applicant plans to request funds for an activity claiming that the activity addresses the slums/blight objective, the state must be contacted for the specific requirements for this determination/qualification prior to application submittal.

To accomplish these national objectives, the state has established the following goals:

A. strengthen community economic development through the creation of jobs, stimulation of private investment, and community revitalization, principally for low and moderate income persons,

B. benefit low and moderate income persons,

C. eliminate or aid in the prevention of slums or blight, or

D. provide for other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

II. GENERAL

A. APPLICATION PROCESS.

This statement sets forth the policies and procedures for the distribution of LCDBG funds. Grants will be awarded to eligible applicants for eligible activities based on a competitive selection process to the extent that funds are available.

The state shall establish deadlines for submitting applications and notify all eligible applicants through a direct mailing. The applications submitted for FY 1988 funds for housing and public facilities were rated and ranked and funded to the extent that monies were available. The ranking under the FY 1988 program will also be used to determine the grants selected for funding under the FY 1989 LCDBG Program. In other words, the top ranked applications, to the extent that monies were available, were funded with FY 1988 funds; the next highest ranked applications will be funded in FY 1989 to the extent that monies are available. Only one application for housing or public facilities could be submitted for FY 1988 funds; that same application will be considered for FY 1989 funds. No new applications for housing and public facilities will be accepted in FY 1989. Only new applications for economic development and demonstrated needs funds will be accepted for FY 1989.

B. ELIGIBLE APPLICANTS.

Eligible applicants are units of general local government, that is, municipalities and parishes, excluding the following areas: Alexandria, Baton Rouge, Bossier City, Terrebonne Parish Consolidated Government, Jefferson Parish (including Grand Isle, Gretna, Harahan, Jean Lafitte, and Westwego), Kenner, Lafayette, Lake Charles, Monroe, New Orleans, Shreveport, Slidell, and Thibodaux. Each eligible applicant may only submit an application on its own behalf. Two or more eligible applicants may submit a joint application for activities of mutual need of each eligible applicant. Joint projects shall necessitate a meeting with state staff prior to submitting the application to determine the appropriate applicant. All local governing bodies involved must be eligible according to the threshold criteria.

C. ELIGIBLE ACTIVITIES.

An activity may be assisted in whole or in part with LCDBG funds if the activity meets the provisions of Title 24 of the U. S. Code of Federal Regulations, Subpart C, as provided in Appendix 2. For application purposes, eligible activities are grouped into the program areas of housing, public facilities, economic development or demonstrated need.

D. TYPES OF GRANTS.

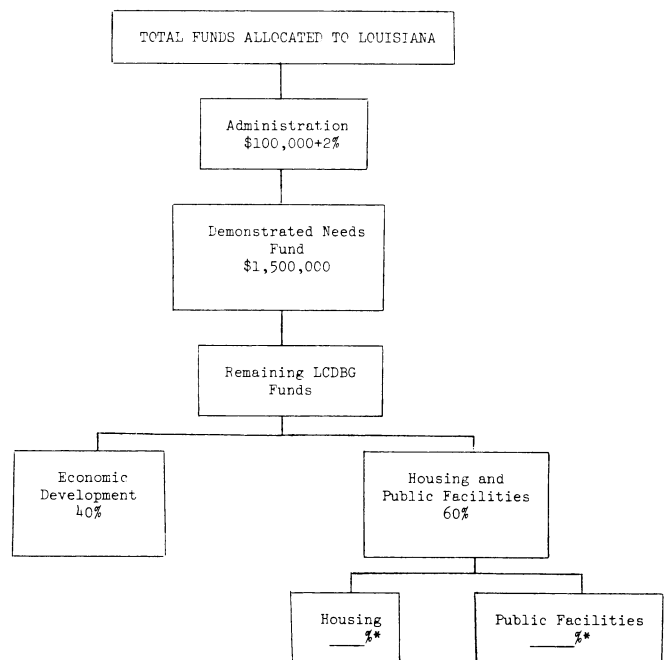
The state will only accept applications for single purpose grants. A single purpose grant provides funds for one need (water or sewer or housing, etc.) consisting of an activity which may be supported by auxiliary activities. Single purpose economic development grants are for one project, consisting of one or more activities.

E. DISTRIBUTION OF FUNDS.

Approximately \$23,801,000 (subject to federal allocation) in funds will be available for the FY 1989 LCDBG Program. Figure 1 shows how the total funds will be allocated among the various program categories.

Of the total CDBG funds allocated to the state, up to \$100,000 plus two percent will be used by the state to administer the program.

FIGURE 1



* The percentage distribution between the housing and public facilities program categories will be based upon the number of applications received and amount requested in each category. Half of the funds will be distributed based on percentage of applications received in each category and half on the basis of amount of funds requested in each category. However, the dollar amount allocated for housing will be no more than ten percent of the total funds available for housing and public facilities. Three subcategories (water, sewer, and other) will be established under public facilities. The dollar amount for each of these sub-

categories will be distributed based upon the percentage of applications submitted and amount of funds requested in each subcategory.

In addition, \$1,500,000 will be set aside for the Demonstrated Needs Fund. Since the creation and retention of permanent jobs is so critical to the economy of the state, up to 40 percent of the remaining LCDBG funds will be allocated specifically for economic development type projects. Only economic development applications will compete for these funds. Economic development applications and demonstrated needs proposals will be accepted on a continual basis within the time frame designated by the state. Public facilities and housing applications will be funded with the remaining LCDBG funds. There will be one funding cycle for housing and public facilities applications. This fund will be divided into two program categories as identified in Figure 1; the exact distribution of these funds will be based upon the number of applications received and amount of funds requested in each program category as established under the FY 1988 LCDBG Program. Half of the money will be allocated based on the number of applications received in each category and half based on the amount of funds requested in each category with a maximum of ten percent of the funds allocated to housing. The public facilities category will be allocated in the same manner, by number and dollar amount of applications for sewer, water, and other type projects.

Six months following the date of the state's executed grant agreement with HUD, the status of the monies originally allocated (40 percent) for economic development will be evaluated. At that time, any monies in excess of half of the original allocation which have not yet been awarded for economic development projects will then be transferred to the current program year's public facilities category to fund the project(s) with the highest score that was not initially funded. Twelve months following the date of the state's executed grant agreement with HUD, all unawarded monies remaining in the original allocation for economic development will be transferred to the current program year's public facilities category to continue to fund the highest ranked project(s) not already funded.

F. SIZE OF GRANTS.

1. Ceilings. The state has established a funding ceiling of \$550,000 for housing grants and \$600,000 for public facilities grants with the exception of sewer grants which have a funding ceiling of \$750,000. The state has established a funding ceiling of \$600,000 for economic development projects.

Within the ceiling amounts the state allows applicants to request funds for administrative costs with the following limitations. Administrative funds for housing programs cannot exceed 12 percent of the estimated housing costs and administrative funds for public facilities programs cannot exceed seven percent of the estimated public facilities project costs. The amount which can be requested for demonstrated needs programs must be commensurate with the amount allowable for the specific type of project (housing rehabilitation or public facilities) for which funds are requested. For public facilities, housing, and demonstrated needs programs for which the total estimated project cost is less than \$200,000, the state will make the final determination as to the appropriate allowable administrative costs. General administrative funds for economic development projects involving a loan to a developer will be the greater of \$12,000 or a maximum of four percent of the LCDBG funds requested for project costs. In addition to the general administrative funds on economic devel-

opment projects involving a loan, the state will provide an additional two percent of the estimated economic development project costs; this additional two percent is specifically dedicated for the grantee to contract with a small business development center. General administrative funds for economic development projects involving infrastructure improvements cannot exceed seven percent of the estimated infrastructure improvement costs. If, after a project has been funded, the scope of the project changes significantly, the state will make a determination as to the actual amount which will be allowed for administrative costs; this determination will be made on a case-by-case basis.

Engineering fees may also be requested within the ceiling amounts; the funds requested must be in compliance with those established by the American Society of Civil Engineers and/or Farmer's Home Administration. If, after a project has been funded, the scope of the project changes significantly, the state will make a determination as to the actual amount which will be allowed for engineering costs; this determination will be made on a case-by-case basis.

2. Individual grant amounts. Grants will be provided in amounts commensurate with the applicant's program. In determining appropriate grant amounts for each application, the state shall consider an applicant's need, proposed activities, and ability to carry out the proposed program.

G. RESTRICTIONS ON APPLYING FOR GRANTS.

1. Each eligible applicant could apply for one housing or public facilities grant under the FY 1988 LCDBG Program; that application will also be considered for funding under the FY 1989 LCDBG Program. Any eligible applicant may apply for an economic development project or demonstrated needs grant, even those applicants previously funded under the housing and public facilities components. The number of demonstrated needs grants which an eligible applicant may receive during each program year is limited to one.

2. Capacity and performance: threshold considerations for grant approval. No grant will be made to an applicant that lacks the capacity to undertake the proposed program. In addition, applicants which have previously participated in the Community Development Block Grant Program must have performed adequately. Performance and capacity determinations for FY 1989 will be made as of the date the state receives its executed grant agreement from HUD. In determining whether an applicant has performed adequately, the state will examine the applicant's performance.

In order to be eligible for a grant award in FY 1989, the following thresholds must have been met:

a. Units of general local government will not be eligible to receive funding unless past CDBG programs awarded by HUD have been closed out.

b. Units of general local government will not be eligible to receive funding unless past LCDBG programs (FY 1982, FY 1983 [including Jobs Bill Programs], FY 1984, FY 1985, FY 1986, FY 1987 and FY 1988) awarded by the state have been conditionally closed-out.

c. Audit and monitoring findings made by the state or HUD have been cleared.

d. All required reports, documents, and/or requested data have been submitted within the time frames established by the state.

e. Any funds due to HUD or the state have been repaid on a satisfactory arrangement for repayment of the debt has

been made and payments are current.

Any applications that were determined to be ineligible for FY 1988 funding will be re-evaluated for eligibility for FY 1989 funding. The state is not responsible for notifying applicants as to their performance status. No waivers to the thresholds will be given by the state except for applicants requesting economic development and Demonstrated Needs funds. All requests for waivers must be submitted in writing to the state prior to the submittal of the application. There shall be no waiver granted if funds are due to HUD or the state unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

H. DEFINITIONS.

For the purpose of the LCDBG Program or as used in the regulations, the term:

1. *Unit of general local government* means any municipal or parish government of the state.

2. *Low/moderate income persons* are defined as those having an income equal to or less than the Section 8 lower income limits as determined by the U. S. Department of Housing and Urban Development. (See Appendices 3 and 4.)

3. *Auxiliary activity* means a minor activity which directly supports a major activity in one program area (housing, public facilities). Note: The state will make the final determination of the validity (soundness) of such auxiliary activities in line with the program intent and funding levels and delete if deemed appropriate.

4. *Slums and blight* is defined as in Act 590 of the 1970 Parish Redevelopment Act, Section Q-8. (See Appendix 1.)

5. *Division* refers to the Division of Administration.

III. METHOD OF SELECTING GRANTEES.

The state has established selection and rating systems which identify the criteria used in selecting grantees.

A. DATA.

1. *Low and Moderate Income.* The low/moderate income limits are defined as being equal to or less than the Section 8 income limits as established by HUD. In order to determine the benefit to low/moderate income persons for a public facility project, the applicant must utilize either census data (if available) or conduct a local survey. A local survey must be conducted for housing activities and must involve 100 percent of the total houses within the target area. Local surveys which have been conducted within twelve months prior to the application submittal date will be accepted, provided the survey conforms to current program requirements.

a. *Census Data.* If an applicant in a non-metropolitan area chooses to utilize census data rather than conducting a local survey, the higher of either 80 percent of the 1980 median income of the parish or 80 percent of the median income of the entire non-metropolitan area of the state will be utilized to determine the low/moderate income levels. The 1980 annual income limits for low/moderate income persons for each parish is shown in Appendix 4. The FY 1979 median income for non-metropolitan Louisiana was \$15,011; therefore, the non-metropolitan low/moderate income level would amount to \$12,009. The low and moderate income levels for applicants in Metropolitan Statistical Areas (MSAs) will be determined on the basis of the entire MSA.

If 1980 census data on income is available by enumeration district, then the division will calculate the applicant's low/moderate income percentages. The applicant must request this

data prior to submittal of the application.

b. *Local Survey.* If the applicant chooses to conduct a local survey, the survey sheet in the FY 1988 application package must be used. Local surveys must be conducted for all housing activities.

When conducting a local survey rather than using 1980 census data, an applicant in a non-metropolitan area will determine the low and moderate income level based on the higher of either 80 percent of the median income of the parish OR 80 percent of the median income of the entire non-metropolitan area of the state. The annual income limits for low/moderate income persons for each parish is provided in Appendix 3. The FY 1987 median income for non-metropolitan Louisiana was \$22,400; therefore, the non-metropolitan state low/moderate income level would amount to \$17,920. The low and moderate income levels for applicants in Metropolitan Statistical Areas (MSA) will be determined on the basis of the entire MSA.

If the applicant chooses to determine low/moderate income based on family size, the following sliding scale must be used:

# OF PERSONS IN HOUSEHOLD	% OF PARISH/MSA* MEDIAN INCOME
1	50
2	64
3	72
4	80
5	85
6	90
7	95
8 or more	100

*MSA = Metropolitan Statistical Area

When a local survey, rather than census data, is used to determine the low/moderate income benefit, a random sample which is representative of the population of the entire target area must be taken. There are several methodologies available to insure that the sample is random and representative. The methodology used must be stated in your application. If you have questions on the methodology to use, you should contact the division for assistance. The appropriate sample size varies with the total number of households in the target area and is determined by using the following formula:

$$n = .9604 \times N \div (.0025N + .9579)$$

Where n = required number of households in sample

Where N = total number of occupied households in target area

If the situation arises where it must be determined as to whether or not the sample taken was indeed random, then standard statistical tests at the appropriate geographical level will be used.

B. PROGRAM OBJECTIVES.

Each activity must address one of the two national objectives previously identified under Section 1. Program Goals and Objectives.

C. RATING SYSTEMS.

All applications submitted for housing, public facilities, and economic development projects will be rated according to the following criteria established for each program category.

Each FY 1988 housing and public facilities application was rated/ranked against all similar activities in the appropriate program category/subcategory.

1. HOUSING (Total of 100 points)

All units which will be rehabilitated or replaced must be occupied by low/moderate income persons. Also, the number of housing target areas may not exceed two. In delineating the target areas, it must be kept in mind that the boundaries must be coincident with visually recognized boundaries such as streets, streams, canals, etc.; property lines cannot be used unless they are also coincident with visually recognized boundaries. All houses rehabilitated within the FEMA one hundred year flood prevention ordinance, where applicable.

(a) PROGRAM IMPACT (Maximum Possible Points - 25)

This will be determined by dividing the total number of owner occupied units to be rehabilitated and/or replaced plus vacant units to be demolished in the target area by the total number of owner occupied substandard units in need of rehab and/or replacement plus vacant units in need of demolition in the target area.

$$\frac{\# \text{ of owner occupied units to be rehabilitated and replaced} + \# \text{ of vacant units to be demolished inside the target area}}{\# \text{ of owner occupied substandard units including those in need of demolition and replacement} + \text{vacant units in need of demolition inside the target area}} = \text{Raw Score}$$

The raw scores were ranked and the top ranked applicant(s) received 25 points. All other applicants received points based on how they scored relative to that high score:

$$\text{Program Impact Points} = \frac{\text{applicant's score}}{\text{highest score}} \times 25$$

No project will be funded that meets less than 75 percent of the identified need. Rental units which are occupied by low/moderate income persons are eligible as long as the number of rental units to be treated does not exceed ten percent of the total owner occupied units proposed for rehab; the rehab of rental units did not affect the impact score in any way. All units must be brought up to at least the Section 8 Existing Housing Quality Standards and HUD's Cost Effective Energy Conservation Standards.

b. NEEDS ASSESSMENT (Maximum Possible Points-25)

This was determined by comparing the total number of owner occupied and vacant units to be treated in the target area to the overall needs of the target area.

$$\frac{\# \text{ of owner occupied and vacant units to be treated in target area}}{\# \text{ of units in need of treatment in target area}} = \text{Raw Score}$$

The raw scores were arrayed and the top ranked applicant(s) received 25 points.

$$\text{Needs Assessment Points} = \frac{\text{applicant's score}}{\text{highest score}} \times 25$$

c. PROJECT FEASIBILITY (Maximum Possible Points-50) This was rated based upon the project's cost effectiveness and overall needs of the area including housing as well as infrastructure.

2. PUBLIC FACILITIES (Total of 120 Points)

For the purpose of ranking public facilities projects, three

separate subcategories were established (sewer, water, and other).

a. Program Impact (Maximum Possible Points - 50)

Maximum Impact - 50 points

The proposed project would completely remedy existing conditions that are in violation of a state or federal standard promulgated to protect public health and safety. The existing conditions and the standard being violated must be documented by cognizant state or federal agencies.

Moderate Impact - 25 points

The proposed project would result in substantial progress being made towards improving existing conditions that are in violation of a state or federal standard promulgated to protect public health and safety. The existing conditions and the standard being violated must be documented by cognizant state or federal agencies.

Minimal Impact - 0 points

The project would improve a community's infrastructure but would not address a violation of state or federal standard promulgated to protect public health and safety or the conditions in violation of the standard are inadequately documented.

b. Benefit to low/moderate income persons (Maximum Possible Points - 10)

Projects consisting of more than one activity which involved different numbers and percentages of beneficiaries for each activity should have specifically identified the numbers and percentages for each activity.

Percent of Low/Moderate Income (Maximum Possible Points - 5)

The percentage of low/moderate income persons benefitting was calculated by dividing the number of low/moderate income persons benefitting (as defined by the state) by the total persons benefitting. Points for percentage of low/mod benefitting were assigned according to the following ranges:

- 85% or more - 5 points
- at least 70% but less than 85% - 4 points
- at least 60% but less than 70% - 3 points

Number of Low/Moderate Income (Maximum Possible Points - 5)

Points for the number of low/moderate income persons benefitting were assigned according to the following ranges:

- 500 or more - 5 points
- 200 to 499 - 4 points
- less than 200 - 3 points

c. Cost Effectiveness (Maximum Possible Points - 10)

Cost estimates per person benefitting were carefully evaluated. The cost per person benefitting was calculated for all projects. All applicants for the same type project (water, sewer, and natural gas or other) were grouped and each of these groups were then grouped by whether the project was for a new system or for repair to an existing system. Once all of these separate groups were established, they were separated into categories based on the number of persons benefitted. An average cost per person benefitting was then determined for each of these categories. Each applicant in a given category was scored relative to that average cost per person figure determined for that given category. An average cost project received five points, a project with lower than average cost per person benefitted received more than five points (a maximum of 10), and a project with higher than average cost per person received fewer than five

points. The following formula was used to determine the cost effectiveness points for each applicant in each grouping:

$$\text{CE Points} = \frac{\text{Average Cost per Person Benefitted}}{\text{Applicant Cost per Person Benefitted}} \times 5$$

If the calculation yielded more than 10, it was revised downward to the 10 point maximum. This allowed all applications for new sewer systems, sewer system repairs, new water systems, water system repairs, etc., to be rated against similar type projects. It also allowed those projects benefitting many people and those benefitting few people to be rated against other projects helping a similar number of persons.

d. **Project Severity** (Maximum Possible Points - 50)

This was rated based upon the severity of the problem and extent of the effect upon the health and welfare of the community. Priority will be given to water, sewer, and gas systems.

In assigning points for project severity, the following general criteria was critiqued for type of project proposed.

Gas Systems - the percentage of unaccounted for gas, the amount and magnitude of leaks, the type of material used in the distribution system, and the number of customers served.

Water Systems primarily for fire protection purposes - well capacity, reliability of supply, amount of water stored, extent of hydrant coverage or spacing, and water pressure and volume for fire fighting.

Water systems addressing potable water and sewer systems - the existence of conditions in violation of those provisions of the State Sanitary Code that most directly safeguard public health, and the adequacy of the proposed improvements to eliminate such conditions. The assessment will be based upon the problem as documented by DHH records, the relative degree of risks to human health posed and the number of persons most directly affected.

Problems that are generally attributable to a lack of routine operation and maintenance resulted in a less favorable evaluation. The proposed actions to eliminate verified problems were evaluated in terms of the direct applicability of the solution; superfluous or inadequate solutions resulted in a lowering of the overall rating.

3. ECONOMIC DEVELOPMENT

The economic development loan set aside is to be used to provide loans to businesses for job creation or retention projects. The LCDBG-ED funds go from the state to the local unit of government to the private developer. A three-way agreement (contract) is signed by these three participants, and other parts of the application are reviewed by them, to ensure a complete understanding by the three parties of the planned development, the expected number of jobs to be created or retained, the sources and uses of all funds to be committed to the project, the payback arrangements for all funds borrowed, the security assigned to each loan granting institution or agency, the financial and other reporting requirements of the developer and the local unit of government to the state, and all other obligations of the developer, the local governmental unit and the state.

An application for LCDBG-ED funds may be submitted at any time during the year, may not exceed \$600,000, may not request more than \$15,000 per job created or retained, and must be for a project which will create or retain a minimum of 10 jobs.

The term "developer" shall mean the corporate entity as

well as the individual investors, stockholders, and owners of the applicant business. As an example of the effect of this definition, an LCDBG-ED loan to Company A cannot be used to purchase equipment, land, etc., from Company B, when both Company A and Company B are substantially owned by one or more of the same individuals.

The state will recoup 100 percent of the payback of LCDBG-ED loans (program income to the state) unless the local governing body will utilize the payback for expansion of the originally funded development. These program income funds received by the state will be placed in an Economic Development Revolving Loan Fund which will be used to supplement funding for economic development projects. These funds will be subject to the federal regulations regarding use of program income.

The interest rate charged on the LCDBG-ED loan depends on the financial and cash flow projections of the applicant business. This rate will be determined in the application review.

In some instances it may be necessary and appropriate for a local unit of government to receive a grant for infrastructure improvements needed by a specific developer before his proposed job creation project can be fully implemented. This economic development grant could be used by the local unit of government to provide sewer, water, and street/road access on public property to the industrial/business site. It cannot be used for general industrial park projects created with the hope that a business client will then be attracted. It must be tied to a specific developer creating a specific number of jobs for low to moderate income people. Although the grant will be tied to a specific developer, all/any other developments that occur within the life of the program as a result of the infrastructure improvements must also be considered to fall under LCDBG requirements. Therefore, when preparing the closeout documents, the job creation/retention and low/moderate income figures would be the total of all of the benefitting businesses in aggregate. It must be a "but for" situation, where the business cannot locate or expand at that site unless the particular infrastructure is provided. The developer must show why this location, which lacks proper infrastructure, must be used instead of another site which already has proper infrastructure. The developer must provide sufficient financial and other statements, projections, etc., to establish that the business is likely to be successful, and will create the appropriate number of jobs at the site in a specified time frame. Certain assurances by the developer, related to the timing of his development on the site, will be required. Other agreements between the local governing body and the developer/property holder, relative to public rights of way, availability of site to local governing body upon failure or change in operation by the developer, etc., will be required as needed on an individual project basis.

The maximum amount available to the local governing body for an infrastructure type project grant is \$5,000 per job created or retained, with a \$500,000 limit for infrastructure improvements on any single project. Any funds used as grant funds, in a situation where the grant is combined with a loan, decreases the amount available as a loan to the developer on a dollar-for-dollar basis. For example, if \$500,000 is used as grant funds for infrastructure improvements, then only \$100,000 is available as loan funds to the developer - a total of \$600,000 maximum.

The following five requirements must be met by all eco-

conomic development applicants.

