

# Emergency Rules

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Agro Consumer Services

Petroleum Products (LAC 7:XXXV.351-365)

The Commissioner of Agriculture and Forestry adopts the following Emergency Rule relating to advertising, offering to sell or sale at retail of motor vehicle fuels in a manner contrary to law. This Rule is adopted in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq. and the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. These emergency regulations renew the previously adopted emergency regulations on this subject matter. Notice of intent to adopt permanent regulations on this subject matter were published in the January 20, 2005 Louisiana Register.

Motor vehicle fuels are essential to the community, to industry including agriculture and forestry, and to the welfare of the citizens of Louisiana. The free and fair distribution and sale of motor vehicle fuels is necessary for the economic vitality of this state in general, and of particular industries such as agriculture and forestry. The free and fair distribution and sale of motor vehicle fuels is therefore important to the public welfare.

Advertising, offering to sell or selling of motor vehicle fuels below cost is unfair competition contrary to and violative of the public policy of this state.

Presently there exists within this state advertisements, offers to sell and sales at retail of motor vehicle fuels below cost, which advertisements, offers and sales are unlawful. The advertisements, offers to sell and sales at retail of motor vehicle fuels below cost tend to reduce competition through the elimination of competitors, thereby threatening the free and fair distribution and sale, and thus the supply, of motor vehicle fuels. Maintenance of competition in the sale of motor vehicle fuels is critical to the free and fair distribution and sale of motor vehicle fuels throughout the state. The reduction of competition and harm to the free and fair distribution and sale of motor vehicle fuels constitutes imminent peril to the public welfare.

The Commissioner of Agriculture and Forestry finds that the circumstances described above constitute an imminent peril to the public welfare and that the adoption of a Rule upon shorter notice than that provided in R.S. 49:953(A) is therefore required.

These emergency regulations become effective upon signature, February 18, 2005, and will remain in effect for a period of one hundred twenty days, unless renewed, or until promulgated as permanent regulations in accordance with the Administrative Procedure Act, whichever occurs first.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXV. Agro-Consumer Services

#### Chapter 3. Petroleum Products

#### Subchapter B. Sale of Motor Vehicle Fuels

#### §351. Definitions

A. As used in this Subchapter, the terms defined in this section have the meanings herein given to them, except where the context expressly indicates otherwise:

*Commissioner*—the Commissioner of Agriculture and Forestry.

*Cost to the Retailer*—only bona fide costs. Purchases made by retailers at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining *cost to the retailer*.

a. The invoice cost, or the replacement cost, of motor vehicle fuels to the retailer, whichever is lower;

i. less all trade discounts except customary discounts for cash;

ii. plus, in the following order:

(a). freight charges not otherwise included in the invoice cost or the replacement cost;

(b). cartage to the retail outlet if done or paid by the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be three-fourths of one per cent of the cost to the retailer after adding freight charges but before adding cartage and markup; and,

(c). a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six per cent of the cost to the retailer after adding freight charges and cartage.

b. In determining *cost to the retailer* in those cases where the retailer buys at wholesale and receives the wholesaler's profits and discounts on motor vehicle fuels to be sold at retail, both a wholesale markup of two per cent and the retail markup of six percent, in the absence of proof of a lesser cost, shall be added to cover a proportionate part of the cost of doing business.

*Discount*—any reduction, direct or indirect, in the price of motor vehicle fuels.

*Freight*—all costs of transportation of motor vehicle fuels from a terminal or other bulk storage facility to the retailer.

*Held for Sale*—that a motor vehicle fuel is stored on the premises of a retailer such that motor vehicle fuel is capable of being sold or dispensed in connection with sales at retail.

*Individual*—person.

*Invoice*—the document evidencing the purchase of motor vehicle fuels by a retailer containing purchase information including the date, quantity, description of product and the actual sale price of each product to the retailer.

*Invoice Cost*—the actual price of motor vehicle fuels purchased by the retailer as set forth in an invoice. In the event any retailer obtains motor vehicle fuels for resale in a manner that does not generate an invoice, in the absence of proof of a different cost, the invoice cost for such fuel for that retailer shall be the rack average price, for the date the motor vehicle fuel was advertised, offered for sale, or sold at retail for the same motor vehicle fuel product at the rack which is geographically closest to the retailer's outlet.

