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Emergency Rules

DECLARATION OF EMERGENCY

Department of Health and Human Resources
Office of Family Security

In accordance with the provisions of R.S. 40:29, the Department of Health and Human Resources, Office of Family Security has implemented the following policy regarding the disclosure of information by institutions and organizations providing Medicaid services:

1. Medicaid providers and fiscal intermediaries/agents are required to disclose to the Medical Assistance Program, certain information about owners, employees, and suppliers (i.e., identification of owners' names, common ownership, ownership in a sub-contractor);

2. The Medical Assistance Program is authorized to refuse to enter into or renew an agreement with a provider, if any of its owners, officers, directors, agents, or managing employees have been convicted of a criminal offense involving any of the programs under Titles XVIII, XIX, or XX of the Social Security Act;

3. The Medical Assistance Program is authorized to terminate an agreement with a provider who fails to disclose fully and accurately the identity of any of its owners, officers, directors, agents, or managing employees who have been convicted of a program-related criminal offense at the time of entering into the agreement;

4. In addition to the Louisiana Medical Assistance Program, the Secretary of the Department of Health, Education and Welfare has been authorized to have access to Medicaid providers' records; and

5. The State Medicaid Fraud Control Unit has been authorized to have direct access to Medicaid providers' records rather than having to access them through the Medical Assistance Program.

This action will allow the Medical Assistance Program to be in compliance with newly published federal regulations, 42 CFR, parts 403, 420, 431, and 455, effective October 15, 1979, which were published in the August 17, 1979, *Federal Register*, Volume 44, Number 138, pages 41636-41646. Compliance with these regulations assures continued federal financial participation in Louisiana's Medical Assistance Program.

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

Rules

RULES

Department of Commerce
Board of Certified Public Accountants

(Editor's Note: The following rules were numbered in accordance with the numbering system to be used in the Louisiana Administrative Code. Numbers in parentheses following each section heading (example: R.S. 37:71) refer to the particular statute which the section implements.)

LAC 11-9:1 Definitions (R.S. 37:71)

1.0 The definitions included in the Act are used herein with the following additions:

1.1 The term "the Act" means Act 510 of the 1979 Regular Session of the Louisiana Legislature or as it may hereafter be amended.

1.2 The term "accountants' report" shall mean a report

1.2.1 rendering any opinion or statement, or denying an opinion, that financial statements or elements thereof are presented, prepared or compiled in accordance with generally accepted accounting principles or any other comprehensive basis of accounting and/or

1.2.2 referring to an audit, examination, review or lack thereof.

1.3 The term "accredited university or college" shall mean a university or college accredited by the Southern Association of Colleges and Schools, Commission on Colleges, or by any one of the six other regional accreditation associations.

1.4 The term "CPA examination" means the examination required for a certificate as a certified public accountant.

1.5 The term "enterprise" shall mean any person or entity, whether organized for profit or not, for which a licensee performs professional services.

1.6 The term "firm" shall mean a proprietorship, partnership, or professional corporation engaged in the practice of public accountancy.

1.7 The term "generally accepted accounting principles" shall mean those standards promulgated by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

1.8 The term "generally accepted auditing standards" shall mean those auditing standards promulgated by the American Institute of Certified Public Accountants or its successor.

1.9 The term "licensee" means a person licensed to practice public accounting by the Board.

1.10 Masculine terms shall include the feminine and, when the context requires, shall include partnerships and/or professional corporations.

1.11 Where the context requires, singular shall include the plural or plural shall include the singular.

LAC 11-9:2 Special Definitions;

Public Accountancy; Exceptions (R.S. 37:72)

2.1 The term "public accounting" as used in the Act shall mean:

2.1.1 Rendering an accountants' report.

2.1.2 All services offered or performed for the public by anyone that involve issuing an opinion or certificate attesting in any way to the reliability of the representation; or that involve an audit, examination, review, or compilation of the financial records leading to a written accountant's report.

2.2 Public accounting shall not include the following if performed by a person who is not a certified public accountant or who is an unlicensed certified public accountant, provided that such person does not indicate, in connection with his signature or otherwise, that he is a public accountant or certified public accountant:

2.2.1 The keeping of books and related accounting records, including payroll records and preparing trial balances.

2.2.2 The compilation of financial statements as long as an accountant's report is not rendered thereon.

2.2.3 The preparation of tax returns to be filed with any federal, state, parish or municipal office or agency, provided the preparation of such returns by persons other than CPAs is not prohibited by law or regulations of the office or agency.

2.2.4 The service or function performed by the Legislative Auditor in the discharge of the duties of his office.

LAC 11-9:3 Domicile: New Appointee (R.S. 37:73)

3.1 The principal office and official address of the Board to which communications should be sent is State Board of Certified Public Accountants of Louisiana, Masonic Temple Building, 333

St. Charles Avenue, New Orleans, Louisiana 70130.

3.2 A new appointee to the Board shall be seated at the first Board meeting he attends following his qualification as required by R.S. 37:74.

LAC 11-9:4 Operating Procedures (R.S. 37:75)

4.1 The officers shall be President, Secretary, and Treasurer. The duties of the respective officers shall be the usual duties assigned to the respective office. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which elected.

4.2 The fiscal year of the Board shall end on June 30 of each year. The annual meeting shall be held as soon as practical after the close of the fiscal year, at which meeting the Board shall elect its officers who shall serve until the next annual meeting or until their successors are elected.

4.3 Any meeting may be called by the President or by joint call of at least two of its members, to be held at the principal office of the Board, or at such other place as may be fixed by the Board.

4.4 Meetings of the Board shall be conducted in accordance with *Robert's Rules of Order* insofar as such rules are compatible with the laws of the state governing the Board or its own resolutions as to its conduct.

4.5 It shall be the duty of the Secretary to determine when the prerequisites and procedures required by the Act and by the Board for taking the CPA examination have been satisfactorily completed by an applicant.

4.6 The Secretary shall determine when, in his opinion, the prerequisites and procedures required by the Act and by the Board shall have been satisfactorily completed in respect to issuance of certificates and/or licenses and he shall submit at each meeting of the Board, for its approval or disapproval, current tabulations thereof, listing the names of the persons concerned.

4.7 The Secretary shall list in the minutes of the Board all persons approved for the issuance of certificates and/or licenses and all persons whose certificates and/or licenses are revoked, suspended, or reinstated.

4.8 It shall be the responsibility of the Secretary to see that an official register of all certified public accountants who have received certificates from the Board is maintained.

4.9 It shall be the responsibility of the Secretary that an annual listing of all certified public accountants licensed to practice is maintained.

4.10 The Treasurer shall be responsible for the maintenance of the accounts of the Board and the preparation of a financial report once a year, as of June 30, and shall submit an annual budget to the Board for its approval.

LAC 11-9:5 Rules of Professional Conduct (R.S. 37:75)

5.1 Preamble. The services usually and customarily performed by those in the public practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations, both to their clients and to the public in general. These obligations include maintaining independence of thought and action, continuously improving professional skills, observing, where applicable, generally accepted accounting principles and generally accepted auditing standards, promoting sound and informative financial reporting, holding the affairs of clients in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters affecting fitness to practice public accountancy.

The Board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright, young minds

essential for adequately serving the public interest.

The rules are intended to have application to all kinds of professional services performed for the public in the practice of public accountancy, including services relating to accounting, auditing, taxation, and management advice and consultation, to mention only the broad areas in which services are currently being offered by those in the practice of public accountancy. A licensee who is engaged in the practice of public accountancy outside the United States may conduct that practice in accordance with the standards of professional conduct applicable to the country in which he is practicing. However, if a licensee's name is associated with financial statements so as to indicate that he is acting as an independent certified public accountant using principles applicable in this country, he shall comply with the rules of competence and technical standards.

In the interpretation and enforcement of these rules, the Board may consider relevant interpretations, rulings, and opinions issued by the Boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

5.2 Independence, Integrity, and Objectivity.

5.2.1 Independence. A licensee shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto unless he is independent with respect to such enterprise. A licensee who signs or uses his name in connection with a professional service as to which he is not independent as contemplated herein shall indicate clearly that he is not independent by use of a title to reflect his status or by some other means. Independence will be considered to be impaired if, for example:

A. During the period of his professional engagement or at the time of expressing his opinion, the licensee:

1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had, or was committed to acquire, any direct or material indirect financial interest in the enterprise; or
3. Had any joint, closely-held business investment with the enterprise or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the licensee or the enterprise; or
4. Had any loan to or from the enterprise or any officer, director, or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

- a. Loans obtained by the licensee which are not material in relation to the net worth of the borrower; and
- b. Home mortgages; and
- c. Other secured loans, except those secured solely by a guarantee of the licensee.

B. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:

1. Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of an owner, a member of management, or of an employee; or
2. Was a trustee for any pension or profit sharing trust of the enterprise.

The foregoing examples are not intended to be all-inclusive. For the purposes of this rule, the licensee, his spouse, descendants, and relatives living in the same household shall be considered together.

5.2.2 Integrity and objectivity. A licensee in the performance of professional services shall neither knowingly misrep-

resent facts not subordinate his judgment to that of others. In tax practice, however, a licensee may resolve doubt in favor of his client as long as there is reasonable support for his position.

5.2.3 Commissions. A licensee shall not pay a commission to obtain a client or accept a commission for a referral to a client of products or services of others. This rule does not prohibit payments for the purchase of all, or a part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs of estates of such persons.

5.2.4 Contingent fees. A licensee shall not offer or perform professional services for a fee which is contingent upon the findings or results of such services; provided, however, this rule does not apply to professional services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor does it apply to professional services for which the fees are to be fixed by courts or other public authorities and which are therefore indeterminate in amount at the time the professional services are undertaken.

5.2.5 Incompatible occupations. A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs his independence or objectivity in rendering professional services, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

5.3 Competence and Technical Standards.

5.3.1 Competence. A licensee shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with Rules 5.3.2 and 5.3.3 below.

5.3.2 Auditing standards. A licensee shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as a certified public accountant with respect to such financial statements unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom must be justified by those who do not follow them.

5.3.3 Accounting principles. A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements depart from such accounting principles so as to produce a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons that compliance with the principle would result in a misleading statement.

5.3.4 Forecasts. A licensee shall not in the performance of professional services permit his name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the forecast.

5.4 Responsibilities to Clients.

5.4.1 Confidential client information. A licensee shall not, without the consent of his client, disclose any confidential information pertaining to such client obtained in the course of performing professional services.

A. This rule does not

1. Relieve a licensee of any obligations under Rules 5.3.2 and 5.3.3, or
2. Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order

of a court, or

3. Prohibit disclosures in the course of a quality review of a licensee's professional services, or

4. Preclude a licensee from responding to any inquiry made by the Board or any investigative or disciplinary body established by law or formally recognized by the Board.

B. Members of the Board, their duly authorized agents, and professional practice reviewers shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to a duly authorized investigative or disciplinary body of the kind referred to above.

5.4.2 Records. For a reasonable charge, a licensee shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

A. A copy of a tax return of the client; and

B. A copy of any report, or other document, issued by the licensee to or for such client; and

C. Any accounting or other records belonging to, or obtained from, or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of such documents when they form the basis for work done by him; and

D. A copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

5.5 Other Responsibilities and Practices.

5.5.1 Discreditable acts. A CPA shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

5.5.2 Acting through others. A CPA shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the CPA, would place him in violation of the Rules of Professional Conduct.

5.5.3 Advertising.

A. Licensees shall have the right to advertise. However, a licensee shall not use or participate in the use of any public communication or advertisement which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

1. Contains a misrepresentation of fact; or

2. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

3. Contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality, or statements intended to attract clients by use of showmanship, hucksterism, slogans, jingles, or other garish language; or

4. Is intended or likely to create false or unjustified expectations of favorable results; or

5. Implies educational or professional attainments or licensing recognition not supported in fact; or

6. States or implies that the licensee has received formal recognition as a specialist or claims any specialized expertise in any aspect of the practice of public accountancy, if this is not the case; or

7. States or implies that the licensee's ingenuity and/or prior record are principal factors likely to determine the results of the services rather than the merit of the facts involved, or contains statistical data or information so as to reflect past performance or predict future success; or

8. Represents that professional services can or will

be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

9. Contains other representations or implications beyond those set forth in B below that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived; or

10. Implies the ability to influence any court, tribune, regulatory agency or similar body or any official thereof; or

11. Makes comparison with other CPAs.

B. As an example, a licensee may use or participate in the use of a public communication which states in a dignified manner the following information about the licensee and any associated licensees:

1. Name, firm name, address, telephone numbers, office hours, and telephone-answering hours;

2. Biographical and educational background;

3. Professional memberships and attainments;

4. Description of services offered;

5. The limitation of practice to certain areas of service;

6. The opening or change in location of any office and changes in personnel;

7. Fees charged for the initial consultation, for specific services of average complexity, and hourly rates. Quoted fees must be adhered to for a reasonable period not less than thirty days after the publication.

C. All licensees shall retain copies or recordings of all public communications by date of publication for a period of at least three years.

5.5.4 Solicitation. A licensee shall not by any direct personal communication solicit an engagement to perform professional services

A. If the communication would violate Rule 5.5.3 above if it were a public communication; or

B. By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harrasing conduct; or

C. Where the engagement would be for a person or entity not already a client of the licensee, unless such person or entity has invited such a communication or is seeking to secure the performance of professional services and has not yet engaged another to perform them.

5.5.5 Form of practice. A licensee may practice public accountancy only in a proprietorship, a partnership, or a professional corporation organized in accordance with the Louisiana Professional Accounting Corporations Law or similar law of another state.

5.5.6 Firm name. The name under which a licensee practices public accounting must indicate clearly whether he is an individual practicing in his own name or a named member of a partnership or professional accounting corporation. The words "and Associates" or "and Company" or similar words shall be used only to denote unnamed partner(s) of a partnership or shareholder(s) of a professional accounting corporation. However, names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under the partnership or corporate name for up to two years after becoming a sole practitioner or sole shareholder. No licensee shall allow a person who is not a licensee, and who is not in partnership with him or in his employ on a salary, to practice in his name. If a firm is incorporated, words so indicating must appear in or with the firm name each time it is used.

5.5.7 Communications. A CPA shall, when requested, respond to communications from the Board within thirty days of

the mailing of such communications by registered or certified mail.

5.5.8 Applicability. All of the Rules of Professional Conduct shall apply to and be observed by licensees. Notwithstanding anything herein to the contrary, they shall also apply to and be observed by CPAs not in public practice, where applicable.

LAC 11-9:6 Requirements for Continuing Professional Education (R.S. 37:75)

6.1 Basic Requirements.

6.1.1 Each licensee shall participate in at least one hundred twenty hours of continuing professional education every three years. However, for the three-year period ending December 31, 1982, only sixty hours shall be required and, for the three-year period ending December 31, 1985, only ninety hours shall be required. The hours of a licensee to whom Rule 6.1.2B applies shall be reduced prorata for the compliance period containing his effective date.

6.1.2 Effective date.

A. As to any licensee who was licensed as of January 1, 1980, the effective date of these requirements shall be January 1, 1980.

B. As to any licensee who obtains his initial license after January 1, 1980, the effective date of these requirements shall be January 1 of the following year.

6.1.3 Compliance period.

A. The first compliance period for continuing professional education shall be the three-year period ending December 31, 1982, and subsequent compliance periods shall end on December 31 each third year thereafter.

B. Election to maintain records on other than calendar year (fiscal year).

1. A licensee may elect to maintain records of continuing professional education on a "fiscal year." In such case, the continuing education requirements must be completed in the fiscal year ended within the last year of the compliance period. Also in such case, a licensee may claim credit for qualifying programs completed in the part of the fiscal year falling in the calendar year prior to the effective date applicable to him, if proper records of participation in such programs are maintained in accordance with Rule 6.6 below.

2. Once a calendar or fiscal year has been established, a change therein may be made only with the approval of the Board, which approval shall be based on a pro rata of the requirements having been completed during any months that are not included in a three-year period as a result of the change. The Board may, at its discretion, permit a change where such pro rata of the requirements has not been completed, if it is agreed that such additional continuing education requirements will be completed by a stated future date.

6.1.4 The Board may require of a certified public accountant who wishes to reenter practice after having allowed his license to lapse

A. That he first complete a specified number of hours (not to exceed ten) of continuing education programs and/or

B. That he complete a specified number of hours (not to exceed ten) of continuing education programs each calendar quarter for no more than four quarters following the granting of his license. The Board may specify the subjects which must be taken for no more than ten of the hours required in this section. In determining the number of hours, it will specify, whether any programs must be completed prior to license renewal, and whether any subjects will be specified, the Board will take into consideration the time period the applicant was without a license and recent occupation(s), business responsibilities, and continuing education of the applicant.

6.1.5 The Board may, at its sole discretion, make exceptions

to Rule 6.1 for reasons of hardship or grant extensions of time to obtain hours of continuing professional education to any licensee who is deficient.

6.2 Standards for Programs.

6.2.1 Program development.

A. The program should contribute to the professional competence of the participants.

B. The stated program objectives should specify the level of knowledge the participant should have obtained or level of knowledge he should be able to demonstrate upon completing the program.

C. The education and/or experience prerequisites for the program should be stated.

D. Programs should be developed by individual(s) qualified in the subject matter.

E. Program content should be current.

F. Programs should be reviewed or evaluated by a qualified person(s) other than the preparer(s) to ensure compliance with the above standards.

6.2.2 Program presentation.

A. Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching methods, and Continuing Professional Education credit.

B. Instructors or discussion leaders should be qualified with respect to program content and teaching method used.

C. Program sponsors should encourage participation only by individuals with appropriate education and/or experience.

D. The number of participants and physical facilities should be consistent with the teaching method(s) specified.

E. Programs should include some means of evaluating quality.

6.3 Programs which Qualify.

6.3.1 The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant.

6.3.2 Accredited university or college courses.

A. Credit courses. Each semester hour credit shall equal fifteen hours toward the requirement. A quarter hour credit shall equal ten hours.

B. Non-credit short courses. Credit allowable for such courses shall be determined by the Board.

6.3.3 Formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify as set forth in Rule 6.5.2A of this subsection.

6.3.4 Continuing education programs qualify if they meet the above standards and if:

A. An outline of the program is prepared in advance and preserved.

B. The program is at least one hour (fifty minute period) in length.

C. The program is conducted by a qualified instructor.

D. A record of registration or attendance is maintained.

6.3.5 The following programs are deemed to qualify provided the above are met:

A. Professional development programs of recognized national and state accounting organizations.

B. Technical sessions at meetings of recognized national and state accounting organizations and their chapters.

C. Formal organized in-firm educational programs.

D. Programs of other recognized organizations (accounting, industrial, professional, etc.).

6.3.6 The Board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of and credit to be allowed for individual courses.

6.4 Subjects which Qualify.

6.4.1 The following general subject matters are acceptable so long as they contribute to the professional competence of the individual practitioner:

Accounting and Auditing

Taxation

Management Services

Computer Science

Communication Arts

Mathematics, Statistics, Probability and Quantitative

Applications in Business

Economics

Business Law

Functional Fields of Business:

Finance

Production

Marketing

Personnel Relations

Business Management and Organization

Social Environment of Business

Specialized Areas of Industry; e.g., Film Industry,

Real Estate, Farming, etc.

Administrative Practice; e.g., Engagement

Letters, Fee Structures, Personnel, etc.

6.4.2 Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to his professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

6.5 Credit Hours Granted.

6.5.1 Class hours.

A. Only class hours or the equivalent (and not student hours devoted to preparation) will be counted.

B. Continuing education credit will be given for whole hours only, with a minimum of fifty minutes constituting one hour. As an example, one hundred minutes of continuous instruction would count for two hours; however, more than fifty minutes but less than one hundred minutes of continuous instruction would count only for one hour. For continuous conferences and conventions, when individual segments are less than fifty minutes, the sum of the segments will be considered equal to one total program.

C. Any one-day program will qualify for eight hours of credit if its timing is such that its class hours require participants to be absent from their work for a normal working day. Travel time cannot be claimed.

D. A participant who is not present for an entire program may claim credit only for the actual time he attended.

6.5.2 Individual study program.

A. The amount of credit to be allowed for correspondence and formal individual study programs (including taped study programs) is to be recommended by the program sponsor based upon one half the average completion time under appropriate "field tests." Licensees claiming credit for such correspondence or formal individual study courses are required to obtain evidence of satisfactory completion of the course from the program sponsor. Credit will be allowed in the renewal period in which the course is completed.

B. The Board will not approve any program that does not offer sufficient evidence that the work has actually been accomplished.

6.5.3 Service as lecturer, discussion leader, speaker.

A. Credit for one hour of continuing professional education will be granted for each hour completed as an instructor or discussion leader to the extent it contributes directly to the individual's professional competence and provided the program would qualify for credit under these rules. No credit will be granted for repetitious presentations of a group pro-

gram.

B. In addition, an instructor or discussion leader may claim up to two hours of credit for advance preparation for each teaching hour awarded in Rule 6.5.3A above, provided the time is actually devoted to preparation.

C. The maximum credit for teaching and preparation therefor cannot exceed fifty percent of the three-year requirements under these rules.

6.5.4 Published articles, books, etc.

A. Credit for published articles and books will be awarded in an amount determined by the Board provided the writing contributes to the professional competence of the licensee.

B. The maximum credit for preparation of articles and books cannot exceed twenty-five percent of the three-year requirements under these rules.

6.5.5 Committee meetings, dinner and luncheon meetings, firm meetings.

A. Credit will be awarded for participation in committee meetings, dinner and luncheon meetings, etc. provided the program portion thereof meets the other requirements of these rules.

B. Credit will be awarded for firm meetings or meetings of management groups if they meet the requirements of these rules. Portions of such meetings devoted to administrative and firm matters cannot be included.

6.6 Maintenance of Records and Control

6.6.1 Each licensee shall maintain records of continuing education in which he has participated showing:

- A. Sponsoring organization.
- B. Location of course.
- C. Title and/or description of content.
- D. Dates attended.
- E. Hours claimed.

6.6.2 Practitioners, partners, or shareholders and employees of a firm of certified public accountants will not be required to maintain the above records personally if the firm has a policy of maintaining such records for its members and professional employees and does maintain the records required herein for the required time and reports to each person at least once each year a summary, which includes the information in Rule 6.6.1 above, of the continuing education file on that person.

6.6.3 Each sponsoring organization shall maintain records of programs sponsored which shall show:

A. That the programs were developed and presented in accordance with the standards set forth in Rule 6.2 above. If a program is developed by one organization and sponsored by another, the sponsoring organization shall not be responsible for program development standards and related record maintenance if

1. It has reviewed the program and has no reason to believe that program development standards have not been met, and

2. It has on record certification by the developing organization that the program development standards have been met and that the developing organization will maintain the required records relative thereto.

B. Dates of program presentations.

C. Instructor(s) and participants.

6.6.4 Records required under this rule shall be maintained for five years and shall be made available to the Board or its designee(s) for inspection at the Board's request.

LAC 11-9:7 Compensation and Expenses of Board Members (R.S. 37:76)

7.1 The officers of the Board shall receive compensation of \$150 per month and other members shall receive \$100 per month. This compensation shall be for time expended by such members in conducting examinations, attending Board meetings

and hearings, issuing of certificates and licenses, conducting investigations, and discharging other duties and powers of the Board. Where and when appropriate, such compensation shall be prorated.

7.2 The compensation of Board members and all other necessary expense incurred by the Board in carrying out its duties as well as expense for operating the office of the Board, conducting investigations (including the hiring of investigators and counsel), examinations and the issuance of licenses and certificates shall be paid out of the treasury of the Board.

LAC 11-9:8 Necessity for Certificate, License, Prohibited Acts (R.S. 37:77)

8.1 No partnership or corporation whether domiciled within or without the State of Louisiana, shall practice the profession of public accounting in Louisiana unless all members or shareholders thereof are holders of licenses issued by the Board and properly renewed. It is recognized that shareholders of Louisiana professional accounting corporations could, in some instances, be persons who are not certified public accountants; therefore, the reference to shareholders above refers to persons entitled to vote shares and participate in the corporate earnings.