A. A firm financial commitment from the private sector will be required upon submission of the application. The private funds/public funds ratio must not be less than 1:1 for manufacturing firms with Standard Industrial Code classifications of 20-39. A private to public ratio for non-manufacturing firms will have a minimum requirement of 2.5:1. In addition, the state must be assured that non-manufacturing projects will have a net job creation impact on the community and not simply redistribute jobs around the community. Private funds must be in the form of a developer's cash or loan proceeds. Revenues from the sale of bonds may also be counted if the developer is liable under the terms of the bond issue. Previously expended funds will not be counted as private funds for the purpose of this program, nor will private funds include any grants from federal, state or other governmental programs, nor any recaptured funds. The value of land, buildings, equipment, etc., already owned by the developer and which will be used in the new or expanded operation, will not be considered as private match. Personal endorsement from all principals of corporations, partnerships, or sole proprietorships shall be required on the LCDBG loan documents. The principals shall: 1) endorse the LCDBG loan to the corporation and 2) guarantee the payment and fulfillment of any obligation of the corporation. These endorsements will be made jointly to the local government and state of Louisiana.

Normally, a principal is defined as owning five percent or more of the business.

B. If cost per job created or retained exceeds \$15,000 for the LCDBG monies, applications will not be considered for funding.

C. A minimum of 10 jobs created or retained is required for LCDBG-ED assistance.

D. A minimum of 60 percent of the employment will be made available to people who at the time of their employment are living in households whose total income is below the low to moderate income limit for the parish where the development occurs (see Appendix 3).

E. The application must include documentation showing that the project is feasible from the management, marketing, financial and economic standpoints. Management feasibility has to do with the past experience of the developer in managing the type of project described in the application, or other similar managerial experience. Marketing feasibility deals with how well the market for the product has been documented at the application stage - the best case being that the developer has verifiable commitments substantiating the first year's sales projection. A typical market study includes a detailed analysis of competition, the expected geographical sales plan, and letters of intent to buy, specifying quantity and price. Economic feasibility relates to whether or not the developer has realistic projections of revenues and variable costs, such as labor and cost of materials, and whether they are consistent with industry value-added comparisons. An assessment will be made of the industry sector performances for the type of industry/business described in the application. Financial feasibility has to do with the ability of the firm to meet all of its financial obligations in the short and long run, determined by a cash flow analysis on the financial history and projections of the applicant's business. In analyzing the financial feasibility of a project, the state may suggest alternatives in the timing of expenditures, the amount and proposed use of public and private funds, as well as other financial arrangements proposed in the

application.

For an application to be funded, the state must be assured that: the project is credit worthy; there is sufficient developer equity; the LCDBG funds will be efficiently and effectively invested; the maximum amount of private and the minimum amount of public funds will be invested in the project; the project will make an adequate return in the form of public benefits commensurate with the money invested; the state and the local community will not assume a disproportionate amount of risk in the project; and, the state and the community will receive an adequate security interest proportionate to the LCDBG funds invested in the project.

DEFAULT: The local governing body shall be ultimately responsible for repayment of the contract funds which were provided by the state.

The state shall look to the local governing body for repayment of all funds disbursed under this contract and default by the developer shall not be considered as just cause for non-payment by the local governing body.

In case of a default by the local governing body in the repayment of contract funds to the state, in accordance with the terms and conditions of the contract, the full sum remitted to the local governing body shall become due and payable to the state upon demand, without the need of putting the local governing body in default.

The state shall deem the local governing body in default, regardless of the fact that the default was precipitated by the developer, to the extent that the local governing body failed to perform its contractual obligations in good faith.

D. DEMONSTRATED NEEDS FUND.

A \$1.5 million reserve fund will be established to alleviate critical/urgent community needs.

An application cannot be submitted for consideration under this fund if the same application is currently under consideration for funding under any other LCDBG program category.

Subject to the availability of funds, projects that meet the following criteria will be funded:

1. GENERAL ELIGIBILITY

Proposed activities must be eligible under Section 105 (a) of the Housing and Community Development Act of 1974, as amended (see Appendix 2).

Each proposed activity must address one of the national objectives.

2. CRITICAL/URGENT NEED - PROJECT SEVERITY

Each activity must address a critical/urgent need which can be verified by an appropriate authority, (cognizant state or federal agency), other than the applicant as having developed within six months prior to submittal of the application.

The project evaluation request will be submitted to the appropriate cognizant agency by the division. In addition to the stipulation that the critical/urgent need must have developed within six months prior to submittal, the cognizant agency will rate the severity or urgency of the project on a scale of one to five based on the following:

- (1) project is urgently needed and is of a health threatening potential;
- (2) project is worthwhile and needed, health risk is moderate, urgency is moderate;
- (3) most of project is worthwhile;
- (4) portions of project are worthwhile;
- (5) project is not worthwhile.

Only those projects receiving a rating of 1 will be fundable.

3. APPLICATION REQUIREMENTS

All items and forms necessary for a regular public facilities application will also be required for demonstrated needs.

E. SUBMISSION REQUIREMENTS.

Applications shall be submitted to the division on forms provided by the division and shall consist of the following:

1. Program Narrative Statement. This shall consist of:

a. identification of the national objective(s) that the activity will address.

b. A detailed description of each activity to be carried out with LCDBG assistance. The description of each activity must clearly identify the target area or areas by street names, highway names or numbers for each street serving as a boundary of the target area. The written description must clearly and exactly conform to the designated area or areas on the map(s). A detailed cost estimate is also required for each activity. If the proposed activity is dependent on other funds for completion, the source of funds and the status of the commitment must also be indicated. If the applicant is applying for a public facilities project, the description must specifically describe what means will be taken by the applicant to ensure that adequate revenues will be available to operate and maintain the proposed project; the description must identify the source of and estimated amount of funds that will be generated for this purpose.

c. A statement describing the impact the activity will have on the problem area selected and on the needs of low and moderate income persons, including information necessary for considering the program impact.

d. A statement on the percent of funds requested that will benefit low and moderate income persons. The statement should indicate the total number of persons to be served and the number of such persons that meet the definition of low and moderate income.

2. Map. A map of the local jurisdiction which identifies by project area:

a. census tracts and/or enumeration districts by number;

b. location of concentrations of minorities, showing number and percent by census tracts and/or enumeration districts;

c. location of concentrations of low and moderate income persons, showing number and percent by census tracts and/or enumeration districts;

d. boundaries of areas in which the activities will be concentrated;

e. specific location of each activity.

3. Program Schedule. Each applicant shall submit, in a format prescribed by the state, a listing of dates for major milestones for each activity to be funded.

4. Title VI Compliance. All applicants shall submit, in a form prescribed by the state, evidence of compliance with Title VI of the Civil Rights Act of 1964. This enables the state to determine whether the benefits will be provided on a nondiscriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin.

5. Certification of Assurances. The certificate of assurances required by the state, relative to federal and state statutory requirements, shall be submitted by all applicants; this certificate includes, but is not limited to, Title VI, Title VIII, and affirmatively furthering fair housing. In addition, each recipient should

target at least 15 percent of all grant monies for minority enterprises. All assurances must be strictly adhered to; otherwise, the grant award will be subject to penalty.

6. Certification to Minimize Displacement. The applicant must certify that it will minimize displacement as a result of activities assisted with LCDBG funds. In addition to minimizing displacement, the applicant must certify that when displacement occurs reasonable benefits will be provided to persons involuntarily and permanently displaced as a result of the LCDBG assistance to acquire or substantially rehabilitate property. This provision applies to all displacement with respect to residential and nonresidential property not governed by the Uniform Relocation Act.

7. Certification of Residential Antidisplacement and Relocation Assistance Plan. The applicant must certify that it has developed and is following a residential antidisplacement and relocation assistance plan. The plan must include two components - a requirement to replace all low/moderate income dwelling units that are demolished or converted to a use other than low/moderate income housing as a direct result of the use of CDBG assistance and a relocation assistance component.

8. Certification to Promote Fair Housing Opportunities. Applicants are required to certify that they will make every effort to further fair housing opportunities in their respective jurisdictions.

9. Certification Prohibiting Special Assessments. The applicant must submit a certification prohibiting the recovery of capital costs for public improvements financed, in whole or in part, with LCDBG funds through assessments against properties owned and occupied by low and moderate income persons. The prohibition applies also to any fees charged or assessed as a condition of obtaining access to the public improvements.

10. Certification of Citizen Participation. Applicants shall provide adequate information to citizens about the Community Development Block Grant Program. Applicants shall provide citizens with an adequate opportunity to participate in the planning and assessment of the application for Community Development Block Grant Program funds. At least one public hearing must be held prior to application submittal in order to obtain the citizens' views on community development and housing needs. A notice must be published informing the populace of the forthcoming public hearing; a minimum of five calendar days is required for this notice. Citizens must be provided with the following information at the hearing:

a. The amount of funds available for proposed community development and housing activities;

b. The range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

c. The plans of the applicant for minimizing displacement of persons as a result of activities assisted with such funds and the benefits to be provided to persons actually displaced as a result of such activities.

d. If applicable, the applicant must provide citizens with information regarding the applicant's performance on prior LCDBG programs funded by the state.

A second notice must be published after the first public hearing has been held but before the application is submitted. The second notice must inform citizens of the proposed objectives, proposed activities, the location of the proposed activities

and the amounts to be used for each activity. Citizens must be given the opportunity to submit comments on the proposed application. The notice must further provide the location at which and hours when the application is available for review. The notice must state the proposed submittal date of the application.

Applicants must submit a notarized proof of publication of each public notice.

In order to provide a forum for citizen participation relative to the proposed activities, a second hearing must be held to receive comments and discuss the proposed application.

Each applicant shall provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the CDBG program. The applicant shall provide adequate information to citizens, hold public hearings at the initial stage of the planning process to obtain views and proposals of citizens, and provide opportunity to comment on the applicant's community development performance. In order to achieve these goals each applicant shall prepare and follow a written citizen participation plan that incorporates procedures for complying with the following regulations (i-vi). The plan must be made available to the public at the beginning of the planning stage, i.e., the first public hearing.

e. The written plan must:

i. provide for and encourage citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;

ii. provide citizens with reasonable and timely access to local meetings, information, and records relating to the state's proposed method of distribution, as required by regulations of the secretary, and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended;

iii. provide for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

iv. provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the handicapped.

v. provide for a timely written answer to written complaints and grievances, within 15 days where practicable; and

vi. identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

11. Certification Regarding Lead-Based Paint. The applicant must certify that its notification, inspection, testing, and abatement procedures concerning lead-based paint are in compliance with Section 570.608 of the Housing and Community Development Act of 1974, as amended.

12. Local Survey Data. Those applicants who conduct a local survey to determine specific data required for the application must include one copy of all completed survey forms.

13. Submission of Additional Data. Only that data re-

ceived by the deadline established for applications will be considered in the selection process unless additional data is specifically requested, in writing, by the state. Material received after the deadline will not be considered as part of the application, unless requested by the state.

F. APPLICATION REVIEW PROCEDURE.

1. The application must be mailed or delivered prior to any deadline dates established by the division. The applicant must obtain a "Certificate of Mailing" from the Post Office, certifying the date mailed. The division may require the applicant to submit this Certificate of Mailing to document compliance with the deadline, if necessary.

2. The application submission requirements must be complete.

3. The funds requested must not exceed the ceiling amounts established by the division.

4. Review and notification. Following the review of all applications, the division will promptly notify the applicant of the actions taken with regard to its application.

5. Criteria for conditional approval. The division may make a conditional approval, in which case the grant will be approved, but the obligation and utilization of funds is restricted. The reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a termination of the grant. Conditional approval may be made:

a. where local environmental reviews have not yet been completed;

b. where the requirements regarding the provision of flood or drainage facilities have not yet been satisfied;

c. to ensure the project can be completed within estimated costs.

d. to ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time.

6. Criteria for disapproval of an application. The division may disapprove an application for the following reasons:

a. based on a field review of the applicant's proposal or other information received, it is found that the information was incorrect; the division will exercise administrative discretion in this area;

b. the Division of Administration determines that the applicant's description of needs and objectives is plainly inconsistent with facts and data generally available. The data to be considered must be published and accessible to both the applicant and state such as census data, or recent local, area wide, or state comprehensive planning data;

c. other resources necessary for the completion of the proposed activity are no longer available or will not be available within a reasonable period of time;

d. the activities cannot be completed within the estimated costs or resources available to the applicant;

e. Any of the items identified under E. SUBMISSION REQUIREMENTS are not included in the application.

G. PROGRAM AMENDMENTS FOR LCDBG PROGRAM.

The division may consider amendments if they are necessitated by actions beyond the control of the applicant. Recipients shall request prior division approval for all program amendments involving new activities or alteration of existing activities that will

change the scope, location, or objectives of the approved activities or beneficiaries.

1. New or altered activities are considered in accordance with the criteria for selection applicable at the time the original application was reviewed and the policy, current at that time, regarding amendments.

2. All amended activities must receive environmental clearance prior to construction.

3. The state will ascertain as to whether or not the proposed activity is an integral part of the originally approved project and is necessary to complete the project as originally approved. The state will also review the site location of the proposed activity in relation to the originally approved target area. As a general rule, activities which are not an integral part of the originally approved project and which are not located within the boundaries of the originally approved target area will not be approved.

IV. ADMINISTRATION.

Rule for Policy Determination. In administering the program, while the division is cognizant of the intent of the program, certain unforeseeable circumstances may arise which may require the exercise of administrative discretion. The division reserves the right to exercise this discretion in either interpreting or establishing new policies.

V. REDISTRIBUTION OF FUNDS.

Any monies awarded by the state that are later recaptured by or returned to the state will be reallocated in accordance with the division's policy, then in effect. The sources of these funds may include, but not be limited to, program income, questioned costs, disallowed expenses, recaptured funds from loans, unallocated monies, previously awarded funds not spent by grant recipients, etc.

With the following exceptions and the stipulations identified in Section II.E., the monies as defined above will be placed in the current program year's public facilities category and will be used to fund the project(s) with the highest score that was not initially funded. This policy will govern all such monies as defined herein from the FY 1982, FY 1983, FY 1984, FY 1985, FY 1986, FY 1987, FY 1988, and 1989 LCDBG program years as well as subsequent funding cycles, until later amended. One exception to this rule is that funds recaptured from economic development loans which were not spent by the grant recipients will initially be transferred to the current economic development program category. Those monies remaining in the economic development program category at the end of the FY 1989 program year will be transferred to the public facilities category for distribution as described above. Another exception is that all funds recaptured by the state from the payback of economic development loans will be placed in an economic development revolving loan fund which will be used to supplement funding for economic development projects. These funds will be subject to the federal regulations regarding use of program income.

These regulations are to be effective on March 20, 1989, and are to remain in force until they are amended or rescinded.

APPENDIX 1

Act 590 of the 1970 Parish Development Act Section Q-8

(8) "Slum area" means an area in which there is a pre-dominance of buildings or improvements, whether residential or

non-residential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open space, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or an area of open land which, because of its location and/or platting and planning development, for predominantly residential uses, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(i) "Blighted area" means an area which by reason of presence of an substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use; but if the area consists of any disaster area referred to in Subsection C (5), it shall constitute a "blighted area."

APPENDIX 2

Eligible Activities

Sec. 105.(a) Activities assisted under this title may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation and rehabilitation of privately owned properties and including the renovation of closed school buildings);

(5) special projects directed to the removal of material

and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods of housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

(7) disposition (through sale, lease, donation or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(8) provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by the such unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount;

(9) payment of the non-federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

(10) payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

(14) activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) assistance to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c), and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of energy use strategies related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as—

(A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation function; and

(B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities.

(17) provisions of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project;

(18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937; and

(19) provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons (A) where the need for reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (i) determines the housing is not suitable for rehabilitation, and (ii) demonstrates to the satisfaction of the secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction.

(b) Upon the request of the recipient of assistance under

this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipients in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4).

(c)(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) is identified as principally benefiting persons of low and moderate income, such activity shall—

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of who are persons of low and moderate income.

(2)(A) In any case in which an assisted activity described in subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (i) not less than 51 percent of the residents of such area are persons of low and moderate income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a

condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this title for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that —

(i) such system will contribute substantially to the safety of the residents of the area served by such system;

(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee. The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this title and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

(3) Any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

APPENDIX 3
1988 Median Family Income
By Parish and MSA

Parish	1988 Median Family Income	Low/Mod Income Limit	Low Income Limit	Parish	1988 Median Family Income	Low/Mod Income Limit	Low Income Limit
Acadia	\$22,000	\$17,600	\$11,000	St. Helena	19,800	15,850	9,900
Allen	22,700	18,150	11,350	St. James	33,900	27,100	15,600
Ascension	See MSA - Baton Rouge			St. John the Baptist	See MSA - New Orleans		
Assumption	27,900	22,300	13,600	St. Landry	20,900	16,700	10,450
Avoyelles	17,900	14,300	8,950	St. Martin	See MSA - Lafayette		
Beauregard	25,200	20,150	11,800	St. Mary	31,200	24,950	15,600
Bienville	21,500	17,200	10,750	St. Tammany	See MSA - New Orleans		
Bossier	See MSA - Shreveport			Tangipahoa	22,600	18,100	11,300
Caddo	See MSA - Shreveport			Tensas	16,200	12,950	8,100
Calcasieu	See MSA - Lake Charles			Terrebonne	MSA - Houma-Thibodaux		
Caldwell	19,600	15,700	9,800	Union	21,700	17,350	10,850
Cameron	29,700	23,750	13,900	Vermilion	23,700	18,950	11,850
Catahoula	19,100	15,300	9,550	Vernon	18,400	14,700	9,200
Claiborne	22,500	18,000	11,250	Washington	21,500	17,200	10,750
Concordia	22,700	18,150	11,350	Webster	23,300	19,500	12,200
DeSoto	23,100	18,500	11,550	West Baton Rouge	MSA - Baton Rouge		
East Baton Rouge	See MSA - Baton Rouge			West Carroll	16,700	13,350	8,350
East Carroll	16,100	12,950	8,100	West Feliciana	24,900	19,900	12,150
East Feliciana	28,200	22,550	12,500	Winn	18,600	14,900	9,300
Evangeline	18,900	15,100	9,450				
Franklin	18,500	14,800	9,250	MSA - Metropolitan Statistical Areas			
Grant	20,600	16,800	10,500	MSA Alexandria, LA ¹	25,900	20,700	12,950
Iberia	29,000	23,200	14,500	MSA Baton Rouge, LA ²	31,200	24,950	15,600
Iberville	30,200	24,150	12,500	MSA Houma-Thibodaux, LA ³	29,400	23,500	14,700
Jackson	21,600	17,300	10,800	MSA Lafayette, LA ⁴	33,800	27,050	16,900
Jefferson	See MSA - New Orleans			MSA Lake Charles, LA ⁵	32,700	26,150	16,350
Jefferson Davis	25,500	20,400	11,950	MSA Monroe, LA ⁶	25,500	20,400	12,750
Lafayette	See MSA - Lafayette			MSA New Orleans, LA ⁷	31,900	25,500	15,950
Lafourche	See MSA - Houma-Thibodaux			MSA Shreveport, LA ⁸	30,400	24,300	15,200
LaSalle	22,800	18,250	11,400				
Lincoln	25,800	20,650	12,900	Footnotes:			
Livingston	See MSA - Baton Rouge			¹ Includes Rapides Parish only.			
Madison	16,600	13,300	8,300	² Includes East Baton Rouge, West Baton Rouge, Livingston, and Ascension Parishes.			
Morehouse	20,100	16,100	10,050	³ Includes Terrebonne and Lafourche Parishes.			
Natchitoches	20,700	16,550	10,350	⁴ Includes St. Martin and Lafayette Parishes.			
Orleans	See MSA - New Orleans			⁵ Includes Calcasieu Parish only.			
Ouachita	See MSA - Monroe			⁶ Includes Ouachita Parish only.			
Plaquemines	30,900	24,700	15,450	⁷ Includes Jefferson, Orleans, St. Tammany, St. Bernard, St. John the Baptist, and St. Charles Parishes.			
Pointe Coupee	26,000	20,800	12,150	⁸ Includes Caddo and Bossier Parishes.			
Rapides	See MSA - Alexandria						
Red River	19,300	15,450	9,650				
Richland	18,800	15,050	9,400				
Sabine	21,000	16,800	10,500				
St. Bernard	See MSA - New Orleans						
St. Charles	See MSA - New Orleans						

Source: Income data provided by U.S. Department of Housing and Urban Development, January 15, 1988.

APPENDIX 4

1980 Median Family Income
By Parish and MSA

Parish	1980 Median Family Income		LOW MOD INCOME UNIT		LOW INCOME UNIT		Parish	1980 Median Family Income		LOW MOD INCOME UNIT		LOW INCOME UNIT	
	Family Income	Families	Unrelated Individuals	Families	Unrelated Individuals	Family Income		Families	Unrelated Individuals	Families	Unrelated Individuals		
Acadia	\$15,792	\$12,634	\$8,844	\$7,896	\$5,527	St. Charles	23,223	18,578	13,005	11,612	8,128		
Allen	15,685	12,548	8,784	7,842	5,489	St. Helena	11,370	9,096	6,367	5,685	3,980		
Ascension	21,572	17,258	12,080	10,786	7,550	St. James	21,044	16,835	11,785	10,522	7,365		
Assumption	17,334	13,867	9,707	8,667	6,067	St. John the Baptist	21,818	17,454	12,218	10,909	7,636		
Avoyelles	11,987	9,590	6,713	5,994	4,196	St. Landry	13,893	11,114	7,780	6,947	4,863		
Beauregard	17,417	13,934	9,754	8,709	6,096	St. Martin	16,612	13,290	9,303	8,306	5,814		
Bienville	13,850	11,080	7,756	6,925	4,848	St. Mary	20,688	16,550	11,585	10,344	7,241		
Bossier	See MSA-Shreveport					St. Tammany	See MSA-New Orleans						
Caddo	See MSA-Shreveport					Tangipahoa	14,315	11,452	8,016	7,158	5,011		
Calcasieu	See MSA-Lake Charles					Tensas	10,447	8,358	5,850	5,224	3,657		
Caldwell	12,624	10,099	7,069	6,312	4,418	Terbonne	20,918	16,734	11,714	10,459	7,321		
Cameron	20,562	16,450	11,515	10,281	7,197	Union	14,027	11,222	7,855	7,014	4,910		
Catahoula	12,770	10,216	7,151	6,385	4,470	Vermilion	16,951	13,561	9,493	8,476	5,933		
Claiborne	14,538	11,630	8,141	7,269	5,088	Vernon	12,951	10,361	7,253	6,476	4,533		
Concordia	15,208	12,166	8,516	7,604	5,323	Washington	13,641	10,913	7,639	6,821	4,775		
DeSoto	14,887	11,910	8,337	7,444	5,211	Webster	See MSA-Shreveport						
E. Baton Rouge	See MSA-Baton Rouge					West Baton Rouge	See MSA-Baton Rouge						
East Carroll	10,388	8,310	5,817	5,194	3,636	West Carroll	10,807	8,646	6,052	5,404	3,783		
East Feliciana	16,184	12,947	9,063	8,092	5,664	West Feliciana	14,289	11,431	8,002	7,145	5,002		
Evangeline	12,540	10,032	7,022	6,270	4,389	Winn	12,445	9,956	6,969	6,223	4,356		
Franklin	11,937	9,550	6,685	5,969	4,178								
Grant	See MSA-Alexandria					MSA - Metropolitan Statistical Areas							
Iberia	19,268	15,414	10,790	9,634	6,744	Alexandria, LA ¹	\$15,741	\$12,593	\$8,815	\$7,871	\$5,510		
Iberville	17,340	13,872	9,710	8,670	6,069	Baton Rouge, LA ²	21,301	17,041	11,929	10,651	7,456		
Jackson	13,919	11,135	7,795	6,960	4,872	Lafayette, LA ³	21,472	17,178	12,024	10,736	7,515		
Jefferson	See MSA-New Orleans					Lake Charles, LA ⁴	21,316	17,053	11,937	10,658	7,461		
Jefferson Davis	17,657	14,126	9,888	8,829	6,180	Monroe, LA ⁵	17,140	13,712	9,598	8,570	5,999		
Lafayette	See MSA-Lafayette					New Orleans, LA ⁶	19,196	15,357	10,750	9,598	6,719		
Lafourche	19,947	15,958	11,170	9,974	6,982	Shreveport, LA ⁷	18,158	14,526	10,168	9,079	6,355		
LaSalle	15,250	12,200	8,540	7,625	5,338								
Lincoln	16,660	13,328	9,330	8,330	5,831								
Livingston	See MSA-Baton Rouge												
Madison	10,679	8,543	5,980	5,340	3,738								
Morehouse	12,949	10,359	7,251	6,475	4,533								
Natchitoches	13,343	10,674	7,472	6,672	4,670								
Orleans	See MSA-New Orleans												
Ouachita	See MSA-Monroe												
Plaquemines	19,884	15,907	11,135	9,942	6,959								
Pointe Coupee	14,913	11,930	8,351	7,457	5,220								
Rapides	See MSA-Alexandria												
Red River	12,482	9,986	6,990	6,241	4,369								
Richland	12,112	9,690	6,783	6,056	4,239								
Sabine	13,519	10,815	7,571	6,760	4,732								
St. Bernard	See MSA-New Orleans												

¹Includes Rapides and Grant Parishes.