*Motor Vehicle Fuel* and *Motor Vehicle Fuels*—those petroleum products, such as gasoline, diesel fuel, or any other refined hydrocarbon mixture, distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads and highways.

*Person*—a natural person or legal entity.

*Replacement Cost*—the lowest cost per unit at which the motor vehicle fuels sold or offered for sale could have been bought by the retailer at any time within thirty days prior to the date of sale or the date upon which the motor vehicle fuels are offered for sale by the retailer if bought in the same quantity as the retailer's last purchase of the motor vehicle fuels.

*Retailer*—any person engaged in the business of making sales at retail within this state of motor vehicle fuels, or if any person is engaged in the business of making sales both at retail and at wholesale, *retailer* shall apply only to the retail portion of the business.

*Sell at Retail* and *Sales at Retail*—any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the retailer's business, of title to motor vehicle fuels to the purchaser for consumption or use other than resale, further processing or manufacturing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

### **§353. Prohibition on Below-Cost Sales of Motor Vehicle Fuels at Retail**

A. No retailer shall advertise, offer to sell, or sell at retail any motor vehicle fuels at less than cost to the retailer.

B. When motor vehicle fuels are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, or are advertised, offered, or sold with a gift of one or more items, each and all of the items shall for the purposes of this Subchapter be considered advertised, offered for sale, or sold, and the price of the motor vehicle fuels for the purposes of this Subchapter shall include the cost of the other items to the retailer. In the absence of proof of a lesser cost, the cost of the other items to the retailer shall be determined in the same manner as "cost to the retailer" of motor vehicle fuels is determined in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

### **§355. Exemptions**

A. The provisions of this Subchapter shall not apply to sales at retail where motor vehicle fuels are:

1. sold in bona fide clearance sales, if advertised, marked, and sold as such;

2. being discontinued and are advertised, marked and sold as such;

3. sold upon the final liquidation of any business;

4. sold for charitable purposes or to relief agencies;

5. sold on contract to departments of the government or governmental institutions;

6. sold in good faith to meet that competition which permits a competitor to sell at a lesser price where such competitor is able to do so without violating the terms and conditions of this Subchapter;

7. sold by any officer acting under the order or direction of any court;

8. sold by the manufacturer or producer thereof; or

9. sold as medicants, germicides, insecticides or cleaning fluids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

### **§357. Burdens and Presumptions**

A. Upon proof being made at any adjudicatory hearing that a person has advertised, offered to sell, or sold motor vehicle fuels at retail at less than cost to the retailer plus applicable taxes, such person shall be presumed to be in violation of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

### **§359. Recordkeeping and Inspection of Records**

A.1. Each retailer, dealer, distributor, marketer, jobber, importer, or refiner of motor vehicle fuels or any person performing one or more of those functions shall keep a full and complete record of motor vehicle fuels received, used, sold, or held for sale within this state by him, including but not limited to the following:

a. invoices, bills of lading, and other pertinent records and papers that document or establish the cost to the retailer as defined in §351 of this Subchapter;

b. records of all measurements of the retailer's inventory of motor vehicle fuels; and

c. records of all motor vehicle fuels pump or dispenser totalizer readings.

2. The records shall be kept for a period of three years from the end of the calendar year in which they were created. The records shall be kept in a manner that permits prompt access to all such records and shall be kept in a manner that facilitates the determination by audit of the cost to the retailer as defined in §351 of this Subchapter. In order to enforce the provisions of this Subchapter, the commissioner may from time to time audit the books and records of retailers, dealers, distributors, marketers, jobbers,

importers, or refiners of motor vehicle fuels and each shall permit access to the records described in this section for such audit during normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