LAC 11-9:9 CPA Examination (R.S. 37:78)

9.1 General Requirements.

9.1.1 Examinations are ordinarily held in May and November of each year. Applications for the May examination must be filed by March 1. Applications for the November examination must be filed by September 1. The official postmark (not a postage meter) on the mailing envelope is the controlling date.

9.1.2 The examination shall consist of the "Uniform Certified Public Accountant Examination" prepared and graded by the American Institute of Certified Public Accountants.

9.1.3 Applicants shall each be given a number and this number only shall be used on examination papers for identification.

9.1.4 All examinations shall be in writing and must be completed in the time allotted by the Board. The use of calculating equipment is prohibited.

9.1.5 A candidate must sit for all the subjects for which he is scheduled in order to receive his grades and to be able to sit for the next examination.

9.1.6 In order to pass the examination a candidate must receive a grade of at least seventy-five in each subject.

9.1.7

A. If, and only if, a grade of fifty or more is made in each subject, a candidate who passes Practice or at least two other subjects at a single examination shall receive credit for the subject or subjects passed, conditioned upon his passing the remaining subject or subjects as set forth in Rule B below.

B. A candidate who has received credit for passing part of the examination as set forth in Rule A above shall be required to remove the condition in any of the next four consecutive examinations but shall receive no credit for passing a subject or subjects at any examination in which he makes a grade of less than fifty in any other subject.

C. Anyone who is a conditioned candidate as of the effective date of the Act shall have four consecutive examinations, beginning with and including the November, 1979, examination, with which to comply with subsection B above.

9.1.8 Any candidate who makes a grade below 40 (39 or lower) in any subject will not be allowed to take the next consecutive examination; and, before being readmitted for examination, must submit proof of further study in the subject or subjects in which he made the low grade(s). This rule does not apply to conditioned candidates.

9.1.9 Grades shall be accepted from other states when a candidate for transfer of grades has met all the requirements of

Louisiana candidates except that he sat for the examination in another state. He shall submit a completed first-time application with an official transcript and a statement from an officer of the state board from which he is transferring as to dates of passing the examination and grades made. A conditioned candidate shall pay for each examination for which he sits and, in addition, shall pay a \$20 transfer fee at the time he requests the transfer. If a candidate has passed all subjects in another state, he shall be required to pay a \$20 transfer fee, in addition to other requirements.

9.1.10 Each candidate shall be notified by mail, on the date specified by the American Institute of Certified Public Accountants, of the grades earned by him in each subject of the examination. No information concerning grades will be released until such date.

9.1.11 The Board shall not be required to furnish the reason for any grades which it shall grant or for any decision which it may reach.

9.2 Educational Requirements.

9.2.1 Any person who, before September 1, 1975, filed an application which showed compliance with the then effective educational requirements of the Board and which was approved by the Board, shall forever be deemed to have met its educational requirements.

9.2.2 Effective September 1, 1975:

A. All applicants for the CPA examination shall possess a baccalaureate degree, conferred by a university or college recognized by the Board.

B. Such degree shall carry with it adequate concentration in the area of accounting at either the undergraduate or graduate level, as follows:

Undergraduate Level	Hours	
	Semester	Quarter
Elementary Accounting	3	4
Intermediate Accounting	6	8
Advanced Accounting	3	4
Cost Accounting	3	4
Income Tax Accounting	3	4
Auditing	3	4
Accounting Elective	3	4
Commercial Law (As it affects accountancy)	6	8
Graduate Level		
Intermediate Accounting	3	4
Advanced Accounting	3	4
Cost Accounting	3	4
Income Tax Accounting	3	4
Auditing	3	4
Accounting Elective	3	4
Commercial Law (As it affects accountancy)	3	4

If the degree does not carry with it such concentration, the candidate shall have completed the courses prescribed above. Such courses shall be completed in a university, college, night or extension school of recognized standing and approved by the Board.

9.3 Penalties.

9.3.1 Any person who files an application for CPA examination containing false statements, false references, or false signatures, may, at the discretion of the Board, be temporarily or permanently barred from taking the examination.

9.3.2 Any person involved in any irregularities during the administration of the CPA examination may, after a formal

hearing, be temporarily or permanently barred from taking the CPA examination and will receive no credit for the examination.

9.3.3 A Board member may eject from a CPA examination any candidate who is found during the examination to be violating the announced or written instructions governing the examination.

LAC 11-9:10 Certification (R.S. 37:78)

10.1 By Examination. When a candidate has successfully passed the examination and has met all other requirements of the Board, he shall be eligible for certification.

10.2 By Reciprocity.

10.2.1 Each application for a reciprocal certificate shall be considered on its own merits. No reciprocal certificate shall be issued to holders of certificates from other states unless the application is made through the state that issued the original certificate, and then only if the said state grants reciprocity to Louisiana CPAs and if, at the time he passed the examination, the applicant met the educational and conditioning rules provided above for Louisiana candidates.

10.2.2 The provisions of the above rule notwithstanding, if an applicant for a reciprocal certificate has been in public practice as a CPA for four years in the ten years immediately prior to the date of submitting the application, he will not be required to have met the educational or conditioning requirements for receiving a certificate in Louisiana.

10.2.3 Applicants for reciprocal certificates shall not be required to reside or have a place for the regular transaction of business in Louisiana, but shall be required to take the CPA oath.

LAC 11-9:11 Qualification for Licensing - Experience (R.S. 37:79)

11.1 Qualified applicants who apply for licensing prior to March 1, 1983, must have at least one year of qualifying accounting experience, which may be completed before or after passing the CPA examination.

11.2 After February 28, 1983, the one year of qualifying experience is increased to two years. When the two-year experience requirement becomes effective, a Master's degree with a concentration in accounting or a more advanced degree in accounting may be substituted for one year of experience.

11.3 This qualifying accounting experience shall be in public accounting or such other accounting experience as, in the opinion of the Board, is equivalent to the foregoing.

11.4 Qualifying experience requirements as stated below shall be experience in the six years immediately preceding the date of application for the license:

11.4.1 Qualifying experience in public accounting shall mean experience gained by full-time employment as a staff accountant by a practicing certified public accountant or firm of such duly licensed accountants who are licensed to practice public accounting under the laws of this state or the duly constituted laws of any other state.

11.4.2 Qualifying experience, in lieu of such years experience in public accounting, may be met by evidence, satisfactory to the Board, of employment in the accounting field in industry, business, government or college teaching, any combination of the above, or any combination of the above and practice in public accountancy.

11.4.3 The practical experience of an applicant for licensing must be meaningful with respect to qualifying the applicant for the practice of public accounting. Experience in industry, business, government or college teaching must meet two basic criteria: proper supervision, and sufficient quality and depth of the accounting functions performed during the required years of employment.

A. Proper Supervision. This criteria can be met in any of five ways:

1. Supervision, by an individual holding a CPA certificate, in the application of generally accepted accounting principles. For purposes of this requirement, supervision shall mean any managerial level one or more positions above the applicant's level.

2. Employment by a firm or organization having its financial statements examined on a periodic basis by independent certified public accountants during the term of the applicant's employment. The applicant must have been responsible for providing information, explaining systems and procedures, and/or preparing schedules and analyses.

3. Employed by a government agency, recognized by the Board as having the responsibility and organizational structure for performing auditing and accounting functions.

4. A full-time teacher of subjects primarily in the accounting discipline, with the rank of assistant professor or above (or comparable positions), for an accredited college or university.

5. Such other form of supervision as the Board considers adequate.

B. Sufficient quality and depth. The applicant's experience in the accounting field shall be of sufficient quality and depth to meet the following criteria:

1. A level of responsibility shall have been attained which requires the candidate to exercise professional judgment on significant financial accounting and reporting matters.

2. The applicant shall have experience in the areas of financial accounting and reporting which follow generally accepted accounting principles. Additionally, the applicant may have had experience in other technical areas of the accounting profession, such as financial analysis, budget, management information systems, management accounting techniques (cost accounting, financial appraisal of capital expenditures, etc.), or internal auditing.

3. If the applicant's experience is in college teaching, he shall have taught courses for academic credit in at least three different areas of accounting above the introductory or elementary level. Examples of these areas are intermediate accounting, cost or managerial accounting, income taxes, auditing, accounting systems, advanced problems, and accounting theory.

4. Such other experience of quality and depth as the Board considers adequate.

11.5 In satisfaction of experience requirements, the applicant must submit substantiating written statements, in such form as the Board shall require, from employers or others who have actual knowledge of such facts.

LAC 11-9:12 Application for CPA Examination, Certification, Licensing; Procedures (R.S. 37:80)

12.1 Application for examination and/or certification as a certified public accountant and/or for licensing as a licensed certified public accountant shall be made on the appropriate forms provided by the Board. Reproduction of these forms shall not be accepted.

12.2 A first-time application for examination must be accompanied by an official transcript from the school or schools where the accounting courses were taken and the baccalaureate degree received.

12.3 All documents required to be submitted must be the original or certified copies thereof. For good cause shown, the Board may waive or modify this requirement.

12.4 The Board may reject or refuse to consider any application which is not complete in every detail, including submission of every document required by the application form.

12.5 If, after filing his application, a candidate is unable to sit for

the CPA examination, he must so notify the Board not later than five days prior to the first day of the examination; otherwise, the fee shall be forfeited. A service charge will be assessed on all refunds of examination fees.

12.6 Each application for examination, certification, or licensing shall be accompanied by a fee set by the Board. In no event may the fee exceed \$100. Should such application be rejected, the fee shall be refunded. If a Louisiana candidate requests that he be allowed to sit in a state that requires a proctoring fee he shall be required to pay the proctoring fee in addition to the fee provided in Rule 13.

LAC 11-9:13 Fees and Service Charges for CPA Examination, Certification, Licensing (R.S. 37:80)

13.1 Fees shall be assessed as follows:

CPA examination:

All subjects	\$50
Parts not previously passed:	
One part	\$25
Two parts	\$35
Three parts	\$45
Service charge for refund of examination fee under Rule 12.5	\$10
Original certification	\$15*
Original license	\$15*
Replacement certificate	\$25**

*The examination fee paid by a candidate who passes the examination in Louisiana shall entitle him to be certified and, if all requirements for licensing are met as of the date of certification, licensed for the remainder of the year in which his certificate is issued without payment of any other fees.

**A replacement certificate shall be issued at the holder's request upon payment of fee and compliance with the following requirements:

A. In the event of a certificate which has been lost, the loss must be advertised in an appropriate newspaper at least five times in thirty days and the request for replacement must be accompanied by a sworn statement that the certificate is lost and that the loss has been advertised in accordance with this rule.

B. In the event of a certificate which has been mutilated, the mutilated certificate must be returned to the Board and if it is mutilated beyond the point of being able to be identified, the request must also be accompanied by a sworn statement that the returned document is, in fact, the certificate.

C. If the request for replacement is to have a change in the name in which the certificate is issued, the original certificate must be returned to the Board and the request must be accompanied by appropriate documentation of the name change.

LAC 11-9:14 Issuance of Certificate, License (R.S. 37:81)

14.1 Certificate.

14.1.1 When an applicant has met all the requirements for certification, the Board shall issue to him a certificate that he is a certified public accountant in the State of Louisiana. All such certificates shall be valid only when signed by the President and Secretary of the Board. The issuance of the certificate does not qualify the candidate to practice public accounting in the State of Louisiana.

14.1.2 Simultaneous with the issuance of his certificate, each such applicant shall be required to execute an oath as prescribed by the Board. In addition, the Board may require an examination in ethics.

14.2 License.

14.2.1 When a certified public accountant has met all the requirements for licensing, the Board shall issue him a license to practice as a licensed certified public accountant. All such licenses shall be valid only when signed by the Treasurer of the

Board. A facsimile signature is acceptable.

LAC 11-9:15 Renewals of Certification, Licensing (R.S. 37:82)

15.1 Annual Renewals, Reinstatements, Fees.

15.1.1 Each certified public accountant shall renew his certificate and each licensee shall renew his license (such renewals hereinafter sometimes referred to as "register" or "registration") annually on or before the last day of the December preceding the year for which renewal is applicable.

15.1.2 Application for annual renewal of certified public accountant certificates and licenses shall be made on forms furnished by the Board and shall be accompanied by renewal fees fixed by the Board. The fee for annual renewal of a certificate shall not exceed \$25 and the fee for annual renewal of both certificate and license shall not exceed \$50 in total. Reproduction of renewal forms shall not be accepted.

15.1.3 The Board shall mail the necessary forms for renewal of certificates and/or licenses to the last known address of each certified public accountant and licensed certified public accountant on or before the first day of December each year.

15.1.4 The Board shall mail a notice of default to the last known address of each certified public accountant and licensed certified public accountant who fails to renew his certificate and/or license on or before the last renewal date provided in Rule 15.1.1.

15.1.5 The Board may reinstate any certificate or license which has expired because of nonrenewal upon payment of the renewal fee and such penalty fee as may be prescribed by the Board, provided that the applicant for such renewal is otherwise completely qualified for certification and/or licensing.

15.1.6 A delinquent penalty equal to the current registration fee shall be assessed against those certified public accountants who have not registered prior to February 1 of each year; a reinstatement penalty equal to twice the registration fee of the year of reinstatement shall be assessed against those persons whose certificates and/or licenses are automatically suspended for failure to register prior to March 1 of each year. To be reinstated, a person shall pay the delinquent penalty for the year he became delinquent, pay annual registration fees for each year he did not register, and pay reinstatement and registration fees for the year in which he is reinstated. For good cause, the Board may waive in whole or in part the fees provided in this section.

15.2 Annual Notice of Form of Practice.

15.2.1 Every certified public accountant who is registered with the Board and who is engaged in the practice of his profession on his behalf shall file annually with the Board a sworn statement that he is practicing as an individual and that there are no partners or associates practicing with him.

15.2.2 Each firm of certified public accountants practicing accounting in the State of Louisiana as a partnership shall file annually with the Board a sworn statement of its members and shall promptly notify the Board of any changes in its partners.

15.2.3 Each professional accounting corporation practicing public accounting in the State of Louisiana shall, at the time of incorporation and annually thereafter, file with the Board a sworn statement of its shareholders and voting shareholders and shall promptly notify the Board of any changes therein. In addition, such corporation shall furnish to the Board an insurance certificate evidencing that it carries professional liability insurance in the amount of \$50,000 for each voting shareholder and for each certified public accountant in its employ to a maximum of \$2,000,000.

15.2.4 An original letterhead must be attached to the statement referred to in Rules 15.2.1, 15.2.2, and 15.2.3 above. Licensed employees or licensed associates may be shown on stationery but such names shall be separated from that of the individual practitioner or those of the partners or voting shareholders by an appropriate line. Deceased or retired partners or shareholders shall be appropriately identified.

15.3 All certified public accountants and licensed certified public accountants shall promptly notify the Board of any change in mailing address or practice status.

LAC 11-9:16 Renewals of Licensing - Reports on Continuing Professional Education (R.S. 37:82)

16.1 Each licensee shall submit with his application for license renewal, on forms supplied by the Board, a report of programs of continuing professional education completed during the preceding year and other information relative to fulfilling the continuing education requirements, except that such a report will not be required of a licensee who is included in a report in accordance with Rule 16.2 below.

16.2 In lieu of the report required above by each licensee, a firm of certified public accountants which maintains records prescribed under Rule 6.6 may provide a sworn statement, in a form prescribed by the Board, that the members and/or employees which it lists in the statement (not necessarily all the members and/or employees of the firm) have fulfilled the continuing education requirements under these rules.

LAC 11-9:17 Causes for Nonissuance, Suspension, Revocations of Restrictions; Reinstatements (R.S. 37:84)

17.1 Charges against holders of CPA certificates and/or licenses shall be made in writing, signed by the person preferring the charges and addressed or delivered to the Board. Charges initiated by the Board shall be by resolution.

17.2 All charges shall be referred to the member of the Board or other person designated as the investigating officer, who is to be appointed annually by the President of the Board.

17.3 The investigating officer may employ such inspectors, special agents, and investigators as authorized by the Board, to investigate by independent investigations, all charges presented to him.

17.4 Upon completion of each investigation, the investigating officer shall report to the Board as to "no cause for action" or "cause for action."

17.5 If "cause for action" is found, written notice shall be mailed to the holder of the certificate and/or licensee at least thirty days before the day for a hearing by the Board. Such notice shall include the items required in R.S. 49:955B.

17.5.1 Parties who do not waive their rights shall be afforded a hearing conducted under the provisions and requirements of R.S. 49:955-964.

17.5.2 Parties who do waive their rights shall be afforded an opportunity to appear before the Board at an informal hearing, or may agree by stipulation to the findings of the investigating officer and to an agreed settlement.

17.6 The Board may at a hearing:

17.6.1 Revoke any certificate and/or license.

A. When a certificate and/or license is revoked, such certificate and/or license shall be returned to the Board and permanently cancelled.

B. The requirements of the immediately preceding paragraph notwithstanding, the Board may, for good cause and by resolution, issue a new certificate and/or license under a new number to anyone whose certificate and/or license has been revoked.

17.6.2 Suspend any certificate and/or license.

A. When a certificate and/or license is suspended, such suspension shall not be for a period of more than three years; during the time of suspension, the holder shall not be considered a certified public accountant.

B. The Board may invoke additional penalties and/or requirements, such as additional educational requirements, to be complied with before the reinstatement of the certificate and/or license.

17.6.3 Officially censure or reprimand the holder of any certificate and/or license.

A. When a holder of a certificate and/or license is offi-

cially censured, or reprimanded, the Board may invoke additional penalties and/or requirements to be complied with or refrained from for a period of not more than two years, such as additional educational requirements, peer review, and/or restrictions on practice.

B. The failure by a person censured or reprimanded to abide by the additional penalties and/or requirements shall be a violation of the rules of the Board.

John J. Sehart, Jr., Secretary
Board of Certified Public Accountants

RULE

Department of Corrections Office of the Secretary

Death Penalty

Purpose. The purpose of this regulation is to set forth the procedures for the execution of the death penalty.

Responsibility. The Assistant Secretary for Adult Services and the Wardens of Louisiana State Penitentiary and Louisiana Correctional Institute for Women are responsible for ensuring implementation of this regulation.

Legal Authority. R.S. 15:567 - 15:571; *Garrett v. Estelle*, 556 F.2d 1274 (5th Cir., 1977).

Incarceration Prior to Execution. Male inmates sentenced to death shall be incarcerated at Louisiana State Penitentiary at Angola, Louisiana. Female inmates sentenced to death shall be incarcerated at Louisiana Correctional Institute for Women at St. Gabriel, Louisiana. Until the time of execution, the Warden shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the Department, and the security of the institution.

Visits. Inmates sentenced to death shall be afforded the same visiting privileges as other inmates in the same institution. In addition, during the final seventy-two hours before the scheduled execution, the Warden will approve special visits for the following:

- A. Clergy
- B. Family member(s) and friend(s) on approved visiting list.
- C. Attorney.

Except for a priest, minister, or religious advisor, all visits will terminate by 6:00 p.m. on the day immediately prior to the execution date.

Media Access. Properly credentialed reporters may contact the Office of the Warden to schedule interviews. If the inmate and, if represented by counsel, his attorney consent, the Warden shall schedule the interview for a time convenient to the institution. Should the demand for interviews be great, the Warden may set a day and time each week for all interviews to be conducted.

Execution.

A. **Time and Place.** The execution shall take place at Louisiana State Penitentiary, Angola, Louisiana, between 12 Midnight and 1:00 a.m. At 11:45 p.m., the witnesses shall be escorted to the Execution Room.

B. Witnesses.

1. The following are the only persons, other than the condemned, who will be admitted to the Execution Room during the execution:

- a. The Warden of Louisiana State Penitentiary or his designee.
- b. The coroner of West Feliciana Parish or his deputy.
- c. A physician chosen by the Warden.
- d. The operator of the electric chair.
- e. A priest or minister, or religious advisor, if the inmate so requests.

f. Three members of the news media, as follows: One

Louisiana Bureau representative designated by the Associated Press and one Louisiana Bureau representative designated by the United Press International and one representative selected by lot from all other Louisiana media persons requesting to be present. Those so designated must agree to act as pool reporters for the remainder of the media present and to meet with all media representatives present immediately after the execution.

g. A maximum of four additional witnesses selected by the Secretary of the Department of Corrections.

2. No recording devices, either audio or video, will be permitted in the Execution Room.

3. All witnesses must be residents of the State of Louisiana and all must agree to sign the report of the execution (as set forth by law).

C. All arrangements for carrying out the execution shall be completed by 12 Midnight. At that time, the Warden shall order the inmate brought into the Execution Room. He shall then allow the inmate to make any last statement he may have. Upon completion of the statement, the Warden shall order the operator of the electric chair to proceed with the execution.

D. At the conclusion of the execution, the coroner or his deputy shall pronounce the inmate dead. The inmate shall then be immediately taken to a waiting ambulance for transportation to a place designated by the next of kin or in accordance with other arrangements made prior to the execution.

E. The Warden will then make a written report reciting the manner and date of the execution. The Warden and all of the witnesses shall sign the report and it shall be filed with the Clerk of Court in the parish where the sentence was originally imposed.

C. Paul Phelps
Secretary of Corrections

RULES

Office of the Governor Engineers Selection Board

Rules of Organization

Article I. Name.

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

Article II. Authority.

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

Article III. Objective.

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

Article IV. Members.

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

Section 2. Any member desiring to resign from the Board shall submit his resignation in writing by registered mail, to the Governor of Louisiana, with a copy addressed to the Chairman of the Board. The effective date of resignation shall be the date of registered mailing to the Governor's Office.

Section 3. The filling of the Board vacancy for the unexpired term due to resignation, or death, or removal from office by just cause, shall be made in the same manner as the original appoint-

ment; or in the case of an elected member, the original electing organization shall select an individual to fill the vacancy.

Article V. Officers.

Section 1. The officers of this Board shall be a Chairman and a Vice-Chairman. These officers shall perform the duties prescribed in Article II, Authority and by these rules.

Section 2. The Chairman shall:

- a. Be the presiding officer at meetings of the Board.
- b. Have the authority to order a special meeting of the Board.
- c. Be responsible for coordinating the activities of the Board.
- d. Appoint all committees and serve as an ex-officio member thereof.
- e. Authenticate by his signature, when necessary, all acts, orders and proceedings of the Board.
- f. Be responsible for implementing all orders and resolutions of the Board.
- g. Have the authority to issue the official advertisement of the intent of an agency to contract for design services.

Section 3. Vice-Chairman. In the event of absence or incapacity of the Chairman, the Vice-Chairman shall assume the duties of the Chairman as outlined above. In the absence of the Secretary, the duties of the Secretary shall be delegated to the Vice-Chairman.

Section 4. Nomination and election of Chairman and Vice-Chairman of the Board shall be held and conducted twice yearly at scheduled meetings.

Section 5. The first of the twice yearly scheduled meetings of the Board, wherein Chairman and Vice-Chairman are elected, shall be held during the period January 1 - June 30; the second during the period July 1 - December 31, of each year.

Section 6. The Chairman and Vice-Chairman shall begin their terms in office immediately upon election. They shall serve a maximum of six months, unless reelected for one term (see Article V, Section 8); however, in no case shall the term in office of the Chairman and Vice-Chairman extend beyond either June 30, (when elections are held between January 1 and June 30), or December 31, (when elections are held between July 1 and December 31).

Section 7. In the event that the term of office of the Chairman and Vice-Chairman expires in accordance with Article V, Section 6 and a meeting is called at a time when there is no duly elected Chairman and Vice-Chairman, upon convening, the first order of business of the Board shall be the selection of a temporary Chairman who shall serve merely for the purpose of conducting the nomination and election of Chairman and Vice-Chairman. Upon election the temporary Chairmanship automatically dissolves and the newly elected officers begin their terms in office. Nothing in this section shall prevent the temporary Chairman from either voting or being nominated for or elected to the office of Chairman or Vice-Chairman.

Section 8. No member shall hold more than one office at a time. A member may serve consecutive terms, not to exceed a total of twelve months.