²Includes East Baton Rouge, West Baton Rouge, Livingston, and Ascension Parishes.

³Includes Lafayette Parish only.

⁴Includes Calcasieu Parish only.

⁵Includes Ouachita Parish only.

⁶Includes Jefferson, Orleans, St. Bernard, and St. Tammany Parishes.

⁷Includes Bossier, Caddo, and Webster Parishes.

⁸1980 Census and Formula provided by U. S. Department of Housing and Urban Development.

Dennis Stine
Commissioner

RULE

**Department of Health and Hospitals
Board of Examiners for Nursing Home Administrators**

In accordance with the notice of intent published in the January 1989 *Louisiana Register*, the Louisiana Board of Examiners for Nursing Home Administrators announces the adoption of Chapter 16, LAC Title XLIX, effective March 20, 1989.

Chapter 16. Certified Nurse Assistant

§1601. General Definitions

A. A *Certified Nurse Assistant* is a person who has met standards established by the Bureau of Health Standards and who has been certified to the board as eligible.

B. *Certified Nurse Assistant Register* is a listing of all certified nurse assistants including names, addresses, certification number and other pertinent data.

C. *Standards* means the standards established by the Bureau of Health Standards for the training, examination, certification, investigation, hearings and other actions required to

establish and maintain a certification program in compliance with federal regulations.

D. The *Bureau* is the Bureau of Health Standards in the Department of Health and Hospitals.

§1603. Certified Nurse Assistant Register

A. The board shall establish a certified nurse assistant register that maintains a current list of all certified nurse assistants in the state.

B. The register shall contain the name, address, social security number, certification number, school attended, date of certification, record of employment and whether nurse assistant has been disciplined. A second part of the register will contain specific information on disciplinary action for patient abuse or neglect, and/or misappropriation of patient property.

§1605. Register Notification

A. The bureau shall notify the register, supplying all required information on each person the bureau certifies.

B. The bureau shall notify the register of each person disciplined for patient abuse or neglect; misappropriation of pa-

tient properties, and any other act the bureau deems pertinent to certification.

§1607. Certification Fees

A. The board shall set a certification and re-registration fee not to exceed \$3 annually for each certified nurse assistant.

§1609. Certificate Form

A. An applicant who has been certified by the bureau and paid the fee set by the board shall be issued a certificate and/or a certification card on a form provided for that purpose by the board, certifying that such applicant has met the requirements of standards and regulations entitling him/her to work and to hold himself/herself out as a duly certified nurse assistant. The certificate shall include an expiration date.

§1611. Registration of Certificates

A. Every person who holds a valid certificate as a certified nurse assistant issued by the board shall immediately upon issuance thereof be deemed registered with the board. Thereafter, such individual shall apply annually on a date set by the board for a new certificate of registration and reports any facts required by the board and the bureau.

B. Re-registration application shall be made on forms provided by the board and the application must at the same time submit a fee not to exceed \$3 as set by the board.

C. Upon receipt of the application and the fee the board shall issue a new certificate of registration showing its expiration date.

D. When a certified nurse assistant fails to comply with provisions of this Section the register shall show his/her registration is not current.

§1613. Use of the Register

A. Each nursing home administrator who is administrator-of-record in a nursing home shall verify with the register that a nurse assistant is certified and in good standing before employing the nurse assistant, except as provided in the standards of the bureau.

§1615. Reproducing Certificates

A. No certified nurse assistant certificate may be copied or reproduced in any way.

§1617. Reissuing Certificates

A. When a certificate is lost or marred to the extent it is not readily legible, the holder shall apply to the board for a replacement. There shall be a replacement fee as set by the board not to exceed \$2.

Winborn E. Davis
Executive Director

RULE

**Department of Health and Hospitals
Board of Examiners for Nursing Home Administrators**

In accordance with the notice of intent published in the January 1989 *Louisiana Register*, the Louisiana Board of Examiners for Nursing Home Administrators announces the repeal of Paragraph 1102, Chapter 11, LAC 46:XLIX effective March 20, 1989:

Chapter 11. Licenses

§1102. Emergency License

A. The board may issue a provisional license on an emergency basis when the state agency responsible for licensing nursing homes certifies to the need. Applicants for a provisional license need not be fully qualified for a regular license but they must be knowledgeable of the operations of a nursing home as determined by an oral review conducted by a board member or the executive director of the board.

1. Applicants shall complete application forms provided by the board and shall pay a fee of \$100.

B. The emergency license shall not exceed a period of three months. At the end of each month the state agency licensing nursing homes shall certify to the board the need to continue the license at the end of the first month and of the second month when indicated.

C. An applicant issued a provisional license under provisions of this Chapter shall represent himself as an "emergency administrator" in all actions and on all documents he is required to sign in his role as head of the nursing home.

Winborn E. Davis
Executive Director

RULE

**Department of Health and Hospitals
Board of Examiners for Nursing Home Administrators**

In accordance with the notice of intent published in the January 1989 *Louisiana Register*, the Louisiana Board of Examiners for Nursing Home Administrators announces the adoption of changes of LAC 46:XLIX, Chapter 11, Paragraph 1105 effective March 20, 1989.

Chapter 11. Licenses

§1105. Refusal, Suspension and Revocation of License

A. . . .

11. has paid, given, has caused to be paid or given or offered to pay or to give a commission or other valuable consideration for solicitation or procurement, either directly or indirectly, of nursing home residents to any referral source which shall include, but not be limited to hospitals, other nursing homes, physicians, clinics, dentists, nurses and social workers.

Winborn E. Davis
Executive Director

RULE

**Department of Health and Hospitals
Board of Examiners for Nursing Home Administrators**

In accordance with the notice of intent published in the January 1989 *Louisiana Register*, the Louisiana Board of Examiners for Nursing Home Administrators announces the adoption of changes of LAC 46:XLIX, Chapter 11, Paragraph 1107 effective March 20, 1989.

Chapter 11. Licenses

§1107. Reciprocity

A. . . .

1. that such other state maintains a system and standard of qualification and examination for nursing home administrator licenses, which are substantially equivalent to those required in this state; or that the applicant is an administrator certified by the American College of Health Care Administrators;" and

Winborn E. Davis
Executive Director

RULE

**Department of Health and Hospitals
Office of Public Health**

In accordance with the laws of the State of Louisiana, R.S. 40:4, 40:5, and the provisions of Chapter XIII of the State Sanitary Code, the State Health Officer has determined that the following amendment to the listing entitled "Mechanical Wastewater Treatment Plants for Individual Homes—Acceptable Units" is adopted:

1. Amend the listing to include one additional series model for a currently listed manufacturer/plant, specified as follows:

	PLANT DESIGNATION	RATED CAPACITY
MANUFACTURER	Model 750 H	750 GPD
Clearstream Wastewater Systems, Inc. P. O. Box 705 Silsbee, Texas 77656 (409) 385-1395		

The specified change is in compliance with the requirements set forth in Section 6.6 of Appendix A of Chapter XIII of the State Sanitary Code.

David L. Ramsey
Secretary

RULE

**Department of Health and Hospitals
Office of the Secretary**

In accordance with Act 104 of the 1988 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, has amended LAC 48: Chapter 43, Section 4301 and 4302 (A), as follows:

Title 48

PUBLIC HEALTH—GENERAL

Part XI. Hospitals

Subpart XVII. Hospital Notification

Chapter 43. Infectious Disease Notifications

§4301. Introduction

A. If, while treating or transporting an ill or injured patient

to a hospital, an emergency medical technician, paramedic, fire-fighter, or other person who is employed by or voluntarily working with a firm, agency, or organization which provides emergency treatment or transportation comes into direct contact with a patient who is subsequently diagnosed as having an infectious disease as listed below, the hospital receiving the patient shall notify the appropriate firm, agency, or organization which shall notify its emergency medical technician, paramedic, fire-fighter, emergency medical transportation service employer, or other person treating or transporting the patient of the individual's exposure to the infectious disease.

B. In accordance with the above, DHH defines hospital to mean any public or private health care facility which is primarily operated for the purposes of diagnosis, treatment or care of persons admitted for health care services. This definition expressly includes emergency rooms and outpatient clinics operated in connection with said health care facilities. In addition, R.S. 40:1099 B requires notification to and by nursing homes.

C. The following infectious diseases are subject to notification and consultation procedures of this rule:

1. untreated pulmonary tuberculosis;
2. acute meningococcal meningitis;
3. acute hepatitis virus B infection (or diagnosed carriers of chronic hepatitis B);
4. human immunodeficiency virus (HIV) infection or acquired immune deficiency syndrome (AIDS).

§4302. Requirements

A. The following notification and consultation procedures shall be carried out in each hospital:

1. Each hospital shall maintain a registry or sign-in log which shall include the name, address and telephone number of the agency, firm, organization, and person(s) who provided emergency treatment and/or transportation of the patient, when the provider is someone other than an ambulance transportation service provider (transporting ambulance providers shall continue to use the existing ambulance transportation log). The log shall later be referred to in the event that it becomes necessary to identify and notify such providers of the exposure to a patient who is subsequently diagnosed and confirmed as having one of the above listed infectious diseases.

2. Each hospital shall post a visible sign to advise the public that Louisiana law requires the hospital to notify, within 48 hours after diagnosis confirmation, any person who has provided emergency treatment or transportation of a patient who is later diagnosed to have infectious diseases as listed in §4301. In order to comply with this law, anyone transporting a patient into the hospital must register in the hospital log book with the name of the agency, firm, or organization with which he/she is affiliated. Transporting ambulance service providers, however, will continue to sign the existing ambulance log which is currently completed whenever a patient is transported by ambulance to the hospital.

3. The hospital's Infection Control Officer (ICO) or other administratively designated staff person shall be promptly notified of all cases involving confirmed diagnoses of the above listed infectious diseases. The ICO shall confidentially contact the listed firms, agencies, and organizations (which will in turn notify the individual) to advise of the exposure to a confirmed case of an infectious disease. The notification, which shall be done within 48 hours of confirmation of patient diagnosis, must include a statement that the transporting agency, firm, or organiza-

tion contact a designated hospital staff person for necessary consultation. The hospital must document that the required notification and consultation, if held, has taken place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1099.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 13: (January 1987), amended by the Department of Health and Hospitals, Office of the Secretary, LR 15: (March 1989).

David L. Ramsey
Secretary

RULE

Department of the Treasury Bond Commission

In accordance with the application provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Bond Commission amended the commission's rules as follows:

Applications must be filed with the commission at least 20 working days in advance of a commission meeting, except in case of absolute emergencies or in case where permission for later filing of routine matters is granted.

Sherri A. Dazet
Director

RULE

Department of Wildlife and Fisheries Office of Fisheries

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 5. Oysters

§501. Oyster Leases

A. Office Policies and Procedures

1. Office hours will be from 8 a.m. to 4:30 p.m., Monday through Friday excluding state holidays.

2. No one is to go into the lease document or quadrangle files, or application registration without permission of and accompaniment by designated office personnel.

B. The taking of Oyster Lease Applications

1. There shall be a 50-foot buffer zone established between new leases. However, by mutual written consent of applicants of adjacent water bottoms the lease boundaries may be common.

a. Where distances between oyster leases are 200 feet or less, no applications or leases shall be taken or issued except that the intervening space may be shared equally by the existing leases or applicants if properly applied for and leased in accordance with existing policies and practices.

b. No new application will be taken when the length exceeds its narrowest width by more than a factor of three except as follows:

i. between existing leases where all available water bottoms are taken;

ii. in bayous (or similar configurations connections or cuts between bays, lakes and ponds, etc.) where all available water bottoms are taken with a subservient clause prohibiting an impedance of reasonable navigation;

iii. a lessee may at the time of renewal request to take up his lease plus existing shoreline erosion not to exceed 100 feet along any shoreline providing that it does not conflict with an existing lease or application;

iv. a lessee may once and only once during the life of a lease submit a revised survey by a private surveyor to take up existing erosion not to exceed 100 feet along any shoreline providing that it does not conflict with an existing lease or application;

c. Any application for an oyster lease may be contoured to follow the shoreline.

2. If an applicant does not keep his appointment with a surveyor his application will be cancelled. The applicant will be notified of action taken and be given an opportunity to reinstate the application with an additional payment of the survey fee within 14 days of the cancellation notice. When the department surveyor cannot keep his appointment all efforts will be made to notify the applicant.

3. a. If any survey of existing leases by the surveyor of the department shows an overlap, the department will abstract the leases involved and eliminate the overlap, giving the area to the longest continuously uninterrupted lease and shall notify the lessees of the action.

b. If any survey of an application for new area shows an overlap of an existing lease and the applicant has not applied for restakes of the overlapped lease the application will be cancelled. The applicant will be notified of the action taken and be given an opportunity to reinstate the application with an additional payment of the survey fee within 14 days of the cancellation notice. An application cancelled for overlapping an existing lease will not be rescheduled until the restakes required to resolve the overlap have been applied for.

4. All applicants must appear in this office to place applications for survey and lease, or provide power of attorney to agents to sit in their behalf.

5. Annual rental notices will be mailed to lessees at least 30 days in advance of due date which is January 1 of each year.

6. A fee of \$10 per lease will be charged for transfer of oyster lease.

7. A fee for all extra maps, leases, plats or documents, will be charged as follows:

All maps	- \$10 per copy
Plats	- \$ 5 per copy
Lease Documents	- \$ 5 per copy
Other material	- \$ 1 per copy
Computations	- \$ 2 per point

(Lambert to Latitude/Longitude)

8. Survey Application Fees

a. Survey application fees for new leases after the moratorium is lifted will be as follows:

Acres	Dollars
10 or less	\$200
11 - 20	\$250
21 - 200	\$ 3.50 additional for each acre after 20
201 - 1000	\$ 2.00 additional for each acre after 200

An additional survey fee of \$10 for each shotpoint in excess of six, excluding shore shots, will be paid prior to approval of any lease.

b. Survey application fees on leases expiring by 15-year limitation are established as follows:

Acres	Dollars
10 or less	\$150
11 - 20	\$250
21 - 200	\$ 2.50 additional for each acre after 20
201 - 1000	\$ 1.50 additional for each acre after 200

An additional survey fee of \$10 for each shotpoint in excess of six, excluding shore shots.

c. Survey application fees for RESTAKES of one's own lease are established as follows:

\$25 per shotpoint

d. Survey application fees for RESTAKES of someone else's lease are established as follows:

\$90 for the first two shotpoints

\$50 for each additional shotpoint thereafter

e. The Survey Section shall notify owner(s) of lease to be restaked.

9. If an oyster farmer knowingly has a private surveyor survey over an existing lease or application, that application is cancelled and will constitute cause for the private surveyor to be barred from surveying oyster leases for a one-year period.

C. Private Surveyors Surveying Oyster Leases for Oyster Farmer

1. All surveyors must appear in person in the office of the Survey Section of the Department of Wildlife and Fisheries to research information pertinent to their surveys.

2. Surveyor to be charged the basic rate for copies of documents needed.

3. All controls and corners of oyster surveys to be tied into the Louisiana State Plan Coordinates System.

4. All surveys must comply with R.S. 56:427B which requires the lease not to exceed the initial application by more than 10 percent compliance by negotiation with the applicant. If unacceptable, application will be cancelled and all fees forfeited.

5. Surveyors to execute properly surveyor's certificate appearing on reverse side of original application on file in the Oyster Lease Survey Section, or a photocopy of the original.

6. Surveyors must furnish the Department of Wildlife and Fisheries Survey Section with the original field notes on standard 4-1/2 x 7-1/2 looseleaf sheets.

7. Surveyors to note in the original field notes any activity in or adjacent to or on surveyed area, or any existing structures, etc.

8. Survey plats to be drawn in black ink on forms furnished by the Louisiana Department of Wildlife and Fisheries Oyster Lease Section and original tracing to become the property of same.

9. The acreage of all surveys, even though calculated to tenth or hundredth of acre, to be rounded off to the next highest acre.

10. Application number and ownership on all survey plats to be shown on original application.

11. No land area to be included in survey. Probing to be done at random throughout the surveyed area to determine type of bottom and results noted on original field notes, along with tidal information.

12. Use standard signs and symbols.

13. The Louisiana Department of Wildlife and Fisheries Survey Section will provide all information needed to perform the survey.

14. Noncompliance with Subsection C. 1-12 above after 30-day notification from the department by certified mail, shall result in cancellation of the application and forfeiture of all fees to the department.

D. 1. Complaints in the field are to be handled in the following manner.

a. The oyster farmer should allow the survey to be completed in all situations. The surveyor has his instructions.

b. If the oyster farmer is dissatisfied with the survey after completed, he may register his complaint with the survey office within 14 days of date of survey.

c. Survey crew is to note that the oyster farmer will complete the survey under protest at time survey is being performed.

d. If the oyster farmer prevents survey from being completed in the field, his application will be cancelled. The oyster farmer has 14 days from postdate on letter notifying him of said cancellation to come into the office and pay survey fee and have application reinstated.

2. In an effort to comply with R.S. 56:425D, which allows the department to settle disputes and R.S. 56:427C requiring compact leases, and policy B-1, the department has the authority to grant applications to settle boundary disputes particularly as it is associated with shoreline erosion.

E. Oyster Lease Posting Requirements

In an effort to comply with with R.S. 56:430, Paragraph B, and to keep within the constraints of Title 14, Section 63, dealing with criminal trespassing, the following are the posting oyster lease requirements.

1. The oyster lessee or person seeking to post the oyster lease shall place and maintain signs along the boundaries of the property or area to be posted. These signs shall be written in the English language.

2. The signs shall have letters at least three inches in height and shall be of sufficient size and clarity to give notice to the public of the location and boundary of the oyster lease. The signs shall be placed and maintained at intervals of not more than one-fifth of a mile and shall be at least three to 12 feet above the water level.

3. At the main entrance to the property and at no less than at all corners along the boundary of said property, the party seeking to post same shall include his name or initials in addition to the lease number.

4. In marsh areas and canals, posted signs shall also be placed at all major points of ingress and egress.

5. In open waters all signs are to be placed facing outward.

F. 1. Applications will remain in effect for a period of

three years. At the end of three years any applications not surveyed by this department or a private surveyor will be cancelled.

2. Upon death of an applicant the estate will have 180 days to appoint a representative to deal with the survey of applications. If the department has not been notified within 180 days the application will be cancelled and survey fees will be retained.

3. No application for lease shall be transferrable.

4. An applicant will be required to outline on a department map the area for which he wishes to apply. Pursuant to R.S. 56:427(A), each element of the verbal description written on the application must be met by the survey plat. Additionally, the survey plat must conform completely to the map outline, attached to and made a part of the application; provided, however, that deviations from the map outline (but not the verbal written description) are permitted when such a deviation would not encroach on a neighboring lease or application, or when the signed, written consent of the leaseholder or applicant whose lease or application would be affected, has been granted. In no case will an applicant survey outside of his verbal written description, except as provided in 5.a.ii, below.

5. a. In the event of department error which results in an application being taken in an area where there is a prior undisclosed application or lease which prevents the applicant from taking the full amount of acreage applied for in the area described, the following procedure shall apply: the applicant shall have the option of

i. taking all available remaining acres within the originally described area in a lease and receiving a pro rata refund of unused survey application fees for any loss of acreage; or

ii. taking all applied-for acres in one lease outside of the originally described area in the nearest unencumbered water bottom; or

iii. if neither of the above options is acceptable to the applicant, the applicant may have his original application cancelled and receive a full refund of the survey application fee.

b. The applicant shall have 30 days from the date of notification of the conflict to exercise the above options.

c. If the applicant exercises the option as set out in Paragraph 5.a.ii above he shall be held to the amount of acres in his original application plus 10 percent.

d. In all such cases, the department shall have final approval of all relocations.

e. Before having the relocation area surveyed, it shall be necessary for the applicant to submit a new application for the area of relocation. This application shall be identified as a "relocation" application and shall indicate the old application by number for which it is being substituted and shall also be approved in writing by the chief of the Oyster Survey Section, the chief surveyor of the department, and the chief of the division.

f. All relocations shall follow this procedure. No survey shall proceed until the properly completed relocation application has been submitted, accepted and approved. No survey is authorized without the above procedure being followed nor shall the department be responsible for the cost of any survey performed prior to final approval of the relocated application.

6. No application for a new area will be accepted from any person not of the full age of majority (18 years).

G. 1. Upon lifting of the moratorium, a date will be set for the taking of appointments to make applications.

2. Each appointment will be for a 30-minute period and will allow the applicant to make one application.

3. If all applicants have received appointments and there are still openings, an applicant may go to the end of the line and make another appointment for one application. An applicant may continue to go to the end of the line and make appointments as long as applications are available.

4. In subsequent years the number of applications not surveyed by July 1 will be determined. This number will be subtracted from a base of 500 to determine the number of applicants to be accepted. On the first business day in August appointments will be taken and the rules in Paragraphs G-3 and G-4 will apply.

H. Policy to comply with laws concerning default in payment of rent on oyster leases. (Non-compliance R.S. 56:429)

1. On the first working day in February of each year, the Survey Section will compile a list of leases that are in default (R.S. 56:429). After compiling the list each owner will be notified by certified mail that his lease is in default and will be offered at public auction on the last Tuesday in March. He will also be notified that all works, improvements, betterments, and oysters on the leased area are the property of the state and that the Enforcement Division of the Louisiana Department of Wildlife and Fisheries has been so notified.

2. On the first working day following the last day of February all leases still in default will be advertised in a newspaper in the parish in which the lease is located. After the placement of the advertisement, advertisement cost will be added to the lease rent plus 10 percent. Up to and including the last Monday in March, the leases may be reinstated by payment of the rent due plus 10 percent and the advertising cost if applicable.

3. On the last Tuesday in March the auction will be held at a place to be designated by the Louisiana Department of Wildlife and Fisheries. The auctioneer will be the chief of the Seafood Division or whomever he wishes to designate. The opening bid for each lease will be the rent due plus 10 percent and advertising cost. All sales must be paid for in cash or by certified check. The auction will start with the lowest numbered lease and continue numerically until completed.

