

Emergency Rules

DECLARATION OF EMERGENCY

**Economic Development
Office of the Secretary
and
Office of the Governor
Office of Financial Institutions
Office of the Commissioner**

Capital Companies Tax Credit Program
Qualified Technology Funds
(LAC 10:XV.331)

The Louisiana Department of Economic Development, Office of the Secretary, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following amendment to the rules of the Capital Companies Tax Credit Program as authorized by R.S. 51:1929. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective July 19, 2004, and shall remaining effect for the maximum period allowed under the Act, or until the adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to provide rules regarding the formation and regulation of "qualified technology funds" to provide for the expeditious formation of such funds to direct investment capital into "qualified Louisiana-based technology businesses. Without these Emergency Rules the public welfare may be harmed as a result of a reduction of capital available to be invested in qualified Louisiana technology-based businesses.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 3. Capital Companies Tax Credit Program

§331. Qualified Technology Funds

A. An applicant seeking designation as a qualified technology fund shall provide to the Secretary the following information along with the request for this designation:

1. the charter documents for the entity that will constitute the qualified technology fund;
2. copies of any management agreements to which the qualified technology fund contemplates being a party, and a description of any contemplated comparable arrangement;
3. a reasonably detailed description of how the qualified technology fund meets and will continue to meet the criteria of R.S. 51:1923(16);
4. a copy of the qualified technology fund's investment policy;
5. evidence in form and substance acceptable to the secretary by which the qualified technology fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana technology-based businesses, as required by R.S. 51:1923(16)(b);

6. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees that the commissioner shall regulate the investment of the certified capital received by the qualified technology fund as required by R.S. 51:1923(16)(d);

7. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees to provide:

a. to the secretary by August 1 of each year the information required to be included in the secretary's report described in R.S. 51:1927.2, with respect to the operations and investments of the qualified technology fund, to the extent that such information is relevant to the qualified technology fund; and

b. to the commissioner the information required by R.S. 51:1926F, by the dates set forth therein, to the extent that such information is relevant to the qualified technology fund; and

8. such additional information as may be requested by the secretary with regard to the qualified technology fund or its ownership, management or operations.

B. A qualified technology fund shall be designated by the secretary for purposes of qualifying an investment in the qualified technology fund under R.S. 51:1923(12)(d) if the applicant meets the criteria set forth in each of Paragraphs 1 through 4 of this Subsection B, or if it meets such additional or other criteria determined by the secretary from time to time.

1. The applicant has delivered to the secretary all of the information required by Subsection A of this Section;

2. The information delivered to the secretary pursuant to this Rule demonstrates that the qualified technology fund meets the criteria under R.S. 51:1923(16); and

3. The information delivered by the applicant shall demonstrate reasonable prospects for the qualified technology fund to invest the following percentages of each of the qualified technology fund's investment pools within the following time periods:

a. on or before the second anniversary of the investment date of the investment pool, 50 percent of the investment pool invested in qualified Louisiana-based technology businesses; and

b. on or before the third anniversary of the investment date of the investment pool, 100 percent of the investment pool invested in qualified Louisiana-based technology businesses.

4. The charter and/or management documents with respect to the applicant shall provide that:

a. the non-certified capital company representatives involved with the management of the applicant have the authority to appoint a majority of the members (including the Chairman) of each of:

i. the Board of Directors, Board of Managers or other similar governing authority of the applicant and any entity responsible for the direction of the applicant's investment decisions; and

ii. any committee of the Board of Managers, Board of Directors or other similar governing authority of the applicant with the authority to approve investment decisions and any such committee of any entity responsible for the direction of the applicant's investment decisions; provided that the certified Louisiana capital companies investing in the qualified technology fund may retain a right to representation on any such boards or committees and a right to veto, by majority vote of those certified capital companies present and voting at any meeting for such purpose, investment decisions of such boards or committees;

b. the qualified technology fund shall have management representation from at least one of the Louisiana research parks identified in R.S. 51:1923(16)(a) or any other technology park certified by the secretary.

c. each member of any board, committee or other governing authority of the applicant or any entity responsible for applicant's investment decisions shall disclose in writing all conflicts of interest with respect to any prospective investment by the applicant (except for conflicts of interest existing solely because of a prior investment by the qualified technology fund or any investment pool or subsidiary thereof) and no such member may vote on any such matter; provided that, the fact that a business is located at or is being assisted or incubated by a Louisiana research park or other technology park shall not in and of itself constitute a conflict of interest for a representative of the park serving on the Board of Director or any committee of the qualified technology fund with respect to matters relating to that business; and

d. the applicant may not invest in any qualified Louisiana-based technology business in which a certified Louisiana capital company that is a participant in the qualified technology fund has previously invested except for a follow-on investment by the qualified technology fund to the extent that the certified Louisiana capital company's first investment in the qualified Louisiana-based technology business was closed contemporaneously with or after a previous investment by the qualified technology fund, and further provided that the investment by the qualified technology fund does not serve to directly or indirectly repay or refund all or a portion of the certified Louisiana capital company's previous investment.

C. Qualified technology funds which are approved by the secretary pursuant to this rule shall be subject to the following additional provisions.

1. The information provided by a qualified technology fund to the office or the department shall be subject to R.S. 51:1926D and 51:1934.

2. A qualified technology fund shall not make any investment in any qualified Louisiana-based technology business:

a. which is involved in any of the lines of business identified in R.S. 51:1926A(3); or

b. if after making the investment the total investment outstanding in such business and its affiliates would exceed the greater of:

i. twenty-five percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

ii. \$500,000.

3. No initial investment by the qualified technology fund in a qualified Louisiana-based technology business, when aggregated with all other investments by the qualified technology fund in such business which are made within the twelve month period following the date of the initial investment, will exceed the greater of:

a. fifteen percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

b. \$300,000.

4. Before any investment is made by a qualified technology fund, the qualified technology fund shall obtain an affidavit from the qualified Louisiana-based technology business in the form required by R.S. 51:1926G.

5.a. All distributions made by a qualified technology fund to a certified Louisiana capital company which has invested in the qualified technology fund shall constitute certified capital which is subject to the requirements of R.S. 51:1928C.

b. A qualified technology fund shall not make any payment or distribution to any CAPCO or affiliate of a certified Louisiana capital company which has invested in it that is not covered by Subparagraph C.3.a of this Section unless approved in advance by the Secretary.

6.a. An investment by a certified capital company in a qualified technology fund that is approved by the secretary in accordance with this rule shall be deemed to "further economic development within Louisiana" for purposes of R.S. 51:1923(12); provided that each investment by a qualified technology fund in qualified Louisiana technology-based businesses must:

i. "further economic development within Louisiana" as provided by rule with respect to qualified Louisiana businesses; and

ii. consist of the investment of cash and result in the acquisition of either:

(a). non-callable equity in a qualified Louisiana technology-based business; or

(b). a note issued by a qualified Louisiana technology-based business with a stated final maturity date of not less than three years; provided that the aggregate of all investments by the qualified technology fund in debt instruments with a stated maturity of less than five years may not exceed twenty-five percent of the total certified capital invested by certified capital companies in the qualified technology fund.

b. The qualified technology fund need not be a Louisiana business and industrial development corporation to provide financing assistance to qualified Louisiana technology-based businesses.

7. The aggregate management fees charged by a certified Louisiana capital company and a qualified technology fund with respect to funds invested by the certified Louisiana capital company in the qualified technology fund shall not exceed the amount permitted by R.S. 51:1928C(3).

8. The qualified technology fund shall submit to the commissioner, on or before April thirtieth, annual audited financial statements which include the opinion of an independent certified public accountant.

9. The commissioner shall conduct an annual review of the qualified technology fund and its various investment pools similar to the annual review of certified capital companies pursuant to R.S. 51:1927(A).

D. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall constitute an investment and a qualified investment for purposes of R.S. 51:1926A(1) and (2) on the date that the certified Louisiana capital company makes the investment in the qualified technology fund or in an investment pool sponsored and administered by the technology fund if the investment by the certified Louisiana capital company is in cash and is either in the form of equity which is not subject to redemption prior to the third anniversary of the date of investment or debt which has a stated final maturity date of not less than three years from the origination of the debt investment in the qualified technology fund.

E. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Rule shall not constitute a qualified investment for purposes of R.S. 51:1927.1C(1), (2) and (3) and R.S. 51:1928B(3) until the qualified technology fund has invested an amount equal to 100 percent of the investment pool which includes the investment by the certified Louisiana capital company. If as of the third anniversary of the investment date of the investment pool which includes a certified Louisiana capital company's investment in a qualified technology fund the qualified technology fund has failed to invest 100 percent of the investment pool in qualified Louisiana-based technology businesses in accordance with R.S. 51:1923(16) and this Rule, the certified Louisiana capital company may demand repayment or redemption of its pro rata share of the uninvested portion and:

1. the invested portion with respect to such certified Louisiana capital company shall be considered to have been invested in qualified investments for purposes of R.S. 51:1927.1C(1), (2) and (3) and R.S. 51:1928B(3); and

2. the uninvested portion returned to the certified Louisiana capital company shall thereafter only be deemed to have been invested in a qualified investment for purposes of R.S. 51:1927.1C(1), (2) and (3) and R.S. 51:1928B(3) when such funds are invested in qualified investments in qualified Louisiana-based technology businesses; and

3. the repayment or redemption shall not adversely affect the status of such funds as having been invested in a qualified investment for purposes of R.S. 51:1926A(1) and (2).

F. For purposes of this rule, the term *investment pool* means not less than all of the cash invested by certified Louisiana capital companies in a qualified technology fund on the same day.

G. A qualified technology fund may organize separate entities to separate the investments which comprise its different investment pools so long as each such separate entity is organized and managed in a manner materially the

same as approved by the secretary pursuant to this rule. Each separate entity shall be subject to regulation as a "qualified technology fund" but need not be separately approved as such by the secretary.

H. The secretary shall respond to an application to become a qualified technology fund within 30 days of receipt of the information required by Subsection A of this Section.

I. To become certified as a "technology park" that is permitted to be involved in the management of a qualified technology fund pursuant to R.S. 51:1923(16)(a) (in addition to the entities specifically enumerated in R.S. 51:1923(16)(a), an applicant shall submit to the secretary:

1. the charter documents for the applicant;
2. a detailed description of the management and operations of the applicant;

3. a statement showing all owners, operators, managers, beneficiaries or other interest holders of the applicant who benefit financially (directly or indirectly) from the operations of the applicant;

4. a list of qualified Louisiana-based technology businesses that have been assisted by the services provided by the applicant and a list of references from those entities, with contact information;

5. a copy of the applicant's mission statement, goals, purposes or other similar statements;

6. the audited financial statements of the applicant from the prior fiscal year with an opinion of independent certified public accountants;

7. information from which the secretary can determine whether the applicant meets the criteria of a Louisiana research park, as defined in R.S. 51:1923(11); and

8. such additional information as may be requested by the secretary with regard to the applicant.

J. The secretary shall approve an applicant as a "technology park" for purposes of participating in the management of a qualified technology fund if the applicant meets the following criteria or such additional or other criteria determined by the secretary from time to time:

1. the applicant is a Louisiana research park, as defined in R.S. 51:1923(11); and

2. in the secretary's reasonable opinion, the information delivered by the applicant to the Secretary demonstrates that the applicant has a history and a mission materially contributing to the economic development of the State of Louisiana by providing assistance to qualified Louisiana-based technology businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, and the Office of the Governor, Office of Financial Institutions, Office of the Commissioner, LR 30:

Michael J. Olivier
Secretary

0408#015

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Notification Requirements for Unauthorized Emissions (LAC 33:I.3925 and 3931)(OS052E3)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality ("department") to use emergency procedures to establish rules, and R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

This is a renewal of Emergency Rule OS052E2, which was effective April 8, 2004, and published in the *Louisiana Register* on April 20, 2004. The department is promulgating a Rule (OS052) that includes the amendments in this Emergency Rule.

In the last two years, the Baton Rouge Nonattainment Area (the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) has experienced exceedances of the one-hour ozone National Ambient Air Quality Standard (NAAQS) promulgated by the United States Environmental Protection Agency (US EPA). These exceedances did not occur during circumstances that typically result in excessive ozone formation and led to ozone readings the Baton Rouge area has not experienced in a decade. The ozone readings for two separate episodes in September 2002 and July 2003 were 164 parts per billion (ppb) and 174 ppb respectively, over 30 percent above the standard. Monitoring results from these exceedances indicate a high rate and efficiency of ozone production, which was limited spatially to the immediate Baton Rouge area. These ozone episodes correspond very well to the kind of episodes that have occurred in the Houston/Galveston areas. The Texas Air Quality Study, conducted in the Houston/Galveston areas, concluded that the reactivity of the hydrocarbons was most often dominated by low molecular weight alkenes and aromatics resulting in explosive ozone formation. Results from computer simulations based on Houston's industrial regions suggest emissions of as little as 100 pounds of light alkenes and aromatics can lead to 50 ppb or greater enhancements of ozone concentrations. Air quality sampling in the Baton Rouge area also showed substantial quantities of the mentioned ozone precursors. Baton Rouge's type of industry (petrochemical plants and refineries) and meteorological conditions are similar enough to Houston to warrant further investigation. The ozone formation experienced in the Baton Rouge area may similarly be the result of the emissions of "highly reactive" ozone precursors.

The department continues to need additional information regarding the unauthorized releases of these highly reactive ozone precursors to understand, predict, and prevent further exceedances of the ozone standard. This information is needed immediately to monitor the remainder of the 2003 and the 2004 ozone season in the hopes of achieving attainment of the standard. Facilities are to continue to follow the LAC 33:I.Chapter 39 reporting protocols and,

whenever possible, to utilize the new notification procedures found at <http://www.deq.louisiana.gov/surveillance/irf/forms> and <http://www.deq.louisiana.gov/surveillance>.

Revisions to the regulations include additional information to be included on the written notification report required in LAC 33:I.3925. This information will enhance the investigation of highly reactive VOC that is in progress. The table in LAC 33:I.3931 is being amended for clarification, and a footnote is revised to clarify that for releases of highly reactive VOC, the lowered Reportable Quantity only applies to releases to the atmosphere. This renewal also corrects two errors in the table in LAC 33:I.3931.

This Emergency Rule is effective on August 6, 2004, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS052E3, you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter D. Notification Procedures

§3925. Written Notification Procedures for the Department of Environmental Quality

A. - B.3. ...

4. details of the circumstances (unauthorized discharge description and root cause) and events leading to any unauthorized discharge, including incidents of loss of sources of radiation, and if the release point is permitted:

a. the current permitted limit for the pollutant(s) released;

b. the permitted release point/outfall ID; and

c. which limits were exceeded (SO₂ limit, mass emission limit, opacity limit, etc.) for air releases;

5. common or scientific chemical name of each specific pollutant that was released as the result of an unauthorized discharge, including the CAS number and U.S. Department of Transportation hazard classification, and best estimate of amounts of any or all released pollutants (total amount of each compound expressed in pounds, include calculations);

B.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. - A.2. ...

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants.