Article VI. Secretary.

The office of Secretary shall be furnished to the Board by the Division of Administration of the State of Louisiana, subject to approval of the Board.

The Secretary shall:

- a. Be under the general supervision of the Board.
- b. Give notice of all meetings of the Board and its committees, to the Board and general public.
- c. Attend all meetings of the Board and committees and record the minutes of all proceedings in a book to be kept for that purpose and make the minutes and records available upon request.
- d. Keep on file all committee reports.
- e. Receive and conduct the general correspondence of the Board, that is, correspondence which is not a function proper to the officers, or to committees.

f. Cause the official advertisement to be advertised in accordance with Act 721, 1975 Regular Legislative Session (R.S. 38:2316, Revised Statutes of 1950) and the Rules of Selection Procedure as adopted by the Board.

g. Maintain and be the custodian of a file of all applications for projects, as well as all data submitted by engineers, selected by the Board to furnish engineering services for state projects as provided for in the Rules of Selection Procedure.

h. Perform such other duties as may be prescribed by the Board.

Article VII. Meetings.

Section 1. Meetings shall be held by the Board when requested by the Division of Administration to select engineers for state projects, but in no case shall the Board not meet at least once during each of the periods, January 1 - June 30; July 1 - December 31, of each year.

Section 2. Special meetings can be called by the Chairman or Secretary or shall be called upon the written request of a simple majority of the total membership of the Board. Special meetings may be held at any place provided that the time, the place and the purpose of the meeting shall be stated in the call and made public in accordance with applicable laws. Except in cases of emergency, at least three days notice shall be given for special meetings.

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

Article VIII. Committees.

Such other committees, standing or special, shall be appointed by the chairman of the Board as shall from time to time deem necessary to carry on the work of the Board.

Article IX. Parliamentary Authority.

The rules contained in the current edition of "Robert's Rules of Order, Newly Revised" shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these Rules of Organization and any special rules of order that the Board may adopt.

Article X. Voting.

Only the votes of members present at a meeting will be counted in the Board's official actions except as contained in the emergency provisions under Article II of the Rules for Selection Procedure. Proxy votes are not allowed.

Article XI. Amendments to Rules.

These Rules of Organization may be amended at any regular or special called meeting of the Board by an affirmative vote of a simple majority of the attending Board, provided that the proposed amendment has been submitted in writing at the previous regular or special meeting, and is in full compliance with the Louisiana Administrative Procedures Act and other applicable laws. Upon receipt of a proposed written amendment, the Chairman, before the next regular or special meeting, shall cause to give at least fifteen days notice of the Board's intended action as provided in the Louisiana Administrative Procedures Act.

Article XII. Severability.

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

* * * *

Rules for Selection Procedure

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

Article I. Information.

Any person may obtain information concerning the Board, its

rules, regulations and procedures from the Board's secretary at the Offices of Facility Planning and Control Department, Office of the Governor, Fifth Floor State Capitol Building, Box 44095, Baton Rouge, Louisiana 70804. Request for information shall be made verbally or in writing. There may be nominal fee charged to defray the cost of information furnished.

Article II. Public Notification.

Section 1. Upon being advised by the Division of Administration, Facility Planning and Control Department, that an agency intends to contract for design service, the Chairman shall request the official advertisement to be published by the Division of Administration. There shall be a ten day application period, commencing with the day of the first publication of the office advertisement, and ending on the day of the deadline for receiving applications. During this period, the official advertisement shall be published in the Official State Journal, one time.

Section 2. The official advertisement specified above shall include the following information:

- a. The name, location and user agency for which the engineer is to be selected.
- b. Time and instructions for applicants to submit application to the Board.
- c. A statement that details are available upon request from the user agency.
- d. Time frame in which the engineer must complete the work.
- e. The project budget.
- f. The fee, as determined by the Division of Administration, together with contractual obligations as contained in the current Capital Improvement Projects Procedure Manual for Design and Construction.

Section 3. Special selections for emergency reasons will be made under one of two methods. The first of these methods should be used whenever possible.

Section 4. The first method will require a one week application period. The official advertisement will be published one time in the publication listed in Section 1. The deadline for applications shall be one week after the advertisement. The selection shall be made one week after the deadline for applications.

Section 5. The second method shall be to make a selection within twenty-four hours of the notice to the Board by the Division of Administration. The Division of Administration shall contact the Chairman, Vice-Chairman, and other members in alphabetical order by telephone. The first person contacted shall select a time and place for the meeting which shall be held on the day following notification by the Division of Administration. Members not attending the meeting in person will be contacted by telephone for their vote. The Board shall make the selection from names submitted by the user agency or any Board member. The user agency shall submit names of at least three firms.

Article III. Application.

Section 1. Any applicant (proprietorship, partnership, corporation or joint venture of any of these) meeting the requirements of Title 38 of the Louisiana Revised Statutes of 1950, R.S. 38:2310 through R.S. 38:2316, may submit an application for selection consideration for a particular project upon which official advertisement has been published. The information submitted shall contain data concerning its experience, previous projects undertaken, present state projects now being performed, scope and amount of work on hand, and any other information that the Board deems appropriate.

Section 2. The Louisiana Engineers Selection Board hereby adopts the use of Standard Form LE-1 - Engineer Selection Board Services as the format for submitting a firm's experience to the Board.

Any special information requested in the advertisement shall be submitted with the required LE-1 form. Incomplete submittals become property of the Board, to be disposed of as it sees proper.

Section 3. All selection applications shall be filed with the Sec-

retary within the time prescribed by the Board. The Secretary shall time date, when received, all applications. All applications are to be received by the Board at the Facility Planning and Control Department during the time prescribed in the advertisement. The burden for timely and complete submittal lies solely with the applicant, and additionally will in no way be affected by nondelivery of the application by the United States Postal Service or other common carrier.

Section 4. The submission of an application on a particular project shall be considered by the Board to mean that based on available information:

- a. That the applicant is aware of the scope of work of the project.
- b. That the applicant can perform the work within the time frame stated.
- c. That the applicant concurs that the project budget is reasonable.
- d. That the fee is equitable.
- e. That the engineering contract shall contain a prohibition against contingent fees.
- f. That the applicant is familiar with the terms and conditions set forth in the current Capital Improvement Projects Procedure Manual for Design and Construction, and will comply therewith.

Should an applicant determine that any of the above items are incomplete, inadequate, or insufficient, the applicant is invited to submit a letter stating in detail the applicant's findings, and the Board will consider this information in the selection process. No unsolicited additional information shall be considered. The Board reserves the right to reject all applications for selection consideration and to readvertise any official advertisement.

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

Article IV. Application Review.

After the deadline for applications, the Division of Administration shall forward copies of the applications together with any available description of the job to the Board members. A special meeting of the Board shall be called within ten days after the deadline for application.

Article V. Final Applicant Selection.

Section 1. The Board shall make its final selection from the submitted applications. The Board reserves the right to require interviews, or additional information, in excess of that required in the official advertisement, when it deems necessary.

Section 2. The final selection shall occur no later than sixty days following the official advertisement.

Section 3. Upon the final selection of the applicant, the Chairman shall notify the Division of Administration, Facility Planning and Control, said notification to be made in accordance with the terms of Act 721.

Article VI. Selection Procedure.

Selection procedure is as follows:

1. User agency will give scope of project.
2. Call for discussion of applications.
3. Board will take weighted vote (each member may vote for as many as three (or two) or as few as one of the firms under consideration).
4. Select firm from two firms with most votes on a one-vote basis. (If less than eight applicants, select from top two; if more than eight, select from top three.)
5. If there is a tie, revote with discussion. If after voting a second time, there is still a tie, the Board may have additional votes and discussion or may postpone the selection until the next meeting.

Article VII. Severability.

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

J. Ben Meyer, Jr., Director
 Facility Planning and Control Department

15	1361 (1228)	1394 (1258)
16	1448 (1307)	1488 (1343)
17	1536 (1386)	1560 (1408)
18	1623 (1465)	1659 (1497)

For each additional person,
 add \$94 (85)

For each additional person,
 add \$103 (94)

RULE

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

The Department of Health and Human Resources, Office of Family Security, does hereby adopt effective February 1, 1980, the Energy Assistance Payment Program to reduce the burden of high heating costs for low income households in the winter of 1979-80.

There shall be a single payment amount in February, 1980, to those families who received Aid to Families with Dependent Children (AFDC) or General Assistance (GA) for the month of December, 1979. This payment is a one-time unrestricted Federal money payment, with single-person assistance units receiving \$16.70 and multi-person assistance units receiving \$33.40.

For detailed information, a copy of the Energy Assistance State Plan can be seen at the following address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804.

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

RULE

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

The Department of Health and Human Resources, Office of Family Security, does hereby adopt effective January 1, 1980, the following increases in the Aid to Families with Dependent Children (AFDC) and General Assistance (GA) Need Standards.

Using a 10.8 percent increase standard, the new AFDC and GA Need Standards are proposed as follows (The current need standards are shown in parentheses.):

AFDC Need Standards

Size of Household	Non-Urban	Urban
1	\$ 139 (125)	\$ 151 (136)
2	259 (234)	289 (261)
3	366 (330)	402 (363)
4	456 (412)	494 (446)
5	543 (490)	583 (526)
6	622 (561)	664 (599)
7	704 (635)	742 (670)
8	782 (706)	821 (741)
9	856 (773)	896 (809)
10	933 (842)	972 (877)
11	1014 (915)	1054 (951)
12	1098 (991)	1138 (1027)
13	1187 (1071)	1219 (1100)
14	1273 (1149)	1306 (1179)

GA Need Standard

1 person - \$229 (207)
 2 persons - \$289 (261)

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

RULE

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

The Department of Health and Human Resources, Office of Family Security, has adopted a rule providing for the semi-annual adjustments for the coupon allotments and standard deduction in the Food Stamp Program effective January 1, 1980.

The Food Stamp Act of 1977, as amended, requires that the semi-annual adjustments in the Thrifty Food Plan (coupon allotments) reflect food price changes published by the Bureau of Labor Statistics and that the standard deduction shall be adjusted every July 1, and January 1 to the nearest \$5 for the six months ending the preceding March 31, and September 30, respectively to reflect changes in the Consumer Price Index for items other than food.

The following is the Thrifty Food Plan (TFP) amounts and standard deduction:

Household Size	TFP	Household Size	TFP
1	\$ 63	11	\$517
2	115	12	564
3	165	13	611
4	209	14	658
5	248	15	705
6	298	16	752
7	329	17	799
8	376	18	846
9	423	19	893
10	470	20	940

For each additional person in excess of twenty, add forty-seven dollars.

The new standard deduction is seventy-five dollars.

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

RULE

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

The Department of Health and Human Resources, Office of Family Security, has adopted, effective January 1, 1980, a rule

which allows persons sixty years of age or over and persons who receive Supplemental Security Income (SSI) Benefits under Title XVI of the Social Security Act or Disability Benefits under Title II of the Social Security Act to deduct from the household's income that portion of medical expenses in excess of thirty-five dollars per month excluding special diets. Spouses or other persons receiving benefits as a dependent of the SSI or disability recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs are:

A. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional.

B. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state.

C. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible.

D. Health and Hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible.

E. Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend-down expenses incurred by Medicaid recipients.

F. Dentures, hearing aids, and prosthetics.

G. Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills.

H. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.

I. Reasonable cost of transportation and lodging to obtain medical treatment or services.

J. Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal-related deduction shall be that in effect at the time of initial certification. The state agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the state agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the state agency shall treat the cost as a medical expense.

Monthly shelter costs is the amount in excess of fifty percent of the household's income after all other deductions have been applied. The shelter deduction alone or in combination with the dependent care deduction shall not exceed ninety dollars unless the household contains a member who is age sixty or over or who receives SSI (including emergency benefits based on presumptive eligibility) under Title XVI or disability payments under Title II of the Social Security Act. These households shall be given an excess shelter deduction for the monthly cost that exceeds fifty percent of the household's monthly income after all other applicable deductions. That portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of

the reimbursement is received or can otherwise be verified.

Households reporting one time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. Averaging would begin the month the change would become effective.

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

RULE

Department of Health and Human Resources Office of the Secretary

The Department of Health and Human Resources has adopted a revised Facility Manual for Facilities Where Department of Health and Human Resources Funds Are Used to Care for Handicapped Persons. The rules are amended under the authority granted to the Department by R.S. 46:1757 (6), R.S. 40:2125, and R.S. 15:1084. This revised manual is necessary to provide for the determination of cost of service and care.

The description of levels of care has been deleted from this manual; however, a description of these levels of care is available from Department of Health and Human Resources, Licensing and Certification, and are still in effect.

Rate Determination Manual For Nonstate Operated Residential Facilities Where Office of Human Development Funds Are Used To Care for Children, Youth, and Handicapped Persons Introduction

The Department of Health and Human Resources (DHHR) currently places clients, whose needs cannot be appropriately met through other state programs, in private residential facilities. Placement is provided under the supervision of the Office of Human Development (OHD).

Children, youth, and handicapped individuals placed in such programs include three major, broad client categories: (1) children and youth who are legally adjudicated abandoned, neglected, and/or abused, and those in need of care due to the inability of the parent or caretaker to adequately provide for them, (2) adjudicated delinquents and children in need of supervision, and (3) children, youth, and other individuals who are handicapped physically, mentally, emotionally, or neurologically to such an extent that they cannot satisfactorily participate in community living without the special care and treatment provided by a residential facility.

The determination of appropriate placement for any client in any of these broad categories is made by the placing agency within the Department of Health and Human Resources, and all referrals for placement must originate and/or be approved through the placing agency of the Department, before OHD funding will be committed for a particular client. Private facilities from which placement services are purchased retain the right of acceptance or rejection of the clients referred by the Department's supervising agencies with the exception of emergency shelter-care facilities which do not have the right of rejection.

The procedures and rules set forth herein have been developed to assure an equitable, cost-related reimbursement formula for the services purchased from private providers for the care and treatment of these clients. These procedures and rules will clearly identify the allowable expenses as to type which shall determine the total maximum amount subject to reimbursement by OHD, dependent on the limits of reimbursement noted within.

These procedures shall apply to all facilities wherein OHD funds are spent for the purchase of residential services for the Department's clients, unless the rate has been established under the approved Louisiana State Plan for Title XIX or through an

approved budget- or grant-approved mechanism for emergency shelter care or respite care. Specifically, this includes all nonstate operated child caring agencies, child placement agencies, emergency shelter care facilities, and maternity homes (not under special contracts or grants), as mandated by Act 786 of the 1978 Louisiana Legislature.

The rates established through these procedures will have an effective date no earlier than the first day of the succeeding state fiscal year and will remain in effect for at least that entire succeeding fiscal year. All facilities receiving OHD reimbursement are required to conform to the *Minimum Standards for Certification of Facilities* and appropriate licensing standards.

Cost-Related Reimbursement

The Department of Health and Human Resources has developed the attached procedures and cost report form with the intent of relating as closely as possible the actual costs a facility incurs to provide appropriate client care and the rate at which they are reimbursed by DHHR for the care of clients of the Office of Human Development.

Implicit in these procedures is the intention that actual costs shall be paid only to the extent that the costs claimed for reimbursement are reasonable, that all facilities will seek to minimize actual costs, and that actual costs will not exceed that which a prudent and cost-conscious buyer would pay. Only allowable costs directly related to client care will be used in cost computations to establish reimbursement rates, and facilities must utilize all other available public resources, such as the Department of Agriculture for food commodities, the Department of Education for school lunches, and Title XIX vendors for medical services. No payments above the facility's established cost-reimbursement rate will be paid for care and treatment by DHHR except in cases where a client's unique needs necessitate a prior special contractual agreement with the placement agency. Extraordinary expenses not covered by such an agreement are, foremost, the responsibility of each client's parents/guardian. Payments made by parents/guardians to the facility for such costs do not affect the rate reimbursed by DHHR, nor does the parental contribution collected by DHHR as mandated by law affect the rate a facility will be reimbursed.

The cost report for the facility's previous fiscal year which provides the basis for determining a facility's rate will be submitted on forms provided by DHHR and shall be completed in its entirety by both established and new facilities. Facilities which have been in operation for less than 12 months must submit a report for their period of operation through June 30, in addition to the projected annual budget, which shall include detailed information to substantiate the projections based on allowable costs as set forth in this manual. The projected budget shall form the basis for the establishment of the rate for the facility's initial year of operation, subject to modification based on certification requirements, the cost of comparable services in other facilities, other available funding sources, the available appropriation to OHD, and so on.

Facilities which provide several distinct programs, i.e., levels of care, must segregate and report actual direct expenditures on a program-by-program basis.

Any financial adjustments to the rate determined according to the instructions below will either be based on the limitations to reimbursement mentioned in a subsequent section or will be considered upon submission by August 1, of documentation by the responsible licensing or regulatory and/or placement authority that certain specified changes are necessary, which could include:

1. Depreciation on major repairs or renovations to meet established State and City Licensing, Health, and Fire Codes.
2. Expenses related to Federal and State regulations not previously in effect or not previously implemented at the individual facility.
3. Mandated additions to personnel made by licensing and certification.
4. Allowable on-going expenses which were previously provided through other funding mechanisms (i.e., LEAA Grants)

will be considered as adjustments to cost with prior approval from OHD. Notification and documentation must be provided to OHD by August 1.

Increases such as minimum wage requirements shall not be included because they are reflected in the general inflation index which will be utilized to determine an appropriate inflation factor for each individual facility, based on its reporting period, and added to the allowable cost, determined by the cost report.

Such adjustments to the determined rates, if approved by DHHR and the Legislature, would not go into effect until the first day of the succeeding state fiscal year, as mandated by Act 786. These adjustments should be recorded in the regular accounting books. During the initial year, these adjustments must also be recorded separately, and quarterly reports on the utilization of these funds must be submitted to the audit section for the purpose of accountability. If these expenses are not incurred as stated and approved, the facility will be required to reimburse DHHR for the adjustments.

A facility, administrator, board, or other governing body may appeal the rate determined for the facility by submitting specific grievances in writing to the Secretary of DHHR. The decision of the Secretary shall address each specific grievance and be provided in writing to the appealing party within thirty days of the receipt of the written appeal, or shall notify the appealing party of the reasons why a decision cannot be made within that time period.

If a legitimate error, according to these procedures, has been made in the computation of figures or in the determination of allowable expenses or adjustments, the facility's rate for the succeeding fiscal year will be adjusted accordingly, subject to legislative approval and appropriations.

General Instructions for Cost Reporting

1. Effective January 1, 1979, each facility must provide a cost report, which will serve as a statement of intent to participate the following state fiscal year, no later than August 1, of each year, as follows:

A. The cost report must be submitted within three months after the end of the facility's fiscal year or August 1 whichever comes first.

B. If a facility has changed its reporting period, a cost report covering the short period must be filed along with IRS Form 1128 if required or other proof of intent to change. The intent of change must be made prospectively. Short period shall mean the period from the end of the facility's regular year to the beginning of the facility's new reporting period. (Example: regular report period January 1, 1978, to December 31, 1978, and changing report period to July 1, 1979, to June 30, 1980. The short period report would cover January 1, 1979, to June 30, 1979.)

2. Delinquent Cost Reports

A. If a cost report is not received by August 1, of each year, the most recent cost report on file will be used for revising the rate for reimbursement for the succeeding year, but, in any case, the facility will only continue to be utilized if a notice of intent to participate in the program has been submitted by August 1, and if a cost report is submitted before January 1, of the following calendar year. Unless an official extension has been granted for necessitous circumstances, any cost report received after August 1, will not result in an increased rate the following state fiscal year, but it could result in a decreased rate if the report so indicates.

B. If a cost report is not received within three months after the end of the cost reporting period, or by August 1, a recommendation will be made to the Assistant Secretary of OHD that a fifty percent suspension of the current OHD claim payments be implemented. A thirty-day warning of this action will be provided before it takes effect.

C. If the cost report is still not received within six months of the reporting period, or by January 1, whichever comes first, a

one hundred percent suspension of current claims/payments will be implemented.

3. Cost reports will be sent to: Health Services Audit Director, Box 2944, Baton Rouge, Louisiana 70821. Questions regarding these procedures should also be addressed to the Health Services Audit Director.

4. Accounting records must be kept (or converted at year end) on an accrual basis.

5. Accounting records must be kept (or converted at year end) in accordance with the attached Chart of Accounts.

6. Each facility must maintain all accounting records, books, invoices, cancelled checks, payroll records, and other documents relative to client-care costs for a period of six years.

7. All fiscal and other records pertaining to client-care costs shall be subject at all times to inspection and audit by the Department of Health and Human Resources, the Legislative Auditor, and auditors of appropriate Federal funding agencies.

8. Each facility must maintain statistical information related to the daily census and/or attendance records for all clients receiving care in the facility.

9. Each facility receiving funds from other public sources must so note such on the cost report form, even if the funding is provided for other programs, and make available additional information on this funding as requested by DHHR.

10. Purchase discounts, allowances, and refunds will be recorded as a reduction of the cost to which it relates.

11. Cost to related organizations: Cost applicable to services, facilities, and supplies furnished to the facility by related organizations are allowable costs at the cost to the related organization. However, such costs must not exceed the price of comparables purchased in the open market and the goods and services must be common to and generally purchased by client-care facilities.

12. Proof of competitive bidding must be available on request for:

- A. Insurance (property, casualty and liability)
- B. Acquisitions in excess of \$500
- C. Repairs and renovations in excess of \$1,000
- D. Leases in excess of \$1,000 annually
- E. Food purchases, if the raw food cost exceeds the limit established by DHHR. The limit will be established annually for prospective reporting periods.

Allowable Costs for Services Provided

1. Shelter Costs.

A. Living space (both indoor and outdoor) used by the clients, including rent, depreciation, or building use allowance. Depreciation must be computed by the straight-line method only. The estimated useful life of fixed assets will be based on the Internal Revenue Service's approved useful life of fixed assets. Depreciation will be allowed only on buildings and equipment related to direct client-care services. Facilities must maintain adequate records to determine cost, value, and reasonable useful life of buildings and equipment.

To be allowable the depreciation must: be identifiable and recorded in the provider's records; give historical cost and accumulated depreciation; indicate useful life and depreciation method.

Note that, if provider has previously used an accelerated depreciation method, the required record keeping information may be kept in a subsidiary ledger to be used for program purposes only.

The estimates listed below are average ranges for asset depreciation. For all depreciable assets, even those not included in the guidelines, an estimate is acceptable if it is proven reasonable.

Land Improvements	Years
Fencing	15-25
Paving	15-20
Landscaping	10-12
Underground sewer and water	25-30
Outdoor Lighting	10-15

Buildings

Wood Frame 25-30

Masonry 30-50

Fixed Equipment

Electrical Wiring, AC Systems, Heating Systems, Sprinkler and Fire Alarm Systems, Telephone, Plumbing, Sewerage, Roofing, Lighting, etc. 20-25

Major Movable Equipment

Kitchen Equipment, Therapy Equipment, Laundry Equipment, Cleaning Equipment, etc. 8-20

Other Items

Automobiles 3-05

Furniture and Furnishings 5-10

Office Machines 5-10

B. Depreciation of furniture and upkeep for items related directly to shelter space used by the clients, for example, living room, dining room and bedroom equipment and furniture, and furnishings, such as draperies, blinds, rugs, etc.

C. Fuel and utilities for space used by the clients, for example, heat, air conditioning, electricity, etc., if these charges are not a part of the rent.

D. Routine maintenance and upkeep of property and equipment used in daily living activities of the clients. This includes staff and supplies for janitorial services, maintenance, and minor repairs to grounds and equipment.

2. Food Costs. Actual food costs and kitchen and dining room operational costs including personnel, depreciation of equipment and supplies associated with planning meals, ordering, preparing, and serving food, cleanup work, and the cost of planned meals away from the facility.

3. Clothing and Other Personal Need Costs.

A. Clients' personal wardrobe, when necessary, not to exceed four hundred dollars per client annually, including initial and replacement clothing; such items will be the clients' personal property which they may take with them upon discharge.