4. Any leases not sold at auction will be removed from the Survey Section maps. The area will be open and may be taken by application at the yearly opening.

I. Procedures to comply with R.S. 56:432.

1. The Survey Section will keep an indexing system to determine the acreage held by all oyster lease holders.

2. No application will be accepted that will cause an applicant to exceed a total of 1000 acres under lease and application. Reference R.S. 56:432.

3. No lease will be issued to an oyster lease holder that will cause his account to exceed 1000 acres under lease unless he qualifies for additional acres by the ownership of oyster canning plants.

4. An oyster lease applicant will be given 30 days to reduce lease acreage prior to cancellation of any application that would cause his lease acreage to exceed 1000 acres. If the reduction is not made within 30 days the application will be cancelled and all fees retained by the department.

Virginia Van Sickle
Secretary

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The following guidelines are established pursuant to Act 169 of the 1988 regular session of the Louisiana Legislature and shall be used by the Louisiana Department of Wildlife and Fisheries in preparing recommendations to the Louisiana Wildlife and Fisheries commission concerning values to be established for certain wildlife species in accordance with that act.

Title 76

WILDLIFE AND FISHERIES

Part I. Wildlife and Fisheries Commission Agencies Thereunder

Chapter 3. Special Powers and Duties

Subchapter C. Wildlife Values

§313. Guidelines for Determining Wildlife Values

A. With respect to fish and shellfish species, published hatchery values reflecting estimated costs involved in rearing various fishes to particular size classes are available for many groups of freshwater fishes and are contained in the American Fisheries Society's publication entitled "Monetary Values of Freshwater Fish and Fish-kill Counting Guidelines." These figures, adjusted by the most recent Consumer Price Index; current data relating to expenditures of both sport and commercial fishermen relating to the animal or species which, directly or indirectly, result in revenues being generated for the state; ex-vessel commercial prices, as presented in the annual National Marine Fisheries Survey of Louisiana Landings; estimated costs involved in the capture, purchase, transportation and release of species of fish; the current commercial retail selling price of living replacement animals; and, the current commercial selling price of meat and/or other products which are derived from the animal and traded in commerce, shall be considered by the department in formulating its recommendations concerning valuation.

B. With respect to avian species, existing information and estimated costs involved in the capture, purchase, transportation and release of species of birds; cost to purchase replacement animals from other states or jurisdictions; the costs to zoos and other zoological institutions to raise and maintain like animals; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and, the expenditures of sportsmen and others relating to the animal or species which, directly or indirectly, result in revenue being generated for the state, shall be considered by the department in formulating its recommendations concerning valuation.

C. With respect to mammal species, estimated costs involved in the capture, purchase, transportation, and release of species of mammals; pelt values; costs to zoos and other zoological institutions to raise and maintain like animals; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and the expenditures of sportsmen and others relating to the animal or species which, directly or indirectly, result in revenue being generated for the state, shall be considered by the department in formulating its recommendations concerning valuation.

D. With respect to reptiles and amphibian species, the estimated costs involved in the capture, purchase, transportation

and release of species of reptiles and amphibians; pelt or hide values; costs to zoos and other zoological institutions to raise and maintain the animal; the current commercial retail selling price of meat and/or other products which are derived from the animal and traded in commerce; and the expenditures of hunters, trappers, and recreational sportsmen with respect to the animal or species which, directly or indirectly, result in revenues being generated for the state shall be considered by the department in formulating its recommendations concerning valuation.

E. Certain species are highly prized because of their rarity or may have a high intangible perceived value placed on the animal or species by the public. Other species have an intrinsically high value because they are threatened or endangered. In addition to the guidelines set forth above, the department shall, with respect to these rare and/or threatened and/or endangered species which might have limited commercial value but which possess a high intangible, intrinsic, aesthetic, ecological, or biological value, consider those factors when determining its recommendations with respect to valuation.

F. Not all the criteria set forth in the guidelines above will be applicable to each particular species and each criterion or factor shall be considered by the department only insofar as it is applicable to each particular species.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:40.1-40.9

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 15: (March 1989).

Virginia Van Sickle
Secretary

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Marketing

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and R.S. 3:556.5, notice is hereby given that the Louisiana Crawfish Promotion and Research Board intends to adopt rules and regulations for the collection of crawfish bag assessments.

Title 7

AGRICULTURE AND ANIMALS

Part V. Advertising, Marketing and Processing

Chapter 23. Louisiana Crawfish Promotion and Research Board

§2301. Definitions

Board means the Louisiana Crawfish Promotion and Research Board.

Crawfish Farmer means a person who cultivates crawfish in ponds.

Crawfish Harvester means a person who harvests wild crawfish without participating in the growing of the crawfish.

Person means any individual, corporation, partnership, association or other legal entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:556.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Louisiana Crawfish Promotion and Research Board, LR 15.

§2303. Designation of Crawfish Bags

A. Bags used to package live crawfish should meet the following specifications:

1. the bags should be made of woven polypropylene;
2. the mesh size of the bags should be no smaller than $\frac{1}{16}$ inch and no larger than $\frac{1}{4}$ inch;
3. the inside dimensions of the finished bags should be no larger than 18 inches wide and 30 inches long;
4. the bags should hold up to 45 pounds of crawfish.

B. Bags meeting all of the specifications in A, above, shall be designated and defined as "crawfish bags."

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:556.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Louisiana Crawfish Promotion and Research Board, LR 15.

§2305. Assessments on Crawfish Bags

A. Pursuant to R.S. 3:556.7 (C), there is levied and imposed an assessment on each crawfish bag in the amount of .01 for each bag holding less than 25 pounds of crawfish and .02 for each bag holding 25 pounds of crawfish or more.

B. The assessment shall ultimately be paid by the crawfish farmers and crawfish harvesters who purchase the bags.

C. Pursuant to R.S. 3:556.9 (A), the assessments provided for above shall be collected at the first point of sale in Louisiana. The person selling the crawfish bags shall collect the assessments provided for herein.

D. The written application for an exemption from the assessments shall be on a form provided by the board, and the application for exemption form shall be filed annually with the board no later than April 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:556.5.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Louisiana Crawfish Promotion and Research Board, LR 15.

Interested parties may submit written comments on the proposed rules through 4:30 p.m., March 7, 1989, to Roy Johnson, Director, Market Development, Louisiana Department of Agriculture and Forestry, Box 44182, Capitol Station, Baton Rouge, LA 70804.

Bob Odom
Commissioner

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Crawfish Promotion and Research Board

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no additional expenditures involved in implementing these regulations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
During FY/88, the Louisiana Crawfish Promotion and Research Board collected \$33,981.33 in bag assessments. If this regulation had been in place, the board estimates that \$44,500 would have been collected in crawfish bag assessments.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
The board estimates no additional cost to persons or non-government groups except by those firms that have been subverting state law. The crawfish industry as a whole will benefit by more funds being available for promotion and research.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Standardizing the definition of crawfish bags will eliminate the unfair advantage that some firms have taken by not collecting the state mandated assessment.

Richard Allen
Assistant Commissioner

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of State Civil Service

The State Civil Service Commission will hold a public hearing on Wednesday, April 5, 1989 to consider amending Civil Service Rules. The public hearing will begin at 8 a.m. in the Second Floor Commission Hearing Room, DOTD Annex Building, 1201 Capitol Annex Road, Baton Rouge, LA.

The following are proposed amendments to be considered at the meeting:

PROPOSAL TO AMEND RULE 8.27(a)5

8.27 Status of Nonclassified Employees Whose Positions are Declared to be in the State Classified Service or are Acquired by a State Agency.

- (a) . . .
 1. . . .
 2. . . .
 3. . . .
 4. . . .
 5. He attains a passing score on the test for the class to which his position has been allocated within three attempts and six months of the date of the notification to the agency that a test is necessary except that the director may

waive the passing of a written examination provided:

1. The knowledges, skills, and abilities measured by the test and the knowledges, skills, and abilities required to perform the job are different; and
2. A review of the person's application reveals that he has successfully performed the duties of the job; and
3. The appointing authority certifies that his performance has been satisfactory.

EXPLANATION

This rule presently does not provide for a waiver of a passing score on the written examination for any reason. There are situations where unclassified employees have performed their duties at least satisfactorily and their test scores are near passing. This rule amendment would allow the director to make exceptions in such cases when in his judgement there is adequate justification for the waiver.

AMEND RULE 13.31

13.31 Amicable Settlement of Appeals.

In any appeal pending before the commission, the parties thereto may agree to submit a proposed settlement which, if approved by the commission or a referee, shall constitute a final disposition of the appeal.

AMEND RULE 15.10

15.10 Modification of Personnel Actions.

(a) . . .

(b) . . .

(c) No removal, demotion or reduction in pay of a permanent employee may be rescinded or modified without approval of the commission or a referee nor may any disciplinary action which is the subject of an appeal be rescinded or modified without approval of the commission or a referee.

EXPLANATION

Rules 13.31 and 15.10(c) are proposed for amendment to authorize referees to approve settlements of appeals and modifications and rescissions of actions.

AMEND RULE 13.37(a)

13.37 Delay for Filing an Application for Review of a Referee's Decision.

(a) No application for review of a referee's decision shall be effective unless a written notice complying with the requirement of Rule 13.36 is received in the office of the director of the Department of State Civil Service (located at 1201 Capitol Access Road, Baton Rouge, LA) within 15 calendar days after the date that the referee's decision was filed with the director. Applications for review of a referee's decision may be mailed to the Commission at Box 94111, Baton Rouge, LA 70804, but to be considered timely, the application must be properly addressed with proper postage affixed and must be postmarked by the United States Postal Service within 15 calendar days after the date that the referee's decision was filed with the director.

Rule 13.37(a) is proposed for amendment to include the current address for the Department of State Civil Service.

Herb L. Sumrall
Director

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

The State Civil Service Commission will hold a public hearing on Wednesday, April 5, 1989 to consider adopting Civil Service Rules 19.3 and 19.11. The public hearing will begin at 8 a.m. in the Second Floor Commission Hearing Room, DOTD Annex Building, 1201 Capitol Access Road, Baton Rouge, LA.

These proposals were scheduled to be heard at the February 15, 1989 Civil Service Commission meeting. However, the commission deferred action on these proposals until its April meeting. The text of these rules appeared in the January issue of this Register as well as in General Circular No. 901. A copy of the applicable General Circular can be obtained from the Department of State Civil Service.

Persons interested in making comments relative to these proposals may do so in writing to the Director of State Civil Service at Box 94111, Baton Rouge, LA 70804-9111.

Herbert L. Sumrall
Director

NOTICE OF INTENT

Department of Economic Development Racing Commission

The Louisiana State Racing Commission hereby gives notice in accordance with law that it intends to adopt the following rule.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1739. Disqualified Horse Recognized as Winner

If a horse winning a race is disqualified, it will nonetheless be recognized as the winner of the race for the purpose of meeting the eligibility and conditions for all future races, except if the specific disqualification was with an elimination race or eligibility race for a specific futurity, stakes or handicap in which case it will not be eligible to advance further. The horse which is declared the official winner of the race will likewise be recognized as the winner of the race, pending final determination by proper authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and 148.

HISTORICAL NOTE: Promulgated by the Racing Commission LR 2:449 (December, 1976), repromulgated LR 3:45 (January, 1977), LR 4:287 (August, 1978).

The office of the Racing Commission is open from 9 a.m. to 4 p.m. and interested parties may contact Alan J. LeVasseur, Executive Director or Tom Trenchard, Administrative Services Assistant at (504) 483-4000 or LINC 635-4000 holidays and weekends excluded, for more information. All interested persons may submit written comments relative to this rule through Mon-

day, March 6, 1989 to 320 North Carrollton Avenue, Suite 2-B,
New Orleans, LA 70119-5111.

Alan J. LeVasseur
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: Disqualified Horse Recognized as Winner

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs to implement this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
The proposed rule change benefits horsemen and patrons by disallowing horses from running in races (such as futurity finals) when they have been disqualified in prior races that were to make them eligible.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition nor employment.

Alan J. LeVasseur
Executive Director

John R. Rombach
Legislative Fiscal Officer

2. Occupational Competency Testing	50,000
3. VTIE Tuition Exemption Program	75,000
4. Regional Grant for SACS Accreditation, Extension, Apprenticeship and Quickstart	600,000
5. Statewide Quickstart	800,000
III. Research or Pilot Programs Designed to Improve Student Academic Achievement	
A. Louisiana Educational Assessment Program (Public and Nonpublic)	1,200,000
B. Parent Education Project	300,000
C. Governor's Reform Initiatives	
1. Teacher Evaluation System	1,400,000
2. School-District-State Profiles	1,000,000
3. School Incentive Program	200,000
4. Teacher Internship Program	850,000
5. Teacher Career Options Program	200,000
6. Statewide Dropout ID and Intervention Program	800,000
7. Model Early Childhood Program	1,595,000
8. Pre-High School Algebra and Reading	200,000
IV. Scholarship Programs for Prospective Teachers	
A. Education Majors Program	2,000,000
B. Post-Baccalaureate Scholarship Program	500,000
V. Remediation Programs	
A. Extended Programs for Students Failing the High School Graduation Test	1,500,000
VI. Purchase of Superior Textbooks, Library Books, and/or Reference Materials	1,700,000
VII. Management and Oversight	
A. BESE Administration (1%)	275,000
B. BESE Fiscal/Programmatic Evaluation (1%)	275,000
TOTAL	\$27,585,676

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

NOTICE OF INTENT

**Board of Elementary and Secondary Education
8(g) Annual Program and Budget FY 1989-90**

In accordance with R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted the following 8(g) Annual Program and Budget for FY 1989-90:

- I. Exemplary Competitive Programs Designed to Improve Student Academic Achievement or Vo-Tech Skills
 - A. Pre-K - 3rd Grade \$ 2,750,000
 - B. Student Enhancement (Grades 4 - 12) 2,750,000
 - C. Educational Technology 1,000,000
 - D. Vocational Education 1,500,000
- II. Exemplary Statewide Programs Designed to Improve Student Academic Achievement or Vo-Tech Skills
 - A. Administrative Leadership Academy 750,000
 - B. Foreign Language Model Program 175,000
 - C. Continuing Education for Teachers 2,300,000
 - D. Louisiana Writing Project 250,000
 - E. Star Schools Telelearning Project 410,676
 - F. Talent Improvement Program for Gifted and Talented Students 80,000
 - G. Vocational Education
 - 1. Curriculum Upgrade 100,000

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: 8(g) Allocation by BESE for 89-90**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The Board of Elementary and Secondary Education has adopted its Quality Education Support Fund budget for 1989-90. This budget is funded with 8(g) dedicated funds. If the Legislature appropriates these funds as proposed by BESE, the additional costs over 1988-89 budgeted will be \$4,426,145. Of this amount, funds for competitive projects will increase by \$1,500,000, funds for statewide programs will increase by \$3,415,676, statewide funding for vocational education will increase by \$125,000, funding for the Governor's Reform Initiatives will decrease by \$722,436, and administration/evaluation will increase \$107,905.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule will increase revenues for LEA's through competitive grant awards by up to \$6,500,000. This amount may be reduced to the extent that funding is provided to applicants other than LEA's.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Up to \$6,500,000 will be available for competitive exemplary projects to improve academic achievement through the Quality Education Support Fund. These projects may be carried out either by LEA's or non-governmental entities as determined by BESE.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Em Tampke
Executive Director

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Board of Elementary and Secondary Education
Policy on Sex Education**

In accordance with R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the following policy on sex education as a new policy in Bulletin 741 as recommended by the State Department of Education:
Add as Standard 1.088.00 in Bulletin 741:

A school system which chooses to offer instruction in sex education shall provide the following information to the parents and/or guardians of the students. In addition, parental sessions must be provided by the school system.

- 1. A description of the course contents,
- 2. a listing of course materials to be used,
- 3. the qualifications of the instructor(s).

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Sex Education**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated implementation costs to the state is approximately \$50 for the printing in Bulletin 741. The local governmental unit cost will vary in each parish. The imple-

mentation of the Sex Education Program is voluntary to school systems which choose to offer instruction in Sex Education. The implementation cost for the program would include cost for course materials, video equipment, and film strips (if used), and inservice training of teachers. The local school systems in Louisiana that choose to offer instruction in sex education at present are very few in number. Caddo Parish which chooses to offer instruction in sex education estimates the cost at \$9,275 for secondary schools and \$4,360 for middle schools the first year implementation of the program. The cost of the program after the first year is a minimum amount, less than \$1,400 for secondary and middle schools for inservice training of new teachers and updated material.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated effect on revenue collections of state or local governmental units is no fiscal impact.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There are no estimated costs or economic benefits associated with the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Graig A. Luscombe
Assistant Superintendent
Management and Finance

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Amendments to Bulletin 1191

In accordance with R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the following amendments to Bulletin 1191, *School Transportation Handbook* as recommended by the Department of Education:

Page 16

Delete- Age Requirements as presently stated and insert: "All bus drivers must be at least 21 years of age."

Pages 69 and 70

Delete R.S 17:160 (School Bus Drivers Under 18 or Over 65 Years of Age Prohibited; Penalty) in its entirety.

Page 94

Delete R.S. 42:691 as written and insert: R.S. 42:691 Compulsory Retirement of Public Employees Because of Age

With the exception of law enforcement personnel and firefighters, no employee of the state of Louisiana, or any political subdivision thereof, or of any district, board, commission, or other agency of either, or of any other such public entity shall be separated from the public service by his appointing authority because of the employee having attained any particular age follow-

ing employment by the appointing authority. This is in accordance with the provisions of the Federal Age Discrimination in Employment Act.

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: School Transportation Bulletin 1191,
amendments**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost to the state is \$50 to cover copying and postage. There is no cost for local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
These amendments will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There are no costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition and employment.

Graig A. Luscombe
Assistant Superintendent for
Management & Finance

John R Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Board of Elementary and Secondary Education
Amend Bulletin 1191 to Comply with Act 509 (1988)**

In accordance with R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved the following amendments to Bulletin 1191, *School Transportation Handbook* to meet the mandates of Act 509 (1988) on page 15, under Driver Experience and Records, delete 1 and 2 as written and insert the following:

1. Applicants be disqualified from consideration as bus driver if within the past five years, they have been convicted of or forfeited a bond on any charge of DWI; transportation, possession of use of a Schedule I drug; leaving the scene of an injury or fatality accident; or any felony involving motor vehicles. In addition, any applicant whose driving or criminal record indicates that a concern should exist for the welfare of children in the

applicant's charge must come under close scrutiny.

2. The Department of Public Safety and Corrections shall provide for the examination of driving records as provided in S.B. 73, R.S. 17:491.1. The Department of Public Safety recommends that the job applicant pay for these record checks.

Schedule I Drug: A controlled substance consisting of drugs and other substances by whatever official name, common or unusual name, chemical name or brand name listed in this section. Each drug is assigned a DEA controlled substance number. Categories are: Opiates (derived from opium) Hallucinogenic Substances - Ex. Marijuana, Depressants, Stimulants

Source: Code of Federal Regulation (CFR) Title 49:, Chapter III, Subchapter B, Appendix D.

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Amend Bulletin 1191 to comply with Act
509 (1988)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation cost is approximately \$50 to cover the cost of printing and dissemination.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
Applicants will pay approximately \$5-10 per exam if the Department of Public Safety decides to charge for this service.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition and employment; however, applicants will be disqualified from consideration as a bus driver if, within the past five years, they have been convicted of the charges listed in new language.

Graig A. Luscombe
Assistant Superintendent for
Management and Finance

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Board of Elementary and Secondary Education
Passing Scores for Criterion-Referenced
Test and Graduation Test**

In accordance with R.S. 49:950 et seq., The Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education, adopted the Department of Education's recommended passing scores on the state criterion-referenced tests for grades 3-5-7, and State Graduation Test, including the written composition component of the Graduation Test as listed below:

Grade	Subject	Scale Score
3	Language Arts	347
3	Mathematics	353
5	Language Arts	549
5	Mathematics	549
7	Language Arts	752
7	Mathematics	743
Graduation Test	Language Arts	1053
Graduation Test	Mathematics	1048
Graduation Test	Science	1042
Graduation Test	Social Studies	1041
Graduation Test	Written Composition	1047

This policy was also adopted as an Emergency Rule (See February 20, 1989 addition of the *Louisiana Register*.) Effective date of Emergency Rule was February 20, 1989.

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules**

**Rule Title: Recommended Passing Scores for
Criterion-Referenced Tests**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The estimated implementation costs of this rule are: 1988-89, \$0.00; 1989-90, \$14,066,809; and 1990-91, \$12,543,392. The remediation costs are based on predicted failure rates for each test with remediation at \$105 per test per fiscal period (two retakes). The cost to administer the exams is \$1.30 per test, except for writing composition which is \$2.60. These costs also update the remediation costs previously presented for the graduation exams as better failure predictions are now available.

The tables below exhibit the basis for the estimated implementation costs.

TABLE I
ESTIMATED FAILURE RATES BY TEST FOR
1988-89 and 1989-90

		1988-89/1989-90		
		*Number of Students for 1988-89, 1989-90	Estimated Number Failed	Estimated % Failed
Grade 3	Language Arts	66,964	14,727	20.0%
	Mathematics	66,964	12,321	18.4%
Grade 5	Language Arts	61,590	13,180	21.4%
	Mathematics	61,590	14,658	23.8%
Grade 7	Language Arts	60,255	13,798	22.9%
	Mathematics	60,255	16,088	26.7%
Grade 10	Language Arts	51,914	10,227	19.7%
	Mathematics	51,914	15,003	28.9%
	Writing Composition	51,914	7,942	15.3%
**Grade 11	Science	45,496	14,149	31.1%
	Social Studies	45,496	13,785	30.3%

*Regular Education and Special Education enrollments submitted to the Bureau of Accountability by the Districts for 1989-90. Estimates for 1988-90 are assumed to be constant for lack of empirical data.

**Grade 11 estimates are not utilized in the calculation of costs until 1990-91.

TABLE II
RETAKE OF GRADUATION EXAM

	1988-89	1989-90	Cost @ \$1.30 Per Test Except Writing Composition @ \$2.60	1990-91	Cost @ \$1.30 Per Test Except Writing Composition @ \$2.60
Sophomores					
1st Retake					
Language Arts	10,227	10,227	\$13,295 (Fall)	10,227	\$ 13,295 (Fall)
Mathematics	15,003	15,003	19,504	15,003	19,504
Writing Composition	7,942	7,942	20,649	7,942	20,649
2nd Retake (25% of 1st Retake)					
Language Arts	2,557	2,557	3,324 (Spring)	2,557	3,324 (Spring)
Mathematics	3,751	3,751	4,876	3,751	4,876
Writing Composition	1,985	1,985	5,161	1,985	5,161
3rd Retake (50% of 2nd Retake)					
Language Arts				1,278	1,661 (Fall)
Mathematics				1,875	2,475
Writing Composition				642	2,579
4th Retake (50% of 3rd Retake)					
Language Arts				639	831 (Spring)
Mathematics				937	1,218
Writing Composition				496	1,290
Juniors					
1st Retake					
Science				14,149	18,394 (Fall)
Social Studies				13,785	17,920
2nd Retake (25% of 1st Retake)					
Science				3,527	4,598 (Spring)
Social Studies				3,446	4,480
			<u>\$66,809</u>		<u>\$122,255</u>

TABLE III
COST OF REMEDIATION

Cost for grades 3 - 10 for 1988-89 w/o 8(g) Supplement 117,549 x \$105 =	\$12,500,000
Supplement for 10th grade - unallocated	\$ 1,500,000
	<u>\$14,000,000</u>
Cost for grades 3 - 11 for 1990-91 145,883 x \$105	\$15,752,940
Cost for 10th grade 3rd retake	435,225
	<u>\$15,752,940</u>
TOTAL ANNUAL COST	
1989-90	
Remediation	\$14,000,000
Retake Administrations	66,809
	<u>\$14,066,809</u>
1990-91	
Remediation	\$15,317,715
Retake Administrations	122,255
	<u>\$15,875,165</u>

rity for any person to do any of the following:

a. Administer test in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education, which would give students an unfair advantage or disadvantage.

b. Give examinees access to test questions prior to testing;

c. Copy, reproduce, or use in any manner inconsistent with test regulations all or part of any secure test booklet;

d. Coach examinees during testing or alter or interfere with examiner's responses in any manner;

e. Make answer keys available to examinees;

f. Fail to follow security regulations for distribution and return of secure test as directed, or fail to account for and secure test materials before, during or after testing;

g. Participate in direct aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in this section.