Pollutant	CAS No. ¹	RCRA ² Waste Number	Pounds
Acetaldehyde	75070	U001	100 [†]

[See Prior Text in Allyl chloride – Antimony*]			
Antimony Compounds	20008		100
Barium*	7440393		100
Barium compounds	20020		100
Biphenyl	92524		100
1-Butanol	71363	U031	5000/1000 [@]
Butenes (all isomers)	25167673		100 [†]
n-Butyl alcohol	71363	U031	5000/1000 [@]

[See Prior Text in Carbonic dichloride]			
Carbonyl sulfide	463581		100

[See Prior Text in Chlorinated Dibenzo Furans, all isomers - Chromium ³ *]			
Chromium compounds	20064		100

[See Prior Text in Copper ³]			
Copper Compounds	20086		100

[See Prior Text in Cumene]			
1,3-Dichloropropylene	542756		100

[See Prior Text in Ethyl acrylate]			
Ethylene	74851		5000 or 100 [†]
Ethylene glycol	107211		5000
Glycol ethers **			100

[See Prior Text in Hexane - 1,3-Isobenzofurandione]			
Manganese*	7439965		100
Manganese compounds			100

[See Prior Text in Methanethiol]			
Methyl acrylate	96333		10

[See Prior Text in Methyl ethyl ketone (MEK)- 4-Methyl-2-pentanone]			
Methylene diphenyl diisocyanate	101688		1000

[See Prior Text in Nitric acid – Propionaldehyde]			
Propylene	115071		100 [†]

[See Prior Text in Strontium sulfide – Thiomethanol]			
Toluene	108883	U220	100 [†]

[See Prior Text in Vinyl acetate - Volatile Organic Compounds not otherwise listed ⁴]			
Highly reactive volatile organic compounds listed below: acetaldehyde; butenes (all isomers); ethylene; propylene; toluene; xylene (all isomers); and/or isoprene ⁵			100 [†]

[See Prior Text in F003 – F005, Methyl ethyl ketone]			

Note * - Note ⁴ ...

⁵ The combined emission of these highly reactive VOC shall be totaled to determine if a RQ has been exceeded.

Note @ ...

[†] The RQ listed denotes the reportable quantities that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Department of Environmental Quality, Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:

Mike D. McDaniel, Ph.D.
Secretary

0408#024

DECLARATION OF EMERGENCY
Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Remediation of Sites with Contaminated Media
(LAC 33:V.109)(HW084E3)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish Rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary in order to implement Rules to address the remediation of sites with contaminated environmental media.

This is a renewal of Emergency Rule HW084E2, which was effective April 6, 2004, and published in the *Louisiana Register* on April 20, 2004. The department is drafting a Rule to promulgate these regulation changes.

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore slowing the remediation of the site or possibly halting it completely due to administration and disposal issues. This Rule will remove a regulatory hurdle that deters site remediation. The incentive to remediate pollution stems from the resulting substantially reduced disposal and transportation costs for contaminated environmental media that are not required to be managed in the same manner as hazardous waste. Language has been added to further define the management of contaminated media as nonhazardous. The Rule will also result in simplification of the waste handling process by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment.

This Emergency Rule is effective on August 4, 2004, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more

information concerning HW084E3 you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

Quality Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Hazardous Waste **C**a solid waste, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. ...

d. it consists of environmental media (soil, sediments, surface water, or groundwater) that contain one or more hazardous wastes listed in LAC 33:V.4901 (unless excluded by one of the exclusions contained in this definition) or that exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. Environmental media no longer contain a hazardous waste when concentrations of the hazardous constituents that serve as the basis for the hazardous waste being listed (as shown in LAC 33:V.4901.Table 6, Table of Constituents that Serve as a Basis for Listing Hazardous Waste, or if constituents are not listed in Table 6 refer to LAC 33:V.2299 [formerly Chapter 22, Appendix]) for appropriate constituents, or if not listed in either of these locations shall be determined by the department on a case-by-case basis) remaining in the media are below applicable RECAP Screening Standards (LAC 33:I.Chapter 13) and the media no longer exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. Land disposal treatment standards (LAC 33:V.2299 [formerly Chapter 22, Appendix] apply prior to placing such environmental media into a land disposal unit even though the media may no longer contain a hazardous waste.

e. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), LR 30:

Mike D. McDaniel, Ph.D.
Secretary

0408#023

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Waste Tires Amendments
(LAC 33:VII.10505, 10509, 10519,
10521, 10535, and 10537)(SW039E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary in order to strengthen the regulations that will ensure proper processing, recycling, marketing, and disposal of waste tires generated in Louisiana. Waste tires that are not processed, recycled, and marketed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community. In particular, improper handling of waste tires results in breeding grounds for mosquitoes, fostering West Nile and other mosquito born diseases in the environment. The elimination of breeding areas for mosquitoes will reduce the exposure to these insects and the serious health problems associated therewith.

The Waste Tire Management Fund, established to temporarily subsidize the processing, recycling, and marketing of waste tires, has not been generating sufficient funds to provide for the proper processing, recycling, and marketing of waste tires. The failure to provide sufficient funds for the waste tire program may result in the

resumption of illegal tire disposal, precipitating an increase in breeding areas for disease carrying vectors and endangering the health of the public and the aesthetics of the environment.

This Emergency Rule is effective on July 30, 2004, for all portions of this rule other than the provisions pertaining to the collection of the fee. The collection of the fee is effective on September 15, 2004, in order to provide sufficient time for those who are subject to collecting the fee to register with the department and implement the systems necessary to comply with the Rule. The Rule shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning SW039E, you may contact the Regulation Development Section at (225) 219-3550.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

A. The following words, terms, and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

* * *

Motor Vehicle Dealer—any person, business, or firm registered with the state of Louisiana that engages in the commercial sale of new motor vehicles.

* * *

Recapped or Retreaded Tire—any tire that has been reconditioned from a used tire and sold for use on a motor vehicle.

* * *

Sale of a Motor Vehicle—any sale and/or lease of a motor vehicle that would require registration, under the name of the consumer, with the Louisiana Department of Motor Vehicles.

* * *

Tire Dealer—any person, business, or firm that engages in the sale of tires, including *recapped or retreaded tires*, for use on motor vehicles.

* * *

Waste Tire—a whole tire that is no longer suitable for its original purpose because of wear, damage, or defect. *Waste tire* does not include a tire weighing over 500 pounds and/or a solid tire.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28:1953 (September 2002), LR 29:2779 (December 2003), LR 30:***

§10509. Prohibitions and Mandatory Provisions

A. - G. ...

H. All persons who sell tires shall retain and make available for inspection, audit, copying, and examination, a

record of all tire transactions in sufficient detail to be of value in determining the correct amount of fee due from such persons. The records retained shall include all sales invoices, purchase orders, inventory records, and shipping records pertaining to any and all sales and purchases of tires. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A).

I. Each tire wholesaler shall maintain a record of all tire sales made to dealers in this state. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A). These records shall contain and include the name and address of each tire purchaser and the number of tires sold to that purchaser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000), LR 30:

§10519. Standards and Responsibilities of Generators of Waste Tires

A. ...

B. Tire dealers must accept one waste tire for every tire sold from the purchaser of the tire at the time of purchase, unless the purchaser elects to retain the waste tire.

C. Each tire dealer doing business in the state of Louisiana shall be responsible for the collection of the \$2 waste tire fee upon the sale of each passenger/light truck tire, \$5 waste tire fee upon the sale of each medium truck tire, and \$10 waste tire fee upon the sale of each off-road tire. For recapped or retreaded tires, a waste tire fee of \$1.25 shall be collected upon the sale of each recapped or retreaded tire. *Tire dealer* includes any dealer selling tires in Louisiana.

D. - E.1. ...

2. "All Louisiana tire dealers are required to collect a waste tire cleanup and recycling fee of \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire, upon sale of each tire. These fees shall also be collected upon replacement of all recall and adjustment tires. Tire fee categories are defined in the Waste Tire Regulations. No fee shall be collected on tires weighing more than 500 pounds or solid tires. This fee must be collected whether or not the purchaser retains the waste tires. Tire dealers must accept from the purchaser, at the time of sale, one waste tire for every tire sold, unless the purchaser elects to retain the waste tire."