B. Expenses incurred in the upkeep of clients' clothing, including staff and supplies on grounds, and for services provided off grounds, such as shoe repair, mending, dry cleaning, alterations, etc.

C. Medicine chest supplies, personal hygiene items such as comb, brush, toothbrush, soap, shampoo, deodorant, sanitary needs and other sundries and incidentals.

D. Cost of hair grooming, limited to two haircuts per month for males and a comparable expenditure for females.

E. Clients' personal allowance must be provided by the facility for all residents, not to exceed \$5.00 per week for clients ages thirteen and up and \$2.50 per week for clients below age thirteen.

4. Recreation Costs.

A. Recreational program and services, including, but not limited to, such items as reading materials, athletic equipment, games, etc.

B. Individual client's dues for youth clubs, scouts, community centers, etc., if not financed from personal allowance.

C. Clients' admission fees to sporting or other recreational and cultural events, including cost of snacks and treats purchased on outings, if not financed from personal allowance.

5. Education Costs. Educational cost items which must be reported are listed on the cost reporting forms provided by DHHR. The entire cost of educational services must be recorded and reported separately.

6. Care Costs.

A. Client-care staff, social workers, other specialized staff and direct-line supervisors of staff responsible for the twenty-four-hour program of care and supervision of the clients, including salary, wages, maintenance and fringe benefits if not met

through the State's program under Titles XIX, XX, IV-B, grants, vocational rehabilitation, Department of Education, or other state or federally funded programs.

B. Transportation intrinsic to the well-being of the client, including but not limited to visits with relatives, prospective foster or adoptive parents, and other activities or events that are an integral part of the twenty-four-hour program of care and not available through another resource. Expenses for an attendant, when required, may be met if not already charged to the state's program under Titles XIX, XX, IV-B, or other publicly funded programs.

7. Health Cost. In all of the examples of allowable expenses below, it is expected that a facility will attempt to utilize public resources prior to employment of or contracting with totally private medical vendors or purchase of medical supplies. Examples of public resources would include Title XIX medical vendors for eligible OHD individuals; state or city supported clinics and hospitals for immunizations, examinations and other screening services, emergency treatment, and on-going special treatment needs (such as the Handicapped Children's Program for orthopedic problems, the Charity Hospital system for dialysis needs, and mental health clinics for counseling and medication, the local education agencies for evaluation services for individuals under age twenty-two, local civic organizations for glasses, wheelchairs, etc.

Routine medical services shall be provided by the facility and may be reimbursed as part of the rate when not available through public resources. These routine services shall include:

A. Periodic medical examinations that include vision, hearing, and routine screening and laboratory examinations as determined necessary by the physician.

B. Immunization.

C. Tuberculosis control.

D. Physician services, minimally to supervise the general health conditions and practices of the facility and be available for emergencies on a twenty-four-hour, seven-days-a-week basis.

E. Nursing services as appropriate.

F. Initial and periodic dental examinations and routine treatment, including provisions for emergency treatment at all times.

G. Dental hygiene program.

H. Psychological testing and counseling when provided routinely to all clients.

I. Psychiatric examination and treatment when provided routinely for facility clients.

J. Medical appliance upkeep, repairs, and purchase of medical supplies for the general facility population.

Extraordinary medical services provided by a facility shall be reimbursable if prior approval for the expense has been secured from the Office of Human Development for a particular child. Examples of extraordinary medical services might include eye glasses and other corrective appliances, special diagnostic tests or treatment needed by a particular child, psychiatric treatment purchased for a particular child, special dental needs such as orthodontics and oral surgery, and so on. At the time the extraordinary need is identified to OHD, a decision will be made regarding whether another resource is available to cover the cost (including parental payment), whether payment will be made directly to the vendor, or whether the facility will incur the expense and be reimbursed by OHD.

8. Administrative Costs.

A. Interest on current obligations and mortgage loans reasonably related to client care. The interest rate must not be in excess of what a prudent borrower would pay.

B. Allowance shall be permitted for a salary for an owner-administrator of a proprietary facility only if he/she is performing the duties of an administrator and would otherwise have to employ another individual to perform these duties. Allowance for a salary of an owner-administrator shall be limited to the national average of salaries for owner-administrators of similarly

sized, similarly staffed facilities. Operating cost of living quarters and automobiles provided an administrator for his/her convenience will be considered part of their compensation.

The administrators who are not owners are also limited to the national average of salaries for administrators of similarly sized, similarly staffed facilities.

C. Premiums for officer/owner's life insurance are allowable only if the beneficiary is the officer/owner's family. Premiums will be included as part of the officer/owner's compensation and subject to the limitations set forth in B.

D. With the following specific exceptions, taxes are an allowable cost: Federal income or excess profit tax; state income or excess profit tax; taxes relating to financing; special assessments (would be capitalized and amortized); taxes for which exemptions are available; taxes on property not related to direct client care; self-employment (FICA) taxes applicable to individual proprietors, partners, etc.; fines or penalties of any kind.

E. Cost for the following types of advertising are allowable: Classified newspaper advertising to recruit personnel or solicit bids; telephone yellow page advertising, except in the event that such advertisement is promotional in nature.

F. Membership costs and costs for conferences and meetings are allowable if related to client-care activities and efficient operation of the facility. Allowable costs include: dues, registration fees, travel, meals and lodging only for the period of a conference. Membership dues and other expenditures related to civic or social organizations are specifically disallowed.

G. Accident or hospitalization insurance for the clients. Insurance claim reimbursements should be credited to the respective expense account for health care.

H. Audit costs are allowable but certified audits are not required by Department of Health and Human Resources since this report will be audited.

I. Clerical salaries and costs related to general administration.

J. Attorneys' fees. Actual fees incurred for nonlitigation legal services which are directly related to child care will be allowed.

K. Bad debts, charity and courtesy allowances are deductions from revenue and are not includable as allowable costs.

9. Personnel and Salary Maximums.

Maximum limits on the number of direct care personnel employed will be based on individual facility requirements to be determined in conjunction with the facility and DHHR Licensing and Certification.

Louisiana State Civil Service salary schedules will be used in determining the maximums allowable. Facilities may maintain separate salary schedule, with the limitation being the above maximums.

10. In-Kind Contributions.

In-kind contributions represent the value of non-cost contributions provided by: the facility; other public agencies and institutions; and private organizations and individuals. In-kind contributions may consist of charges for real property and equipment and value of goods and services directly benefiting and specifically identifiable to all clients in the approved program.

Specific procedures for the facilities in placing the value on in-kind contributions from private organizations and individuals are set forth below:

A. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteer service may be counted as a program cost if the service is an integral and necessary part of an approved program.

1. Rates for volunteer services. Rates for volunteers should be consistent with those regular rates paid for similar work in other activities. Rates used should be consistent with those paid for similar work in the labor market in which the facility competes for the kind of services involved.

2. Volunteers employed by other organizations. When an employer other than the facility furnishes the services of an

employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

B. Valuation of materials. Contributed materials include office supplies, maintenance supplies, or workshop and classroom supplies. Prices assessed to donated materials should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the facility.

C. Valuation of donated equipment, buildings, and land, or use of space. The value of donated property will be determined as follows:

1. Equipment and buildings. The value of donated equipment or buildings should be based on the donor's cost less depreciation or the current market prices of similar property, whichever is less. The title of the donated equipment and building must be legally in the name of the facility.

2. Land or use of space. The value of donated land or its usage charge should be established by an independent appraiser, i.e., private realty firm.

D. Valuation of Other Charges. Other necessary charges incurred specifically for an indirect benefit to the program on behalf of all clients may be accepted as program costs provided they are adequately supported and permissible under the approved program. Such charges must be reasonable and properly documented.

The following requirements pertain to the facility's supporting records for in-kind contributions from private organizations and individuals:

A. The extent of volunteer services must be supported by the same methods used by the facilities for its employees.

B. The basis for determining the charges for personal services, material, equipment, and buildings must be documented.

Unallowable Costs for Services Provided

1. Fund raising; public relations.

2. No monies paid to an attorney or a law firm as a retainer, rather than as legal fees for services actually performed, will be allowed.

3. Payments made by the facility as gifts, assessments, or paybacks to parent organization.

4. Income producing expenses, including depreciation of equipment to secure self-generated revenue.

Limits of Reimbursement

1. Fiscal Limitation. The availability of state and federal funds may result in a uniform rateable reduction of fees. Adjustments will also be limited and considered separately.

2. Reasonable Cost Limits. Payments to facilities for client services shall be based on the lesser of the reasonable cost of services or the customary charges to the general public for such services.

3. Profit Limits. An allowance of a reasonable return on equity capital invested and used in the provision of client care is allowable as an element of the reasonable cost of covered services. The amount allowable on an annual basis will be determined by applying to the provider's equity capital a percentage basis equal to 1½ times the average of the rates of interest on special issues of public debt obligations issued by the Federal Hospital Insurance Trust Fund. A profit factor will be allowed only for proprietary facilities.

4. Occupancy Limits. Those facilities which operate at less than fifty percent capacity will be penalized by using the fifty percent occupancy level.

5. Other Limits. Costs which are unallowable for federal participation will be paid by the state up to the maximum allowable under the section entitled "Allowable Costs for Services Provided."

Payment procedures do not include a year-end settlement. Revised rates are effective July 1 of each year based upon the actual expenditures per cost reports received August 1 of the preceding year. Retroactive adjustment will not be made except

for over-payments which result from the inclusion of unallowable costs in the cost report. Therefore, management decisions which increase cost will not affect the current rate and will increase future rates only if justified.

Current economic indicators will be used to determine an inflation factor in calculating the per diem rate.

Definitions

1. Equity Capital. The net worth of a facility, excluding those assets and liabilities which do not relate to direct client care. Specifically, equity capital includes: (1) a facility's investment in plant, property, and equipment (net of depreciation) related to direct client care, plus funds deposited by a facility which leases plant, property, or equipment related to client care and is required by the lease to deposit such funds, and (2) net working capital maintained for necessary and proper operation of client-care activities.

2. Fiscal Year. The twelve-month period used by the facility for federal income tax purposes. This does not apply to state or federal fiscal year.

3. Net Working Capital. Working capital is the difference between current assets and current liabilities. Net working capital is working capital reduced by any amount determined to be excessive for the necessary and proper operation of client-care activities.

4. Plant, Property, and Equipment. Fixed assets related to client care are, for example, building, land, fixtures and equipment, goodwill, and other assets not part of current assets.

5. Proprietary Facilities. Facilities, whether sole proprietorships or corporations, organized and operated with the expectation of earning profit for the owners, as distinguished from facilities organized and operated on a nonprofit basis, as confirmed by the Internal Revenue Service.

6. Related Organization.

A. Related to facility. The facility, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies.

B. Common ownership exists when an individual or individuals possess significant ownership or equity in the facility or organization serving the facility.

C. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or facility.

7. New Facility. Any facility not receiving funds from DHHR the entire preceding state fiscal year; or any facility closed for more than three months during its preceding fiscal year; or any facility which has a change in ownership; or any facility which has been certified by DHHR for a change in its level of care.

8. Client. Any person receiving services in the facility.

9. Level of Care. A facility's level of care shall be a determination made by DHHR Licensing and Certification based on the needs of the population served, the services offered, the direct care staff-to-patient ratio, and staff qualifications. A description of these levels is available from DHHR Licensing and Certification. A facility may be certified for more than one level of care if such is appropriate.

Any new facility desiring OHD participation and any facility requesting a change in their level of care must first reach an agreement with OHD regarding the need for the particular level of care desired, based on the population served, and the population needing to be served.

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

RULE

Board of Elementary and Secondary Education

Rule 3.01.70.u(10)

The Board approved for final adoption Requirements for Certification of Assessment Teacher as follows:

1. A minimum of master's degree in Elementary or Secondary Education, Special Education, Early Childhood or Child Development.

2. A minimum of a Type B teaching certificate with at least one year classroom teaching experience in a properly certified area of special education.

3. Certification in at least two areas of special education one of which is Learning Disabilities in accordance with the requirements of the State Board of Elementary and Secondary Education, or a generic certification with specialization in one area at the master's level.

4. Six semester hours in diagnosis and remediation of reading problems, three semester hours of which may be undergraduate coursework. (Secondary majors must have three semester hours in foundations of reading in addition to this requirement.)

5. A minimum of the following graduate level courses:

a. Three semester hours in applied learning theory.

b. Three semester hours in behavioral intervention strategies, including systematic behavioral assessment. (This course must include twenty-five child contact hours.)

c. Three semester hours in consulting teacher strategies.

d. Three semester hours in precision assessment and diagnostic/prescriptive strategies.

e. Three semester hours in test theory.

f. Six semester hours in educational diagnosis and a supervised internship to include one hundred child contact hours. (These courses must include the administration scoring and interpretation of norm-referenced and criterion-referenced individual educational tests and implications for educational intervention through the development of the individualized assessment/intervention plan.)

Becomes effective for all individuals applying for assessment teacher certification on or after September 1, 1980. An individual may function as an assessment teacher under a plan of professional development approved by the Division of Special Education Services until September 1, 1982.

Assessment teachers who are employed in approved Local Education Agency educational assessment programs, school year 1979-80, who participated in ongoing in-service development conducted by the State Department of Education, and who have certification as an educational consultant shall be awarded certification as an assessment teacher if applications are received prior to September 1, 1980.

Rule 4.03.40.i

The Board approved for final adoption the following statement regarding affirmative action for vocational-technical schools: Each state-operated vocational-technical school shall, upon request of an employer seeking an employee, afford all qualified applicants the opportunity of a job interview.

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

RULE

Department of Natural Resources Office of Conservation

Rule 14—Certificate of Public Convenience and Necessity to be Issued Pursuant to Provisions of Section 607 of the Act.

A. This regulation shall only apply to the requirements of R.S. 30:607.

B. The words, terms, and phrases defined herein shall have the following meanings when used in this regulation:

1. Producer-seller. The owner(s) of the mineral rights pursuant to which the gas is produced and that, as such owner(s) of the produced gas, makes the first transfer of the gas for value to another person. The term "producer-seller" is inclusive of the lessor's royalty and any overriding royalty that a producer-seller has the right to market under a lease or sublease.

2. Natural gas. All gas capable of being produced, or which is produced, within the State of Louisiana, which is not subject to federal jurisdiction under the Natural Gas Act, 15 U.S.C. §717, et seq., including natural gas transported through the use of interstate pipelines where such use of interstate pipelines is or may hereafter be exempt from the control of the Federal Energy Regulatory Commission under the Natural Gas Act, or rules and regulations promulgated by the Federal Energy Regulatory Commission thereunder; and gas, wherever produced, which is or may be transported into this state and delivered into an intrastate pipeline system in this state to be used or consumed wholly within this state.

3. Intrastate natural gas pipeline. All facilities located within the State of Louisiana which may be or are utilized for the production, gathering or transportation of intrastate natural gas and which are not subject to federal jurisdiction under the Natural Gas Act, 15 U.S.C. §717, et seq., including, but not limited to, wellhead facilities, gathering facilities, pipeline facilities, and all facilities connected thereto or utilized therewith.

4. Intrastate natural gas transporter. A person as defined in R.S. 30:503(6).

5. Interested parties.

a. For an application for an exclusion

i. The interstate pipeline purchaser or the user that takes delivery of the gas in Louisiana and that causes the gas to be transported in interstate commerce to its plants or facilities for use; and

ii. Any other persons whose facilities are used in processing or transporting such natural gas.

b. For an application for a certificate of public convenience and necessity are the intrastate natural gas transporters who have indicated an interest in purchasing natural gas pursuant to a request for purchase of natural gas as provided herein, the proposed interstate purchaser, and any other persons whose facilities are to be used in processing or transporting such gas.

c. For a letter of objection pursuant to R.S. 30:607C(3), are the parties to the contract.

6. Gas committed or dedicated to interstate commerce.

a. Gas which is subject to federal jurisdiction under the Natural Gas Act, 15 U.S.C. §717, et seq.; or

b. All gas dedicated or contractually committed to interstate commerce before September 7, 1979; or

c. Such quantities of natural gas from specified sources that a producer-seller is required to deliver into interstate commerce pursuant to an order issued by the Federal Power Commission or the Federal Energy Regulatory Commission; provided, that said order and specified sources were in effect prior to September 7, 1979.

7. Bona fide offer. For purposes of R.S. 30:607C(2) and this regulation, a bona fide offer shall be deemed made by a producer-seller when he causes to be published in the Official Journal of the state, the *State Times* in Baton Rouge, Louisiana, for a period of three consecutive days of publication a notice that he will entertain bids for the purchase of natural gas from intrastate natural gas transporters. Such bids must be received by the producer-seller within thirty days of the date such notice first appears in the Official Journal of the state.

C. The public notice required for a bona fide offer shall contain the following information:

1. The exact legal name and principal place of business of the producer-seller and the name, title, mailing address and telephone number of the person to whom bids should be submitted.
2. The name of the well(s) and location by section, township, range and field or area; and, if applicable, a description of other mineral rights on which additional wells may be drilled.
3. The probable gas classification under the Natural Gas Policy Act.
4. The location of the proposed point of sale.
5. The anticipated daily volume of natural gas available.
6. Other information deemed appropriate by producer-seller.

A copy of the notice shall be mailed to the Commissioner concurrent with submission of notice to the Official Journal of the state.

D. No producer-seller, after September 7, 1979, shall dedicate natural gas to, or introduce said natural gas into interstate commerce or connect producer-seller's intrastate natural gas pipeline as defined herein with an interstate pipeline without first obtaining a certificate of public convenience and necessity issued by the Commissioner of Conservation. Said certificate may be issued by the Commissioner after public hearing, where required by law, upon an application submitted by the producer-seller. The application shall be made in writing, verified under oath by an individual having authority to execute same and contain the following information:

1. A letter of transmittal explaining the purpose of and authority and reasons for the application and a listing of supportive information.
2. The exact legal name of the applicant, its principal place of business, and the name, title, and mailing address of the person or persons to whom communications concerning the application should be addressed.
3. A copy of proposed or executed contract.
4. A completed Form PL5.
5. A general description and diagrammatic sketch of facilities required to effect the movement of contracted gas from the wellhead to the point of delivery into interstate commerce, including the names and addresses of any other persons whose facilities are used in the processing or transporting of such natural gas.
6. A statement that a bona fide offer was made pursuant to this regulation.

The Commissioner may request such additional information as in his opinion is reasonably necessary to properly evaluate the application.

E. No certificate of public convenience and necessity shall be issued to a producer-seller unless it is demonstrated at a public hearing, where required by law, that:

1. In the case of natural gas which is the subject of an intrastate sales contract that will expire subsequent to September 7, 1979, the producer-seller has first offered to sell such natural gas to the present purchaser at the same price at which the gas could be sold to any other person pursuant to arm's length negotiations, and under other terms, conditions and circumstances as favorable as those which could be obtained for the sale of such gas to any other user in the State of Louisiana, including intrastate natural gas transporters, no less than forty-five days prior to expiration of the contract;
2. In those cases where the offer provided for in paragraph (1) above has not been accepted by the present purchaser within the twenty-five day period ending twenty days prior to expiration of the contract; and the natural gas was not the subject of an intrastate sales contract; the producer-seller has made a bona-fide offer to sell such natural gas to intrastate natural gas transporters and no intrastate natural gas transporter capable of taking delivery within a reasonable time has submitted a bid at an equivalent or better price, with equivalent or

better terms, conditions, and circumstances, as the producer-seller could obtain by the sale of such gas in interstate commerce.

F. If a person who is a party to an intrastate natural gas sales contract subject to R.S. 30:607C(3) files a letter of objection with the Commissioner of Conservation before the expiration date of the contract alleging noncompliance with this regulation and Section 607C(3), the Commissioner shall proceed under Rule 5 of the Commissioner's Rules of Procedure to resolve all matters of controversy. The producer-seller shall bear the burden of establishing that he has made an offer to the present purchaser of said natural gas, to continue said sale at the same price, at which the gas could be sold to any other person pursuant to arm's length negotiations, except where otherwise provided by law and under other terms, conditions, and circumstances as favorable as those which could be obtained for the sale of such gas to any other user in the State of Louisiana, including intrastate natural gas transporters. All parties shall provide such additional information as the Commissioner in his opinion deems reasonably necessary to properly evaluate the matter.

G. A producer-seller may submit an application requesting a declaratory order excluding from the provisions of this Act, natural gas committed or dedicated to interstate commerce before September 7, 1979, where initial deliveries of gas have not commenced from such commitment or dedication, or where natural gas is sold under a contract effective before September 7, 1979, to a user that transports the gas to the place of use in an interstate pipeline. The Commissioner, after review of such application, may administratively issue an order excluding the producer-seller hereunder and authorizing the producer-seller to make such connection with or to introduce such natural gas into the applicable interstate pipeline. An application under this paragraph should include items d.(1) - (5) above. Any person subject to Article IX, Section 2 of the Louisiana Constitution, R.S. 30:555H and Rule 5, prior to September 7, 1979, and for which authorization to interconnect was required, shall not enjoy this exclusion.

H. If the Commissioner, in his judgment, determines that an emergency exists which requires waiver of the requirement of a producer-seller to make a bona fide offer or any other part of this regulation, he shall proceed under Rule 5 to hold a public hearing on an abbreviated notice, where such hearing is required by law, but not less than three days following the date of publication of notice of said hearing in the Official Journal of the State of Louisiana. Where a hearing is not required, he may administratively issue a certificate of public convenience and necessity. The Commissioner may limit the effective term of the certificate of public convenience and necessity after consideration of the nature of the emergency and the public interest.

In determining whether an emergency exists and what action would be appropriate, the Commissioner shall consider the public health, safety and welfare and may consider such other pertinent circumstances such as those surrounding the producer-seller, user, and transporter, giving due consideration to economics and lease obligations.

Every person contemplating a sale under this paragraph shall advise the Commissioner by telegram or letter stating briefly the circumstances of the emergency and within ten days following such notice, shall file with the Commissioner an original and two copies of an application in writing, verified under oath by an individual having authority to execute same, containing the following information:

1. The facts warranting invocation of this paragraph and anticipated period of stated emergency.
2. A copy of proposed contract, if available.
3. A completed copy of Form PL 5 containing the terms and conditions of proposed contract.
4. A general description and diagrammatic sketch of facilities required to effect the movement of gas from the wellhead to the point of delivery into interstate commerce, including the names

and addresses of any other persons whose facilities are used in processing or transporting of such gas.

I. Other exceptions from the provisions of R.S. 30:607, Rule 5 of the Commissioner's Rules of Procedure and this regulation granted the producer-seller are as follows:

1. Solution or associated gas from an oil well(s); provided that the total daily volume of gas produced with the oil does not exceed five hundred thousand cubic feet per day; and that timely notification of the availability of such gas for sale has been provided all intrastate natural gas transporters having a pipeline located within a two-mile radius of the well(s) or production facility(s) associated therewith.

2. Gas produced from a gas well(s); provided that production tests of the well(s) and analysis of other information, including geologic and reservoir information and other well tests, indicate that the predicted average daily rate for the first year's production would not exceed five hundred thousand cubic feet per day; and that timely notification of the availability of such gas for sale has been provided all intrastate natural gas transporters having a pipeline located within a two-mile radius of the well(s) or production facility(s) associated therewith.

3. Gas to be produced and credited to a small interest of a producer-seller; provided that the production estimated to be credited to the producer-seller's interest from the first year's production does not exceed five hundred thousand cubic feet per day; and that timely notification of the availability of such gas for sale has been provided all intrastate natural gas transporters having a pipeline located within a two-mile radius of the well(s) or production facility(s) associated therewith.

Every producer-seller exercising his right of exception hereunder, shall provide the Commissioner with a written report of the actions so taken within sixty days of first production or sale or introduction of such gas into interstate commerce.

J. Except where indicated above, no order, ruling, or findings may be made or other action taken with respect to this regulation without a public hearing after due notice to all interested parties unless the right to a public hearing is waived pursuant to the provisions of the Administrative Procedures Act, as amended (R.S. 49:951 et seq.).