3. Each local school district shall develop and adopt a district test security policy. The policy shall provide for the security of the materials during testing and the storage of all secure tests and test materials, including observational answers, keys, video tapes and completed observation sheets and examinee answer documents before, during and after testing.

4. Test materials, including all test booklets and other materials containing secure test questions, answer keys, and student responses, shall be kept secure and accounted for in accordance with the procedure specified in the examination program administration manuals and other communications provided by the State Department of Education. Such procedures shall include but are not limited to the following:

a. All test materials shall be kept in secure, locked storage prior to and after administration of any test.

b. All test materials shall be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.

c. Any discrepancies noted in the number or serial numbers of testing materials received from contractors shall be reported to the Assistant Superintendent for Research and Development by designated institutional or school district personnel prior to the administration of the test.

d. In the event the test materials are determined to be missing while in the possession of the institution or school district, designated institutional or school district personnel shall immediately by telephone notify the Assistant Superintendent of Research and Development. The designated institutional or school district personnel shall investigate the cause of the discrepancy and provide the Department of Education with a report of the investigation within 30 calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witness to the occurrence. Officials from the State Department of Education are authorized to conduct additional investigations.

5. Each district superintendent shall designate annually one individual in the district authorized to procure test instruments which are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education or the State Department of Education. The name of the individual designated shall be provided in writing to the Assistant Superintendent of Research and Development, State Department of Education.

6. The State Superintendent of Education may disallow, after investigation, test results which may have been achieved in a manner which is violative of test security.

7. The State Department of Education shall establish procedures to identify:

a. Improbable achievement of test score gains in consecutive years;

b. Situations in which collaboration between or among individuals occurs during the testing process;

c. A verification of the number of all tests distributed and the number of tests returned;

d. Any other situation which may result in invalidation of test results.

8. In cases where test results are not accepted because of breach of test security or action by the State Department of Education, any programmatic, evaluative, certification, or graduation criteria dependent upon the data shall not have been met.

9. Individuals shall adhere to all procedures specified in all operation manuals governing the mandated testing program.

10. Any individual(s) who knowingly engage(s) in any activities during testing which results in invalidation of scores derived from the High School Graduation Exit Examination, the High School Equivalency Program Test (GED) or the Vo-Tech Teachers' Evaluation examinations shall forfeit the test results and will be allowed to retake the test at the next test administration.

11. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education shall have breached test security. Any individual(s) who knowingly cause(s) or allow(s) the presentation of forged, counterfeit or altered identification for the purpose of obtaining admission to any test administration site shall forfeit all test scores and will be allowed to retake the test at the next test administration. Any teacher or other school personnel who allows or breaches test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

The policy was also adopted as an Emergency Rule. (See February 20, 1989 issue of *Louisiana Register*) This policy supersedes the Test Security Policy advertised as a Notice of Intent in the June 20, 1988 issue of the *Louisiana Register*. Effective date of this Emergency Rule is February 20, 1989.

Interested persons may comment on the proposed policy change and/or additions in writing, until 4:30 p.m., May 8, 1989 at the following address: State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Em Tampke
Executive Director

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Test Security Policy**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

statement, along with other copies in binders with tabs and then mail it to the Louisiana Proprietary School Commission.

Inquiries and comments should be addressed in writing to Andrew H. Gasperecz, Executive Secretary, Louisiana Proprietary School Commission, State Department of Education, Box 94064, Baton Rouge, LA 70804-9064, through March 6, 1989.

The public hearing will be held at 10 a.m., April 5, 1989, in the conference room on the second floor of the State Department of Education Building, 626 North Fourth Street, Baton Rouge, LA.

Andrew H. Gasperecz
Executive Secretary

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Application for Associate in Occupational Studies Degree

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost is \$300. This cost covers printing and distribution.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
N/A
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Andrew H. Gasperecz
Executive Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Education Proprietary School Commission

Exemption From Licensure Under Proprietary School Rules Title 2, Section 2, (c)

Proprietary School Commission Rules, Title 1, Section 2 (c) "A school or training program which offers instruction primarily in the field of recreation, health or entertainment and which does not purport to qualify persons for employment as determined by the commission" may be exempted provided that our disclaimer is used on all of your advertisements. The disclaimer is as follows: "This course is for recreation, health, entertainment or personal enrichment (whichever fits your school) of the student, and completion of the course will not qualify the student for any particular employment".

This disclaimer statement must be on all of the hand-out

(course) materials, fliers, catalogs, radio, television, yellow pages and newspaper advertisements so that the public will not misinterpret your program. Advertisements can be misinterpreted on some programs as being career oriented, job training or vocational training; therefore, a disclaimer statement will clarify this.

Before you can be exempted from licensure, the Commission will require proof of the above materials prior to exempting you from licensure. Copies of your course materials, hand-outs, catalogs, fliers and advertising copies shall be mailed to the Commission along with your reasons for exemption.

Inquiries and comments should be addressed in writing to Andrew H. Gasperecz, Executive Secretary, Louisiana Proprietary School Commission, State Department of Education, Box 94064, Baton Rouge, LA 70804-9064, through March 6, 1989.

The public hearing will be held at 10 a.m., April 5, 1989, in the conference room on the second floor of the State Department of Education Building, 626 North Fourth Street, Baton Rouge, LA.

Andrew H. Gasperecz
Executive Secretary

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Exemption from Licensure

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost is \$300. This cost covers printing and distribution.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
N/A
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Andrew H. Gasperecz
Executive Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Education Proprietary School Commission

Add to Title V, Section 1, and Title X Subsection (10) to the Advisory Commission on Proprietary Schools, Louisiana State Department of Education, Rules and Regulations, Bulletin 1443, the following:

Qualifications of School Staff

I. An instructor in an academically credentialed area shall have, at a minimum, a baccalaureate degree from an accredited college or university, and shall by evidence of academic tran-

script, and/or occupational experience, demonstrate appropriate familiarity with the subject matters taught.

II. An instructor of other than academically credentialed area shall have a high school diploma or its equivalent with a license, diploma, certificate or other degree from a recognized institution or organization in the area taught and at a minimum four years documented evidence of occupational experience in the area taught approved by the commission.

III. An academic dean of education shall have, at a minimum, a baccalaureate degree from an accredited college or university.

IV. A guidance counselor of a proprietary school shall be certified by the "Louisiana Department of Education" or licensed by the "Licensed Professional Counselors Board of Examiners".

Inquiries and comments should be addressed in writing to Andrew H. Gasperecz, Executive Secretary, Louisiana Proprietary School Commission, State Department of Education, Box 94064, Baton Rouge, LA 70804-9064, through March 6, 1989.

The public hearing will be held at 10 a.m., April 5, 1989, in the conference room on the second floor of the State Department of Education Building, 626 North Fourth Street, Baton Rouge, LA.

Andrew H. Gasperecz
Executive Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: Qualifications of School Staff

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost is \$300. This cost covers printing and distribution.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
N/A
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment.

Andrew H. Gasperecz
Executive Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Environmental Quality
Office of Solid and Hazardous Waste
Hazardous Waste Division**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in particular Sections

2011, 2014, and 2193 and in accordance with the provisions of the Administrative Procedure Act, La.R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Louisiana Hazardous Waste Regulations, LAC 33:V.Subpart 1.

These regulations are intended to preclude further environmental damage and the endangerment to the citizens of the state; to provide for restrictions and incentives designed to encourage alternative methods of hazardous waste disposal, destruction and reduction; to lessen the possibility of hazardous waste releases from existing land disposal sites; and to provide for the eventual prohibition of land disposal of hazardous wastes. The regulations include schedules for land disposal prohibitions, treatment standards which waste treatment residues must meet to be disposed, procedures for exemptions from the prohibitions, and fee schedules.

The proposed regulations are to become effective on May 20, 1989, or as soon thereafter as practical upon publication in the *Louisiana Register*.

A public hearing will be held at 10 a.m. on April 3, 1989, in the Mineral Board Hearing Room, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed regulations.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than April 10, 1989, to Joan Albritton, Office of Legal Affairs and Enforcement, Box 44066, Baton Rouge, LA 70804. A copy of the proposed regulations are also available for inspection at the following locations from 8:00 a.m. until 4:30 p.m.:

State Land and Natural Resources Building, Room 615, 6th Floor, 625 North Fourth Street, Baton Rouge, LA;

Department of Environmental Quality, 804 31st Street, Monroe, LA.

Department of Environmental Quality, State Office Building, 1525 Fairfield Avenue, Shreveport, LA.

Department of Environmental Quality, 1155 Ryan Street, 2nd Floor, Lake Charles, LA.

Department of Environmental Quality, 2945 North I-10 Service Road, Metairie, LA.

Department of Environmental Quality, 100 Eppler Road, Lafayette, LA.

Paul H. Templet, Ph.D.
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules**

Rule Title: Act 803 Regulations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Additional costs to the Department of Environmental Quality resulting from implementation of these rules is estimated to be \$300,000 to \$350,000 per year for additional staff and associated costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of local governmental units will not be affected. State revenue collections will increase in implementation of fees to cover costs of the program. This increase is estimated to be between \$300,000 and \$350,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no real costs to non-governmental groups in the phase-out of land disposal, since the wastes which are being banned are also being banned by EPA. However, additional costs above the costs of using treatment versus disposal technology will be incurred. If a facility does not seek an exception to the rules, the costs will be only those imposed in the fee schedule (\$100 per year for generators, and up to \$5,000 per year for commercial disposers who continue to handle restricted wastes.) If exceptions are sought, additional costs may range from approximately \$6,000 for submitting a request for a time extension, to \$15,000 for submitting a variance request, to \$60,000 for submitting an exemption request.

If the petition for a variance, extension, or exemption is not granted by the Department and is granted by EPA, the cost may range as high as \$40 million for capital investment in alternative technology. These costs may be offset since treatment technology which would be constructed could be used to treat other wastes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The regulations would have no negative impact on competition and employment within the state; in fact, jobs are expected to be generated as facilities seek to comply with the regulations. Louisiana facilities may be adversely affected competitively when compared to other states, though, if exemptions are not provided in cases where they have been provided by EPA.

Paul H. Templet, Ph.D
Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of State Planning**

Louisiana Community Development
Block Grant (LCDBG) Program
FY 1988 Final Statement - Amended

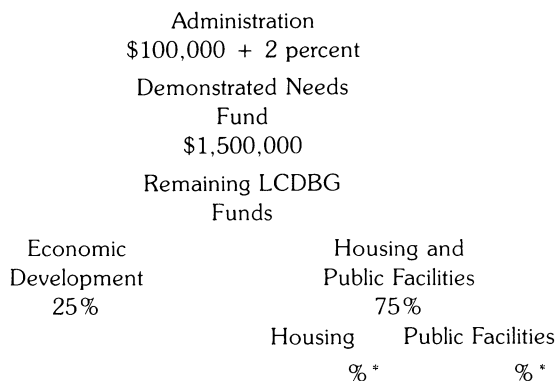
The following sections of the FY 1988 LCDBG Final Statement will be amended as follows:

Section II. General

E. Distribution of Funds

Approximately \$24,000,000 (subject to federal allocation) in funds will be available for the FY 1988 LCDBG Program. Figure 1 shows how the funds available will be allocated between the various program categories. Of the total CDBG funds allocated to the state, up to \$100,000 plus two percent will be used by the state to administer the program.

FIGURE 1
TOTAL FUNDS ALLOCATED TO LOUISIANA



*The percentage distribution among the housing and public facilities program categories will be based upon the number of applications received and amount requested in each category. Half of the funds will be distributed based on percentage of applications received in each category and half on the basis of amount of funds requested in each category. However, the dollar amount allocated for housing will be no more than ten percent of the total available for housing and public facilities. Three subcategories (water, sewer, and other) will be established under public facilities. The dollar amount for each of these subcategories will be distributed based upon the percentage of applications submitted and amount of funds requested in each subcategory.

In addition, \$1,500,000 will be set aside for the Demonstrated Needs Fund. Since creation and retention of permanent jobs is so critical to the economy of the state of Louisiana, 25 percent of the remaining LCDBG funds will be allocated specifically for economic development type projects. Only economic development applications will compete for these funds. Economic development applications and demonstrated needs proposals will be accepted on a continual basis within the time frame designated by the state. Public facilities and housing applications will be funded with the remaining LCDBG funds. There will be one funding cycle for housing and public facilities applications. This fund will be divided into two program categories as identified in Figure 1; the exact distribution of these funds will be based upon the number of applications received and amount of funds requested in each program category as established under the FY 1988 LCDBG Program. Half of the money will be allocated based on the number of applications received in each category with a maximum of 10 percent of the funds allocated to housing. The public facility category will be allocated in the same manner, by number and dollar amount of applications for sewer, water, and other type projects.

Funds may also be awarded from the public facilities category to previously funded communities who, due to unforeseen changes in standards and requirements of other state agencies, or other reasons, cannot complete their project as originally funded. Only those projects for which construction has not been completed will be considered. These additional funds will only be given in extreme cases where they are necessary in order that a national objective be met. These funds will only be used as a last resort, and only when it is cost effective to do so. The state reserves the right to cancel or amend the original project before awarding additional funds. The amount of additional funds used will be determined on a case-by-case basis and will be awarded

by either contract amendment or a second contract. If it is determined by the state that the situation requiring the additional funds could have been avoided, sanctions may be imposed.

Section VI. Redistribution of Funds

Any monies awarded by the state that are later recaptured by or returned to the state will be reallocated in accordance with the division's policy then in effect. The sources of these funds may include but not be limited to, program income, questioned costs, disallowed expenses, recaptured funds from loans, unallocated monies, previously awarded funds not spent by grant recipients, etc.

The monies as defined above will be placed in the current program year's public facilities category and will first be used to fund previously funded communities who cannot complete their project as originally funded, as described in Section II.E., amended.

Secondly the monies placed in this category will be used to fund the project with the highest score that was not initially funded, with some exceptions. This policy will govern all such monies as defined herein from the FY 1982, FY 1983, FY 1984, FY 1985, FY 1986, FY 1987, and FY 1988 LCDBG Program years as well as subsequent funding cycles, until later amended. One exception to this rule is that funds recaptured from economic development loans which were not spent by the grant recipients will initially be transferred to the current economic development program category. Those monies remaining in the economic development program category at the end of the FY 1988 program year will be transferred to the public facilities category for distribution as described above. Another exception is that all funds recaptured by the state from the payback of economic development loans will be placed in an economic development revolving loan fund which will be used for economic development projects under the guidelines then in effect.

These regulations are to be effective on May 20, 1989 and are to remain in force until they are amended or rescinded. Anyone having comments should submit them in writing by May 1, 1989 to: Joan Wharton, Director; State Planning Office, Box 94095, Baton Rouge, LA 70804.

Dennis Stine
Commissioner of Administration

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Final Statement - Amendment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed change to the FY 1988 LCDBG Final Statement will not result in any additional costs or savings to the state.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The amendment will have no effect on the amount of LCDBG funds the state will receive.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no cost to persons directly benefitting from these federal funds. This rule change will make it possible to bene-

fit those persons who would not benefit if the originally approved project was not completed. This is the main reason for the rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be a small effect on this area, as the amount of grant funds used to complete previously funded projects may amount to approximately one regular size project. Therefore, there may be one less grant awarded. However, the completion of these previously awarded projects is more feasible.

Joan Wharton
Director

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Office of the Governor Office of Elderly Affairs

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs intends to amend Section 1229 of the GOEA Policy Manual, entitled "Long Term Care Ombudsman Program." The purposes of the amendment are to improve clarity, to provide for changes in state and federal law and to revise the responsibilities of substate entities which are designated as representatives of the recently established Office of the State Ombudsman (the Office).

Major changes involve the functions of the Office and the duties of Ombudsman Coordinators, local Ombudsmen, and Long Term Care Visitors. The number of hours of required visitation in long term care facilities are reduced. Confidentiality requirements are spelled out.

Copies of the proposed rule change may be obtained by writing to James R. Kautz, State Ombudsman, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374.

A public hearing to receive comments on the proposed policy manual revisions will be held on Thursday, April 13, 1989 in the State Police Auditorium, 7901 Independence Boulevard, Baton Rouge, LA. The hearing will convene at 1 p.m. All interested persons will be given an opportunity to submit comments concerning the proposed revisions, both orally and in writing.

Written comments concerning the proposed policy manual revisions may be mailed to Betty Johnson, Elderly Affairs Planning Manager, at this office. They must be received by April 14, 1989.

Vicky Hunt
Director

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: GOEA Policy Manual Amendment-Section 1229

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: GOEA Policy Manual Revisions-
Sect. 1223 Title-III-C Nutrition Services**

- There will be no costs or savings to state or local governmental units resulting from the proposed rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
Some AAAs will realize increased funds; others would receive fewer funds, based upon realistic budgets which are derived from implementation of policy. Net effect statewide is not estimable at this time.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Some area agencies on aging may be able to reallocate personnel from the ombudsman program to other services.

Vicky Hunt
Director

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs intends to amend Section 1223 of the GOEA Policy Manual, entitled "Title III-C Nutrition Services." The purposes of the amendment are to encourage healthier menus for older persons served by the Older Americans Act Title III-C program, and to comply with R.S. 37:3086 and 36:259(Q).

Basically, this rule change is an update of nutrition policies for area agencies on aging. More emphasis has been placed upon implementation of the U.S. Dietary Guidelines for Americans in the area agency menus.

Copies of the proposed rule change may be obtained by writing to Mary Tonore or Debbie Lourens, Nutritionist Specialist, Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374.

A public hearing to receive comments on the proposed policy manual revisions will be held on Thursday, April 13, 1989 in the State Police Auditorium, 7901 Independence Boulevard, Baton Rouge, LA. The hearing will convene at 1 p.m. All interested persons will be given an opportunity to submit comments concerning the proposed revisions, both orally and in writing.

Written comments concerning the proposed policy manual revisions may be mailed to Betty Johnson, Elderly Affairs Planning Manager, at this office. They must be received by April 14, 1989.

Vicky Hunt
Director

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There will be no costs or economic benefits resulting from the proposed rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The previous policy state that AAAs must have a Registered Dietitian (R.D.). The proposed rule change changes the R.D. requirement to the Licensed Dietitian Nutritionist (L.D.N.). No effect will be seen as R.D.s are all eligible for licensure under R.S. 37:3086; R.S. 36:259(Q).

Vicky Hunt
Director

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Physical Therapy Examiners**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Board of Physical Therapy Examiners intends to amend the following rules.

**Title 46
PART LIV. LOUISIANA STATE BOARD OF
PHYSICAL THERAPY EXAMINERS**

**Subpart 1. Licensing and Certification
Subchapter B. Graduates of American Physical Therapy
Schools and Colleges**

§107. Qualifications For Licensure

A. 5. have taken the licensing examination administered by the board and achieved a passing score, as set forth in §145, subject to the exception provided for certain applicants for licensure by reciprocity provided in §121.

§111. Approved Physical Therapy Schools

C. A listing of approved schools of physical therapy shall be kept on file at the board office and, periodically, amended and supplemented.

Subchapter D. Licensure by Reciprocity

§121. Qualifications for Licensure by Reciprocity

An applicant who possesses and meets all of the qualifications and requirements specified by §§107-109 of this Chap-

ter, save for successfully passing the examination administered by the board, as otherwise required by §107.A.5, shall nonetheless be eligible for licensing if such applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license issued by another state.

Subchapter E. Application

§125. Application Procedure

D. Application forms and instructions pertaining thereto may be obtained upon written or verbal request directed to the office of the board. Application forms will be mailed by the board within five working days of the board's receipt of request.

E. An application for licensure under this Chapter shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications set forth in this Chapter;

2. two recent photographs of the applicant; and

3. such other information and documents as the board may require to evidence qualification for licensing.

H. After submission of a completed application, an applicant shall, by appointment, make a personal appearance before a member of the board, or its designee, as a condition to the board's consideration of such application.

§127. C. (Omitted In New Rules and Regulations)

Subchapter F. Examination

§131. Designation of Examination

The examination approved and administered by the board pursuant to R.S. 37:2409 shall be standardized and nationally accepted by the Federation of State Boards of Examiners and/or the American Physical Therapy Association.

§133. Eligibility of Examination

To be eligible for examination by the board, an applicant shall possess all qualifications for licensure prescribed by §107.A; provided, however, that an applicant who has completed, or prior to examination will complete, his physical therapy education, but who does not yet possess a degree or certificate as required by §107.A.4, shall be deemed eligible for examination upon submission to the board of a letter subscribed by the authorized representative of an approved physical therapy school certifying that the applicant is in his last semester or term of, or has completed his academic physical therapy education at such school or college, that the applicant is a candidate for a degree in physical therapy at the next scheduled convocation of such school or college, and specifying the date on which such degree will be awarded.

§135. Dates, Places of Examination

In accordance with testing dates specified by the approved testing agency, applicants shall be advised of the specific dates, times, and locations of the next scheduled examination upon application to the board and may obtain such information upon inquiry to the board office.

§137. Administration of Examination

B. An applicant who appears for examination shall:

1. present to the chief proctor or his designated assistant proctor proof of registration for the examination and positive personal photograph and other identification in the form prescribed by the board; and

§145. Passing Score

An applicant will be deemed to have successfully passed the examination if he attains a minimum converted score of 75

for the composite score and a minimum of 70 on each subsection of the examination.

§147. Restriction, Limitation on Examinations

A. A passing score must be attained by an applicant upon the passing of all sections of the examination taken during a single administration of the entire examination.

B. An applicant having failed to attain a passing score upon taking the examination twice shall not be issued a temporary permit. Therefore, the applicant can no longer work in the capacity of a physical therapist and must thereafter successfully pass the examination in order to obtain a license to practice in Louisiana.

§149. Lost, Stolen, or Destroyed Examinations

A. The submission of an application for examination by the board shall constitute and operate as an acknowledgement and agreement by the applicant that the liability of the board, its members, committees, employees and agents, and the state of Louisiana to the applicant for the loss, theft or destruction of all or any portion of an examination taken by the applicant, prior to the reporting of scores thereon by the Examination Service, other than by intentional act, shall be limited exclusively to the refund of the fees paid for examination by the applicant.

B. In the event that all or part of the examination taken by an applicant is lost, stolen, or destroyed prior to the reporting of the applicant's score thereon, such applicant shall be permitted by the board to sit for and take such section(s) of the examination at either of the next two successively scheduled administrations of the examination, and such scores or averages as the applicant attains on such section(s) shall be averaged with the section(s) on which scores were previously reported in computing the applicant's score, which shall be accepted by the board.