F. - J. ...

K. No generator shall allow the removal of waste tires from his place of business by anyone other than an authorized transporter, unless the generator generates 50 or less waste tires per month from the sale of 50 tires. In this case, the generator may transport his waste tires to an authorized collection or permitted processing facility provided LAC 33:VII.10523.C is satisfied.

L. A generator who ceases the sale of tires at the registered location shall notify the Office of Management and Finance, Financial Services Division, within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the tire sale and monthly report records.

M. Generators of waste tires shall segregate the waste tires from any usable tires offered for sale.

N. - O. ...

P. All generators of waste tires (e.g., new tire dealers, used tire dealers, salvage yards, and recappers) shall maintain a complete record of purchase invoices, inventory records, and sales invoices for a period of no less than three years. These records shall be open for inspection and/or audit by the administrative authority at all reasonable hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:1818 (September 2003), LR 29:2780 (December 2003), LR 30:

§10521. Standards and Responsibilities of Motor Vehicle Dealers

A. All existing motor vehicle dealers shall notify the Office of Management and Finance, Financial Services Division, of their existence and obtain an identification number. Notification shall be on a form provided by the Office of Management and Finance, Financial Services Division. Any new motor vehicle dealer shall notify the Office of Management and Finance, Financial Services Division, within 30 days of commencement of business operations.

B. Motor vehicle dealers doing business in the state of Louisiana, who sell new vehicles, shall be responsible for the collection from the consumer of the \$2 waste tire fee for each tire upon the sale of each vehicle that has passenger/light truck tires, the \$5 waste tire fee for each tire upon the sale of each vehicle that has medium truck tires, and the \$10 waste tire fee for each tire upon the sale of each off-road vehicle. No fee is collected on the designated spare tire.

C. Motor vehicle dealers shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance, Financial Services Division. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance, Financial Services Division) to the Office of Management and Finance, Financial Services Division, on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each motor vehicle dealer is required to make a report and remit the fee imposed by this Section and shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of vehicles sold, together with vehicle purchase and sales invoices, and inventory records, for a period of no less than three years. These records shall be made available for inspection by the administrative authority at all reasonable hours.

D. Motor vehicle dealers must provide notification to the public sector via a sign, made available by the Office of

Management and Finance, Financial Services Division, indicating that:

"All Louisiana motor vehicle dealers selling new vehicles are required to collect a waste tire cleanup and recycling fee from the consumer of \$2 for each tire upon the sale of each vehicle that has passenger/light truck tires, \$5 for each tire upon the sale of each vehicle that has medium truck tires, and \$10 for each tire upon the sale of each off-road vehicle. These fees shall also be collected upon replacement of all recall and adjustment tires. No fee shall be collected on the designated spare tire."

E. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice or buyers order. No tax of any kind shall be applied to this fee.

F. A motor vehicle dealer who ceases the sale of motor vehicles at the registered location shall notify the Office of Management and Finance, Financial Services Division, within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the motor vehicle sales and monthly report records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

§10535. Fees and Fund Disbursement

A. - A.8. ...

B. Waste Tire Fee upon Promulgation of These Regulations. A waste tire fee is hereby imposed on each tire sold in Louisiana, to be collected from the purchaser by the tire dealer and motor vehicle dealer at the time of retail sale. The fee shall be \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire. No fee shall be collected on tires weighing more than 500 pounds or solid tires.

C. - D.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228 (December 2001), LR 30:

§10537. Enforcement

A. ...

B. Investigations and Audits: Purposes, Notice. Investigations shall be undertaken to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the identity of the persons or parties involved. Upon written request, the results of an investigation shall be given to any complainant who provided the information prompting the investigation and, if advisable, to any person under investigation, if the identity of such person is known. In cases where persons selling tires have failed to report and remit the waste tire fee to the administrative authority, and the person's records are inadequate to determine the proper amount of fee due, or in cases(s) where a grossly incorrect report or a report that is false or fraudulent has been filed, the administrative

authority shall have the right to estimate and assess the amount of the fee due, along with any interest accrued and penalties. The burden to demonstrate to the contrary shall rest upon the audited entity.

C. - E.2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 28:1954 (September 2002), LR 30:

Mike D. McDaniel, Ph.D.
Secretary

0408#025

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Home and Community Based Services Waivers
New Opportunities Waiver
(LAC 50:XXI.13707-13709)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt LAC 50:XXI.13707-13709 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is being promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1997 to establish the provisions governing the programmatic allocation of waiver slots for the Mental Retardation/Developmental Disabilities (MR/DD) Waiver (*Louisiana Register*, Volume 23, Number 6). The June 20, 1997 rule was subsequently amended on May 20, 2002 to update the methodology for slot allocation in order to better meet the needs of citizens with disabilities in the state of Louisiana (*Louisiana Register*, Volume 28, Number 5). The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgated a Rule implementing a new home and community based services waiver designed to enhance the support services available to individuals with developmental disabilities titled the New Opportunities Waiver (NOW) (*Louisiana Register*, Volume 30, Number 6). The New Opportunities Waiver replaced the MR/DD Waiver upon completion of the transition of all MR/DD participants to NOW.

The Appropriations Bill of the 2004 Regular Session of the Legislature allocated funds for the establishment of sixty-six emergency slots for NOW and mandated the development and enforcement of rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The bureau now proposes to promulgate an Emergency Rule to establish the provisions

governing emergency waiver opportunities. In addition, the bureau proposes to repeal the rules governing programmatic allocation of MR/DD Waiver slots and adopt those provisions to govern the programmatic allocation of waiver opportunities for NOW.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities by facilitating access to waiver services when the individual meets the criteria for an emergency waiver opportunity. It is anticipated that implementation of this Emergency Rule will increase expenditures in the New Opportunities Waiver Program by \$3,735,600 for state fiscal year 2004-2005.

Effective August 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services repeals the May 20, 2002 Rule and adopts the following provisions governing the programmatic allocation of waiver opportunities in the New Opportunities Waiver.

Title 50 PUBLIC HEALTH/MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers Subpart 11. New Opportunities Waiver Chapter 137. General Provisions §13707. Programmatic Allocation of Waiver Opportunities

A. The Bureau of Community Supports and Services (BCSS) Request for Services Registry, hereafter referred to as the "registry," shall be used to evaluate individuals for waiver eligibility and shall be used to fill all waiver opportunities administered by the BCSS for persons with mental retardation or developmental disabilities. BCSS shall notify, in writing, the next individual on the registry that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a case management agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next person on the registry shall be notified as stated above and the process continues until an eligible person is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a waiver opportunity, the person's name shall be removed from the registry.

B. Right of Refusal. A person may be designated inactive on the registry upon written request to BCSS. When the individual determines that he/she is ready to begin the waiver evaluation process, he/she shall request, in writing, to BCSS that his/her name be removed from inactive status and his/her original protected request date will be reinstated. In addition, persons who left a publicly operated developmental center after July 1, 1996 and who would have received a waiver opportunity, but chose another option at the time of discharge may request access to a waiver opportunity through the Office for Citizens with Developmental Disabilities (OCDD) regional administrative units. OCDD will verify that the individual meets the criteria for this option and will refer the person to BCSS for access to the next available waiver opportunity based on their date of

discharge from the developmental center that will become their protected date.

C. Utilizing these procedures, waiver opportunities shall be allocated to the targeted groups cited as follows.

1. A minimum of 90 opportunities shall be available for allocation to foster children in the custody of the Office of Community Services (OCS), who successfully complete the financial and medical certification eligibility process and are certified for the waiver. OCS is the guardian for children who have been placed in their custody by court order. OCS shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the comprehensive plan of care, and submitting the plan of care document to BCSS.