K. All applications including letters of objection requiring public hearing shall be accompanied by a fee of one hundred dollars payable by check to the Louisiana Office of Conservation. An application for an administrative order shall be accompanied by a fee of twenty-five dollars payable by check to the Louisiana Office of Conservation.

L. Applications submitted to the Commissioner for certificates of public convenience and necessity and bona fide offers made by producer-sellers to intrastate natural gas transporters pursuant to Interim Regulation 14 and prior to the date of publication of Regulation 14 in the Louisiana Register shall be deemed in compliance with this regulation.

R. T. Sutton, Commissioner of Conservation
Department of Natural Resources

RULES

Department of Public Safety Office of Motor Vehicles

Citizens Band (CB) Radio Operators' License Plates

1. Eligibility. Applicants for CB radio operators' license plates shall include any persons possessing a CB radio operator's license issued by the Federal Communications Commission. Such plates shall be issued on personally used private passenger vehicles, private use minimum trucks, private use vans and private busses.

2. Place of Application. Applications for issuance of CB radio

operators' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896.

3. Applications. All applications for issuance or transfer of CB plates shall be made on prescribed Department of Public Safety Vehicle Registration (DPSVR) forms. Applications must be accompanied by a photocopy of the CB operator's license issued by the Federal Communications Commission. If the vehicle on which the CB plate will be displayed has been purchased but application for title has not been made, the application for title and the request for the special plate will be taken at the same time. A numerical plate will be issued for the vehicle until the special plate has been received, at which time the numerical plate and corresponding registration certificate will be surrendered for cancellation.

4. Fee. The fee for issuance shall be twenty-five dollars a year for the plate plus the regular registration fee of three dollars a year for automobiles, ten dollars a year for pickup trucks and twenty-five dollars a year for private busses. The plates are subject to regular renewal requirements.

5. Cancellation. CB plates displayed on vehicles other than those to which issued are subject to immediate cancellation. If the applicant no longer wishes to display the plate on his vehicle or wishes to transfer the plate to another vehicle registered in his name, the plate shall be returned to this office for cancellation.

6. Replacement. If the CB plate is lost or stolen, the applicant may apply for a replacement plate by executing the prescribed DPSVR form and submitting it along with the current registration certificate and a two dollar fee.

Consuls' License Plates

1. Eligibility. Applicants for consuls' license plates shall include the following:

A. Consul Generals.

B. Consulates (the offices).

C. Honorary Consuls-citizens of the United States who hold an exequatur from the United States to represent another country.

D. Consuls and other office help-attaches.

The plate numbers are assigned by the Dean of the Consul Corps according to protocol.

2. Place of Application. Application for issuance of consuls' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896. Applications shall also be accepted at the Vehicle Registration Bureau, 325 Loyola Avenue, New Orleans, Louisiana. However, all plates will be issued from the headquarters office.

3. Applications. All applications for issuance or transfer of consuls' license plates shall be made on prescribed DPSVR forms. If the vehicle on which the consul plate will be displayed is not presently registered in Louisiana, proper title documentation and fees must be submitted along with the request for the plate.

4. Fee. Fees for consuls' plates are due as follows:

A. Consul General - no charge, free plate.

B. Consulates (the offices) - no charge, free plate.

C. Honorary Consuls - fee will be the same as for regular license plate.

D. Consuls and other office help (attaches) - If they do hold an exequatur, there is no charge for the Consul plate. If they do not hold an exequatur, they can obtain a free private plate. Applicant must be a native of the country he represents.

The plates can be transferred from one consul to another providing the original consul leaves his position and a new one takes over. A plate can also be transferred from one vehicle to another; however, there will be a three dollar transfer fee. Two consul plates can be issued to each qualified official.

5. Cancellation. If the applicant leaves his position and a new representative is not appointed to take his place, the plate must be returned for cancellation. If the applicant no longer wishes to display the plate on his vehicle, it must be surrendered for cancellation.

6. Replacement. If the consul plate is lost or stolen, the applicant may apply for a replacement plate by executing prescribed DPSVR form and submitting it with a copy of the current registration certificate. Another plate number shall be assigned by the Dean of the Consul Corps. No fee will be charged for this replacement.

Amateur Radio Operators' License Plates

1. Eligibility. Applicants for amateur radio operators' license plates shall include any persons possessing a current amateur radio license issued by the Federal Communications Commission. Such plates shall be issued on personally used private passenger vehicles, private use minimum trucks, private use vans and private busses.

2. Place of application. Applications for issuance of amateur radio operators' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896.

3. Application. All applications for issuance or transfer of amateur radio operators' license plates shall be made on prescribed DPSVR forms. Application must be accompanied by a photocopy of the applicant's current amateur radio operator's license issued by the Federal Communications Commission. If the vehicle on which the plate will be displayed has been purchased but application for title has not been made, the application for title and the request for special plate will be taken at the same time. A numerical plate will be issued for the vehicle until the special plate has been received, at which time the numerical plate and corresponding registration certificate will be surrendered for cancellation.

4. Fee. The fee for issuance of an amateur radio operator's license plate shall be one dollar plus the regular registration fee. The plate can be transferred from one vehicle to another upon payment of a three dollar transfer fee. The plates are subject to regular renewal requirements.

5. Cancellation. Amateur radio operators' license plates displayed on vehicles other than those to which issued are subject to immediate cancellation. If the applicant no longer wishes to display the plate on his vehicle or transfer the plate to another vehicle registered in his name, the plate shall be returned to this office for cancellation.

6. Replacement. If the plate is lost or stolen, applicant may apply for a replacement plate by executing prescribed DPSVR form and submitting it along with the registration certificate and a two dollar fee.

Colonel Malcolm Millet, Secretary
Department of Public Safety

RULES

Department of Public Safety Office of Motor Vehicles

Commercial Driver Training Schools

I. Definitions

The following words and phrases have been defined as follows:

1.1 Motor Vehicles: Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

1.2 Person: Every natural person, firm, partnership, association or corporation.

1.3 Operator: Every person who is in actual physical control of a motor vehicle upon a highway.

1.4 Street or Highway: The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

1.5 Department: Any reference herein to the Department shall be construed as referring to the Department of Public Safety, acting directly or through its duly authorized officers and agents. The mailing address of the Department, for all filings or reports required by these rules, is Box 64886, Baton Rouge, Louisiana 70896.

1.6 Secretary: The chief officer of the State Department of Public Safety.

1.7 Commercial Driving Schools or Commercial Driver Training Schools: A school maintained, classes conducted or instruction offered by an individual, for consideration, profit or tuition, the purpose of which is to educate or train an individual or individuals, either practically or theoretically, or both, to operate or drive a motor vehicle.

1.8 Agent: Any person, whether employed by a commercial driving school or operating in his behalf, or whether acting in behalf of any school located within or outside of this state who shall personally solicit any individual within this state to enroll in a commercial driving school.

1.9 Solicitor: Any individual, firm or corporation who sells, offers for sale, or attempts to sell any product or service.

1.10 Suspension: Licensee privilege to operate a commercial driving school or to instruct (as provided in these regulations) is temporarily withdrawn.

1.11 Revocation: The licensee privilege to operate a commercial driving school or to instruct (as provided in these regulations) is terminated.

II. Requirements for Initial License

2.1 All instructors being employed by commercial driving schools licensed by this Department must, prior to being issued an instructor's certificate, possess a chauffeur type license.

2.2 Before any license is issued, an application shall be made in writing to the Department on a form prepared and furnished by the Department, which shall include a statement showing:

A. The title or name of the school or classes together with ownership and controlling officers and when originated.

B. The specified course of instruction which will be offered.

C. The place or places where such instruction will be given.

D. The qualifications of instructors, agents, and supervisors in each specific field together with their names and addresses.

2.3 The applicant, any officer or partner of an applicant and all instructors thereof shall furnish the following along with the application:

A. Three sets of photographs taken within thirty days to date of filing must be presented with the application. All pictures must be identical, one and one-half inches square, and must show full face view of neck, shoulders, and uncovered head.

B. Two sets of fingerprints of each digit on the right and left hands accompanied by an affidavit from some parish or city enforcement officer (qualified to take prints) that the photographs and fingerprints are those of the applicant.

C. A statement from a physician certifying mental ability, visual acuity, and that applicant does not have any contractual diseases, hearing ailments, epilepsy, dizzy spells, or fainting spells.

D. Evidence that each instructor or agent employed by the school is in possession of a valid instructor's certificate or agent's card issued by the Department.

E. A certified copy of certificate of adopted business name, in the event that the business is to be conducted under an adopted business name, along with a copy of the advertisement placed in

the newspaper.

F. Samples of any and all contracts to be used by the school.

G. Sample copies of all forms of receipts to be used by the school.

H. Copies of all forms used by the school which will be furnished or delivered to students.

I. A copy of the financial agreement between the school and any agent or solicitor if a driving school as agents or solicitors employed.

2.4 Every application for a license must be accompanied by an application fee of twenty-five dollars for the school and ten dollars for each individual instructor.

III. Licenses

3.1 Licenses must be renewed by December 31 of each calendar year. All license fees shall be paid by cashier's check, money order or certified check, payable to the Department of Public Safety. Payment shall be attached to the application form.

3.2 Each original license, instructor's certificate or agent card shall be valid for a period of one year from January 1 to December 31.

3.3 Licenses shall not be transferable. In the event of change of ownership, application for a new license shall be made and the old license must be surrendered to the Department before a license will be issued to the new owner. The fee for the new license is twenty-five dollars for each school and ten dollars for each individual instructor payable as set forth above and shall accompany the application for the new license.

3.4 The license must be conspicuously displayed in the licensee's principal place of business at all times.

3.5 If one of the subject licenses is lost or destroyed, a duplicate will be issued upon presentation of proof of loss or destruction, and in case of mutilation, upon surrender of such license. Such proof shall consist of an affidavit indicating:

A. Date the license was lost, mutilated or destroyed.

B. The circumstances involving the loss, mutilation, or destruction.

C. The name of the police department or police authority to which report was made, and date of such report.

IV. Changes in Officers or Addresses

4.1 The Department must be notified in writing within ten days if there is any change in the address of the owner, partner, officer, or driving instructor of any commercial driving school.

4.2 The Department must be notified in writing within ten days of any changes in the officers, directors, or stockholders of any corporation in holding a license. In such cases each new officer, director, or stockholder must supply the same information as would be required on an original application by the corporation.

4.3 Failure to inform the Department of the above changes shall be grounds for suspension or revocation of the driving school's license.

V. License Renewal

5.1 Application for the renewal of a license shall be made on the prescribed form, accompanied by a fee of twenty-five dollars and ten dollars for each individual instructor payable to the Department of Public Safety by cashier's check, money order or certified check, which is returnable in the event the application for renewal is not approved.

5.2 License renewal forms for the school license, vehicle registration certificate, instructor's applications for renewal of licenses, and a statement from a physician certifying that the applicant possesses normal mental ability, visual acuity, and is free of any contractual diseases, hearing ailments, epilepsy, dizzy or fainting spells, must be forwarded to the Department thirty days prior to the time the license expires.

VI. Location

6.1 A commercial driving school properly licensed shall be allowed to teach in an area within a fifty-mile radius of the place where the driving school is located. When a driving school adver-

tises or lists a different phone or address, other than the main office, it will be necessary to establish a branch office in this location.

6.2 No commercial driving school shall be located within three hundred feet of any building or a portion thereof, used for the purpose of conducting Louisiana State driver's license examinations.

VII. Office Requirements

7.1 The school's license must be conspicuously displayed at the place of business.

7.2 All records pertaining to the operation of the school shall be maintained in this office and available for inspection during the hours of 9 a.m.-5 p.m. Monday through Friday.

7.3 A telephone used exclusively for the operation of the driving school must be maintained.

7.4 Sufficient indoor space to teach a student the theoretical instruction relating to the rules and regulations of the road and safe driving practices must be maintained.

7.5 Approval of the office space by the Department of Public Safety will be determined after the inspection report is received at the Department's headquarters in Baton Rouge, Louisiana.

VIII. Name

8.1 No commercial driving school shall use, adopt, or conduct any business under a name that is like or deceptively similar to a name used by another driving school.

8.2 The school shall not use the word "State" in any part of the school name.

IX. Branch Offices

9.1 A commercial driving school desiring to open a branch office in a different location, or operating one at the present time, shall make application on the form set forth in these rules and regulations, prescribed by the Director, accompanied by an application fee of twenty-five dollars and an additional ten dollars for each individual instructor, which fees shall not be refunded.

9.2 Where the owner of a branch office is conducting business under an adopted name and the branch office is to be located in a parish other than that in which the principal place of business is located, the owner must submit with his application a copy of the certificate of adopted name certified by the clerk of the parish in which such branch office is to be located.

9.3 If a branch office is discontinued, the branch office license must be surrendered to the Director or his authorized representative. Each branch office must be equipped to, and shall perform substantially, the same services as apply to the principle place of business.

X. Records and Contracts

10.1 Every licensee shall maintain the following records:

A. A permanently bound book or a permanent card file, setting forth the name, address contract number, and terms of payment, with respect to every person giving and receiving lessons, lectures, tutoring, instructions of any kind, or any other services relating to instructions in the operation of a motor vehicle.

B. The date, type, and duration of all lessons, lectures, tutoring, and instruction including the name of the instructor giving such lessons and the tag number, make and model of vehicle used to conduct the road test.

C. A duplicate copy of every contract entered between the school and every person taking lessons, lectures, tutoring, and instructions relating to the operation of a motor vehicle. The original contract must be given to the student taking instructions and a duplicate thereof must be retained by the school.

XI. Insurance and Safety

11.1 No school vehicle certificate will be issued unless and until: The licensee has filed with the Department evidence of liability insurance coverage, by a company authorized to do business in this state, in an amount of at least \$25,000 payable in the case of bodily injury to, or death of, any one person in any one accident, and of at least \$50,000 payable in the event of bodily injuries, or the death of, two or more persons in any one accident.

11.2 The driving school shall furnish evidence of such insurance coverage in the form of a certificate from an insurance carrier, which evidence shall stipulate that the Department shall be notified when the policy expires or is cancelled, and shall include the make, model, and motor or serial number of each vehicle used for instructional purposes.

11.3 If the licensee is covered under a fleet plan and another vehicle is added to the fleet, the insurance company must notify the Department that the unit has been added.

11.4 Every motor vehicle used for driver training shall have a current Louisiana license plate and be not more than five years old, with special equipment as follows: operable extra brake and extra clutch pedals where vehicle has conventional shift, rear view mirror placed on inside of motor vehicle, two outside rear view mirrors, one on each side of the vehicle, and cushions for the proper seating of students when necessary.

XII. Program of Instruction

12.1 Theoretical instruction shall include subject matter relating to the rules and regulations of the road, safe driving practices, pedestrian safety, and the driver's responsibility.

12.2 Practical instruction shall include the demonstration of, and actual instructions in, stopping, starting, shifting, turning, backing, parallel parking, and steering in a dual controlled vehicle which meets the Department's requirements.

XIII. Instructor's Certificate

13.1 All applications for, or renewals of, an instructor's certificate must be accompanied by a statement from the owner (unless the owner is making application) of the driving school listing the applicant's name, address, and that said person is or will be employed by the school.

13.2 All applicants must be Louisiana residents.

13.3 The instructor's certificate must be carried in the vehicle at all times while driving instructions are being given.

13.4 Every instructor in a school shall be a citizen of the United States, at least twenty-one years of age, and a person of good moral character.

13.5 Every instructor shall have a valid chauffeur's license issued by the State of Louisiana before making application for an instructor's certificate.

13.6 Every instructor must maintain during any consecutive three-year period, a driving record which does not include more than one chargeable accident. Any violation resulting in suspension or revocation will automatically cause the cancellation of the instructor's certificate.

13.7 All new instructors must pass a special written test, a vision test, and a road rules test, prepared and administered by the Department of Public Safety, embracing subject matter pertinent to the care, operation, road signs, laws affecting traffic of the motor vehicle. The contents of this examination shall be taken from the Louisiana Driver's Handbook, Louisiana Motor Vehicle Code, and the Rules and Regulations Governing Commercial Driving Schools.

13.8 The visual acuity of an instructor cannot be worse than 20/40 in one eye and 20/50 in the other, or 20/30 in each eye separately with or without glasses. An instructor must have two functional eyes, hands, and feet.

13.9 No person shall perform any instructional duties as an owner or employee of any school or branch thereof unless such person shall meet the qualifications for instructors as herein provided. All instructional personnel must possess a valid instructor's permit issued by the Department of Public Safety.

XIV. General Regulations

14.1 The applicant or licensee must not have been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, or immoral conduct.

14.2 No parish official, his agent or employee whose duties relate in any way to the issuance of state driver's licenses, nor any employee of the Department of Public Safety, or the spouse of any employee, shall be connected in any capacity whatsoever with any

commercial driving school.

14.3 The school shall agree to permit the Department and its representatives to inspect the school and shall make available to the department, at any time when requested to do so during normal working hours, full information pertaining to any or all items of information contained in the application form, and shall permit the photocopying of school records.

14.4 A school shall not use any name other than its licensed name for advertising or publicity purposes, nor shall a school advertise or imply that it is "supervised," "recommended," or "endorsed" by the Department of Public Safety.

14.5 No commercial driving school shall advertise in any way until such time as the school is properly licensed by the Department of Public Safety. Any advertisement in the telephone directory or other publications that are considered permanent shall first be approved by the Department.

14.6 The driving school must exhibit on all motor vehicles licensed by the Department a sign identifying the name of the school. This identification may be painted on the front, side or rear of the motor vehicle in letters at least two inches high. If the identification is not painted on the rear of the motor vehicle, a portable identifying sign must be attached securely to the rear bumper, or on the top of the motor vehicle in such a manner as to be visible from the rear. If driving instructions are given at night, the vehicle must have reflectorized signs.

14.7 No commercial driving school instructor, employee, or agent may assist any student during the taking of a state driver's license examination.

14.8 No commercial driving school instructor, employee, or agent will be permitted to loiter in or on the premises rented, leased or owned by the Department of Public Safety.

14.9 No commercial driving school instructor, employee, or agent shall be permitted to solicit any individual on premises rented, leased, or owned by the Department of Public Safety for the purpose of enrolling them in any commercial driving school.

14.10 No agent shall solicit or act in behalf of any driving school without being properly licensed by the Department.

XV. Revocation or Suspension

15.1 Any license or certificate may be suspended or revoked by the Department. The Department may suspend or revoke any license or certificate if it is found that:

A. The licensee has violated any provision of the rules and regulations of the Department.

B. The applicant or licensee has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, or immoral conduct.

C. The applicant or licensee has knowingly presented to the Department false or misleading information relating to licensing.

D. The applicant or licensee, or any instructor or agent is addicted to the use of alcoholic liquors, morphine, cocaine, or other drugs having similar effect, or is incompetent.

E. The owner or licensee has failed or refused to permit the Department or its representatives to inspect the school or class, or motor vehicle which was used to teach its students; or failed to provide full information and disclosure pertaining to any or all items contained in an application or to its program.

F. The applicant has failed or refused to submit to the Department an application for license in the manner prescribed by the Department.

G. A licensed instructor, agent or owner has failed to produce his license when requested to do so by officials of the Department.

H. An applicant or licensee has failed to maintain adequate standards of instruction or qualified instructors or equipment sufficient to maintain the school or classes.

I. The licensee is employing instructors, teachers, or agents who have not been approved and licensed by the Department.

J. There has been a change in ownership of the school without immediately advising the Department.

K. An instructor, agent, or owner has aided or assisted a person in obtaining a driver's license by fraudulent practice.

L. The licensee or instructor is instructing students contrary to the restrictions imposed on the students' drivers' licenses.

M. Unauthorized possession of application forms or questionnaires used by the Department of Public Safety in conducting drivers' license examinations.

Colonel Malcolm Millet, Secretary
Department of Public Safety

RULES

Department of Revenue and Taxation

The following regulations pertaining to Louisiana Corporation Franchise Tax shall be effective for all taxable periods commencing on or after January 1, 1980.

Corporate Franchise Tax

Rule 601 Imposition of Tax

601.1 Except as specifically exempted by R.S. 47: 608, R.S. 47: 601 imposes a corporation franchise tax in addition to all other taxes levied by any other statute on all corporations, joint stock companies or associations, or other business organizations organized under the laws of the State of Louisiana which have privileges, powers, rights or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as domestic corporations, for the right granted by the laws of this state to exist as such an organization and on both domestic and foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state or actually does business in this state through exercising or enjoying each and every act, power, right, privilege or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

601.2 With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the State of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities and the imposition of the same duties, restrictions, penalties and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege or the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties and interest where applicable, which would be imposed on a domestic corporation.

601.3 Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges or immunities granted to business corporations organized under the laws of this state under the provisions of R.S. 12:41 are subject to

and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

A. The power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law.

B. Without limiting the grant of power contained in A. above, every corporation shall have the authority to:

1. Have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument.

2. Have perpetual existence, unless a limited period of duration is stated in its articles of incorporation.

3. Sue and be sued in its corporate name.

4. In any legal manner, acquire, hold, use and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles.

5. In any legal manner to acquire, hold, vote and use, alienate and encumber, and deal in and with, shares, memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals or governmental entities.

6. Make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals or governmental entities, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by hypothecation of any kind of property.

7. Lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments.

8. Conduct business and exercise its powers in this state and elsewhere as may be permitted by law.

9. Elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive and benefit plans for any or all of its directors, officers and employees; and establish stock bonus plans, stock option plans and plans for the offer and sale of any or all of its unissued shares, or of shares purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf, which plans: (a) may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto, and (b) may provide for the payment of the price of such shares in installments.

10. Make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation.

11. Provide indemnity and insurance pursuant to R.S. 12:83.

12. Make donations for the public welfare, or for charitable, scientific, educational or civic purposes.

13. In time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

601.4 Thus, the mere ownership of property within this state, or in interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

601.5 The tax imposed by this Section shall be at a rate of one dollar fifty cents for each one thousand dollars or a major fraction thereof on the amount of its capital stock, determined as provided in R.S. 47:604. Its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the amount of such capital stock, surplus and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers and immunities within this state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.

601.6 Corporations to which the imposition of the franchise taxes imposed by this Section do not apply are set forth in R.S. 47:608.

601.7 The accrual, payment and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

601.8 In the case of any domestic or foreign corporation subject to the tax herein imposed the tax shall not be less than ten dollars per year in any case.

Rule 602 Determination of Taxable Capital

602.1 Every corporation which is subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607 and the rules and regulations issued thereunder by the Secretary of Revenue and Taxation.

602.2 Holding Corporation Deduction. Any corporation which owns at least eighty percent of the capital stock of a banking corporation organized under the laws of the United States or of the State of Louisiana may deduct from its total taxable base, determined as provided in Subsection A hereof, and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in Subsection A hereof.

602.3 Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 which owns at least eighty percent of the voting power of all classes of the stock in another corporation (not including non-voting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602A, R.S. 47:606 and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606B. The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least eighty percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than eighty percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606B. In no case shall a reduction be allowed with respect to revenues from the subsidiary.

Rule 603 Borrowed Capital

603.1 General. The tax imposed by this Chapter, as described in R.S. 47:601, is based on that portion of the taxpayer's capital stock, surplus and undivided profits, and borrowed capital, as defined herein, which is attributable to Louisiana under the provisions of R.S. 47:606 and R.S. 47:607. The intent of the statute is to tax all capital employed in this state whether it be from contribution of capital by stockholders, retained earnings or surplus, or, within the limitations set forth in defining borrowed capital contained in

R.S. 47:603, from any other source from which capital may be obtained. The relationship of capital stock, surplus, undivided profits and borrowed capital to each of those elements of taxable base is immaterial in determining the amount thereof to be subjected to the tax.