Subchapter G. Temporary Permits

§153. Permit Pending Examination

A. An applicant who possesses all of the qualifications for licensing prescribed by §107.A of the Chapter, save for §107.A.5, and who has applied to the board and completed all requirements for examination shall be issued a temporary permit to be in effect until the board submits the applicant's examination scores to him.

B. The applicant holding a temporary permit requires periodic supervision (as defined in §305.A herein) by a physical therapist approved by the board.

§155. Permit Pending Reexamination

A. An applicant who possesses all of the qualifications for licensing prescribed by §107.A of this Chapter, except for §107.A.5, who has once failed the licensing examination administered by the board, and who has applied to the board within 10 days and completed all requirements for examination at the next scheduled date, shall be issued a new temporary permit to the effective pending the applicant's taking of the next scheduled physical therapy licensing examination and the reporting of the applicant's scores to the board.

§157. Permit Pending Reciprocity (New addition; section renumbered)

An applicant for reciprocity who has applied to take the licensure examination in another state, or has examination scores pending for licensure in that state, may be issued a temporary permit according to §§151 and 153 and may practice physical therapy under periodic supervision as defined in §305.A until the applicant has fulfilled all requirements for licensure.

§159. Foreign Graduate Temporary Permit

A. A foreign graduate who possesses all of the qualifications for licensing prescribed by §115 of this Chapter, save for §115.A. 3, shall be issued a temporary permit to engage in supervised clinical physical therapy training under the requirements of §153.B for the purpose of fulfilling in whole or part the requirement of §115.A. 3.

Subchapter H. License and Permit Issuance, Termination, Renewal, Reinstatement

§161. Issuance of License

A. If the qualifications, requirements, and procedures prescribed or incorporated by §§107-109, 115-117, or 121 are met to the satisfaction of the board, the board shall issue to the applicant a license to engage in the practice of physical therapy in the state of Louisiana.

B. A license issued under §107 of this Chapter shall be issued by the board within 30 days following the reporting of the applicant's licensing examination score to the board. A license issued under any other Section of this Chapter shall be issued by the board within 15 days following the meeting of the board next following the date on which the applicant's application, evidencing all requisite qualifications, is completed in every respect.

§163. Expiration of Licenses and Permits

A. Every license or permit issued by the board under this Chapter, the expiration date of which is not stated thereon or provided by these rules, shall expire, and thereby become null, void, and to no effect, on the last day of the year in which such license or permit was issued.

B. The timely submission of an application for renewal of a license as provided by §165 of this Chapter, shall operate to continue the expiring license in full force and effect pending issuance of the renewal license.

C. Temporary permits that expire at the end of a calendar year can be reissued upon payment of the renewal of license fee, and approved by the board.

§165. Renewal of License

A. Every license issued by the board under this Chapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with the renewal fee prescribed in Chapter 5 of these rules.

B. An application for renewal of license form shall be mailed by the board to each person holding a license issued under this Chapter on or before the first day of December of each year. Such forms shall be mailed to the most recent address of each licensee as reflected in the official records of the board.

§167. Reinstatement of License

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An applicant for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation from reputable physicians, dentists, podiatrists, or physical therapists who have knowledge of the former licensee's most recent professional activities, together with the applicable renewal and reinstatement fees.

Subchapter I. Committees

§169. Purpose

The board may appoint committees to assist in the review of applicants' qualifications for licensure under this Chapter, in administration of the physical therapy licensing examination, in

interpretation of board rules and regulations, in the delivery of temporary permits, in liaison with other licensed physical therapists in the state of Louisiana, and other purposes deemed necessary by the board.

Subpart 3. Practice

Chapter 3. Practice

Subchapter A. General Provisions

§305. Special Definition: Physical Therapy

A. As used in the definition of *physical therapy* set forth in the Physical Therapy Practice Act, and as used in this Chapter, the following terms shall have the means specified:

1. *Passive Manipulation* means the manipulation or movement of musculature or joints other than by the spontaneous function of the body or active effort on the part of the patient.

2. *Physical Therapy Evaluation* means the assessment and resulting interpretation of a patient's condition through the use of patient history, signs, symptoms, objective tests, and measurements to determine neuromusculoskeletal and biomechanical dysfunctions. The conclusions of such evaluation may result in a physical therapy diagnosis and the establishment or modification of treatment goals together with a treatment program.

3. *Physical Diagnosis* as used in the definition of physical therapy evaluation means the specific condition or primary dysfunction toward which the physical therapist directs treatment. The physical therapist may only use a diagnostic label which he can confirm through professionally recognized physical therapy examinations and testing methods which he is educated and trained to perform. The physical therapy diagnosis is not a differential medical diagnosis.

4. *Periodic Supervision* as related to temporary permit holders shall mean 1) daily direct verbal communication between the supervising physical therapist and permit holders, and 2) direct patient care observation no less than five hours per forty hour week.

5. *Consultative Services* (omitted)

6. *Supervision* as used with respect to physical therapy supportive personnel, means responsible, continuous, on-premise superintendence of procedures, functions and practice by a licensed physical therapist.

7. *Licensed in the State* means possessing a current license to practice duly issued by an agency of the state of Louisiana.

Subchapter D. Disciplinary Proceedings

§321. Cause for Administrative Action

The board, after due notice and hearing as set forth herein and the Louisiana Administrative Procedure Act, R. S. 49:950 et seq., may refuse to issue a license or temporary permit, or suspend, revoke, or impose probationary conditions and/or restrictions on the license or temporary permit of a person on a finding that the person has violated the Physical Therapy Practice Act of Louisiana, R. S. 37:2401 et seq., or any of the rules and regulations promulgated thereto, R. S. 46:301 et seq.

§323. Definitions

A. A person who *attempts to or attains a license by fraud or misrepresentation*, as used in §2413A (2) of the Physical Therapy Practice Act, means and includes a person who:

1. makes any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to a material fact or omits to state any fact or matter that is material to an

application for a license or temporary permit under Chapter 1 of these rules; or

2. makes any representation, or fails to make a representation or engages in any act or omission which is false, deceptive, fraudulent, or misleading in achieving or obtaining any of the qualifications for a license or permit required by Chapter 1 of these rules.

B. As used in §2413.A. 4 of the Physical Therapy Practice Act, a *felony* means a crime defined as such under the law of the United States, or of any state. The term *convicted*, as applied to a licensed physical therapist, the holder of a temporary permit or an applicant for such license or permit, means that a judgment has been entered against such person by a court of competent jurisdiction on the basis of a finding or verdict of guilty or a plea of guilty or *nolo contendere*. Such a judgment provides cause for administrative action by the board so long as it has not been reversed by an appellate court of competent jurisdiction and notwithstanding the fact that an appeal or other application for relief from such judgment is pending.

C. As used in §2413.A. 5 of the Physical Therapy Practice Act, *habitually intemperate* means:

1. repeated excessive use or abuse of alcohol; or
2. the ingestion, self-administration, or other use of legally controlled substances or other medications affecting the central nervous system other than pursuant to and in accordance with a lawful prescription.

D. As used in §2413.A. 5 of the Physical Therapy Practice Act, the phrase *addicted to the use of habit forming drugs* means physiological dependence on any legally controlled substance or any other medication with a potential for inducing physiological or psychological dependence or tolerance.

E. As used in §2413.A.7 of the Physical Therapy Practice Act, the term *unprofessional conduct* means:

1. departure from, or failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice in the state of Louisiana, regardless of whether actual injury to a patient results therefrom;

2. conviction of any crime or entry of a plea of guilty or *nolo contendere* to any criminal charge arising out of or related to the practice of physical therapy;

3. making or participating in any communication, advertisement, or solicitation which is false, fraudulent, deceptive, misleading or unfair, or which contains a false, fraudulent, deceptive, misleading, or unfair statement or claim;

4. disclosure to a third-party not involved in a patient's care, without such patient's prior written consent, or information or records relating to the physical therapist-patient relationship, except when such disclosure is otherwise required or permitted by law;

5. initiation or continuation of physical therapy services that are contraindicated or cannot reasonably result in a beneficial outcome; or

6. abuse or exploitation of the physical therapist-patient relationship for the purpose of securing personal compensation, gratification, or benefit unrelated to the provision of physical therapy services.

F. As used in §2413.A. 8 of the Physical Therapy Practice Act, the phrase *engages directly or indirectly in the division, transferring, assigning, rebating, or refunding of fees received for professional service with a referring practitioner or any relative or business associate of that referring practitioner* means:

1. exploitation of the physician/physical therapist referral mechanism whereby the physician or any other referring practitioner receives compensation, payment, or anything of value, including but not limited to rental fees in excess of fair market value, or any other unearned monies or value in kind, in return for the patient referral when the physician or any other referring practitioner does not have an ownership interest in the physical therapy practice at issue.

§325. Disciplinary Process and Procedures

A. The purpose of the following rules and regulations is to supplement and effectuate the applicable provisions of the Louisiana Administrative Procedure Act, R. S. 49:950 et seq., regarding the disciplinary process and procedures incident thereto. These rules and regulations are not intended to amend or repeal the provisions of the Louisiana Administrative Procedure Act, and to the extent any of these rules and regulations are in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

B. A disciplinary proceeding, including the formal hearing, is less formal than a judicial proceeding. It is not subject to strict rules and technicalities, but must be conducted in accordance with considerations of fair play and constitutional requirements of due process.

C. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he did, whether those acts violated the Physical Therapy Practice Act or rules and regulations of the Board of Physical Therapy Examiners; and to determine the appropriate disciplinary action.

§327. Initiation of Complaints

Complaints may be initiated by any person or by the board on its own initiative.

§329. Informal Disposition of Complaints

Some complaints may be settled informally by the board and the person accused of a violation, without a formal hearing. The following types of informal dispositions may be utilized:

A. Disposition of Correspondence

For complaints less serious, an agent of the board may write to the person explaining the nature of the complaint received. The person's subsequent response may satisfactorily explain the situation, and the matter may be dropped. If the situation is not satisfactorily explained, it shall be brought before the board for a formal or informal hearing.

B. Conference or Informal Hearing

1. An agent or agents of the board, may hold a conference with the person, in lieu of, or in addition to correspondence, in cases of less serious complaints. If the situation is satisfactorily explained in conference, a formal hearing is not scheduled.

2. The person shall be given adequate notice of the conference, of the issues to be discussed, and of the fact that information brought out at the conference may later be used in a formal hearing. Board members may be involved in informal hearings.

C. Settlement

An agreement worked out between the person making the complain and the person accused of a violation does not preclude disciplinary action by the Board of Physical Therapy Examiners. The nature of the offense alleged and the evidence before the board must be considered.

§331. Consent Order

An order involving some type of disciplinary action may be made by the board with the consent of the person. A consent order requires formal consent of a quorum of the board. It is not the result of the board's deliberation; it is the board's acceptance of an agreement reached between the board and the person. The order is issued by the board to carry out the parties' agreement.

§333. Formal Hearing

A. The Board of Physical Therapy examiners has the authority, granted by R. S. 37:2413, to bring administrative proceedings against persons to whom it has issued a license to practice as a physical therapist or any applicant requesting a license. The board and the person accused of a violation are the parties to the proceeding. The person has the right to appear and be heard, either in person or by counsel; the right of notice, a statement of what accusation have been made; the right to present evidence and to cross-examine; and the right to have witnesses subpoenaed.

B. If the person does not appear, either in person or through counsel, after proper notice has been given, the person may be considered to have waived these rights and the board may proceed with the hearing without the presence of the person.

C. The process of disciplinary proceeding shall include certain steps and may include other steps as follows:

1. The Board of Physical Therapy Examiners received a complaint alleging that a person has acted in violation of the Physical Therapy Practice Act. Communications from the complaining party shall be privileged and shall not be revealed to any person except when such documents are offered for evidence in a formal hearing and except those documents being subpoenaed by a court.

2. a. The complaint is investigated by the board's agent or attorney to determine if there is sufficient evidence to warrant disciplinary proceedings. No board member may communicate with any party to a proceeding or his representative concerning any issue of fact or law involved in that proceeding, once notice of the proceeding has been served, and said member has notice thereof.

b. A decision to initiate a formal complaint or charge is made if one or more of the following conditions exists:

- i. the complaint is sufficiently serious;
- ii. the person fails to respond to the board's correspondence concerning the complaint;
- iii. the person's response to the board's letter or investigative demand is not convincing that no action is necessary;
- iv. an informal approach is used, but fails to resolve all of the issues.

3. A sworn complaint is filed, charging the violation of one or more of the provisions of the Physical Therapy Practice Act and/or the rules and regulations promulgated thereto and the specific violation thereof.

4. A time and place for a hearing is fixed by the chairman or an agent of the board.

5. a. At least 10 days prior to the date set for the hearing, a copy of the charges and a notice of the time and place of the hearing are sent by registered mail to the last known address of the person accused. If the mailing is not returned to the board, it is assumed to have been received. It is the person's obligation to keep the board informed of his whereabouts.

b. The content of the charges limits the scope of the hearing and the evidence which may be introduced. The charges may be amended at any time up to 10 days prior to the date set for the hearing.

c. If the board is unable to describe the matters involved in detail at the time the sworn complaint is filed, this complaint may be limited to a general statement of the of the issues involved. Thereafter, upon the person's request, the board shall supply a more definite and detailed statement to the person.

6. Except for extreme emergencies, motions requesting a continue of a hearing shall be filed at least five days prior to the time set for the hearing. The motion shall contain the reason for the request, which reason must have relevance to due process.

7. a. The chairman, or an authorized agent of the board, issues subpoenas for the board for disciplinary proceedings, and when requested to do so, may issue subpoenas for the other party. Subpoenas include:

i. a subpoena requiring a person to appear and give testimony; and

ii. a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he has control.

b. A motion to limit or quash a subpoena may be filed with the board, but not less than 72 hours prior to the hearing.

8. a. The hearing is held, at which time the board's primary role is to hear evidence and argument, and to reach a decision. Any board member who, because of bias or interest, is unable to assure a fair hearing, shall be recused from the particular proceeding. The reasons for the recusal are made part of the record. Should the majority of the board members be recused for a particular proceeding, the governor shall be requested to appoint a sufficient number of pro tem members to obtain a quorum for the proceeding.

b. The board is represented by its agent who conducted the investigation and presents evidence that disciplinary action should be taken against the person and/or by the board's attorney. The person may present evidence personally or through an attorney, and witnesses may testify on behalf of the person.

c. Evidence includes the following:

i. oral testimony given by witnesses at the hearing, except that, for good cause, testimony may be taken by deposition; (cost of the deposition is borne by requesting party)

ii. documentary evidence, i.e., written or printed materials including public, business or institutional records, books and reports;

iii. visual, physical and illustrative evidence;

iv. admissions, which are written or oral statements of a party made either before or during the hearing;

v. facts officially noted into the record, usually readily determined facts making proof of such unnecessary.

d. All testimony is given under oath. If the witness objects to swearing, the word "affirm" may be substituted.

9. The chairman of the board presides and the customary order of proceedings at a hearing is as follows:

a. The board's representative makes an opening statement of what (s)he intends to prove, and what action, (s)he wants the board to take.

b. The person, or her/his attorney, makes an opening statement, explaining why (s)he believes that the charges against her/him are not legally founded.

c. The board's representative presents the case against the

person.

- d. The person, or her/his attorney, cross-examines.
- e. The person presents evidence.
- f. The board's representative cross-examines.
- g. The board's representative rebuts the person's evidence.
- h. The person surrebuts the evidence against her/him.
- i. Both parties make closing statements. The board's representative makes the initial closing statement and the final statement.

10. Motions may be made before, during, or after a hearing. All motions shall be made at an appropriate time, according to the nature of the request. Motions made before or after the hearing shall be in writing. Those made during the course of the hearing may be made orally since they become part of the record of the proceeding.

- 11. a. The record of the hearing shall include:
 - i. all papers filed and served in the proceedings;
 - ii. all documents and other materials accepted as evidence at the hearing;
 - iii. statements of matters officially noticed;
 - iv. notices required by the statutes or rules, including notice of the hearing;
 - v. affidavits of service or receipts for mailing or process or other evidence of service;
 - vi. stipulations, settlement agreements or consent orders, if any;
 - vii. records of matters agreed upon at a prehearing conference;
 - viii. reports filed by the hearing officer, if one is used;
 - ix. orders of the board and its final decision;
 - x. actions taken subsequent to the decisions, including requests for reconsideration and rehearing;
 - xi. a transcript of the proceedings, if one has been made, or a tape recording or stenographic record.

b. The record of the proceeding shall be retained until the time for any appeal has expired, or until the appeal has been concluded. The record is not transcribed unless a party to the proceeding so requests, and the requesting party pays for the cost of the transcript.

12. a. The decision of the board shall be reached according to the following process:

- i. determine the facts in issue on the basis of evidence submitted at the hearing;
- ii. determine whether the facts in the case support the charges brought against the person;
- iii. determine whether charges brought are a violation of the Physical Therapy Practice Act or rules and regulations of the Board of Physical Therapy Examiners.

b. The vote of the board shall be recorded. A majority vote of the board, or a majority vote of the quorum of the board in attendance at the hearing, shall be necessary to render a decision, unless otherwise agreed upon by the parties. Minority views may be made part of the record.

c. Sanctions against the person who is party to the proceeding are based upon the findings of fact and conclusions of law determined by the hearing. The party is notified by mail of the decision of the board.

13. a. The board may reconsider a matter which it has decided. This may involve rehearing the case, or it may involve reconsidering the case on the basis of the record. Such reconsid-

eration may occur when a party who is dissatisfied with a decision of the board files a petition requesting that the decision be reconsidered by the board.

b. The board shall reconsider a matter when ordered to do so by a higher administrative authority or when the case is remanded for reconsideration or rehearing by a court to which the board's decision has been appealed.

c. A petition by a party for reconsideration or rehearing must be in proper form and filed within 10 days after notification of the board's decision. The petition shall set forth the grounds for the rehearing, which include one or more of the following:

- i. the board's decision is clearly contrary to the law and evidence;
- ii. there is newly discovered evidence by the party since the hearing which is important to the issues and which the party could not have discovered with due diligence before or during the hearing;
- iii. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly; or
- iv. it would be in the public interest to further consider the issues and the evidence.

§335. Withdrawal of a Complaint

If the complainant wishes to withdraw the complaint, the inquiry is terminated, except in cases where the board judges the issues to be of such important as to warrant completing the investigation in its own right and in the interest of public welfare.

§337. Refusal to Respond or Cooperate with the Board

A. If the person does not respond to the original inquiry within a reasonable period of time as requested by the board, a follow-up letter shall be sent to the person by registered or certified mail, return receipt requested.

B. If the person refuses to reply to the board's inquiry or otherwise cooperate with the board, the board shall continue its investigation. The board shall record the circumstances of the person's failure to cooperate and shall inform the person that the lack of cooperation may result in action which could eventually lead to suspension or revocation of license, or other appropriate legal action under the law.

§339. Emergency Action

If the board finds that public health, safety, and welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

§341. Judicial Review of Adjudication

Any person whose license has been revoked, suspended or denied by the board shall have the right to have the proceedings of the board reviewed by the state district court having jurisdiction over the board, provided that such petition for judicial review is made within 30 days after the notice of the decision of the board. If judicial review is granted, the board's decision is enforceable in the interim unless the court orders a stay.

§343. Appeal

A person aggrieved by any final judgment rendered by the state district court may obtain a review of said final judgment by appeal to the appropriate circuit court of appeal. Pursuant to the applicable section of the Louisiana Administrative Procedure Act, R. S. 49:965, this appeal shall be taken as in any other civil case.

§345. Reinstatement of Suspended or Revoked License

A. Application for reinstatement of a revoked license must be made in accordance with the requirements of initial licensure in Louisiana.

B. The application for reinstatement of a suspended license does not require satisfaction of the requirements for initial licensure.

C. Prior to reinstatement of a license previously revoked or suspended (except for non-payment of fees), a hearing is held before the board to afford the applicant with the opportunity to present evidence that the cause for the revocation or suspension no longer exists and to provide an opportunity for the board to evaluate changes in the person and/or conditions.

§347. Declaratory Statements

The board may issue a declaratory statement in response to a request for clarification of the effect of the provisions contained in the Physical Therapy Practice Act, R. S. 37:2401 et seq., and/or the rules and regulations promulgated in accordance thereto, R. S. 46:103 et seq.

A. A request for declaratory statement is made in the form of a petition to the board. The petition should include at least:

- 1. the name and address of the petitioner;
- 2. specific reference to the statute or rule and regulation to which the petitioner relates;
- 3. a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or by its potential application to her/him, in which (s)he is uncertain of its effect.

B. Said petition shall be considered by the board within a reasonable period of time taking into consideration the nature of the matter and the circumstances involved.

C. The declaratory statement of the board on said petition shall be in writing and mailed to the petitioner at the last address furnished to the board.

§351. Injunction

The board may cause to issue in any competent court of law a writ of injunction enjoining any person from unlawfully practicing physical therapy, until such person obtains a license pursuant to the provisions of the Physical Therapy Act, R. S. 37:2401 et seq., and/or any rules and regulations promulgated thereto. This injunction shall not be released upon the posting of a bond by the person. The provisions of R. S. 37:2416 shall further govern the use and effects of this procedure.

Subpart 5. Fees

Chapter 5. Fees

§501. Fees

A. The board may collect the following fees:

Examination Fee	180
Reciprocity Fee	150
Re-examination Fee	90
Re-instatement Fee	75
Renewal of License Fee	75
Verification of Licensure Fee	
Out of State	10
Duplicate Wall License Fee	30
Duplicate Billfold License Fee	10

B. Fees provided in the Section shall be paid to the secretary-treasurer of the board by January 1 of each year.

C. If renewal fees are not paid by February 1 of each year, a license will lapse and re-instatement fee will be charged.

Any comments may be addressed in writing to: Becky Legé, Chairman, 332 East Farrel Road, Suite D, Lafayette, LA 70508. Public hearing has been set on the rule changes as follows: Lafayette Parish Government Building, 110 Lafayette Street, Lafayette, LA 70501, April 6, 1989, 9:30 a.m.

Becky Legé
Chairman

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Louisiana State Board of Physical Therapy
Examiners**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Printing and distribution of 1,000 copies of the Physical Therapy Practice Act to incorporate the proposed rule changes will cost an estimated \$1,075. This cost can be absorbed by the current budget of the Board of Physical Therapy Examiners.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Revenues will increase by an estimated \$1,050 per year due to proposed increases in the licensure examination fee from \$165 to \$180 and in the reexamination fee from \$75 to \$90. This will cover the cost of administering the examination, which will increase because the price the board must pay for examination booklets will be an additional \$15 per copy. An estimated 70 examinations and reexaminations are administered each year for total additional costs of \$1,050. The fee for out-of-state verification of licensure is proposed to be reduced from \$25 to \$10 and is estimated to have a minimal effect on revenues to the board.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
The cost for licensure by examination will increase by \$15 to each examinee after July, 1989. This is due to a \$15 increase which the board must pay to the new test agency which provides the examination.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment as a result of this rule change.

Becky Legé
Chairman

David W. Hood
Senior Fiscal Analyst

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to

amend the Facility Need Review policies and procedures which set forth the criteria for review of applications proposing to enroll beds in the Medicaid Program.

The changes are proposed so that the policies and procedures will accurately reflect the purposes of the review, and criteria which are irrelevant will be eliminated.

These changes will also affect the Medicaid Title XIX State Plan.

A public hearing will be held on April 5, 1989, at 9:30 a.m. in Second Floor Auditorium, 755 Riverside, Baton Rouge, LA. Interested persons may submit comments on the proposed changes at any time before April 15, 1989, to the following address: Carolyn Maggio, Department of Health and Hospitals, Bureau of Health Services Financing, Box 94065, Baton Rouge, LA 70804-4065. Copies of this notice may also be obtained at this address.