2. A minimum of 160 opportunities shall be available for people living at Pinecrest and Hammond Developmental Centers, or their alternates, who have chosen to be deinstitutionalized, have successfully completed the financial eligibility and medical certification process, and are certified for the waiver. In situations where alternates are used, an alternate shall be defined as a person who lives in a private ICF-MR facility and chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the private ICF-MR facility for an individual being discharged from a publicly operated developmental center. A person living at Pinecrest or Hammond Developmental Center must be given freedom of choice in selecting a private ICF-MR facility placement in the area of his/her choice in order to designate the individual being discharged from the private ICF-MR facility as an alternate. The bed being vacated in the private ICF-MR facility must be reserved for 120 days for the placement of a person being discharged from a publicly operated developmental center.

3. Except for those opportunities addressed in C.1., C.6. and C.7., opportunities vacated during the waiver year shall be made available to persons leaving any publicly operated ICF-MR or their alternates.

4. For those individuals who do not complete the transition process and move from a publicly operated developmental center during the 120-day reservation period, the waiver opportunity will be converted to a community opportunity for processing. Justification to exceed the 120-day reservation period may be granted by the BCSS as needed.

5. Opportunities not utilized by persons living in public ICFs-MR or their alternates shall be divided between:

- a. the next individual on the registry who is living in either a nursing facility or private ICF-MR; and
- b. the next individual on the registry who is residing in the community.

6. Ten waiver opportunities shall be used for qualifying persons with developmental disabilities who receive services from the Developmental Neuropsychiatric Program (DNP) administered by Southeast Louisiana State Hospital. This is a pilot project between the BCSS, the OCDD, and the Office of Mental Health (OMH) in the development of coordinated wrap around services for individuals who choose to participate in the waiver and meet the financial and medical eligibility requirements for the waiver.

7. 66 waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that an opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 66 opportunities are filled, then supports and services based on the priority determination system will be identified by OCDD and addressed through other resources currently available for individuals with developmental disabilities.

8. Funded opportunities not addressed above shall be available for allocation to the next individual on the registry who successfully completes the financial eligibility and medical certification process and is certified for the waiver.

D. The Bureau of Community Supports and Services has the responsibility to monitor the utilization of waiver opportunities. At the discretion of the BCSS, specifically allocated opportunities may be reallocated to better meet the needs of citizens with disabilities in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13709. Emergency Opportunities

A. Requests for emergency waiver services shall be made through the regional administrative units (RAU), which are local and regional governmental entities responsible for implementing OCDD policies. When a request for emergency services is received, the RAU (which may be OCDD regional offices, human services districts, or human services authorities) shall complete a priority assessment that incorporates standardized operational procedures with standardized assessment tools to determine the priority of the individual's need in a fair and consistent manner.

B. To be considered for emergency waiver supports, the individual must need long term supports, not temporary or short term supports. All of the following criteria shall be used in the determination of priority for an emergency opportunity.

1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:

- a. the caregiver is unable or unwilling to continue providing care (i.e., the individual was dropped off and the caregiver was not found);
- b. death of the caregiver and there are no other available supports (i.e., other family member);
- c. the caregiver is incapacitated and there are no other available supports (i.e., other family member) due to physical or psychological reasons;
- d. intolerable temporary placement, immediate need for new placement; or
- e. other family crisis exists with no caregiver support available.

2. Level of Risk. The individual will be assessed to determine the risk to health and safety in areas of daily living, health care and behavioral supports if an emergency

waiver opportunity is not made available. Level of risk will be categorized as follows.

a. High Risk. The person's health or safety is at imminent risk without the requested developmental disability supports.

b. Moderate Risk. The person has a potential risk of losing their current level of health or safety without the requested developmental disability supports.

c. Low Risk. The person is at little or no risk of losing their current level of health or safety without the requested developmental disability supports.

3. Level of Unmet Needs. The person's needs shall be identified and assessed to determine the level to which the needs are being met.

4. Adaptive Service Level Determination. The person's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.

5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.

C. For individuals who appear to meet the criteria for an emergency waiver opportunity, the RAU will forward the Priority Ranked Score and all supporting documentation to the DHH Emergency Review Team Coordinator at OCDD in Baton Rouge to complete the determination process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Barbara Dodge at the Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#090

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Prosthetics and Orthotics
Artificial Eyes, Scleral Shell, and Related Services
(LAC 50:XVII.1301-1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XVII.1301-1303 and amend §1305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to establish the reimbursement methodology for artificial eyes in the *Louisiana Register*, (Volume 27, Number 1). The bureau now proposes to adopt criteria for the authorization of artificial eyes, scleral shell, and related services and amend the reimbursement methodology.

This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to artificial eyes and related services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Durable Medical Equipment Program by \$60,080 for fiscal year 2004-2005.

Effective August, 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the authorization of artificial eyes, scleral shell and related services.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XVII. Durable Medical Equipment

Subpart 1. Prosthetics

Chapter 13. Prosthetics and Orthotics

Subchapter A. Artificial Eyes, Scleral Shell, and Related Services

§1301. Introduction

A. Definitions

Artificial Eye or Ocular Prosthesis. A replacement for a missing or damaged, unsightly eye.

a. An artificial eye and related services are when an eyeball is removed and replacement, repair and/or upkeep of an artificial eye are necessary to maintain the contour of the face. It does not restore vision. There are two types of ocular prostheses:

- i. full ocular prosthesis; and
- ii. scleral shell.

Full Ocular Prosthesis. Used for individuals who have the globe removed allowing for the fitting of a regular artificial eye.

Related Services. Include polishing or resurfacing of ocular prosthetics, enlargements or reductions of ocular prosthetics, and fabrication or fitting of ocular conformer.

Scleral Shell (or Shield)

a. a custom-made, thin ocular prosthesis fitted directly over a blind and shrunken globe. It includes the iris (the colored part of the eye) and the sclera (the white part of the eye);

b. a term utilized to describe different types of hard scleral contact lenses. A shell fits over the entire exposed surface of the eye as opposed to a corneal contact lens which covers only the central nonwhite area encompassing the pupil and iris.

B. These procedures require prior authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:

§1303. Medical Necessity

A. A scleral shell may be authorized when the medical criteria as stated in this Subchapter A are met.

B. An artificial eye and related services shall be approved if an eyeball is removed and replacement and repair and/or upkeep of an artificial eye are necessary to maintain the contour of the face.

C. A scleral shell may, among other things, obviate the need for surgical enucleation and prosthetic implant and act to support the surrounding orbital tissue of an eye that has been rendered sightless and shrunken by inflammatory disease. In such a case, the device serves essentially as an artificial eye. In this situation, authorization of payment may be made for a scleral shell. Scleral shells are occasionally used in combination with artificial tears in the treatment of "dry eye" of diverse etiology. Tears ordinarily dry at a rapid rate, and are continually replaced by the lacrimal gland. When the lacrimal gland fails, the half-life of artificial tears may be greatly prolonged by the use of the scleral contact lens as a protective barrier against the drying action of the atmosphere. Thus, the difficult and sometimes hazardous process of frequent installation of artificial tears may be avoided. The lens acts in this instance to substitute, in part, for the functioning of the diseased lacrimal gland and may be covered as a prosthetic device in the rare case when it is used in the treatment of "dry eye."

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:

§1305. Reimbursement

A. Reimbursement for artificial eyes, scleral shells, and the related services shall be at 90 percent of the 2004 Medicare fee schedule or billed charges; whichever is the lesser amount. If not available at the established flat fee, the flat fee that shall be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1030 (May 2004), amended LR 30:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#082

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Program Health Services (LAC 50:XV.7101-7105)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.7101-7105 in the Medical Assistance

Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services provided to recipients under the age of 21. The Bureau now proposes to amend current criteria governing services, staffing requirements and school-based services reimbursement methodology in the Early and Periodic Screening, Diagnosis and Treatment Program.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT school-based services. It is estimated that implementation of this Emergency Rule will increase expenditures for EPSDT services by approximately \$2,000,000 for state fiscal year 2004-2005.