603.2 All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification or limitation contained in the statute, must be included in total taxable base. No amount of indebtedness of a corporation may be excluded from taxable base except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

603.3 The definition of borrowed capital contained in R.S. 47:603, and the exclusions, qualifications and limitations provided by that definition differ depending upon the relationship of the debtor and the creditor. In the case of amounts owed by a corporation to a creditor who does not meet the definition of an "affiliated corporation" contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Conversely, indebtedness which has a maturity date of less than one year from the date the indebtedness was incurred may be eliminated from borrowed capital, but only to the extent that the debt was actually paid within one year from the date it was incurred. Note that determination of the one year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined at any subsequent time by reference to the maturity date measured from the subsequent date. To illustrate this principle, only so much of long term indebtedness which has a maturity date of less than one year and which is actually paid within one year from the original date the indebtedness was incurred may be eliminated from borrowed capital. The unpaid balance of the long term debt shall constitute borrowed capital even though some portions of the debt may become due and payable immediately. Thus, the entire amount of a long term debt not having a maturity date of less than one year which was not paid within the one-year period constitutes borrowed capital even though it may constitute the current liability for payment on the long term debt.

603.4 The fact that indebtedness which had a maturity date of more than one year from the date it was incurred was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital, and all such amounts shall be included in the taxable base.

603.5 For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred with respect to any indebtedness which was extended, renewed or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed or refinanced indebtedness was incurred. All such indebtedness wherein the debtor and the creditor remained the same on the extended, renewed or refinanced debt shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, the date the original debt was incurred. In instances of debts which are extended, renewed or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be construed to be new indebtedness and the one year controlling factor will be measured from the date that identity of the creditor changed.

603.6 For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred with respect to the amount due on a mortgage on real

estate purchased subject to the mortgage, the date the indebtedness was originally incurred shall be the date upon which the property subject to the mortgage was acquired by the corporation.

603.7 In the case of amounts owed by a corporation to a creditor who meets the definition of any "affiliated corporation" contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through stock ownership, directorate control, or any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation. It is not necessary that control exist between the corporations but only that policy be influenced in any manner whatsoever by another corporation or through the same channels. Clearly, any corporation subject to the provisions of R.S. 47:606B and the regulations issued thereunder, constitutes an affiliated corporation for purposes of this paragraph, and any indebtedness between such corporations constitutes borrowed capital, to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products or services furnished to a corporation for which indebtedness is incurred, except as provided in this sub-part with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; In the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.

603.8 To illustrate this principal, assume:

Corporation A - Parent of B, C, D and E.

Corporation B - Nonoperating, funds flow conduit, owning no stock in C, D or E.

Corporation C - Other corporation.

Corporation D - Other corporation.

Corporation E - Other corporation.

603.9 Any funds furnished by the parent A, to either B, C, D, or E constitutes either a contribution to capital of the receiving corporation or an advance to the corporation which must be attributed to Louisiana by the parent, based on the corporation franchise tax ratio of the receiving corporation under the provisions of R.S. 47:606B. With respect to the receiving corporation, the advances, whether considered to be in the nature of loans from the parent or a further contribution to capital of the receiving corporation, must be included in taxable base.

603.10 Any funds supplied by D or E to C, whether channeled through A or B or not, would constitute borrowed capital to C, or, if channeled through A, would constitute either borrowed capital or contributed capital. In either case, the funds must be included in taxable capital of C. In the absence of the formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A; routing of the funds does not change their character in the hands of C. Whenever the funds are channeled by D or E through B only, they constitute borrowed capital to B, which also has an advance to C which constitutes borrowed capital to C. In all such financing arrangements, the multiple transfers of funds are held to constitute the conduct of the business of the corporation involved and a part of the capital required for that purpose. In the case of transfers of funds from D or E directly to C, the amounts constitute borrowed capital to C.

603.11 For purposes of determining whether and to what extent indebtedness to an affiliate constitutes borrowed capital substantially used to finance or carry on the business of the debtor corporation, which indebtedness was created through normal trading accounts, due consideration shall be given to the amount of such indebtedness in relationship to capitalization of the debtor and its ability to have incurred a similar amount in indebtedness, equally payable as to terms and period of time within which payable, had such trading or indebtedness involved unrelated parties.

603.12 In the case of indebtedness between two corporations

wherein each is indebted to the other, to the extent that the indebtedness which would constitute borrowed capital is the same type of indebtedness and is equally demandable and payable, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

603.13 With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

603.14 Exclusions from Borrowed Capital. Federal, State and local taxes. R.S. 47:603 provides that certain indebtedness or an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to federal, state, and local taxes, the only amounts which may be excluded are the tax accruals for the amount determined to be due to the taxing authority or taxes due and not delinquent for more than thirty days. In the cases of reserves for taxes, the liability for which has been accrued, only so much of the reserve as represents the liability for taxes for the accrual period may be excluded; any amount of the reserve balance in excess of the amount actually due for the accrual period shall be included in taxable base since the excess does not constitute a reserve for a definitely fixed liability. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in taxable base. Any taxes which are due and are delinquent more than thirty days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

603.15 Voluntary deposits. The liability of a taxpayer to a depositor created as the result of advances, deposits or sums of money having been voluntarily left on deposit with him or her to facilitate the transaction of business between the parties, which deposits have been segregated by the taxpayer and are not used in the conduct of his business, shall not constitute borrowed capital. Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose shall have an effect on the amount of such liability which shall be excluded from borrowed capital.

603.16 Deposits with Trustees. To the extent that cash or securities have been deposited with a trustee or other custodian or segregated into a separate or special account whenever such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations, an amount equivalent to the principal amount of such cash or securities may be excluded from the indebtedness which would otherwise constitute borrowed capital. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

603.17 Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be deducted from the dividend payable which would otherwise constitute borrowed capital.

603.18 Receiverships, bankruptcies, and reorganization. In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of a petition for receivership, bankruptcy or reorganization under the bankruptcy law, after such allowance or approval by the court of

the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval to the extent that it is permitted to make such payments under terms of the receivership, bankruptcy or reorganization proceedings.

Rule 604 Capital Stock

604.1 For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the Secretary of Revenue and Taxation to reflect the true value of the stock; in no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

604.2 In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange except as provided in the following paragraph.

604.3 In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least eighty percent of the total voting power of all voting stock and at least eighty percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

604.4 In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

604.5 Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares and any certificates or options convertible into shares.

Rule 605 Surplus and Undivided Profits

605.1 Determination of Value. For the purpose of determining the tax imposed by R.S. 47:601 there are statutory limitations on both the maximum and minimum amounts which shall be included in taxable base with respect to surplus and undivided profits.

605.2 The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accruals of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

605.3 Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus, and to its related asset account for property factor purposes, only in those cases in which all investments are recorded under the principles of equity accounting. Such reductions in the value of any particular

investment below cost thereof to the taxpayer will not be allowed except in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment; in no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

605.4 In any instance in which an asset is required to be included in the property factor under the provisions of R.S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra-account, such as, but not limited to, an account to record unrealized gain from an installment sale, all such contra-accounts shall be included in taxable base, except to the extent such contra-accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605A and Rule 605.9(a), (b), (c) and (d). (See Rule 606.35 for required adjustments to assets with respect to any contra-account or reserve which is not included in taxable base.)

605.5 The minimum under the statute is, however, subject to examination and revision by the Secretary of Revenue and Taxation and the recorded book value of surplus and undivided profits may be increased as the result of such examination to the extent found necessary by the Secretary to reflect the true value of surplus and undivided profits. The Secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer.

605.6 The maximum value which may be placed on surplus and undivided profits in any revision by the Secretary of Revenue and Taxation shall in no instance exceed an amount which would constitute actual cost of any asset, the recorded value of which is the subject of the examination. A taxpayer may in his own discretion reflect values in excess of cost. That option is not extended to the Secretary in any examination of recorded cost; any revisions must be limited to actual cost of assets involved in the revaluation of surplus.

605.7 In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept the Secretary of Revenue and Taxation shall, except as provided in the following paragraphs, construe cost of any asset to be fair market value of the asset received in exchange therefor.

605.8 Exception to the above stated rules will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136 and 138.

605.9 In addition to the amounts to be included in the franchise tax base determined in the manner heretofore described, there must also be included all reserves other than those for:

A. Definitely fixed liabilities.

B. Reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayers.

C. Established valuation.

D. Bad debts.

605.10 No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is partially or fully

funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Reserves for fixed liabilities shall be included in taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

605.11 Whenever a taxpayer is prohibited from recording in his or her books the full amount of depreciation sustained because of regulations of a governmental agency which restricts the amount of depreciation which can be recorded, the Secretary of Revenue and Taxation may permit the taxpayer to add to his or her book reserve and deduct from surplus and undivided profits the difference in depreciation sustained and the amount permitted to be recorded by the regulating governmental agency. The addition to the reserve and reduction in surplus and undivided profits in such cases will be allowed by the Secretary only upon disclosure by the taxpayer of sufficient information to enable the Secretary to verify the reasonableness of the depreciation claimed to have been sustained and a citation by the taxpayer of the specific regulation of the governmental agency which prohibits the recording of the full amount of depreciation sustained.

605.12 In addition to the four classifications of reserves which may be excluded from taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from taxable base.

Rule 606 Allocation of Taxable Capital

606.1 General Allocation Formula. Every corporation subject to the tax imposed by R.S. 47:601 must determine the extent to which its entire issued and outstanding capital stock, determined as required by R.S. 47:604 and the regulations issued thereunder, its surplus and undivided profits, determined as required by R.S. 47:605 and the regulations issued thereunder, and its borrowed capital, determined as required by R.S. 47:603 and the regulations issued thereunder, are employed in the use of its franchise in this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding stock, surplus, and undivided profits, and borrowed capital by the ratio obtained through computing the arithmetical average of the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana, to total net sales made to customers in the regular course to business and total other revenues and the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever they are situated or used.

606.2 Net Sales and other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana and upon which the tax imposed by R.S. 47:601 shall be based, are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products or merchandise are transferred to another party at one location in exchange for raw materials, products or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factors. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, sales of property other than stock in trade shall not be included in the

revenue factor since they generally do not meet the specific requirements that only sales made to customers and that the sales be made in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute "other revenue" so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

606.3 Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer.

606.4 Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer-vendor in his own equipment it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

606.5 Transportation by Purchaser. Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

606.6 The intent of the parties to the sale is of great importance. The intent and purpose of the purchaser may be determined directly or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time.

606.7 The transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser would be generally the same in nature and scope as that performed by the vendor or by a carrier. The statute sees no difference in an incident where the taxpayer in Houston ships F.O.B., Houston, to a purchaser in Baton Rouge, by common carrier, and a second incident where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

606.8 Sales to a Pipeline Company. The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and clearly is not related to the sale by the taxpayer.

606.9 Transportation of Natural Resources by a Public Carrier Pipeline. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. That is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in

different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation. That is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

606.10 In situations involving several deliveries in several different states, to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B and C, all in Texas, each sells to X refinery, in Louisiana, ten thousand barrels of crude oil, shipped F.O.B., Texas by public carrier pipeline:

A. If X refinery receives all thirty thousand barrels in Louisiana each taxpayer must attribute his total sale to Louisiana.

B. If X refinery receives ten thousand barrels in Louisiana, ten thousand barrels in Mississippi and ten thousand barrels in Alabama, it cannot be said by any taxpayer that all of his or her sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly.

C. To further illustrate, consider the incident of the three different taxpayers, A, B, C, in Texas, selling to three different purchasers, X refinery in Louisiana, Y refinery in Mississippi, and Z refinery in Alabama. The same rules governing the problems set forth above are applicable. If A sells to X refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y refinery and Z refinery.

D. If A sells to X, B to Y and C to Z, with X, Y and Z receiving a portion of their purchases in Louisiana, in Mississippi and Alabama, that portion received by X, Y and Z in Louisiana must be attributed to Louisiana by A, B and C.

606.11 Storage of Property After Purchase. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of temporary nature.

606.12 In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of transportation to another, or by natural conditions, the place of such storage is of no moment.

606.13 Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular kind or type of revenue received.

606.14 Revenue from transportation for others through pipelines. Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis

of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state total revenues for the transportation shall be attributed to Louisiana.

606.15 In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner:

A. Crude Petroleum and Liquid Petroleum Products. Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported both within and without Louisiana.

B. Natural Gas. Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet such gas is transported times the number of miles such gas is transported both within and without Louisiana.

C. Other Commodities. Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

606.16 In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state, shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the Secretary of Revenue and Taxation, in his or her discretion, may permit or require the use of any method deemed reasonable by him or her.

606.17 Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular kind or type of revenue received.

606.18 Revenues Derived From Transportation other than by Aircraft or Pipeline. Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The ratio for attributing revenue to Louisiana and the revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

A. In the case of the transportation of passengers, the transportation of one passenger a distance of one mile.

B. In the case of transportation of liquid commodities, the transportation of one barrel of the commodity a distance of one mile.

C. In the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile.

D. In any case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for

calculating total transportation charges for a distance of one mile. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

606.19 In any case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the Secretary of Revenue and Taxation, in his or her discretion, may permit or require the use of any alternate method deemed reasonable to him or her.

606.20 Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this section for the particular kind or type of revenue received.

606.21 Revenue from Services other than from Transportation. Revenue derived from services, other than from transportation, shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which personnel and property are material revenue producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following ratios:

A. The ratio that salaries and wages paid to personnel performing such services within Louisiana bears to total salaries and wages for personnel performing such services both within and without Louisiana.

B. The ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

C. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and does not include an element of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

606.22 Rents and Royalties from Immovable or Corporeal Movable Property. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties and other income from mineral leases, royalty interests, oil payments and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

606.23 In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require attribution of the revenue by use of a formula or formulas to properly consider the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, which are usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton-miles or traffic density in combination with miles traveled are the bases for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state

based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the period covered by the rental agreement.

606.24 Interest on Customers' Notes and Accounts. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state in which the customers are located, which shall be the place at which the goods were received by the purchaser or the services were rendered. For purposes of this section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

606.25 In those cases in which records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue to location of the customer, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

606.26 Other Interest and Dividends. Interest other than on customers' notes and accounts and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

606.27 "Used in connection with the taxpayer's business" is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

606.28 Credit instruments which are secured by mortgages shall be deemed to have a business situs at the location of the property subject to the mortgage.

606.29 "Commercial domicile" is in that state where management decisions are implemented, which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors meetings is not presumed to create commercial domicile at that location.

606.30 Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606B and the regulations issued thereunder.

606.31 Royalties or Similar Revenue From the Use of Patents, Trademarks, Secret Processes and Other Similar Intangible Rights. Royalties or similar revenue received for the use of patents, trademarks, secret processes and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

606.32 In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the royalties were received. When the royalty or similar revenue is not based on measurable units the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

606.33 Revenue from a parent or subsidiary corporation shall

be allocated as provided in R.S. 47:606B and the regulations issued thereunder.

606.34 All Other Revenues. All revenues which are not specifically described in R.S. 47:606A (1-10) shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

606.35 In the case of revenue from the performance of construction, repairs and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue from such performance, including all payments received by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

606.36 Revenues from partnership or joint venture operations shall be attributed to the state in which the partnership or joint venture has its principal place of operation.

606.37 Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer, reduced by reasonable reserves for depreciation and depletion actually sustained. In any case in which an asset, such as, but not limited to, prepaid debt discount and amounts set aside and segregated pursuant to a court order described in Rule 605.12, are permitted to serve as a reduction in an amount which would otherwise be included in taxable base, to the extent the asset is so used, it shall not be included in either the numerator or denominator of the property factor. Further, an amount reflected in a contra-account described in Rule 605 which is excluded from taxable base or which constitutes a reserve permitted to be excluded from taxable base shall be deducted from the asset to which it is associated in determining both the numerator and the denominator of the property factor. Both the values recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the Secretary of Revenue and Taxation when, in his or her opinion, such revision is found to be necessary in order to properly reflect the extent to which capital of the corporation is employed in the exercise of its charter. In no event, however, shall the revision by the Secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer.

606.38 Specific rules are contained in the governing statute which prescribes the state to which any asset will be allocated. Those rules are as follows:

A. Cash on Hand. Cash on hand shall be allocated to the state in which the cash is physically located.

B. Cash in Banks and Temporary Investments. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs; in the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commer-

cial domicile of the taxpayer is located. (See Rule 606.24-28 relative to "business situs" and "commercial domicile.")

C. Trade Accounts and Trade Notes Receivable. "Trade accounts and trade notes receivable" are construed to mean only those accounts and notes receivable resulting from the sales of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable, both to be determined in accordance with the rules set forth in Rule 606.24-28 for determining the place to which the revenue from such sales or from the performance of services shall be attributed. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states based upon delivery of the merchandise or performance of services, such accounts and notes may, by agreement between the Secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

D. Investments in and Advances to a Parent or Subsidiary. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606B and the regulations issued thereunder.

E. Notes and Accounts Other Than Temporary Cash Investments, Trade Notes and Accounts, and Advances to a Parent or Subsidiary. Notes and accounts receivable other than temporary cash investments, trade notes and accounts and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts and advances to a parent or subsidiary, shall be allocated to the state in which the commercial domicile of the taxpayer is located. (See Rule 606.24-28 relative to "business situs" and "commercial domicile.")

F. Stocks and Bonds Other Than Temporary Cash Investments and Investments in or Advances to a Parent or Subsidiary Corporation. Stocks and bonds other than temporary cash investments and investments in or advances to a parent or subsidiary corporation shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds, other than temporary cash investments and advances to a parent or subsidiary corporation, shall be allocated to the state in which the commercial domicile of the corporation is located. (See Rule 606.24-28 relative to "business situs" and "commercial domicile.")

G. Immovable and Corporeal Movable Property. Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated between the states in which used on the basis of a ratio which gives due consideration to extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

1. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles.

2. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles.

3. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles.

4. The value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to the total of all passenger car miles.

5. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles.

6. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles.

7. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to the total of all other truck miles.

8. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles.

9. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

10. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

11. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

12. The value of work and miscellaneous equipment shall be allocated to Louisiana on the basis of the ratio of track miles in Louisiana to total track miles in the case of a railroad, on the basis of the ratio of bank miles operated in the case of inland waterway transportation and on the basis of the ratio of route miles operated in Louisiana to total route miles in the case of truck and bus transportation. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one half of such mileage shall be considered Louisiana miles.

13. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

14. The value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of two hundred pounds.

15. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

16. All other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state.

H. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the Secretary of Revenue and Taxation, in his or her discretion, may permit or require the allocation of the value of the property on the basis of any method deemed reasonable by him or her.

I. All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the

particular asset and the type of business involved. In the case investments in or advances to a partnership or joint venture, the entire amount of such investments or advances shall be attributed to the state in which the partnership or joint venture has its principal place of operation.

606.39 Allocation of intercompany items. Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.

606.40 A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly or substantially owned by another corporation and whose management, business policies and operations are, howsoever, actually, wholly or substantially controlled by another corporation; such latter corporation shall be termed the parent corporation.

606.41 It shall be presumed that the ownership, either directly or indirectly, of more than fifty percent of the voting stock of any corporation constitutes control of that corporation's management, business policies and operations for purposes of application of this subsection, whether such control is documented by formal directives from the owner of such stock or not.

606.42 Other criteria which will be construed to constitute control of the management, business policies and operations of a corporation are:

A. The filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than fifty percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax and the minimum tax on preferential items of income.

B. The requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than fifty percent of its stock, its designee, or from another corporation in which the owning corporation owns more than fifty percent of the stock.

C. The requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than fifty percent of its stock, its designee, or to another corporation in which the owning corporation owns more than fifty percent of the stock.

D. Participation in a retirement, profit sharing, or stock option plan administered by, or participating in the profits or purchase of stock of, the corporation owning more than fifty percent of its stock.

E. The filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities and other financial information are reflected as a part of similar information of the corporation owning more than fifty percent of its stock, or

F. The presence on its board of directors of a majority of members who are on the board of directors, are officers, or employees of the corporation owning more than fifty percent of its stock.

606.43 In any case of a corporation which owns more than fifty percent of a corporation, the burden of proving that control of the management, business policies and operations of the latter does not exist, shall rest with the taxpayer.

606.44 For purposes of this subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to, or revenue from, a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606A and the regulations issued thereunder.

606.45 Minimum allocation; assessed value of real and personal property. The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

Rule 607 Railroad Corporations

607.1 General. Except in the case of domestic railroad corporations with foreign subsidiaries, railroad corporations are required to calculate the amount of corporation franchise tax due in the same manner as any other corporation.

607.2 Domestic corporations with foreign subsidiaries. In the case of a railroad corporation organized only under the laws of the State of Louisiana having one or more subsidiaries in which the Louisiana corporation owns eighty percent or more of the capital stock and funded debt, each calculated separately, of such subsidiary corporation which is organized under the laws of a state other than Louisiana, such domestic corporation shall file a consolidated corporation franchise tax return which includes the entire capital stock, surplus and undivided profits and borrowed capital of the corporation and such foreign subsidiaries. The numerator of the revenue factor of the attribution formula shall include the entire amount of revenue derived from Louisiana sources determined as provided in R.S. 47:606A of the consolidated group, and the denominator shall include all revenue of the consolidated group, both within and without Louisiana. The numerator of the property factor of the attribution formula shall include all property situated in Louisiana of the consolidated group determined as provided in R.S. 47:606A, and the denominator shall include all property of the consolidated group wherever situated.

Rule 608 Exemptions

608.1 General. Corporations organized for the purposes described in R.S. 47:608 (1-15) are fully exempt from the payment of the Louisiana corporation franchise tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax (federal, state or local), or whether or not they may be specifically exempted from all taxes under laws of the state in which they were organized, chartered or domiciled.

608.2 A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in Rule 608.8D and E, as limited by Rule 608.11A and B; must file a verified application for exemption with the Secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the Secretary may deem necessary from any particular applicant, the following:

- A. Character of the organization.
- B. Purpose for which organized.
- C. Its actual activities.
- D. Ownership of stock in the corporation.
- E. The source of its income.
- F. The disposition of its income.
- G. Whether or not any of its income is credited to surplus,

and if so, the intended future use of the retained amounts.

H. Whether any of its income may inure to the benefit of any shareholder or individual.

I. A copy of the charter or articles of incorporation.

J. By-laws of the organization.

K. The latest statement of the assets, liabilities, receipts and disbursements.

L. Any other facts relating to its operations which affect its right to exemption from the tax.

M. A copy of the ruling or determination letter issued by the Federal Internal Revenue Service.

608.3 The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of this section for which the exemption is sought.

608.4 Once the Secretary has issued a ruling or determination letter that an organization, except those described in Rule 608.8D and E, as limited by Rule 608.11A and B, meets the exemption requirements, there is no mandatory provision that it make a return of income or any further showing that it meets the specified requirements, unless it changes the character of its organization or operations. The Secretary reserves the right, however, to review any exemption granted by him or her, at his or her discretion, and may require the filing of whatever information may be deemed necessary to permit proper evaluation of the exempt status.

608.5 No exemption will be granted to a corporation other than those described in Rule 608.8D and E, as limited by Rule 608.11A and B, organized and operated for the purpose of carrying on a trade or business for profit even though its entire income may be contributed or distributed to another corporation or organizations which are themselves exempt from the tax.

608.6 An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the Secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

608.7 A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

608.8 Exempt Corporations. Labor, agricultural or horticultural organizations which are exempt from the corporate franchise tax are those corporations which:

A. Have no net income inuring to the benefit of any stockholder or member.

B. Are educational or instructive in character.

C. Have as their objects the betterment of conditions of those engaged in such pursuits, improvements of the grade of their respective occupations.

D. At least seventy-five percent of the beneficial ownership is held by or for the benefit of members, or the spouses of members, of a family, and at least eighty percent of total gross income is from the production, harvesting and preparation for market of products produced by the corporation.

E. At least eighty percent of total gross income of the corporation is derived from the production, harvesting and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed five hundred thousand dollars for the previous year.

608.9 For purposes of this subsection, "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources (excluding minerals), or raising livestock, poultry, fish or crawfish.

608.10 Thus the following types of organizations (but not limited thereto) which meet the requirements of Section 608.8 A, B, and C above, will be deemed to be exempt from the tax:

A. An organization engaged in the promotion of artificial

insemination of livestock.