David L. Ramsey
Secretary

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Facility Need Review Program - Revised Policies and Procedures

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No costs or savings are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No effect on revenue collections will result.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
The change in service area for the overbedded exception for nursing homes will affect nursing home applicants by further restricting bed additions. The provision to review the need for an entire enrolled facility if additional beds are applied for and not needed will affect existing Title XIX providers by restricting bed additions. The economic impact cannot be determined, as bed additions are already restricted.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect is anticipated.

Carolyn O. Maggio
Acting Director

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to

adopt the following rule in the Medical Assistance Program.

Currently, program policy provides a personal care needs allowance of \$30 a month as mandated under federal regulations for Medicaid recipients in skilled and ICF facilities.

The bureau has been advised by HCFA that the amount of personal need funds which recipients are allowed to retain may remain at the \$30 level. HCFA's interpretation of the federal regulations on provision of optional state supplementation payments allows the state to retain the current payment level based upon treatment of supplemental payments as income in the post-eligibility process and applied towards the cost of nursing home care. Under this regulatory option, recipients receive no net increase in the personal need allowance but the federal government benefits from a reduction in the net matching expenditure for vendor payments. This savings to the federal government results from offsetting reduced vendor payments with increased state funded supplementation payments which vendors are required to collect from recipients.

The bureau has the option of providing an \$8 state supplementation payment not subject to treatment as income, thereby increasing the personal care needs allowance to \$38 with no concurrent decrease in vendor payments. Under this regulatory option, individuals in long term care facilities would receive a net increase of \$8 thereby increasing both state and federal expenditures.

Under this proposed rule the bureau will begin providing an \$8 state supplementation payment which is not subject to treatment as income in the post-eligibility process and applied towards the cost of nursing home care.

PROPOSED RULE

The Personal Care Needs Allowance for Medicaid recipients in Skilled and Intermediate Care Facilities will be \$38 for individuals and \$76 for couples.

Interested persons may submit written comments to the following address: Carolyn O. Maggio, Acting Director, Box 94065, Baton Rouge, LA 70804-4065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule will be held on April 5, 1989 in the Second Floor Auditorium, 755 Riverside, Baton Rouge, LA, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

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

David L. Ramsey
Secretary

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Increase in OSS Payments

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed rule will result in increased state expenditures of: \$69,610 in FY 88-89; \$1,384,383 in FY 89-90; and \$1,388,046 in FY 90-91.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will increase federal matching funds for Title XIX vendor payments by: \$1,433,496 in FY 89-90; and \$1,458,024 in FY 90-91.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will result in increased benefits to recipients of: \$229,888 in FY 88-89; \$2,786,496 in FY 89-90; and \$2,814,432 in FY 90-91.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Carolyn O. Maggio
Acting Director

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

The Department of Health and Hospitals, Office of the Secretary, proposes to update rules for the licensing of Child Placing Agencies with and without Adoption Programs in compliance with R.S. 46:1401-1424.

These updated rules have been developed and submitted to the Department by the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies. These updated rules are for Class A child placing agencies only. The legal authority for these rules is the R.S. Title 46:1401-1424. The purpose of these proposed rules is to protect the health, safety, and well being of the children of the state who are placed in foster care and adoption. The rules are concerned with the licensing procedures, the administration and organization of the agencies to be licensed, social services related to child placement, records, family foster care services, and adoption services.

Specifically, these rules replace Chapters 41 (Adoption agencies) and 61 (Foster Care/Substitute Family Care) in their entirety in the Louisiana Administrative Code. This rule will replace both chapters by combining them into one chapter of the Louisiana Administrative Code, namely, Chapter 41 and will be named Client Placing Agencies with and without Adoption Programs. There will be public hearings in Ruston, Louisiana on April 4, 1989; in Lafayette, LA on April 5, 1989; and in New Orleans, LA on April 6, 1989 at the following locations: In Ruston, LA, April 4, 1989, 1-4 p.m. — Louisiana Tech University, Wylly Tower Auditorium. In Lafayette, LA, April 5, 1989, 1-4 p.m. — University Medical Center Auditorium. In New Orleans, LA, April 6, 1989, 1-4 p.m., Orleans Office of Eligibility Determination Auditorium, 2601 Tulane Avenue.

The proposed regulations are too bulky to be published in the Register. A copy may be obtained by calling 504-342-5774 or by writing to Steve Phillips, Department of Health and Hospitals, Box 3767, Baton Rouge, LA 70821.

David Ramsey
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Child Placing agencies with and without
adoption programs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated cost or savings because this rule simply replaces a rule already current and in place.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated revenue addition.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no estimated cost to directly affected persons or groups because this rule is similar to the current rule but has more details in explanation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment because this rule simply replaces an already current rule.

Steve Phillips
Licensing

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

The Department of Health and Hospitals, Office of the Secretary, proposes to update rules for the licensing of child day care centers in compliance with R.S. 46:1401-1424. These updated rules have been developed and submitted to the Department by the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies. These updated rules are for Class A child care centers only. The legal authority for these rules is R.S. 46:1401-1424. The purpose of these proposed rules is to protect the health, safety, and well being of the children of the state who are in out-of-home care on a regular or consistent basis, specifically in day care centers. A child day care center is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of seven or more children under the age of 18 years not related to the caregiver and unaccompanied by parent or guardian, on a regular basis for at least 20 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full-time day care center. A day care center that remains open after 9 p.m. shall meet the appropriate regulations established for nighttime care. The proposed rules will address the following topics: Procedures for licensing, training of staff, required child care staff, other required staff, group size (staff-child ratios), plant equipment, admission procedures, and care of children such as nutrition, health services, daily program, su-

pervision and discipline, and finally transportation.

Specifically, the proposed regulations will replace the current regulations located in the Louisiana Administrative Code Title 48 Chapter 53 in its entirety.

There will be public hearings in Ruston, Louisiana on April 4, 1989; in Lafayette, Louisiana on April 5, 1989; and in New Orleans, Louisiana on April 6, 1989 at the following locations:

In Ruston, Louisiana, April 4, 1989, 1 p.m. to 4 p.m., Louisiana Tech University, Wylly Tower Auditorium.

In Lafayette, Louisiana, April 5, 1989, 1 p.m. to 4 p.m., University Medical Center, Auditorium.

In New Orleans, Louisiana, April 6, 1989, 1 p.m. to 4 p.m., Orleans Office of Eligibility Determinations, Auditorium, 2601 Tulane Avenue.

A copy of these proposed regulations may be obtained by calling 504-342-5774 or by writing to Steve Phillips, Department of Health and Hospitals, Box 3767, Baton Rouge, LA 70821.

David Ramsey
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Licensing of Day Care Centers**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No estimated costs or savings because this rule will replace current rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No estimated effect on revenue because this rule will replace current rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There may be some estimated costs to directly affected persons because there are some training requirements and some qualification requirements for day care center staff that are not in the current standards. The department is unable to determine these costs at the present time.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment because this rule replaces a current rule.

Steve Phillips
Licensing

David W. Hood
Senior Fiscal Analyst

**NOTICE OF INTENT
Department of Justice
Office of the Attorney General
Electronic Video Bingo Panel**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby

given that the Attorney General's Electronic Video Bingo Panel intends to amend its rules and adopt revised permanent rules relative to the operation of electronic video bingo machines. Permanent rules were adopted April 26, 1988. Emergency rules were adopted on July 8, 1988; February 3, 1989; and February 13, 1989. (See: *Louisiana Register*, Vol. 14, No. 6, June 20, 1988 pp. 354-360; *Louisiana Register*, Vol. 14, No. 7, July 20, 1988 pp. 422-423; *Louisiana Register*, Vol. 15, No. 2, February 20, 1989).

The revised permanent rules to be adopted will be in the same form and substance as the permanent rules with the following additions and designated as "Proposed Rule Change to Section's 103, 107, and 113."

**Title 22
CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT
Part VII. Department of Justice**

**Chapter 1. Electronic Video Bingo Rules
§103. Definitions and Terms**

Redefines "charitable organization" to include those organizations enumerated in R.S. 33:4861.4.C. and R.S. 40:1485.5.D(2). This amendment is being made to bring the Electronic Video Bingo rules in compliance with the aforementioned statutory provisions.

§107. Permitting Process

Changes the expiration date of permits issued from July 1 to June 30, to a period of 12 months from the date of issuance of the permit as set forth in the proposed amendment.

§113. Fees

Changes the method of payment of Electronic Video Bingo fees from quarterly to monthly payments.

The proposed rules will be made available for public inspection between the hours of 8:30 a.m. and 5 p.m. on any working day after March 20, 1989 at the Office of the Attorney General, 234 Loyola Avenue, Suite 700 New Orleans, LA.

Interested persons may submit their views and opinions to William J. Guste, Jr. Attorney General, 234 Loyola Avenue, Suite 700, New Orleans, LA.

The Attorney General's Electronic Video Bingo Panel will hold a public hearing on Friday, May 20, 1989, at 10 a.m., at Suite 700, 234 Loyola Avenue, New Orleans, LA 70112.

The Electronic Video Bingo Panel shall, prior to the adoption of permanent rules, afford all interested parties reasonable opportunities to submit data, views or arguments, orally or in writing.

Inquiries concerning the proposed permanent rules shall be directed to Sidney H. Cates, III, Director, Electronic Video Bingo Unit, 234 Loyola Avenue, Suite 700, New Orleans, LA 70112, Telephone: (504) 568-5597.

William J. Guste, Jr.
Attorney General

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Electronic Video Bingo Rules**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no cost for implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendment will allow for monthly payments of the \$600 annual fee per EVB machine in use rather than quarterly payments as now required. It will also eliminate a penalty situation that exists for placement of new machines after the beginning of the fiscal period because the full 12-month permit period will begin at the date of issuance. The elimination of this penalty situation should encourage the placement of new machines by distributors increasing the possibility of additional revenue. The potential exists for a loss in revenue collections given the present fiscal period, however, this will be negated due to permits being in effect a full twelve months from date of issue.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed amendment should encourage more charitable organizations to participate in charitable gaming, and the placement of additional EVB machines by distributors because of the elimination of the penalty situation that presently exists. The present regulations provide for the remittance of a full 12-month permit fee of \$600 payable in quarterly installments per machine in operation for the licensing year beginning July 1 through June 30 of the next year. The proposed regulations authorizes the remittance of this fee monthly on a pro-rata basis beginning with actual date of issuance through a full 12-month period. There is no data available to accurately forecast the costs or economic effects of this change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this amendment will not effect competition of employment.

Dale C. Wilks
Chairman

John R. Rombach
Legislative Fiscal Officer

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Electronic Video Bingo Rules**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no cost for implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will allow charitable organizations such as Mardi Gras Carnival Organizations, civic or service associations, volunteer fire companies, booster clubs, parent-teacher associations and senior citizens recreation clubs without 501.C tax exempt status to participate in charitable gaming. Presently there are 238 charities that use EVB machines. The demand for additional participation in the program due to the implementation of the rule change cannot be determined at this time due to the fact there is no available data to forecast this effect. The potential exists under the proposed rule change for an increase in revenue due to possibility of increased participation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule change might encourage more charitable organizations to participate in charitable gaming. There is no way to forecast estimated costs and economic benefits because the demand for additional participation cannot be determined at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this amendment will not effect competition or employment.

Dale C. Wilks
Chairman

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation
Docket No. PL 89-33**

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, as amended by Act 16 of the Extraordinary Session of 1973, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, at 9 a.m. on May 18, 1989.

At such hearing the commissioner will consider evidence relative to the adoption of the proposed hazardous liquids pipeline regulations.

A copy of the proposed regulation is on file with the Office of Conservation and may be examined during normal business hours.

The proposed regulation represents the views of the commissioner as of this date; the commissioner reserves the right to make additions or amendments prior to final adoption.

Comments and views regarding the proposed regulation should be directed in written form to be received not later than 5 p.m., May 17, 1989. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. Direct comments to: J. Patrick Batchelor, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL 89-33.

All parties having interest in the aforesaid shall take notice thereof.

J. Patrick Batchelor
Commissioner

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Hazardous Liquids Pipeline Regulations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Regulation of proposed rules will require approximately \$100,000 per year. Requirements would include two hazardous liquids pipeline inspectors and one secretary. No state general funds are required. Funding would be a combination of a \$12 per mile pipeline fee and federal funds.

There should be no cost or savings to local governmental bodies as a result of adopting these rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The office of conservation estimates over 4,000 miles of regulated liquid lines that would produce approximately \$50,000 in revenue and approximately \$50,000 of federal funding.

The proposed rules do not specifically provide for revenue collections by local governmental bodies.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

These rules only apply to liquid pipelines after they are built or are already in place. There are no applications or permitting fees, only a \$12 per mile fee on pipe in the ground; therefore, cost to the industry would be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There would be no effect on competition and employment. The primary effect of these rules is to transfer inspection and enforcement of safety regulations from federal domain to state.

J. Patrick Batchelor
Commissioner

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

Docket Number UIC 89-1

In accordance with the provisions of R.S. 49:950, et seq., the Louisiana Administrative Procedure Act, and the authority given in R.S. 30:4, notice is hereby given that the commissioner of conservation will conduct a public hearing at 9 a.m., Friday, March 31, 1989, in the Conservation Hearing Room located on the First Floor of the State Land and Natural Resources Building, 625 North Fourth St., Baton Rouge, LA.

At such hearing the commissioner or his authorized representative will consider the promulgation of Statewide Order No. 29-N-2 which will address federally required changes to regulations applicable to Class I hazardous and nonhazardous waste injection wells. Such changes provide restrictions to disposal/injection of hazardous waste, amendments to technical requirements for Class I hazardous waste injection wells, and additional monitoring requirements applicable to all Class I wells.

A copy of the proposed rules and regulations may be obtained at no cost by writing James H. Welsh, Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804-9275, by calling 504/342-5515, or by coming in person to Room 253 of the Natural Resources Building, North and

Riverside, Baton Rouge, LA.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing in accordance with R.S. 49:953. Written comments will be accepted until 5 p.m., Friday, April 7, 1989 to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804-9275, Re: Docket No. UIC 89-1.

J. Patrick Batchelor
Commissioner

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Statewide Order No. 29-N-2**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no additional estimated implementation costs (savings) to state or local governmental units to promulgate or implement the proposed Statewide Order No. 29-N-2.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The chemical industry would be required to expend additional funds amounting to \$2.8 million (initial cost) and \$70,000 (annually) to bring and keep the existing 50 Class I hazardous waste disposal injection wells into compliance with the proposed Statewide Order No. 29-N-2.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The additional requirements as provided in the proposed Statewide Order No. 29-N-2 will provide new opportunities for geologist/engineering consultants, logging companies, and well drilling contractors to provide these services to the chemical industry, which should provide additional income to such contractors and consultants (see No. III above).

J. Patrick Batchelor
Commissioner

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of Eligibility Determinations**

The Department of Social Services, Office of Eligibility Determinations, proposes to adopt the following rule in the Aid to Families with Dependent Children Program.

The Family Support Administration in the Department of Health and Human Services advised OED in Memorandum No. FSA-IM-89-1 that proposed regulations were being developed

regarding the treatment of loans. Until final regulations are published, states may disregard a bona fide loan from any source as income and resources. The Office of Eligibility Determinations elects to implement this policy change prior to the publication of federal regulations.

Proposed Rule

Effective June 1, 1989, bona fide loans will not be considered income in determining AFDC eligibility and payment amount. A loan is considered bona fide if the client is legally obligated or intends to repay the loan.

Interested persons may submit written comments to the following address: Howard L. Prejean, Assistant Secretary, Office of Eligibility Determinations, Box 94065, Baton Rouge, LA 70804-4065. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held in the Second Floor Auditorium, 755 Riverside, Baton Rouge, LA on Wednesday, April 5, 1989, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

May Nelson
Secretary

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: AFDC - Bona Fide Loans

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The cost is \$50 (\$25 state and \$25 federal) for printing.

Current policy requires that loans be budgeted as unearned income if the loan was used for current living expenses.

In AFDC, contributions, which loans are one component of, are one of the top five quality control errors.

Based on this error rate, it is obvious that recipients, as a rule, do not report loans now as they do not consider loans to be income.

Therefore, the reversal of this policy is not expected to substantially increase AFDC grant expenditures as unreported loans are not budgeted.

Additionally, we could reduce our error rate and, thereby, reduce our potential for fiscal sanctions.

The cost shown is the cost for printing manual material.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Howard L. Prejean
Assistant Secretary

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Social Services Office of Eligibility Determinations

The Department of Social Services, Office of Eligibility Determinations, proposes to adopt the following rule in the Food Stamp Program.

This was published as an emergency rule in the February 20, 1989 issue of the *Louisiana Register*. Correspondence received from the United States Department of Agriculture (USDA) dated January 10, 1989 mandated an implementation date of January 1, 1989. Federal regulations are forthcoming.

Proposed Rule

Effective January 1, 1989, advance payment of earned income tax credits (EITC) will not be counted as income for food stamp purposes. However, the amount of the EITC payment will still have to be estimated. This amount will be counted toward the household's resources just as EITC payments made as tax refunds are.

Interested persons may submit written comments to the following address: Howard L. Prejean, Assistant Secretary, Box 94065, Baton Rouge, LA, 70804-4065. He is the person responsible for responding to inquiries regarding this proposed rule. A copy of this proposed rule and its fiscal and economic impact statement is available for review from the local Office of Eligibility Determinations.

A public hearing on this proposed rule will be held in the Second Floor Auditorium, 755 Riverside, Baton Rouge, LA on Wednesday, April 5, 1989, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

May Nelson
Secretary

Fiscal and Economic Impact Statement For Administrative Rules Rule Title: Food Stamp Program - EITC payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The cost is \$50 (\$25 state and \$25 federal) in FY 88-89 for printing manual material.

Because food stamp benefits are 100 percent federally funded, any increase or decrease in benefits would impact on the federal budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

A minimal number of food stamp households might have their benefits increased. The rule change will be implemented on a case-by-case basis as the agency implements other changes affecting the household, at certification, recertification, or at the household's request.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Howard L. Prejean
Assistant Secretary

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Social Services
Office of Eligibility Determinations**

The Department of Social Services, Office of Eligibility Determinations, proposes to adopt the following rule in the Food Stamp Program.

This was published as an emergency rule in the February 20, 1989, *Louisiana Register*. Emergency rulemaking was necessary because correspondence received from the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) dated November 4, 1988, mandated a February 1, 1989 implementation date and that federal regulations were forthcoming immediately. Federal regulations still have not been received.

Effective February 1, 1989 foster children are to be considered "boarders" and must be certified under the provisions governing boarder status in Section C-140 and E-210 of the FAM-4. The provision under E-211.1 which prohibits granting boarder status to children under 18 years of age who are under the parental control of an adult household member does not apply with regard to foster children. In addition, the foster care payments must be excluded from consideration as income to the household providing the foster care. However, foster care households continue to have the option to treat the foster children as members of the household in accordance with current boarder policy. The entire foster care payments would then count as income to the household.

Interested persons may submit written comments to the following address: Howard L. Prejean, Assistant Secretary, Box 94065, Baton Rouge, LA, 70804-4065. He is the person responsible for responding to inquiries regarding this proposed rule. A copy of this proposed rule and its fiscal and economic impact statement is available for review from the local Office of Eligibility Determinations.

A public hearing on this proposed rule will be held in the Second Floor Auditorium, 755 Riverside, Baton Rouge, LA on Wednesday, April 5, 1989, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

May Nelson
Secretary

**Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Food Stamp Program - Foster Care**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The cost is \$50 (\$25 State and \$25 Federal) in FY 88-89 for printing manual material.

Because food stamp benefits are 100 percent federally funded, any increase or decrease in benefits would be on a federal level.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Households with foster child will be directly affected. Each household's circumstances dictate the amount of their food stamp benefits, therefore it cannot be estimated if benefits will increase or decrease. This policy will be implemented on a case-by-case basis.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Howard L. Prejean
Assistant Secretary

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

Pursuant to the authority granted under Louisiana Revised Statutes, Title 56, Section 320(E), the Louisiana Wildlife and Fisheries Commission hereby advertises its intent to continue the special scuba gamefish season at Toledo Bend Reservoir, but to delete black bass from the list of gamefish eligible to be taken. The rules regulating the special scuba gamefish season as amended and re-enacted by the commission will be as follows:

1. The special season shall be limited to Toledo Bend Reservoir, and only in that part of the lake located south of Highway 6 (Pendleton Bridge) on the Louisiana side.

2. The special season shall be for four months beginning at sunrise on the first day of June and ending at sunset on the last day of September, each year.

3. The taking of gamefish species shall be permitted during daylight hours only from sunrise to sunset.

4. Each diver harvesting gamefish is required to have a special permit issued by the secretary of the Louisiana Department of Wildlife and Fisheries, and the permit must be available for inspection upon request.

5. In addition to the special permit, the permit holder must have a valid Louisiana sportfishing license.

6. Crappie and bream shall be the only gamefish species allowed to be taken.

7. The daily creel limit shall be 25 crappie and 50 bream; the possession limit shall be the same as the daily creel limit.

8. The scuba diver must be submerged in the water and use only standard underwater spearing equipment.

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9. No permitted diver shall have in his possession (vessel or on his person) any other fishing gear.

10. Each permit holder shall submit to the Louisiana Department of Wildlife and Fisheries a monthly report of gamefish taken, and other information requested on the forms supplied by the department; the report deadline for a specific month shall be on the fifteenth of the following month. All reports should be sent to Bennie Fontenot, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898. Each permit holder must submit the monthly report whether they fish or not.

11. A legal diving flag shall be conspicuously displayed while diving operations are taking place.

12. Permits will expire at the end of each season and shall be renewed on an annual basis.

13. Failure of the permittee to adhere to any of the above stipulations shall result in the revocation of the permit by the secretary of the department.

14. The secretary of the department shall be authorized to recall permits and/or to close the special season if deemed necessary.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., Wednesday, May 3, 1989, to the following address: Virginia Van Sickle, Secretary, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Virginia Van Sickle
Secretary

Fiscal and Economic Impact Statement For Administrative Rules

Rule Title: Toledo Bend Reservoir - Prohibition of the taking of black bass by scuba divers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no measurable effect with regard to implementation costs or savings. Enforcement and administrative duties regarding this special season will be carried out by existing personnel. Existing equipment will be utilized in the execution of these duties.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no measurable effect with regard to implementation costs or savings. There may be a slight decrease in sportfishing licenses obtained by scuba divers for the taking of fish at Toledo Bend Reservoir, but this decrease should be offset with an increase of sportfishing licenses purchased by anglers fishing at this reservoir.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There should be no measurable costs or benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect upon competition or employment.

Virginia Van Sickle
Secretary

John R. Rombach
Legislative Fiscal Officer

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Department of Natural Resources Fishermen's Gear Compensation Fund

In accordance with the provisions of the Fishermen's Gear Compensation Fund, R.S. 56:700.1, notice is given that 32 claims amounting to \$66,340.26 were received during the month of February, 1989. During the same month, 78 claims in the amount of \$132,554.14 were paid, and eight claims were denied.

Pursuant to the provisions of Act 33 of 1988, the following claims with the Fishermen's Gear Compensation Fund have been validated by the Fund's hearing examiner and the secretary of DNR will approve payment, effective April 4, 1989.

Written comments from interested parties may be addressed to Department of Natural Resources, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, and must be received on or before April 3, 1989.

No objections were filed to claims proposed for payment in the February, 1989 *Louisiana Register*.