Effective August 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current criteria governing services, staffing requirements and school-based services reimbursement methodology in the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 71. Health Services

§7101. Covered Services

A. Audiology services are for the identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques. Audiology services include:

1. determination of range, nature and degree of hearing loss and communications, by use of audiological procedures;
2. referral for medical and other services necessary for the rehabilitation of children with auditory impairment; and
3. provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services.

B. Speech pathology services are for the identification of children with communicative or oropharyngeal disorders and delays in development of communication skills including diagnosis and treatment. These services include:

1. referral for medical or other professional services necessary for the rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and
2. provision of services for the rehabilitation or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

C. Occupational therapy services address the functional needs of a child related to the performance of self-help skills, adaptive behavior, play and sensory, motor and postural development. Occupational Therapy services include:

1. identification, assessment, and intervention;

2. adaptation of the environment;
3. selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
4. prevention or reducing the impact of initial or future impairment, delays in development, or loss of functional ability.

D. Physical therapy services are designed to improve the child's movement dysfunction. Physical therapy services include:

1. screening of infants and toddlers to identify movement dysfunction;
2. obtaining, interpreting and integrating information appropriate to program planning; and
3. services to prevent or alleviate movement dysfunction and related functional problems.

E. Psychological services are for obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development. Psychological services include:

1. administering psychological and developmental tests and other assessment procedures;
2. interpreting assessment results;
3. planning and managing a program of psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

F. Transportation. Transportation to and from school is covered for Medicaid children only when the child receives another covered EPSDT Health Service identified in the child's Individualized Education Plan (IEP) at the school on the day the transportation is provided. If a child requires transportation in a vehicle adapted to serve the needs of the disabled, including a specially adapted school bus, that transportation may be billed to Medicaid if the need for that specialized transportation is listed in his IEP. The child's medical need for the transportation must be identified in the IEP to be covered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 16:971 (November 1990), amended LR 23:413 (April 1996), LR 24:336 (February 1998), repromulgated for LAC codification, LR 29:176 (February 2003), amended LR 30:1034 (May 2004), LR 30:

§7103. Professional Staffing Requirements

A. Audiological Services. Audiological services must be provided by an audiologist or physician licensed in Louisiana to provide these services. A referral must be made by the child's physician, preferably the primary care physician, at least annually in accordance with federal Medicaid regulations. The audiologist must have one of the following:

1. a certificate of clinical competence from the American Speech and Hearing Association;
2. completion of the equivalent educational requirements and work experience necessary for certification; or
3. completion of the academic program and is acquiring supervised work experience to qualify for a certificate.

B. Speech Pathology Services. Speech pathology services must be provided by or under direction of a speech pathologist or audiologist in accordance with licensing standards of the State Examiners Board for Speech Pathologists or Audiologists. The speech pathologist or audiologist must be licensed in the State of Louisiana to provide these services and have one of the following:

1. a certificate of clinical competence from the American Speech and Hearing Association;
2. completion of the equivalent educational requirements and work experience necessary for certification; or
3. completion of the academic program and is acquiring supervised work experience to qualify for a certificate.

C. Occupational Therapy Services. Occupational therapy services must be provided by or under the direction of a qualified occupational therapist licensed in Louisiana to provide these services in accordance with the licensing standards of the State Examiners Board of Occupational Therapists. Occupational therapy treatment services require a written referral or prescription by a physician licensed in Louisiana on at least an annual basis. An initial evaluation may be done without a referral or prescription.

1. The occupational therapist must also be:
 - a. registered (OTR) by the American Occupational Therapy Association, Inc. (AOTA); or
 - b. a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience before registration by the AOTA.

2. Services provided under the direction of an occupational therapist must be provided by an occupational therapist assistant certified by the AOTA, who is licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist licensed in Louisiana.

D. Physical Therapy Services. Physical therapy services must be provided by or under the directions of a qualified physical therapist in accordance with state licensing standards of the State Examiners Board for Physical Therapists. The physical therapist must be a graduate of a program of physical therapy approved by both the Council in Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent. Physical therapy treatment requires a written referral or prescription by a physician licensed in Louisiana on at least an annual basis. An initial evaluation does not require such referral or prescription.

E. Psychological Services. Psychological services include diagnosis and psychological counseling for children and their families.

1. Early Intervention Centers. These services must be provided by a:
 - a. Louisiana licensed physician;
 - b. psychiatrist;
 - c. psychologist; or
 - d. certified school psychologist
2. School-Based Services. These services must be provided by a:
 - a. Louisiana licensed physician;

- b. psychiatrist;
- c. psychologist;
- d. certified school psychologist;
- e. licensed professional counselor;
- f. licensed clinical social worker; or
- g. graduate social worker with supervision in accordance with the state licensing standards of the State Board of Social Work Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1034 (May 2004), amended LR 30:

§7105. Reimbursement

A. Early Intervention Centers. Reimbursement for rehabilitation services rendered to Medicaid recipients who are age 0 up to 3 provided by EPSDT early intervention center providers will be as follows,

Procedure	Rate
Electrical stimulation	\$ 17
Physical therapy-one area—therapeutic-30 minutes	\$ 17
Physical therapy-neuromuscular reed-30 minutes	\$ 17
Physical therapy-gait training-30 minutes	\$ 34
Orthotic training	\$ 14
Kinetic act one area-30 minutes	\$ 14
Physical performance test	\$ 14
Physical therapy evaluation/re-evaluation	\$ 92
Occupational therapy evaluation/re-evaluation	\$ 70
Speech/language evaluation/re-evaluation	\$ 70
Speech/language therapy—30 minutes	\$ 26
Speech/language therapy-add 15 minutes	\$ 13
Group speech/language/hearing therapy—30 minutes	\$ 26
Speech group therapy—20 minutes	\$ 13
Speech group therapy—add 15 minutes	\$ 13
Group Speech/language/hearing therapy—1 hour	\$ 52
Speech/language/hearing therapy—20 minutes	\$ 17
Speech/language/hearing therapy—1 hour	\$ 52
Procedures and modalities—30 minutes	\$ 34
Procedures and modalities—45 minutes	\$ 52

B. School Based Services. All school boards that participate in Medicaid as EPSDT health services providers must submit a signed school system certification of understanding (PE-50 EPSDT provider supplement agreement **A@** in order to receive the new reimbursement rates for these services. The new reimbursement rates will not be activated until a completed PE-50 EPSDT provider supplement agreement **A@** form has been received from all of the school boards enrolled as EPSDT health services providers. Payments shall be based on cost. An interim rate based on projected cost may be used as necessary with a settlement of cost at the end of the fiscal year. Providers shall be required to submit annual cost data on forms developed and maintained by the Bureau of Health Services Financing. Cost data shall be used in the calculation of rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#083

DECLARATION OF EMERGENCY

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

Hospital Program **C** Transplant Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule on June 20, 1994 that adopted criteria for the reimbursement of inpatient hospital services (*Louisiana Register*, Volume 20, Number 6). The bureau subsequently promulgated another Rule on October 20, 1994 that established requirements for the reimbursement for specialized neonatal and pediatric intensive care, burn and transplant services (*Louisiana Register*, Volume 20, Number 10). The bureau now proposes to repeal and replace the provisions in the June 20, 1994 and October 20, 1994 rules governing the coverage of transplant services provided by hospitals. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to transplant services. It is estimated that implementation of this Emergency Rule will be revenue neutral for fiscal year 2004-2005.

Emergency Rule

Effective August 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals and replaces the provisions in the June 20, 1994 and October 20, 1994 rules governing the coverage of transplant services provided by hospitals.