B. A nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce.

C. A nonprofit organization of persons engaged in raising fish (or crawfish) as a cash crop on farms which was formed to encourage better and more economical methods of fish farming and to promote the interest of its members.

D. Parish fairs and similar organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

608.11 Corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in Rule 608.8D and E, subject to the following limitations:

A. Any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products produced by them and who has at least eighty percent of its gross income from such pursuits are exempt from corporation franchise tax, but only if seventy-five percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this paragraph a single family shall consist of brothers, sisters, spouses, ancestors and lineal descendants, including those legally adopted.

B. Any corporation engaged in the production, harvesting and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from the corporation franchise tax, but only if:

1. At least eighty percent of its income is from such activity; and,

2. The total gross income of the corporation for the previous year did not exceed five hundred thousand dollars.

608.12 Mutual savings banks, national banking corporations and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

608.13 Banking corporations organized under the laws of the State of Louisiana which are required by other laws of this state to pay a tax for their shareholders or whose shareholders are required to pay a tax on their shares of stock are exempt.

608.14 Banking corporations other than those described in Rules 608.12 and 13 above, organized under the laws of a state other than the State of Louisiana are not exempt from the tax.

608.15 Fraternal beneficiary societies, orders or associations are exempt from tax only if operated under the "lodge system" or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like. In order to be exempt it is necessary that the organization have an established system for the payment of life, sick, accident or other benefits to its members or their dependents.

608.16 Cemetery companies are exempt from the corporation franchise tax if:

A. They are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale.

B. They are not operated for profit.

C. They are not permitted by their charter to engage in any business not necessarily incident to burial purposes.

D. No part of their net earnings inures to the benefit of any private shareholder or individual.

608.17 For purposes of this subsection a nonprofit corporation engaged in the operation of a crematory who otherwise meets the exemption qualifications set forth herein will be deemed to be an exempt cemetery company.

608.18 Such companies may issue preferred stock entitling the

holders to dividends at a fixed rate not exceeding eight per cent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefore are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

608.19 Community chests, funds or foundations - Organizational and operational tests. In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

608.20 The term "exempt purpose or purposes" as used in this section, means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in Rule 608.36 et seq.

608.21 Organizational test. In general, an organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles"), as defined in Rule 608.26, limit the purposes of such organization to one or more exempt purposes, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

608.22 In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which by the terms of its articles, is formed "for literary and scientific purposes" within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes," such articles ordinarily shall be sufficient for purposes of the organizational test (see Rule 608.30 for rules relating to construction of terms).

608.23 An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles "to engage in a manufacturing business," or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of R.S. 47:608(5)."

608.24 In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

608.25 An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and

as a part of its application for exemption.

608.26 Articles of organization. For purposes of this section, the terms "articles of organization" and "articles" include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

608.27 Authorization of legislative or political activities. An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to:

A. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda; or,

B. Directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or,

C. Have objectives and to engage in activities which characterize it as an "action" organization as defined in Rule 608.34.

608.28 The terms used in Rule 608.27A, B, and C, shall have the meanings provided in Rule 608.34.

608.29 Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provides that its assets would, upon dissolution, be distributed to its members or shareholders.

608.30 Construction of Terms. The law of the state in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under state law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the Attorney General, or other evidence of applicable state law.

608.31 Applicability of the organizational test. A determination by the Secretary that an organization is described in R.S. 47:608(5) and exempt under R.S. 47:608 will not be granted unless such organization meets the organizational test prescribed by this paragraph. If an organization has been determined by the Secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this paragraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph.

608.32 Operational test — primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

608.33 Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

608.34 "Action" organizations. An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions A, B, or C of this paragraph:

A. An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by

propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

1. Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation.

2. Advocates the adoption or rejection of legislation. The term "legislation," as used in this subdivision, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

B. An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

C. An organization is an "action" organization if it has the following two characteristics:

1. Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation.

2. It advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

608.35 An "action" organization, described in Rule 608.34, though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

608.36 Exempt purposes — in general. An organization may be exempt as an organization described in R.S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes: (a) religious, (b) charitable, (c) scientific, (d) literary, (e) educational, or (f) for the prevention of cruelty to children or animals.

608.37 An organization is not organized or operated exclusively for one or more of the purposes specified in Rule 608.36 unless it serves a public rather than a private interest. Thus, to meet the requirement of Rule 608.36, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, its creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

608.38 Since each of the purposes specified in Rule 608.36 is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable."

608.39 Charitable defined. The term "charitable" is used in R.S. 47:608(5) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial

decisions. The meanings of the term include: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and the promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tension, to eliminate prejudice and discrimination, to defend human and civil rights secured by law, or to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being disqualified as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such an organization from qualifying under R.S. 47:608(5) so long as it is not an "action" organization of any one of the types described in Rule 608.34.

608.40 Educational defined. The term "educational," as used in R.S. 47:608(5), relates to the instruction of training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

608.41 Examples of educational organizations. The following are examples of organizations which, if they otherwise meet the requirements of R.S. 47:608(5), are educational:

A. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

B. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

C. An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

D. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

608.42 Scientific defined. Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see Rule 608.37). Therefore, the term "scientific," as used in R.S. 47:608(5), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific;" and the nature of particular research depends upon the purpose which it serves. For research to be "scientific," within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic," as contrasted with "applied" or "practical."

608.43 Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

608.44 Scientific research will be regarded as carried on in the public interest:

A. If the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis.

B. If such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political subdivision thereof.

C. If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

1. Scientific research carried on for the purpose of aiding in the scientific education of college or university students.

2. Scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public.

3. Scientific research carried on for the purpose of discovering a cure for a disease.

4. Scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area, or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision C will be regarded as being in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

608.45 An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a "scientific" organization, if:

A. Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in R.S. 47:608(5).

B. Such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For the purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as having been made available to the public if the granting of such exclusive right was the only practicable manner in which the patent, copyright, process, or formula could have been utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of Rule 608.44) only if it is carried on for a person described in Rule 608.44B, or if it is scientific research described in Rule 608.44C.

608.46 The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research.

608.47 Organizations carrying on trade or business. An organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or

nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

608.48 An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

608.49 Business leagues, chambers of commerce, real estate boards, and boards of trade. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business, as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, or a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from the tax.

608.50 Civic leagues and local associations of employees. Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting, in some manner, the common good and general welfare of the people of the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. A "social welfare" organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" set forth in Rule 608.39 and is not an "action organization" as set for in Rule 608.34.

608.51 The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. (See, however, R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this section even though it is an "action" organization described in Rule 608.34, if it otherwise qualifies under this section.)

608.52 Local associations of employees. Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

A. Membership of such an association be limited to the employees of a designated person or persons in a particular municipality.

B. The net earnings of the association be devoted exclusively to charitable, educational or recreational purposes.

C. Its activities are confined to a particular community, place or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character.

D. No substantial part of the activities of the association is

carrying on propaganda, or otherwise attempting to influence legislation.

608.53 Social Clubs. The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreational and other nonprofitable purposes. It does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

608.54 A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

608.55 Local benevolent life insurance associations, mutual, irrigation and telephone companies and like organizations. In order to be exempt under the provisions of R.S. 47:608(9), an organization of the type specified must receive at least eighty-five percent of its income from amounts collected from members for the sole purpose of meeting losses and expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of insurance and maintains investments from which more than fifteen percent of its income is derived, it is not entitled to an exemption. An organization may be entitled to exemption, although it makes advance assessments for the sole purpose of meeting future losses and expenses, provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

608.56 The phrase "of a purely local character" applies only to benevolent life insurance associations and organizations exempt on the grounds that they are organizations similar to a benevolent life association, and not to the other organizations specified in R.S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective, however, of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

608.57 Insurance corporations. Insurance companies which pay, or which are required to pay, a premium tax under the provisions of Title 22 of the Louisiana Revised Statutes of 1950 are exempt from the corporation franchise tax.

608.58 Farmers' and fruit growers' cooperatives. Farmers cooperative marketing associations engaged in marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers or the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if

an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

608.59 An association which has capital stock will not for such reason be denied an exemption if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all of such stock (with the exception noted below) is owned by producers who market their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association is unable, because of a constitutional restriction or prohibition or other reason beyond the control of the association, to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

608.60 The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who shares in the profits of a farmers' cooperative marketing association, and is entitled to participate in the management of the association, must be regarded as a member of such association.

608.61 Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term "supplies and equipment" includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this rule. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed fifteen percent of the value of all its purchases.

608.62 In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

608.63 To be entitled to exemption, an association must not

only be organized but actually operated in the manner and for the purposes specified in R.S. 47:608(11). Cooperative organizations engaged in activities dissimilar from those of farmers, fruit growers, and the like, are not exempt.

608.64 Corporations organized to finance crop operations. A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R.S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this paragraph.

608.65 Corporations organized for the exclusive purpose of holding title to property. Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

A. The entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for religious purposes, charitable purposes, scientific purposes, literary purposes, or educational purposes.

B. No part of the net earnings of which inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under A, above, whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

608.66 Corporations whose articles of incorporation or bylaws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property and turning over the entire amount of its income, after expenses to the specified types of organizations are not exempt.

608.67 Voluntary employees' beneficiary associations. The exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

A. The organization is an association of employees.

B. Membership of the employees in the association is voluntary.

C. The organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents.

D. No part of the net earnings of the organization inures, other than by payment of the benefits described in subparagraph C, above, to the benefit of any private shareholder or individual.

E. At least eighty-five percent of the income of the organization consists of amounts collected from members for the sole purpose of making such payments of benefits and meeting expenses.

608.68 Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14) for purposes of Rule

608.67 — Association of employees. An organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, the employees of one industry, or the members of one labor union. Although membership in such an association need not be offered to all of the employees of a common working unit, membership must be offered to all the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as, a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a

requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as, a requirement that a member meet a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this subdivision. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of Rule 608.69) or who are not members of the common working unit, provided that these individuals constitute no more than ten percent of the total membership of the association.

608.69 Employee definition. The term "employee" has reference to the legal and bona fide relationship of employer and employee. The term "employee" also includes:

A. An individual who would otherwise qualify for membership under Rule 608.69, but for the fact that he or she is retired or on leave of absence.

B. An individual who would otherwise qualify under Rule 608.69, but, subsequent to the time he qualifies for membership, becomes temporarily unemployed. The term "temporary unemployment" means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under Rule 608.69 if during a period of temporary unemployment, he performs services as an independent contractor or for another employer.

C. An individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the usual common law rules applicable in determining the employer-employee relationship.

608.70 Explanation of voluntary association. An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective bargaining agreement which validly requires membership in the association.

608.71 Life, sick, accident, or other benefits — In general. A voluntary employees' beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or noncash benefits.

608.72 Life benefits. The term "life benefits" includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. "Life benefits" may be payable to any designated beneficiary of a member.

608.73 Sick and accident benefits. A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of a member, or his or her dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he or she expends because of illness or injury, or for premiums which he or she pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form such as, for example, benefits in the nature of clinical care, services by visiting nurses and transportation furnished for medical care.

608.74 Other benefits. The term "other benefits" includes only benefits furnished to a member or his or her dependents which are similar to life, sick, and accident benefits. A benefit is similar to a life, sick, or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered "other benefits" since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are "other benefits" since they protect the employee in the event of interruption of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not "other benefits" since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term "other benefits" does not include the furnishing of automobile or fire insurance, or the furnishing of scholarships to the member's dependents.

608.75 Inurement to the benefit of any private shareholder or individual. No part of the net earnings of the organization may inure to the benefit of any private shareholders or individual other than through the payment of benefits described in Rules 608.71-74. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of Rules 608.71-74 even though the benefit is of the type described therein. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement of such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed receive unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify him for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

608.76 The income test — meaning of the term "income." The requirement of R.S. 47:608(14) that eighty-five percent of the income of a voluntary employees' beneficiary association consists of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in Rules 608.71-74 (including meeting the expenses of the association) assures that not more than a limited amount (fifteen percent) of an association's income is from sources, such as investments, selling goods and performing services, which are foreign to what must be the principal sources of the association's income, i.e., the employees. Therefore, the term "income" as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term income does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as dues, qualifying the member to receive an

allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such member. However, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contributed to the association by the employer of the members are not considered gifts or donations.

608.77 Record keeping requirements. In addition to such other records which may be required, every organization described in R.S. 47:608(14) must maintain records indicating the amount of benefits paid by such organizations to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amounts of each member's contributions.

608.78 A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

608.79 Teachers' retirement fund associations. Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

A. They are of a purely local character whose activities are confined to a particular community, place or district, irrespective of political subdivisions; if its activities are limited only by the borders of a state, it cannot be considered to be purely local in character.

B. Its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members and income from investments.

C. No part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

Rule 609 Accrual, Payment and Reporting of Tax

609.1 The corporation franchise tax imposed by this Chapter accrues on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus and undivided profits and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the Secretary of Revenue and Taxation on or before the fifteenth day of the fourth month following the month in which the tax accrues. In the case of a calendar year taxpayer, the tax accrues on January 1 and is payable to the Secretary on or before May 15. For purposes of this paragraph, "fiscal or calendar year" shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

609.2 Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the Secretary of Revenue and Taxation, which shall be signed by a duly authorized official of the corporation.

609.3 Whenever the Secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already accrued until the end of the new accounting period shall be determined by multiplying the ratio that the number of such month bears to twelve, times the tax computed for an annual period based on the previous year closing. All subsequent returns shall be prepared on the basis of the new accounting period.

609.4 In the case of a mere change in name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

609.5 For provisions relating to newly taxable corporations, see R.S. 47:611.

609.6 For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

609.7 In the case of mergers which have as an effective time and date twelve o'clock midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the revenue and property factors and the tax base of the merged corporation for its last accounting period in its factors and tax base for purposes of determining the amount of tax due for the year following the date of the merger.

609.8 If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax of ten dollars for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

Rule 611 Newly Taxable Corporation

611.1 Every corporation shall pay only the minimum tax of ten dollars in the first accounting period, or fraction thereof, in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum ten dollar tax is due for that accounting period. The tax accrues immediately upon the corporation becoming subject thereto.

611.2 The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period closing.

611.3 In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

Rule 612 Extension of Time for Filing Return and Paying the Tax

612.1 Whenever an application for an extension of time within which to file the report required by this Chapter has been filed, the Secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax returns with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the Secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

612.2 The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the Secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

612.3 Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

Rule 613 Fiscal Year, Accounting Period

613.1 "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. In the case of a taxpayer who, in keeping his books, regularly uses a fifty-two to fifty-three week period permitted under R.S. 47:91F, the Secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provision of this Chapter is expressed in terms of taxable years

beginning or ending with reference to a specified date which is the first or last day of a month, such fifty-two or fifty-three week accounting period shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period, or as ending with the last day of the calendar month ending nearest to the last day of such taxable period, as the case may be.

613.2 However, no fiscal year will be recognized, unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

613.3 Once an accounting period has been established, no change from that period shall be made without the approval of the Secretary of Revenue and Taxation.

Rule 617 Refunds and Credits

617.1 In the case of an overpayment of corporation franchise tax for any accounting period, the amount of the overpayment may be either refunded to the taxpayer or credited to the taxpayer's account in satisfaction of existing or future liabilities. Any amount actually refunded shall bear interest at the rate of six percent per annum computed from ninety days after the filing date of the final return upon which the overpayment was made, or from the due date of the return, whichever is the later, to the date on which the refund was made.

617.2 Amounts of overpayments which are credited to a taxpayer's account shall bear no interest.

Shirley McNamara, Secretary
Department of Revenue and Taxation

RULE

Department of Transportation and Development

I. Exemption of nonconforming tourist directional information signs from removal requirements pursuant to provisions of R.S. 48:461.23 and 23 U.S.C. 131 (o). (Note these regulations are based on guidelines utilized by the Federal Highway Administration in analyzing exemption requests.)

1. Certain nonconforming directional information signs may be exempted from removal requirements if a definitive showing can be made that their removal would create a substantial adverse economic impact to a defined geographical area.

2. The signs must be directional information signs, must be located within the confines of the defined geographical area, and must continue to provide the directional information, in the interest of the traveling public, to goods and services offered at the same enterprise in the defined area that was provided on May 5, 1976 (normal upkeep and refurbishing of the then existing copy is allowed).

3. Claims of substantial economic impact must be supported by an economic study and analysis. Claims of economic hardship made by or on behalf of individual businesses as such, will not be considered.

4. All requests for exemption from meeting the criteria established herein shall be forwarded by the Department to the Federal Highway Administration for review and approval of the Secretary of the United States Department of Transportation. Any exemption requests granted by the Secretary shall be reanalyzed every three years to ensure that the exemption is still warranted.

5. The Department essentially serves as a conduit for such requests to be acted upon by the Secretary of the United States Department of Transportation and will review and submit requests for exemption to the Federal Highway Administration for denial or approval. The Department will not participate in the cost or preparation of any facet of any request for exemption.

6. Any request for exemption submitted to the Department must contain the following specific information in order to

support the request:

a. A statement that all proposed exempt signs meet the definition established herein for Directional Information Signs.

b. A detailed description of the methodology used in performing the economic analysis (guidelines for the economic analysis are provided herein).

c. The limits of the defined area(s) requested for exemption, a listing of the signs to be exempted, their locations, and the name of the enterprise advertised on May 5, 1976.

d. A definitive showing that the signs provide directional information to goods and services in the interest of the traveling public in the defined area and that removal would result in a substantial economic hardship in the defined area(s). This information must be supported by economic analysis.

e. Certification that the defined area will be reviewed and evaluated every three years to determine that the exemption is still warranted. Results of this review and evaluation, along with considerations utilized in performing same shall be submitted to the Department for any exemptions granted.

7. Following are definitions and guidelines which may aid in the preparation of request for exemption (Economic Analysis: Section 131(o)).

a. Definitions.

(1) Directional Information Signs—signs giving directional information about goods and services in the interest of the traveling public. Such signs are limited to those pertaining to rest stops, camping grounds, food services, gasoline and automotive services, lodging, recreation areas, historical sites, and resorts, and must provide specific directional data such as mileage, exit number, interchange name, or routing data to enable the motorist to locate the advertised activity or commodity.

(2) Defined Area—an area with clearly established geographical boundaries which can be evaluated as an economic entity. Such areas may include a municipality, parish, metropolitan area, or some other definable entity.

(3) Economic Analysis—an analysis which identifies the key economic activities of an area. By so doing, the analysis helps define the perimeter of such an area and can thus be utilized as a means of establishing the geographical boundaries for a defined area. Many of the principles utilized in the preparation of a "community economic base study" can be employed in such an economic analysis. An economic base study divides the economy of an area into two segments:

(a) Firms and individuals serving markets outside such area, hereinafter called export markets.

(b) Firms and individuals serving markets inside such area, hereinafter called local markets.

Export markets are considered to be the prime movers of local economy. If employment serving this market rises or falls, employment serving the local market is presumed to move in the same direction. Because of this prime mover role, export employment is considered as "basic". Employment which serves the local market is considered adaptive and is titled "non-basic."

(4) Tourism—for the purposes of conducting an economic analysis, tourism is considered to be that sector of an area attributable to the traveling public. It is assumed that local travelers have a basic familiarity with the goods and services available to them within a certain radius of their domicile, and would not, therefore, be influenced by the presence of signs, displays, and devices advertising such goods and services. That part of the traveling public which is not familiar with the goods

and services available to them within a given area would logically be from outside that area and traveling into or through such area. Use of the term tourism in a generic sense is therefore considered appropriate. Tourism, while not fitting into the classic definition of an export (since no tangible commodity is produced, packaged and shipped to a market outside the area), is nonetheless considered to be an export since goods and services are sold to markets outside the area. The distinction is that, in the case of tourism, the "foreign" market is brought to the area where the goods and services are sold.

b. Principles of economic analysis for the purpose of requesting exemption from acquisition of certain nonconforming directional information signs.

(1) Within a defined area, an economic analysis must identify:

(a) The sources of current income and employment in such area.

(b) Of such sources, the portion thereof which is attributable to tourism.

(c) Of that portion attributable to tourism, the portion thereof which is attributable to directional information signs.

(d) The basis for such conclusions.

(2) In order to proceed with an economic analysis, it will be necessary to:

(a) Examine the structure of the economy, including the mechanics of income and employment

1. Area income stream.

a. Internal sources.

b. External sources.

2. Area Employment.

a. Industry groupings—identify specific groupings such as Agriculture, Manufacturing, Seafood, Oil and Gas, Retail Sales, Government, etc., and their proportionate contribution to the economy as a whole.

b. Internal and external factors currently affecting area employment.

(b) Develop a methodology for measuring the contribution of each sector of the area's economic base to the area economy as a whole.

1. Units of Measurements.

a. Sales.

b. Value added—the sales of a firm less the cost of materials purchased from others.

c. Income accrual to area residents.

d. Employment—measured in number of jobs/sector and hours/job.

2. Methods of Measurement. (Note: Quantify in percentages. This should induce more cooperation on the part of those interviewed or questioned.)

a. Questionnaires.

b. Personal interviews.

c. Extant economic data and/or analyses compiled by federal, state or local entities, e.g., U.S. Commerce Department, Bureau of Labor Statistics, census data, university studies, etc. Such analyses may already contain sufficient quantified data for our purposes.

3. Factors affecting reliability of data

a. Quality of the questionnaires, interviews.

b. Frequency of response.

c. Subjectivity of respondents.

d. Subjectivity of preparers of extant economic data and/or analyses.

e. Scope of historical data and/or analyses.

f. Recency of historical data and/or

analyses.

4. Sources of expertise which may be utilized in collecting the necessary data.

a. Staff of various local organizations

b. Consulting firms.

c. University facilities.

d. Government agencies.

(3) After completion of the economic analysis it will be necessary to establish a relationship between that sector of the area economy attributable to tourism and the retention of certain nonconforming directional informational signs.

(a) Quantifiable Data.

1. The number of nonconforming signs providing directional information to goods and services in the interest of the traveling public within the defined area for which exemption from acquisition is requested.

2. The number of nonconforming signs providing similar information for which no exemption from acquisition is requested.

3. The number of conforming sign sites where such signs could be lawfully erected.

4. The type and quantity of available or potentially available alternative travel information systems within the defined area.

(b) Analysis.

1. Those signs identified in part (a) 1 must be demonstrated to have a direct causal relationship with the economic well-being of those enterprises offering goods and services to the traveling public which such signs advertise, and thus with the economic well-being of the defined area. This demonstration must show that the (a) 1 signs, independent of the options listed above as (a) 2, 3, and 4, contribute to the area's economic well-being to such a degree that their removal would work a substantial economic hardship throughout the area.

Specifically, it must be demonstrated that such signs, in and of themselves, generate substantial business and, thus, income within the defined area. In order to establish this fact, a polling or sampling technique should be employed wherein motorists utilizing the advertised goods and services are asked how they came to patronize the establishment offering such goods and services. Such sampling must differentiate between nonconforming signs for which the exemption is being requested and other sign types (i.e., (a) 2, 3, and 4, as listed above).

2. After compiling sufficient polling data, said data should be analyzed and a determination made with regard to its statistical significance.

3. If a determination is made that removal of signs addressed in (a) 1 above would work a substantial economic hardship throughout the area, a narrative explanation of the reasons for the determination of substantiality must be set forth. Such explanation should include an analysis of both primary and secondary economic impacts within the defined area. In addition, the narrative explanation should include the rationale for the determination of statistical significance in part 2 above.

George A. Fischer, Secretary
Department of Transportation and Development

Notices of Intent

NOTICE OF INTENT

Department of Agriculture Dairy Stabilization Board

Notice is hereby given that the Department of Agriculture, Dairy Stabilization Board, under authority of Chapter 4 of Title 40:931.8(B) of the Louisiana Revised Statutes of 1950, intends to amend Louisiana Administrative Code (LAC)/Dairy Stabilization Board Rules and Regulations 2-17:11.1-11.13.

The proposed amendments to LAC 2-17:11.1-11.13 provides for the removal of the requirement for the issuance of an annual volume discount certificate. Hence, volume discount certificates presently in effect will be verified to allow them to remain in effect until changed or cancelled, and new volume discount certificates will remain in effect until changed or cancelled.