Claim No. 88-89-184

Autrey Thibodeaux, Route 1 Box 285 E Chauvin, LA 70344, SSN 436-74-8589 Terrebonne (Parish), Gulf of Mexico (Waterbody), Amount \$664.06
Claim No. 88-89-209

Joseph Verdin, 4813 Grand Caillou Houma, LA 70363, SSN 433-56-5989 St. Mary, Atchafalaya Bay, Amount \$1337.23
Claim No. 88-89-199

Alan Cheramie, Box 376 Lafitte, LA 70067, SSN 436-72-7784, Plaquemines, Loran 28804 46857, Amount \$3405.69
Claim No. 88-89-191

Edward Guillie, Jr., Box 202, Gloria Dr. Lafitte, LA 70067, SSN 437-58-6741, Plaquemines, Cowhorn Reef, Amount \$1456
Claim No. 88-89-193

Wayne Cheramie, 1983 LA Hwy 1, Grand Isle, LA 70358, SSN 438-06-8389, Jefferson, Gulf of Mexico, Amount \$1068.52
Claim No. 88-89-194

Wayne Cheramie, 1983 LA Hwy 1, Grand Isle, LA 70358, SSN 438-06-8389, Jefferson, Gulf of Mexico, Amount \$1068.52
Claim No. 88-89-99

Thomas Pacaccio, Box 1133, Grand Isle, LA 70358, SSN 436-60-2796, Jefferson, Bayou St. Dennis, Amount \$770.50
Claim No. 88-89-121

Lester Schellinger, Route 6 Box 257 A, New Orleans, LA 70129, SSN 439-68-8383, St. Bernard, Lake Borgne, Amount \$634.23
Claim No. 88-89-171

Daniel Cheramie, 580 Crochetville Rd., Montegut, LA 70377, SSN 438-78-8178, Terrebonne, Humble Canal Amount \$1000

Claim No. 88-89-187
 Warren Perez, Sr., Route 1 Box 669, St. Bernard, LA 70085, SSN 436-66-2588, St. Bernard, Mississippi River Gulf Outlet, Amount \$777.49

Claim No. 88-89-17
 Clarence R. Lovell, 2508 Bartolo Dr., Meraux, LA 70075, SSN 433-68-8756, St. Bernard, Issac Ditch, Amount \$1532.03

Claim No. 88-89-179
 Harry Cheramie Sr., Box 239, Grand Isle, LA 70358, SSN 436-86-7460, Jefferson, Gulf of Mexico, Amount \$672.63

Claim No. 88-89-417
 Edward Guillie, Jr., Box 202 Gloria Dr., Lafitte, LA 70067, SSN 437-58-6741, Plaquemines, Cow Horn Reef, Amount \$600

Claim No. 88-89-189
 Ojess Cheramie, 1978 LA Hwy 1, Grand Isle, LA 70358, SSN 433-56-6169, Jefferson, Gulf of Mexico, Amount \$847.25

Claim No. 88-89-34
 Richard Clark, 2019 Guillot Drive St., Bernard, LA 70085, SSN 423-29-1422, St. Bernard, Mississippi River Gulf Outlet, Amount \$881.74

Claim No. 88-89-134
 Roy Campo, 2021 Deogracias, Braithwaite, LA 70040, SSN 437-52-6221, St. Bernard, Chandeleur Sound, Amount \$1821.70

Claim No. 88-89-236
 Louis Matherne, Sr., Box 435 A, Barataria, LA 70036, SSN 435-54-3935, Plaquemines, Gulf of Mexico, Amount \$1030.20

Claim No. 88-89-237
 Louis Matherne, Sr., Box 435 A, Barataria, LA 70036, SSN 435-54-3935, Lafourche, Gulf of Mexico, Amount \$1029.78

Claim No. 88-89-118
 Frank R. Christen, Sr., Box 35, Lafitte, LA 70067, SSN 439-74-4334, Plaquemines, Gulf of Mexico, Amount \$1008.99

Claim No. 88-89-58
 Dorcerle East, 198 Magnolia Road, Hackberry, LA 70645, SSN 436-12-6565, Cameron Big Lake, Amount \$720.85

Claim No. 88-89-248
 Master Terry, Inc., 5139 Shrimpers Row, Dulac, LA 70353, Fed ID #72-1121108, Terrebonne, Loran 27889 46863, Amount \$2012

Claim No. 88-89-205
 Ellis Schouest Jr., Star Rt B Box 415 A, Franklin, LA 70538, SSN 436-52-6278, St. Mary, East Cote Blanche Bay, Amount \$1432

Claim No. 88-89-182
 Peter Ronquille, Box 232 Lafitte, LA 70067, SSN 437-54-0438, Plaquemines, Main Pass Flat, Amount \$2901.71

Claim No. 88-89-95
 Alan Cheramie, Jr., Box 182, Lafitte, LA 70067, SSN 433-35-0147, Jefferson, Gulf of Mexico, Amount \$1432.33

Claim No. 88-89-240
 Alvin Cantrelle, Route 1 Box 346 E, Lockport, LA 70374, SSN 436-50-6104, Vermilion, Loran 27626 46916, Amount \$1062.82

Claim No. 88-89-246
 Terry Luke, 5139 Shrimpers Row, Dulac, LA 70353, SSN 437-84-6109, Terrebonne, Loran 27893 46861, Amount \$1296

Claim No. 88-89-247
 Terry Luke, 5139 Shrimpers Row, Dulac, LA 70353, SSN 437-84-6109, Terrebonne, Loran 27743 46879, Amount \$2220.50

Claim No. 88-89-234
 Preston Landry, 217 South Pelloat, Delcambre, LA 70528, SSN 460-28-7085, Cameron, Loran 26692 46977, Amount \$1411.26

Claim No. 88-89-221
 Jefferson Lasseigne, Sr., Box 121, Galliano, LA 70354, SSN 433-54-2907, Terrebonne, Loran 27735 46884, Amount \$1270.31

Claim No. 88-89-243
 Lloyd DeSilva, Jr., 230¹/₂ Casa Calvo St., Chalmette, LA 70043, SSN 437-52-6752, Orleans, Ship Channel, Amount \$1650

Claim No. 88-89-153
 Irvin Blanchard, Jr., Route 2 Box 511, Yscloskey, LA 70085, SSN 436-94-4549, St. Bernard, Point Eloi, Amount \$2762.65

Claim No. 88-89-202
 John Zar, III, Route 1 Box 511 A, Lafitte, LA 70067, SSN 436-64-0063, Jefferson, Gulf of Mexico, Amount \$3313.25

Claim No. 88-89-231
 Ray W. Matherne, Box 435 A, Barataria, LA 70036, SSN 433-64-6321, Plaquemines, Gulf of Mexico, Amount \$656.50

Claim No. 88-89-235
 Gerard Lewis, 413 Chinchilla Dr., Arabi, LA 70032, SSN 438-96-6214, St. Bernard, Bayou Bienvenu, Amount \$473.79

Claim No. 88-89-201
 Henry Martinez, Route 1 Box 806, St. Bernard, LA 70085, SSN 436-60-9505, St. Bernard, Santa Helena Pass, Amount \$1542.80

Claim No. 88-89-239
 Danny Buras, 5132 Eighty Arpent Road, Marrero, LA 70072, SSN 434-15-8776, Jefferson, Barataria Bay, Amount \$442

Claim No. 88-89-267
 Jimmie Dupre, Route Box 430, Erath, LA 70533, SSN 437-64-0309, Vermilion, Fresh Water Bayou, Amount \$1128.85

Claim No. 88-89-251
 Wayne Nuschler, 2405 Bartolo Dr., Meraux, LA 70075, SSN 439-68-6188, St. Bernard, Mississippi River Gulf Outlet, Amount \$1565.10

Claim No. 88-89-219
 Levy Brunet, Jr., Route 2 Box 328-L, Cut Off, LA 70345, SSN 433-96-8359, Jefferson, Barataria Bay, Amount \$742.65

Claim No. 88-89-228
 Ben Guerra, Jr., Box 611-A Floriscant Rd., St. Bernard, LA 70085, SSN 437-52-6212, Plaquemines, Black Bay, Amount \$1464.96

Claim No. 88-89-167
 Jeff J. Touts, 308 East 40th, Cut Off, LA 70345, SSN 438-13-1221, Jefferson, Grand Lake, Amount \$2464.42

Claim No. 88-89-251

Shane Aucoin, 144 W. 107th St., Cut Off, LA 70345, SSN 436-72-7431, Lafourche, Bayou Blue, Amount \$3730.60

Claim No. 88-89-215

Gary J. Treuil, 215 Papworth Ave., Metairie, LA 70005, SSN 433-66-5597, Orleans, Loran 28809 47047, Amount \$1325.64

Claim No. 88-89-63

Michael Hymel, 2912 Penwood Dr., Gretna, LA 70056, SSN 434-84-2355, Plaquemines, Grand Bayou, Amount \$565.72

Claim No. 88-89-158

Herman Alfonso, 5112 Nicosia Dr., St. Bernard, LA 70085, SSN 438-76-5243, Plaquemines, Mississippi Sound, Amount \$3025

Claim No. 88-89-435

Ojess Cheramie, 1978 LA Hwy 1, Grand Isle, LA 70358, SSN 433-56-6169, Jefferson, Gulf of Mexico, Amount \$847.25

Claim No. 88-89-233

William Brumley, Box 398, Chauvin, LA 70344, SSN 447-14-8806, Terrebonne, Bay Le Fleur, Amount \$1603.56

Raymond W. Stephens
Secretary

POTPOURRI

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

Docket Number UIC 89-2

In accordance with the laws of the state of Louisiana, and with particular reference to the provisions of R.S. 30:4, notice is hereby given that the commissioner of conservation will conduct a public hearing at 6 p.m., Thursday, April 20, 1989, in the Meeting Room of the Terrebonne Parish Library, East Houma Branch, located at 1311 Grand Caillou Road, Houma, LA.

At such hearing the commissioner of conservation or his designated representative will hear testimony relative to the application of Houma Fluid Services of Metairie, Louisiana 70001. The applicant intends to amend an existing permit for a commercial nonhazardous oilfield waste facility in Section 82, Township 17 South, Range 16 East, Terrebonne Parish, Louisiana and Section 2, Township 18 South, Range 16 East, Terrebonne Parish, Louisiana.

Prior to authorizing the amendment of this commercial facility permit to allow the disposal of nonhazardous oilfield waste solids, the commissioner of conservation must find that the applicant has met all the requirements of Statewide Order No. 29-B (August 1, 1943, as amended).

The application is available for inspection by contacting Carroll D. Wascom, Office of Conservation, Injection and Mining Division, Room 253 of the Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Terrebonne Parish Police Jury Office in Houma, LA. Verbal informa-

tion may be received by calling Carroll D. Wascom at 504/342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 5 p.m., April 27, 1989, at the Baton Rouge Office. Comments should be directed to: Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. UIC 89-2, Commercial Disposal Facility, Terrebonne Parish.

J. Patrick Batchelor
Commissioner

POTPOURRI

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

Docket Number UIC 89-3

In accordance with the laws of the state of Louisiana, and with particular reference to the provisions of R.S. 30:4, notice is hereby given that the commissioner of conservation will conduct a public hearing at 6 p.m., Monday, April 24, 1989, in the Parish Council Meeting Room located in the St. Mary Parish Courthouse (fifth floor), on Main Street in Franklin, Louisiana.

At such hearing the commissioner of conservation or his designated representative will hear testimony relative to the application of Land Treatment Systems, Inc., Box 1409, Amelia, Louisiana 70340. The applicant intends to amend an existing permit for a commercial nonhazardous oilfield waste facility in Section 16, Township 16 South, Range 12 East, St. Mary Parish, Louisiana.

Prior to authorizing the amendment of this commercial facility permit the commissioner of conservation must find that the applicant has met all the requirements of Statewide Order No. 29-B (August 1, 1943, as amended).

The application is available for inspection by contacting Carroll D. Wascom, Office of Conservation, Injection and Mining Division, Room 253 of the Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the St. Mary Parish Police Jury Office in Franklin, Louisiana. Verbal information may be received by calling Carroll D. Wascom at 504/342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 5 p.m., May 1, 1989, at the Baton Rouge Office. Comments should be directed to: Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. UIC 89-3, Commercial Disposal Facility, St. Mary Parish.

J. Patrick Batchelor
Commissioner

POTPOURRI
Department of Natural Resources
Office of Conservation
Injection and Mining Division

Docket Number UIC 89-4

In accordance with the laws of the State of Louisiana, and with particular reference to the provisions of LRS 30:4, notice is hereby given that the commissioner of conservation will conduct a public hearing at 6 p.m., Tuesday, April 25, 1989, in Court Room A of the Bossier Parish Courthouse (4th floor), located on Burt Boulevard in Benton, LA.

At such hearing the commissioner of conservation or his designated representative will hear testimony relative to the application of Campbell Wells Corporation, Box 1467, Jennings, LA 70546. The applicant intends to construct and operate a commercial nonhazardous oilfield waste treatment and disposal facility in Section 28, Township 16 North, Range 11 West, Bossier Parish, LA.

Prior to authorizing the use of this facility for disposal of nonhazardous oilfield waste, the commissioner of conservation must find that the applicant has met all the requirements of Statewide Order No. 29-B (August 1, 1943, as amended).

The application is available for inspection by contacting Carroll D. Wascom, Office of Conservation, Injection and Mining Division, Room 253 of the Natural Resources Building, 625 North 4th Street, Baton Rouge, LA, or by visiting the Bossier Parish Police Jury Office in Benton, LA. Verbal information may be received by calling Wascom at 504/342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 5 p.m., May 2, 1989, at the Baton Rouge Office. Comments should be directed to: Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket No. UIC 89-4, Commercial Disposal Facility, Bossier Parish.

J. Patrick Batchelor
Commissioner

**CUMULATIVE INDEX
(Volume 15, Number 3)**

1989

<i>Pages</i>	<i>Issue</i>
3— 54	January
57— 136	February
141— 231	March

AGRICULTURE AND FORESTRY DEPARTMENT

Agricultural and Environmental Sciences, Office of

- Advisory Commission on Pesticides, 76R
- Chemistry Lab fee, 77R
- Honeybee import, 49P
- Horticulture Commission
 - Landscape architect exam, 134P
 - Retail floristry exam, 134P
- Nursery certificate fee, 77R
- Seed Irish potato, 78R

Agro-Consumer Services, Office of

- Weights and Measures Commission
- Registration, 78R

Forestry, Office of

- Timber stumpage, 5R
- Timberland fire protection, 79R

Management and Finance, Office of

- Farm product additions, 110N
- Meat, poultry, seafood fee, 79R
- Market Commission
 - Market bulletin, 75R

Marketing, Office of

- Crawfish Promotion Research Board
- Crawfish bags, 200N

CIVIL SERVICE DEPARTMENT

Civil Service Commission

- Amends certain rules, 201N
- Pay adjustment, 16N, 202N

ECONOMIC DEVELOPMENT DEPARTMENT

Architectural Examiners, Board of

- Application for exam, 5R
- Examination, 5R
- Registration, 5R

Commerce and Industry, Office of

- Industrial Tax Equalization, 144ER
- LA Capital Companies Tax Credit, 147ER

Louisiana Economic Development Corporation

- Minority Venture Capital Match Program, 60ER
- Venture Capital Co-investment Program, 61ER
- Venture Capital Match Program, 63ER
- Small Business Equity Program-Feasibility studies, 64ER

- Small Business Equity Program-Loan guaranty, 64ER
- Small Business Equity Program-Loan participation, 67ER

Racing Commission

- Application form, 7R
- Bleeder medication, 7R
- Disqualified horse recognized as winner, 202N
- Horse registration, 7R, 3ER
- Super six, 8R
- Twin trifecta, 8R

Real Estate Commission

- Exams, 80R
- License applications, 80R

Used Motor Vehicle and Parts Commission

- Procedural changes, 111N

EDUCATION DEPARTMENT

Elementary and Secondary Education, Board of

- 8(g) Program, budget, 203N
- 8(g) Calendar, 8R
- 8(g) Policy Manual, 16N, 181R
- Act 832 implementation, 207N
- Bulletin 741
 - H.S. credit for correspondence courses, 17N
 - Journalism courses, 17N
 - Local electives, 18N
 - Maximum class size, K-3, 113N
 - Nonpublic school standards, 19N
 - Pre-algebra, 80R
 - Sex education, 204N
- Bulletin 746
 - Assistant Superintendent standards, 113N
- Bulletin 1191
 - Transportation Handbook-Age requirement, 204N
 - Transportation Handbook-Driver experience, 205N
- Bulletin 1196
 - Competitive food policy, 9R
 - Child care food program, 9R
 - Criterion referenced test/graduation test, 206N
 - Local electives submission, 19N
 - Test scores, 69ER
 - Test security, 70ER, 207N
 - Teaching certificate denial, 9R

Proprietary School Commission

- Licensure exemption, 210N
- Occupational studies degree assoc., 209N
- Staff qualifications, 210N

ENVIRONMENTAL QUALITY DEPARTMENT

Nuclear Energy Division

- Radiation, 71ER

CR—Committee Report

EO—Executive Order

L—Legislation

PPM—Policy and Procedure Memorandum

ER—Emergency Rule

P—Potpourri

R—Rule

Solid and Hazardous Waste, Office of

Hazardous Waste Division
Act 803, 211N
Closure requirements, 181R
Discarded commercial chemicals, 181R
Ignitable/reactive wastes, 181R
Incompatible wastes, 181R
Wastewater exclusions, 181R

Water Resources, Office of

Oil and Gas, 114N
Water pollution, 73ER

EXECUTIVE ORDERS

BR 89-1—Amends BR 88-41 — Creating Governor's Special Task Force on Judicial Selection, 59
BR 89-2—Amends BR 88-20 — Transferring Research Division to Department of Economic Development, 59
BR 89-3—Amends BR 88-43 — Creating Employee Group Benefits Program Task Force, 59
BR 89-4—Grants Excess Unused Ceiling to Certain Projects, 59
BR 89-5—Increases Number of Ex-officio Members in Highway Safety Commission, 60
BR 89-6—Amends BR 88-46 to appoint members to the Special Task Force from the Senate, 143
BR 89-7—Creates a Task Force on Criminal Justice, 143
BR 89-8—Declares a state of emergency for repairs to T.H. Harris Voc.-Tech School, 144
BR 89-9—Appoints additional members to the Task Force on Criminal Justice, 144

GOVERNOR'S OFFICE

Architects Selection Board

Organization, 115N

Division of Administration

Contractual review, 81R
Risk Management
Insurance, 85R
State Planning
LCDBG final statement, '89, 20N, 182R, 212N

Elderly Affairs, Office of

Long-term care ombudsman, 213N
Older Americans Act, 116N
State Plan on Aging, 150ER
Title III-C Nutrition, 214N

Women's Services, Office of

Victims of family violence, 117N

HEALTH AND HOSPITALS DEPARTMENT

Dietetics and Nutrition, Board of

Foreign graduate license, 86R

Embalmers and Funeral Directors, Board of

Embalmer requirements, 9R
Exam, 134P

Medical Examiners, Board of

Alternative qualification, 37N

Licensure, 36N

Physician records, 34N

Mental Health, Office of

OMR/MH/PRADA, Block Grant, 11R

Nursing Home Administrators, Board of Examiners for

Certified nurse asst., 3ER, 32N, 194R
Emergency license, 32N, 195R
License refusal, 33N, 195R
Reciprocity, 33N, 195R

Physical Therapy Examiners, Board of

Fees, 214N
Licensing/certification, 214N
Practice, 214N

Psychologists, Board of

Address display, 87R
Doctoral programs, 86R
License display, 87R

Public Health, Office of

Lead Poisoning Program, 88R
Paternity, 118N
Sanitary Code
Mechanical wastewater treatment plant, 38N, 196R
Non-dairy frozen desserts, 88R
Temporary food service, 39N, 89R

Secretary, Office of

Child placing agency, 222N
Day care center license, 222N
Facility Need Review Program, 220N
Hospice care, 155ER
Infectious disease notification, 42N, 196R
LTC income disregards, 92R
MAP
OSS payment increase, 221N
Need Review Policy, 11R
Physician inclusion of podiatrists, 49P
Reimbursement for inpatient hospital services, 155ER
Resident screening, review, 4ER
Sliding fee policy, 92R

JUSTICE DEPARTMENT

Attorney General Office

Electronic Video Bingo, 73ER, 74ER, 223N

LABOR DEPARTMENT

Employment Security, Office of

Claims appeal, 120N
Employment security law, 122N

Research and Statistics

Data estimates, 134P

LOUISIANA ADMINISTRATIVE CODE UPDATE

October, 1988 -- December, 1988, 47

CR—Committee Report

EO—Executive Order

ER—Emergency Rule

L—Legislation

N—Notice of Intent

P—Potpourri

PPM—Policy and Procedure Memorandum

R—Rule

NATURAL RESOURCES DEPARTMENT

Conservation, Office of

Hazardous liquids pipeline, 224N
Public hearing, 230P, 230P, 231P
Statewide order 29-N-2, 225N

Fishermen's Gear Compensation Fund

Claims, 49P, 135P, 228P

PUBLIC SAFETY AND CORRECTIONS DEPARTMENT

Private Security Examiners, Board of

Amendments, 11R

State Fire Marshal, Office of

Health care facility emergency generator, 95R
Life Safety Code, 96R

REVENUE AND TAXATION DEPARTMENT

Secretary Office of

Sales and use tax, 124N
Tax collection, 122N

Tax Commission

Timber stumpage, 5R

SECRETARY OF STATE DEPARTMENT

Secretary, Office of

Foreign corporations, 125N

SOCIAL SERVICES DEPARTMENT

Community Services, Office of

Children's trust fund, 129N

Eligibility Determinations

AFDC Program
Bona fide loans, 225N
Child support enforcement, 96R
Error rate, 130N
Essential persons, 156ER
Food Stamp Program
Dependent Care, 14R
Earned income tax credit, 226N
Foster care, 227N
Foster children, 74ER
Public institution residents, 157ER
Income tax credit, 74ER
Work requirements, 96R

Licensed Professional Vocational

Rehabilitation Counselors, Board of

General Provisions, 126N

Secretary, Office of

Public hearing, 52P

TRANSPORTATION AND DEVELOPMENT DEPARTMENT

Maintenance

Driveway permit, 48CR

Secretary, Office of

Ferry toll, 43N, 44N

Real Estate, 157ER

Traffic and Planning

Outdoor advertising, 15R

Weights and Measures

Airport fuel vendors/distributors, 15R
Fees for manuals, 15R
New product evaluation, 48CR
Project inspections, 48CR
Qualified product list, 48CR

TREASURY DEPARTMENT

Bond Commission

Applications, 4ER, 44N, 197R

State Employees Group Benefits Program

Admission dates, 97R
Dental surgery, 97R
Emergency Room, 130N
Fee schedule, 131N
HMO's, 97R
Obesity treatment, 99R
Out-patient surgery, 100R
Rate increase, 132N
Single claim determination period, 133N

WILDLIFE AND FISHERIES DEPARTMENT

Fisheries, Office of

Oyster lease rental, 49CR
Oyster lease survey, 197R

Wildlife and Fisheries Commission

Black and Clear Lakes net ban, 15R
Fish seining prohibition, 133N
Refugee, wildlife management areas, 100R
Saltwater gill and trammel nets, 46N
Shrimp season, 4ER, 46N
Toledo Bend Reservoir-
Black bass prohibition, 227N
Waterfowl conservation stamp, 105R
Wildlife value guidelines, 45N, 200R

CR – Committee Report

EO – Executive Order

ER – Emergency Rule

L – Legislation

N – Notice of Intent

P – Potpourri

PPM – Policy and Procedure Memorandum

R – Rule