Transplant Services

A. Transplants must be prior authorized by the Department. Transplants (other than bone marrow and stem cell) must be performed in a hospital that is a Medicare approved transplant center for the procedure. Hospitals seeking Medicaid coverage for transplant procedures must submit documentation verifying that they are a Medicare approved center for each type of transplant other than bone marrow and stem cell transplants. A completed attestation form must be submitted to Provider Enrollment. The Medicaid Director may grant an exception to a transplant center for a specific procedure if the transplant surgeon can demonstrate experience with that specific procedure and a

history of positive outcomes in another hospital that is a Medicare approved transplant center for that specific procedure.

B. In addition to the above criteria, transplant centers located in-state shall meet the following criteria for Medicaid coverage of transplant services:

1. be a member of the Organ Procurement and Transplant Network (OPTN) or the National Marrow Donor Program (NMDP) if the hospital only performs bone marrow/stem cell transplants;

2. have an organ receiving and tissue typing facility (Centers for Medicare and Medicaid Services (CMS) approved for histocompatibility) or an agreement for such services;

3. maintain a written records tracking mechanism for all grafts and patients including:

a. patient and/or graft loss with the reason specified for failure;

b. date of the procedure;

c. source of the graft;

d. if an infectious agent is involved, the facility shall have a written policy for contacting patients and appropriate governmental officials;

4. have written criteria for acceptable donors for each type of organ for which transplants are performed;

5. have adequate ancillary departments and qualified staff necessary for pre-, intra-, and post-operative care including, but not limited to:

a. assessment team;

b. surgical suite;

c. intensive care;

d. radiology;

e. laboratory pathology;

f. infectious disease;

g. dialysis; and

h. therapy (rehabilitation);

6. have minimum designated transplant staff which includes:

a. transplant surgeon adopt standards as delineated and updated by the OPTN;

b. transplant physician same as above;

c. clinical transplant coordinator:

i. Registered Nurse licensed in Louisiana; and

ii. Certified by NATCO or in training and certified within 18 months of hire date;

d. transplant social worker;

e. transplant dietician;

f. transplant data coordinator

g. transplant financial coordinator;

Note: (For 6.a-g above, continuing education is required for continued licensure and certification as applicable.)

7. written patient selection criteria and an implementation plan for application of criteria;

8. facility plan, commitment and resources for a program capable of performing the following number of transplants per year/per organ a minimum of:

a. heart 12;

b. liver 12;

c. kidney 15;

d. pancreas 6;

e. bone marrow 10;

f. other organs as established per Medicare and/or

OPTN.

Note: If the level falls below the required volume, the hospital shall be evaluated by the Department for continued recognition as a transplant center;

9. facility must demonstrate survival rates per organ type per year which meet or exceed the mean survival rates per organ type per year as published annually by the OPTN. (If rates fall below this level, the hospital shall supply adequate written documentation for evaluation and justification to the Department.)

Interested persons may submit written comments to the Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#084

DECLARATION OF EMERGENCY

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

Mental Health Rehabilitation Program Provider Enrollment Moratorium (LAC 50:XV.707)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 50:XV.707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to revise provider participation requirements for the Mental Health Rehabilitation Program (MHR) by establishing enrollment and certification criteria for prospective providers (*Louisiana Register, Volume 24, Number 7*). Act 246 of the 2003 Regular Session of the Legislature authorized the department to promulgate rules and regulations requiring the mandatory accreditation of providers of mental health rehabilitation services by an accreditation body. In compliance with Act 246, the bureau promulgated a Rule to amend the provisions contained in the July 20, 1998 Rule by establishing the accreditation requirements for mental health rehabilitation agencies (*Louisiana Register, Volume 30, Number 4*). The department now proposes to establish a moratorium on the enrollment of new providers of mental health rehabilitation services in the Medicaid Program. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring that only qualified providers who can meet the accreditation requirements may enroll to participate in the Medicaid Program. It is estimated that implementation of this Emergency Rule will be revenue neutral for state fiscal year 2004-2005.

Effective August 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.707 to implement a provider enrollment moratorium for mental health rehabilitation services.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 7. Providers

Subchapter A. Eligibility and Certification

§707. Provider Enrollment Moratorium

A. Effective August 20, 2004, a moratorium is implemented on the enrollment of mental health rehabilitation (MHR) providers to participate in the Medicaid Program. The department shall not approve for enrollment any new MHR provider or satellite office regardless of the status of their application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#085

DECLARATION OF EMERGENCY

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

Professional Services Program
Physician Services
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC). Reimbursement for these services is a flat fee

established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the Bureau restored a seven percent reduction to the reimbursement rates for selected locally assigned HCPCS and specific CPT-4 procedure codes. In addition, the reimbursement fees for certain CPT-4 designated procedure codes were increased (*Louisiana Register*, Volume 27, Number 5). The bureau subsequently promulgated a rule to increase the reimbursement for certain designated CPT procedure codes related to speciality services (*Louisiana Register*, Volume 28, Number 8). As a result of the allocation of additional funds by the Legislature during the 2003 Regular Session, the bureau increased reimbursement for selected CPT surgical and medical codes. (*Louisiana Register*, Volume 29, Number 12). This Emergency Rule is promulgated to continue the provisions contained in the January 1, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Professional Services Program and recipient access to providers of these medically necessary services.

Emergency Rule

Effective for dates of service on or after August 30, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement paid to physicians for selected surgical and medical services provided to designated Medicaid recipients.

Pediatric Surgery Services

A. Services include selected surgery services provided by the primary servicing physician to Medicaid recipients from 11 through 15 years of age. Physicians' Current Procedural Terminology (CPT) surgical procedure codes (10021-69990) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for deliveries (59410) and (59415) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

B. Surgical services modified with modifier 63 (procedure performed on infants less than 4 kg) shall be reimbursed at 125 percent of the fee on file.

Pediatric Medical Services

A. Services include selected medical services provided by the primary servicing physician to Medicaid recipients from birth through 15 years of age. Physicians' Current Procedural Terminology (CPT) medical procedure codes (90918-99199) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status, procedure codes for conscious sedation (99141) and (99142) or those payable with a fee greater than 100 percent of the Medicare Region 99 allowable for 2002.

Implementation of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services

Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0408#086

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004 Commercial Deep-Water Grouper Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Effective 12:00 noon, August 8, 2004, the commercial fishery for deep-water groupers (misty, snowy, yellowedge, Warsaw grouper, and speckled hind) in Louisiana waters, as described in LAC 76:VII.357.B.1 will close and remain closed until 12:01 a.m., January 1, 2005. Nothing herein shall preclude the legal harvest of deep-water grouper by legally licensed recreational fishermen during the open season for recreational harvest.

Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell deep-water groupers whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess deep-water groupers in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing deep-water groupers taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The commission grants authority to the Secretary of the Department of Wildlife and Fisheries to re-open and close the commercial season for deep-water groupers in Louisiana state waters if he is informed by NMFS that the season dates for the commercial harvest of deep-water groupers in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters.

The Secretary of the Department of Wildlife and Fisheries has been notified by the National Marine Fisheries Service that the commercial quota for deep-water groupers was projected to be reached on July 15, 2004, and that the

Federal season closure is necessary to ensure that the quota for deep-water grouper for 2004 is not exceeded.

Wayne J. Sagrera
Vice-Chairman

0408#042

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004-2005 Early Migratory Bird Seasons

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule:

The hunting seasons for early migratory birds during the 2004-2005 hunting season shall be as follows.

Mourning Doves: Split Season, Statewide, 70 days
September 4 - September 12
October 9 - November 14
December 18 - January 10

Mourning Dove and fully dressed Eurasian Collared-Doves and Ringed Turtle-Doves: Daily bag limit 12 in aggregate, Possession 24 but note: Eurasian Collared-Doves and Ringed Turtle-Doves and Eurasian collared-doves and ringed turtle-doves may only be hunted or taken during the open mourning dove season. There is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed turtle-doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the daily bag limit for mourning doves.