A copy of the proposed amendment is available at the office of the Dairy Stabilization Board, Room 209, 2843 Victoria Drive, Baton Rouge, Louisiana 70805. Written comments will be accepted through February 3, 1980, at the above address. C. James Gelpi is the person responsible for responding to inquiries concerning the proposed amendments.

C. James Gelpi, Director-Attorney
Dairy Stabilization Board

NOTICE OF INTENT

Department of Commerce Racing Commission

The Louisiana State Racing Commission does hereby give notice in accordance with law that it intends to consider the adoption of a new rule and/or amendment of the existing rules of racing, and in particular: Rules LAC 11-6:54 and LAC 11-6:53.11, to prohibit the administration, use, application and/or possession of any narcotic, stimulant, depressant, local anesthetic, analgesic, and/or drugs of any description, with the exception of bleeder medication as approved by these rules.

This prohibition would include, by way of illustration and without limitation, any substance which could produce analgesia in, or stimulate, or depress a horse, or could mask or screen any prohibited substance. It would include any substance which could affect the speed or performance of a horse in any race.

The office of the Commission will be open from 9:00 a.m. to 4:00 p.m. and interested persons may call Ms. Rosalie Robinson (504-568-5870) during this time, holidays and weekends excluded. All interested persons may submit written comments relative to this proposed rule change through February 3, 1980, to the Louisiana State Racing Commission, Suite 1020, One Shell Square, 701 Poydras Street, New Orleans, Louisiana 70139.

Albert M. Stall, Chairman
Racing Commission

NOTICE OF INTENT

Department of Culture, Recreation and Tourism Office of the State Library

The Office of the State Library intends to revise the rules and regulations pertaining to State aid grants to public libraries for the purpose of purchasing and processing library materials.

Copies of the revised rules and regulations are available at the Office of the State Library, 760 Riverside North, Baton Rouge, Louisiana 70804. Interested persons may present their views in writing to Mr. Ben Brady, Associate State Librarian, Office of the State Library, Box 131, Baton Rouge, Louisiana 70821, through February 5, 1980.

Thomas F. Jaques, State Librarian
Office of the State Library

NOTICE OF INTENT

Department of Culture, Recreation and Tourism Office of Program Development Division of Archaeology and Historic Preservation

In accordance with Act No. 650 of the 1979 Regular Session of the Louisiana Legislature, the Department of Culture, Recreation and Tourism, Division of Archaeology and Historic Preservation, hereby issues a notice of intent to adopt and promulgate rules, regulations and standards for the regulation of the historic character of and the administration of the State Capitol Historic District. The district includes the following grounds and structures:

1. The old and new State Capitol Buildings.
2. The old and new Governor's Mansions.
3. The Pentagon Courts.
4. The Capitol Annex.
5. The old Arsenal Museum.
6. All state-owned buildings within the city of Baton Rouge incorporated into the jurisdiction of the district upon recommendation of the State Review Committee for the National Register.

Interested persons may direct inquiries to Ann R. Jones, Director, Division of Archaeology and Historic Preservation, Box 44247, Baton Rouge, Louisiana 70804, (504-342-6682). Written comments on the proposed adoption and promulgation of rules, regulations and standards will be received at the above address until February 10, 1980.

J. Larry Crain, Ph.D., Secretary
Department of Culture, Recreation and Tourism

NOTICE OF INTENT

Board of Trustees for State Colleges and Universities

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, and under the authority of Article VIII, Section 6 of the 1974 Constitution, a public hearing will be held in the Mineral Board Hearing Room, State Land and Natural Resources Building, Baton Rouge, Louisiana, beginning at 9:30 a.m. on February 22, 1980.

At such hearing the Board will consider amendment to: Part VI, Financial and Leave Policies and Procedures, specifically, Section 6.6F, Self Assessment Fees (amend); and Part VII, Faculty and Staff Personnel Policies and Procedures, specifically, Section 7.5F, Sabbatical Leave, Subsections 1, 2, and 5 (amend).

The Board of Trustees for State Colleges and Universities shall accept written comments until 4:30 p.m., February 15, 1980, at the following address: Miller L. Shamburger, Board of Trustees for State Colleges and Universities, Box 44307, Baton Rouge, Louisiana 70804.

The public is made aware of the proposed policies and procedures in compliance with R.S. 49:951-968.

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

NOTICE OF INTENT

Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education intends to adopt the following as policy at its February meeting:

1. Amend Rule 4.01.70, Registry of Approved Project Evaluators, to become operative for the 1980-81 school year.

2. Amend Rule 4.01.70, Registry for Approved Project Evaluators, by adding Paragraph 4 to read as follows: Any project which requires the approval of the State Board of Elementary and Secondary Education shall be evaluated only by a person or persons or corporate bodies whose name or names appear on the registry of evaluators maintained by the Office of Research and Development, subject to any other rules adopted by the Board.

3. Certification of elementary teachers in teaching French.

4. State Plan for Vocational Education for the 1980-81 Fiscal Year will be submitted to the Board at the latest meeting prior to May 1, 1980, for approval and at the same time for succeeding fiscal years. The plan will be submitted to U.S. Department of Education officials for approval, no later than fifteen days after Board approval.

5. Policy allowing special education students to achieve Carnegie Units where possible, subject to the following conditions: 1) that the integrity of the Carnegie Unit should not be diminished in any way to accommodate the performance of students in special education programs; and 2) that the Carnegie Units should be granted by regular classroom teachers or special education teachers certified in the subject matter area.

6. Policy authorizing local systems to issue a state certificate of achievement to students of exceptionality based upon the conditions that: 1) Each student shall have been properly evaluated and placed in a special education program, 2) An Individual Education Plan has been prepared for each student to specifically outline the curriculum choices which will best allow for successful academic performance. However, this will not preclude any special education student from earning a regular diploma if the minimum requirements for graduation have been successfully completed.

Interested persons may comment on the proposed policy changes and/or additions, in writing, until 4:30 p.m., February 6, 1980, at the following address: State Board of Elementary and Secondary Education, Box 44064, Baton Rouge, Louisiana 70804.

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

NOTICE OF INTENT

Department of Education Louisiana Universities Marine Consortium

The Council of the Louisiana Universities Marine Consortium for Research and Development will meet February 21, 1980, for the purpose of adopting its bylaws. Persons interested in the procedures of the Council may submit written comments or sug-

gestions to LUMCON Council, 660 Laurel Street, Room 106, Baton Rouge, Louisiana 70802. Comments will be accepted through February 10, 1980. The person responsible for responding to the inquiries about the proposed bylaws is Ms. Barbara D. Wethey.

Dr. H. D. Hoese, Interim Director
LUMCON Council

NOTICE OF INTENT

Board of Regents

Notice is hereby given that the Louisiana Board of Regents intends to amend policy 4.2 - Guidelines for the Conduct of Off-Campus Activities at its February 28, 1980, meeting. Enrollment minimums and contractual arrangements will be discussed and considered. Proposed changes will be available at least fifteen days prior to the date upon which they are to be considered and will be available for public inspection between the hours of 8:00 a.m. and 4:30 p.m., on any working day, at the Louisiana Board of Regents, Suite 1530, One American Place, Baton Rouge, Louisiana, telephone (504) 342-4253. Mrs. Sharon Beard is the person within the agency who is responsible for responding to inquiries about the proposed rule.

William Arceneaux
Commissioner of Higher Education

NOTICE OF INTENT

Office of the Governor Tax Commission

In accordance with the provisions of the Administrative Procedures Act (R.S. 49:953), notice is hereby given that the Louisiana Tax Commission intends to hold a public hearing on February 26, 1980, 9:00 a.m., in Senate Committee Room "F" of the State Capitol Building in Baton Rouge, Louisiana.

The purpose of this hearing is to amend the following:

1. Personal Property Rules and Regulations.

2. Suggested "Guidelines for Ascertaining Economic Lives of Business and Industrial Personal Property," as related to the assessment of drilling rigs and pipelines (other than public service companies).

3. "Guidelines for Ascertaining the Fair Market Value of Oil and Gas Producing Property," as related to the assessment of Lease and Gathering Lines.

4. Louisiana Ad valorem Tax (LAT) 14 - pipeline 14.

5. And to hear complaints on the findings of the Tax Commission in regard to the level of appraisals or assessments of commercial property and the degree of uniformity of assessments of commercial property in Orleans Parish for the year 1980, and the remaining parishes for the year 1979.

Interested persons may inspect a copy of the above proposals beginning fifteen days prior to the scheduled hearing at the official domicile of the Louisiana Tax Commission in the Capitol Annex, Room 215, Riverside Mall, Baton Rouge, Louisiana until 4:15 p.m., February 25, 1980.

C. Gordon Johnson, Chairman
Tax Commission

NOTICE OF INTENT

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt policy that will require the timely submittal by providers of medical claims for Durable Medical Equipment within six months from the date of service.

Interested persons may submit written comments on this proposed policy change through February 3, 1980, at the following address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about this proposed rule.

* * * *

The Department of Health and Human Resources, Office of Family Security proposes to adopt the following policy which will require the disclosure of information by institutions and organizations providing Medicaid services:

1. Medicaid providers and fiscal intermediaries/agents are required to disclose to the Medical Assistance Program, certain information about owners, employees, and suppliers (i.e., identification of owners' names, common ownership, ownership in a sub-contractor);

2. The Medical Assistance Program is authorized to refuse to enter into or renew an agreement with a provider, if any of its owners, officers, directors, agents, or managing employees have been convicted of a criminal offense involving any of the programs under Titles XVIII, XIX, or XX of the Social Security Act;

3. The Medical Assistance Program is authorized to terminate an agreement with a provider who fails to disclose fully and accurately the identity of any of its owners, officers, directors, agents, or managing employees who have been convicted of a program-related criminal offense at the time of entering into the agreement.

4. In addition to the Louisiana Medical Assistance Program, the Secretary of the Department of Health, Education, and Welfare has been authorized to have access to Medicaid providers' records; and

5. The State Medicaid Fraud Control Unit has been authorized to have direct access to Medicaid providers' records rather than having to access them through the Medical Assistance Program.

Interested persons may submit written comments on the proposed policy changes through February 3, 1980, at the following address: Mr. Alvis D. Roberts, Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about this proposed rule.

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

NOTICE OF INTENT

Department of Health and Human Resources Office of Licensing and Regulation Division of Health Planning and Development

The Department of Health and Human Resources proposes to adopt rules and regulations for the conduct of the capital expenditure review program in Louisiana under Section 1122 of the Social Security Act. These rules are being enacted in accordance with the FY 1980 agreement between the Louisiana Department of Health and Human Resources and the U.S. Department of Health, Education and Welfare.

The rules are being enacted pursuant to the requirements of the

Administrative Procedures Act as amended.

Copies of these proposed rules may be obtained by writing to: David W. Hood, Health Planning Officer, Division of Health Planning and Development, 150 Riverside Mall, Suite 400, Baton Rouge, Louisiana 70801. Interested persons may submit written comments until 12 noon, February 15, 1980, to the above address. Mr. Hood is the person responsible for responding to inquiries about the proposed rules.

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

NOTICE OF INTENT

Department of Health and Human Resources Board of Pharmacy

The Louisiana Board of Pharmacy hereby gives notice that the Board, at the February 8, 1980, meeting, intends to adopt proposed Rules and Regulations for Institutional Pharmacy Supportive Personnel. Public notification made herein indicates no final approval. The public is made aware of the proposed changes in compliance with R.S. 49:951-966.

Written comments may be addressed to Redfield Bryan, Executive Director, Louisiana Board of Pharmacy, 4645 North Boulevard, Baton Rouge, Louisiana 70806, until 5:00 p.m., February 7, 1980.

The Board will conduct an open hearing on the following proposed rules and regulations at 10:00 a.m., on February 8, 1980, at the Pharmacy Building, Northeastern Louisiana University, College of Pharmacy, Monroe.

Regulations relating to Institutional Pharmacy Supportive Personnel by adding a new rule section 27, through authority reflected in R.S. 37:1178, providing definitions, qualifications, training, duties and ratio.

Section 27 - Institutional Pharmacy Supportive Personnel.

1. Definitions.

A. Institutional pharmacy supportive personnel: definitive pharmacy employees properly identified by name badge and position in a state licensed hospital, clinic, skilled nursing or extended care facility, holding a valid pharmacy permit.

B. Unit Dose Pre-Packaging: the packaging of individual prescription doses in a suitable container which has been properly labeled as to: identity of drug generically, chemically or trade marked, strength, manufacturer, expiration date, control number and/or lot number; under the direct and immediate supervision of a registered pharmacist for subsequent dispensing by a registered pharmacist. Unit Dose packaging does not include drug reconstituted admixtures or piggy-back medications.

C. Unit Dose System: that drug distribution system which is pharmacy based and which involves the dispensing of a properly labeled prepackaged unit dose drug in a suitable container in final dosage form for subsequent patient administration for a twenty-four hour period dosage regime.

2. Qualifications. Institutional pharmacy supportive person shall be an eighteen year old high school graduate of good moral character. He or she must have satisfactorily completed a Louisiana Board of Pharmacy approved training program. The program being designed to meet prescribed limited functions to be performed in a licensed hospital, clinic, skilled nursing or extended care facility holding a valid pharmacy permit issued by the Louisiana Board of Pharmacy.

3. Training. The Louisiana Board of Pharmacy shall approve submitted training program guidelines consisting of practical, on-the-job training and instruction. The training program shall assure competence of the institutional pharmacy supportive

person to assist the pharmacist in the Unit Drug Dosage Pre-packaging Distribution System. The Board shall approve, disapprove, suspend or revoke any training program for failure to conform to the prescribed rules and/or regulations.

4. Pre-packaging and dispensing of Unit Dose Medications:

A. Supportive personnel. Properly trained supportive personnel shall:

a) Retrieve and receive written doctors' orders, prescriptions, or files.

b) Clerical: type labels and maintain patient's profile, which has been previously entered and scheduled by an on-duty registered pharmacist.

c) Secretarial: do telephoning, type letters, give computer in put.

d) Accounting: keep records, accounts receivable, third party reimbursements and posting.

e) Inventory control: monitor, price, date, invoice, and stock pharmacies and wards, and prepare purchase orders.

f) Housekeeping: maintain clean and orderly pharmacy.

g) Medication delivery.

h) Pre-packaging unit dose medication: Package individual prescription doses under the direct and immediate control and supervision of the registered pharmacist, for subsequent dispensing by a registered pharmacist.

B. Registered Pharmacist.

a) Shall be solely responsible for drug reconstitution admixtures for oral or parental use, and piggy-back medication.

b) Shall be responsible for initiating, selecting and retrieving of the bulk drug container for unit dose pre-packaging medication.

c) Shall supervise the proper labeling of pre-packaged medication as to name of medication, strength, manufacturers control number, expiration date, lot number.

d) Shall dispense the properly labeled, pre-packaged drug in final unit dose dosage form.

e) Shall supervise the maintenance of patient profiles.

f) Shall supervise all pharmacy functions of supportive personnel under his or her direct and immediate control.

5. Ratio. Pharmacist supervision shall be a ratio of one institutional pharmacy supportive person to one pharmacist on duty for related unit dose pre-packaging function.

Salvatore J. D'Angelo, President
Board of Pharmacy

NOTICE OF INTENT

Department of Insurance Division of Property and Casualty Insurance

The Department of Insurance, Division of Property and Casualty, intends to adopt a rule pursuant to the provisions of Act 462 of the 1979 Regular Session of the Louisiana Legislature.

A copy of the proposed rule follows. Generally, it establishes the guidelines to be utilized by the Department of Insurance to assure financial stability and uniformity in operations of interlocal risk management agencies established pursuant to the provisions of the above cited Act.

§1 Authority. This rule and guidelines are adopted by the Commissioner of Insurance pursuant to the authority vested in him by Title 22, Section 2, Louisiana Revised Statutes of 1950 and Act 462 of the 1979 Session of the Louisiana Legislature.

§2 Purpose. The purpose of this rule is to adopt provisions and uniform guidelines for their interpretation as authorized specifically by Act 462 of the 1979 Session of the Legislature. These provisions are designed to facilitate and implement the provisions of that

Act. They are designed to supplement, not alter in any manner, the provisions of the Act.

§3 Applicability. These provisions shall be applicable to any entity which may be defined an "interlocal risk management agency" by Act 462 of the 1979 Session of the Louisiana Legislature.

§4 Definitions. When used in this rule, the following words or terms have the meaning described in this section.

1. Department—the Insurance Department of the State of Louisiana.

2. Loss fund—the retention of liability for an interlocal risk management agency under the terms of an aggregate excess contract or contracts.

3. Trustees—the executive boards of the Louisiana Municipal Association or of the Police Jury Association of Louisiana, as the case may be, where those bodies have been designated to administer an interlocal risk management agency. In all other cases, trustee means a group of members elected by the interlocal risk management agency for stated terms of office, to administer a self-insurance fund, and whose duties shall include responsibilities for approving applications for new members of such fund. A trustee shall not be an owner, officer or employee of the service agent.

4. Service agent—a business which contracts with interlocal risk management agencies for the purpose of providing all services necessary to place and maintain a self-insurance program.

5. Trustee fund—any monetary fund, under the control of the board of trustees, of a self-insurance fund which is not part of the loss fund, or which is not required to pay claim.

6. Gross premium—the premium determined by multiplying the payroll or other unit of exposure (segregated into the proper workmen's compensation job classification or general liability classification) times the appropriate manual rates.

7. Standard premium—gross premium plus or minus applicable experience modification.

8. Normal premium—the standard premium less any discount allowed.

9. Manual rate—(for workmen's compensation purposes) that rate filed by and approved for use in the state by the National Council on Compensation Insurance. For public liability exposure, the term means that rate filed by, and approved for use by the Insurance Services Office.

10. Experience modification—the applicable experience debit or credit promulgated in accordance with those experience rating plans filed by and approved for the National Council on Compensation Insurance or the Insurance Services Office.

11. Fund—the interlocal risk management agency self-insurers fund.

12. Current ratio—the ratios of current assets to current liabilities as shown in the most recent financial statement.

13. Certified audit—an audit upon which the auditor expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles consistently applied, and accordingly including such tests of the accounting records and such other auditing procedures as considered necessary.

14. Net safety factor—any amount needed in a given fund year, in addition to current loss reserves to fund factor loss development.

15. Loss development—the change in incurred loss from one point in time to another.

16. Contingent liability—the amount that the interlocal risk management agency may be obligated to pay in excess of a given year's normal premium, collected or on hand.

17. Working capital or net current assets—current assets less current liabilities.

18. Conditional reserves—acceptable assets or reserves established by the trustees as required by the Insurance Department.

19. Surplus—all other assets a fund may have on hand in

excess of all loss reserves, actual and contingent liabilities and net safety factors in all fund years.

20. Statutory workmen's compensation benefits—those prescribed by Title 23, Louisiana Revised Statutes of 1950, as amended.

§5 Requirements Necessary to Obtain a Certificate of Authority as an Interlocal Risk Management Agency.

1. Evidence must be submitted to the Insurance Department that the local government subdivisions have made and executed agreements among themselves to form and become members of an interlocal risk management agency.

2. Copies of the by-laws and other requirements must be submitted to the Insurance Department.

3. A copy of the ordinance or other enabling act that is adopted by the political subdivisions to enter an interlocal risk management agency must be submitted to the Department of Insurance.

4. Each interlocal risk management agency must identify its agent for service of process to the Department of Insurance.

5. Each fund must have an annual gross premium calculated in accordance with the applicable manual premium rate or rates, plus or minus applicable experience credits or debits, of not less than two hundred thousand dollars.

6. An interlocal risk management agency must at all times maintain a contract or contracts of specific excess insurance of at least one million dollars per claim, and an aggregate excess insurance of five million dollars with respect to public liability claims.

7. Each interlocal risk management agency must provide statutory workmen's compensation benefits. A contract or contracts of excess insurance shall be provided to secure payment of statutory workmen's compensation benefits.

8. A copy of each contract of excess and aggregate insurance must be filed with the Department of Insurance.

9. Each risk contract must contain a provision that the Department of Insurance will be notified not less than sixty days in advance in the event of cancellation of the contract by action of either the interlocal risk management agency or the insurance company that issued the contract.

§6 Filing of Reports.

1. A certified audited financial statement must be submitted annually. That statement must contain a review of the interlocal risk management agency operations and general conditions of a certified independent casualty actuary. During the first two years of the existence of the interlocal risk management agency, the Commissioner of Insurance or his Chief Examiner may require periodic interim financial reports. Those reports may be required on a basis no more frequent than quarterly.

2. That statement of financial condition must include a report of the outstanding worker's compensation liabilities of the interlocal risk management agency, and include details of the amount and source of all monies recoverable from any third party.

3. Summary loss data shall be filed with the Department of Insurance on each fund member within sixty days after the evaluation date of the losses being reported in a manner acceptable to the Department of Insurance.

4. Classified, audited, and properly limited payrolls and premium development on each fund member shall be submitted to the Insurance Department on acceptable forms within sixty days after the evaluation date of the summary loss information required in Number 3 above.

5. All of the information required in number 4 above shall be submitted using classification, payroll limitations, experience modification and rate procedure of the National Council on Compensation Insurance as filed and approved for use in this state.

6. Failure or refusal of any interlocal risk management agency to file these reports in accordance with this Rule, shall be considered good cause to suspend or refuse renewal of the certificate of authority issued by the Commissioner of Insurance.

§7 Solvency of Risk Management Agencies; Trustee Responsibilities.

1. In order to insure the financial stability of the operations of each interlocal risk management agency fund, the board of trustees of each fund shall be responsible for all operations of the fund. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including

a. The designation of a fiscal agent and/or administrator, if not otherwise provided for by Act 462 of the 1979 Regular Session of the Louisiana Legislature to administer the financial affairs of the fund, who, as obligee, shall furnish a fidelity bond, or acceptable substitute, to protect the fund against misappropriations or misuse of any monies or securities. The amount of the bond, or substitution therefor, shall be determined by the interlocal risk management agency. Such fiscal agent or administrator shall not be an owner, officer or employee of the service company.

b. Retain control of all monies collected or disbursed from the fund. Segregate all monies into claims fund and trustee fund. The amount allocated to the claims fund will be sufficient to cover payment of the entire aggregate loss fund as defined in the aggregate excess insurance policy. Only disbursements that are credited toward the loss fund (as defined in the aggregate excess policy) will be made from the claims fund. All administration costs and other disbursements will be made from the trustee fund. The administration of the fund, shall establish a revolving fund for use by the authorized service company, which will be replenished from time to time from the claims fund. The service company and its employees shall be covered by a fidelity bond, with the interlocal risk management agency as obligee in an amount sufficient to protect all monies placed in the revolving fund.

c. Audit of the accounts and records as provided for in Act 462 of the 1979 Regular Session of the Louisiana Legislature.

d. The board of trustees or its fiscal agent or administrator shall not utilize any of the monies collected as premiums for any purpose unrelated to workers' compensation or public liability purposes. Further, it shall not borrow any monies from the fund or in the name of the fund without advising of the nature and purpose of the loan and obtaining approval. The board of trustees may, at its discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to United States government bonds, United States treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations and commercial banks shall be limited to institutions in this state and shall not exceed the federally insured amount in any one account, except that the federally insured amount on any one account may be exceeded if the amount involved in such an account does not exceed either of the two following factors:

i. Five percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in this state in the banking division annual report of the financial institution bureau of the department of commerce (banking control).

ii. Five hundred thousand dollars per institution.

2. The board of trustees may delegate authority for specific functions to the administrator of the self-insurers' fund. The functions which may be delegated include, but are not limited to, such matters as contracting with a service agent, determining the premium charged to and refunds payable to members, investing surplus monies subject to the restrictions set forth in subdivision d of subrule 1, and approving applications for membership. All delegated authority shall be specifically defined in the written minutes of the trustees' meetings and shall be subject to final approval.

§8 Interlocal Risk Management Self Insurance Funds; Advance Premium Discounts; Surplus Distribution; Deficit.