Teal: September 18 - September 26

Daily bag limit 4, possession limit 8, blue-winged, green-winged and Cinnamon teal only. Federal and State waterfowl stamps required.

Rails: Split Season
September 18 - September 26

Remainder to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate. Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinules: Split Season
September 18 - September 26

Remainder to be set in August with the duck regulations.

Common and Purple: Daily bag limit 15 in the aggregate, possession 30 in the aggregate.

Woodcock: December 18 - January 31
Daily bag limit 3, possession 6

Snipe: Deferred, to be set in August with the duck regulations.

Shooting Hours:

Teal, Rail, Woodcock, and Gallinule: One-half hour before sunrise to sunset.

Mourning Dove: One-half hour before sunrise to sunset except on September 4-5, October 9-10 and December 18-19 when shooting hours will be 12:00 noon to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2004 and extend through sunset on February 28, 2005.

Dwight Landreneau
Secretary

0408#044

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004 Fall Shrimp Season Zones 1 and 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2004 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at official sunrise August 16, 2004; and

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at official sunrise August 9, 2004.

The commission also hereby sets the closing date for the 2004 Fall Shrimp Season in inside waters in Zone 1 and Zone 3 at official sunset December 21, 2004 except in the open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307D) which shall remain open until 6:00 a.m., March 31, 2005. The commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Wayne J. Sagrera
Vice-Chairman

0408#041

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004 Fall Shrimp Season Zone 2

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, and a resolution adopted by the Wildlife and Fisheries Commission on July 1, 2004 which authorized the Secretary of the Department of Wildlife and Fisheries to open and close the 2004 fall shrimp season in inside waters provided technical and biological data indicate that marketable shrimp, in sufficient quantities are available for harvest and to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state outside waters if significant numbers of small white shrimp are found in these waters, the Secretary of the Department of Wildlife and Fisheries does hereby set the 2004 Fall Shrimp Season in Louisiana waters to open as follows:

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at official sunrise August 2, 2004.

The Secretary also hereby sets the closing date for the 2004 Fall Inshore Shrimp Season in Zone 2 at official sunset December 21, 2004.

Dwight Landreneau
Secretary

0408#017

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004-2005 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1 notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declares:

The oyster season in the Vermilion Bay Public Oyster Seed Ground as described in LAC 76:VII.507 and LAC 76:VII.509 will open one-half hour before sunrise on September 8, 2004 and close one-half hour after sunset on April 1, 2005.

The oyster season in the Bay Gardene Public Oyster Seed Reservation as described in R.S. 56:434.E will open one-half

hour before sunrise on September 15, 2004 and will close one-half hour after sunset on April 1, 2005.

The oyster seasons in the primary public oyster seed grounds east of the Mississippi River as described in LAC 76:VII.511 and LAC 76:VII.513 are as follows:

1. that portion of the public oyster seed grounds bordered on the north by the Louisiana/Mississippi state line and on the south by the Mississippi River Gulf Outlet, including that portion of Lake Borgne as described in LAC 76:VII.513, will open one-half hour before sunrise on October 1, 2004 and close one-half hour after sunset on April 30, 2005; and

2. that portion of the public oyster seed grounds east of the Mississippi River bordered on the north by the Mississippi River Gulf Outlet and on the south by the Mississippi River and North Pass, including the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet will open one-half hour before sunrise on October 1, 2004 and close one-half hour after sunset on April 1, 2005.

The oyster season in the Bay Junop Public Oyster Seed Reservation as described in R.S. 56:434.E will open one-half hour before sunrise on October 1, 2004 and will close one-half hour after sunset on October 10, 2004.

The oyster season in the Lake Mechant Public Oyster Seed Grounds as described in LAC 76:VII.517, with the exception of the 2004 cultch plant within the following corners:

1. latitude 29 degrees 18 minutes and 45.106 seconds north and longitude 90 degrees 56 minutes 54.820 seconds west;

2. latitude 29 degrees 18 minutes 26.090 seconds north and longitude 90 degrees 56 minutes 55.329 seconds west;

3. latitude 29 degrees 18 minutes 25.879 seconds north and longitude 90 degrees 56 minutes 45.090 west; and

4. latitude 29 degrees 18 minutes 44.895 seconds north and longitude 90 degrees 56 minutes 44.580 seconds west, will open one-half hour before sunrise on October 11, 2004 and close one-half hour after sunset on October 31, 2004.

The oyster season for the Calcasieu Lake public oyster ground as described in R.S. 56:435.1.1 will open one-half hour before sunrise on October 15, 2004 and will remain open until one-half hour after sunset on April 30, 2005. The sack limit for Calcasieu Lake is set at 15 sacks per day as provided for in R.S. 56:435.1.1. However, these conservation actions will not supercede public health closures.

The following areas will remain closed for the 2004/2005 oyster season: the Hackberry Bay and Sister Lake Public Oyster Seed Reservations (as described in R.S. 56:434.E), the Public Oyster Seed Grounds located in portions of Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Barataria Bay (as described in LAC 76:VII.517), and the Sabine Lake public oyster tonging area (as described in R.S. 56:435.1).

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has

occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads and the reef is being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Wayne J. Sagrera
Vice-Chairman

0408#040

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Alligator Hide Tag Fee

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to promulgate rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, and finfish seasons and size limits, and all rules and regulations pursuant thereto, and the authority granted to the Secretary of the Department of Wildlife and Fisheries by the Wildlife and Fisheries Commission on May 6, 2004, the Secretary of the Department of Wildlife and Fisheries does hereby suspend the collection of \$1.00 of the \$4.00 alligator hide tag fee. This suspension shall commence on September 20, 2004 and continue for a period of 120 days or until such time as the Wildlife and Fisheries Commission takes further action, whichever occurs first.

Emergency procedures are necessary to allow the Department to make the simultaneous transition from the current suspension of \$2 of the \$4 alligator hide tag fee to a \$1 suspension of the \$4 alligator hide tag fee. Without the Declaration of Emergency, a simultaneous transition will not be possible and will result in the fee going up to \$4 for a short period of time. During September and October of 2003 the number of hides shipped and subject to the collection of the alligator fee was 68,165 hides. With the changing of the tag fees multiple times during the September and October 2004, there will certainly be considerable confusion in the industry. Dealers will alter shipping dates to the greatest extent possible to minimize their tag fee cost. Problems will occur in all levels of the alligator industry; with the staff conducting the inspections, the scheduling of inspections, with the collection of the appropriate fees and with dealers. With this Declaration of Emergency we will be able to at least simplify the issue, notifying dealers of the change and then scheduling the hide inspections to meet the need of the industry within our personnel limitations. Without the Declaration of Emergency all of the dealers will be trying to schedule inspections in early September, this is the exact

timeframe that we need our staff in the field monitoring alligator harvest sex ratios and "return alligators" harvested during the wild season.

Dwight Landreneau
Secretary

0408#039

DECLARATION OF EMERGENCY

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

Deer Hunting Seasons Area 6

In accordance with the provisions of R.S. 49:953B and 967D(1) of the Administrative Procedure Act, and under the authority of R.S. 56:115 and 116, the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule:

As a result of public comments and staff recommendations, this commission hereby adopts the

following dates for the Area 6 deer hunting season, which dates reflect the original recommendations of Department staff.

Modern Firearms Still Hunt November 20-December 5
Muzzleloader December 6-10

This action must be taken by Declaration of Emergency since the commission's season date Rule has already been submitted to the legislative leadership and the Office of the State Register, and insufficient time remains to make these changes via standard rulemaking prior to the opening dates of these seasons.

This provision supercedes the corresponding provision contained in LAC 76:XIX.103 which was promulgated as a rule and published in the July 20, 2004 State Register.

Wayne J. Sagrera
Vice-Chairman

0408#043