**§361. Suspension of Right to do Business**

A. A violator of the provisions of §353 of this Subchapter may have his right to engage in the business of making sales at retail within this state of motor vehicle fuels suspended in addition to any civil penalty that may be imposed by the commissioner. For a first or second offense, the violator's right to continue or engage in the business of making sales at retail within this state of motor vehicle fuels at the place of business involved may be suspended for not less than one week nor more than six months. For any subsequent offense, the violator's right to engage in said business may be suspended for not less than three months nor more than twelve months. This suspension shall extend only to the individual guilty of the offense, unless the person is acting as an agent for a principal who knew of and participated in the violation, or knowing of the violation, acquiesced therein. The suspension shall extend to the right to use the filling station and all tanks, pumps, containers or equipment located at that station for the same period of time. However, if the violator does not own the property or equipment, and is merely renting, leasing or borrowing it, or is acting as agent for another, the suspension will extend to the owner or principal only if the owner or principal knew, or had good reason to know, of the violation. The commissioner has authority on motion in court to take a rule against the retailer, to show cause in not less than two nor more than ten days, inclusive of holidays after the service thereof, why said retailer should not be ordered to cease from further pursuit of business as retailer for the aforesaid period. Violations of the injunction shall be considered as a contempt of court and punished according to law. These motions shall be tried out of term and in chambers, and always by preference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

**§363. Monetary Penalty; Adjudicatory Hearing Required; Cost of Adjudicatory Hearing; Court Enforcement of Rulings; Injunctive Relief; Stipulated Resolution; Service**

A. A violator of any provisions of this Subchapter shall be subject to a civil penalty of not more than five hundred dollars for each act of violation. Each day on which a violation occurs shall be a separate offense.

B. Penalties may be assessed only by a ruling of the commissioner based upon an adjudicatory hearing held in accordance with the provisions of the Administrative Procedure Act.

C. In addition to civil penalties, the commissioner may assess the proportionate costs of the adjudicatory hearing

against the offender. The commissioner shall determine the amount of costs to be assessed.

D. The commissioner may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurred.

E. The commissioner may institute civil proceedings seeking injunctive relief to restrain and prevent the violation of the provisions of this Chapter in the district court for the parish in which the violation occurred.

F. Nothing contained in this Part shall limit the right of the commissioner to offer any stipulated resolution of any alleged violation.

G. All notices including notices of adjudicatory hearings and service of subpoenas shall be served upon the agent for service of process, an officer, the principal owner, a manager or an employee of the entity to be noticed or served and, once served in accordance herewith said notice or service, shall be valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

**§365. Severability Clause**

A. If any provision of this Subchapter is declared invalid for any reason by a final judgment of a court of competent jurisdiction, that declaration shall not affect the validity of the remaining provisions of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, R.S. 3:4671, R.S. 3:4679, R.S. 3:4680, R.S. 3:4686, and R.S. 51:421 et seq.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Weights and Measures Commission, LR 31:

Bob Odom  
Commissioner

0503#003

**DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of Environmental Assessment**

Postponement of Permit Deadline for  
Oil and Gas Construction Activities  
(LAC 33:IX.2511)(WQ060E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R. S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the March 9, 2005, Environmental Protection Agency (EPA) rule to postpone until June 12, 2006, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas related construction activity that disturbs one to five acres of land. This is the second postponement promulgated by EPA for these

activities. Within six months of that action, EPA intends to publish a notice of proposed rulemaking in the *Federal Register* for addressing these discharges and to invite public comments.

This Emergency Rule will allow operators at construction sites related to oil and gas exploration, production, processing, or treatment operations, or transmission facilities that disturb equal to or greater than one acre and less than five acres of land to legally conduct those construction activities without being permitted until the regulations found at LAC 33:IX.2511 can be revised to incorporate the new June 12, 2006, federal permit authorization deadline for those construction activities. The Department of Environmental Quality, Office of Environmental Services (successor to the former Office of Water Resources) became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. An emergency rule is necessary for the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. Accordingly, the department adopts the following Emergency Rule.

This Emergency Rule is effective on March 10, 2005, 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 WQ060E you may contact the Regulation Development Section at (225) 219-3550.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 2. The Louisiana Pollutant Discharge**

**Elimination System (LPDES) Program**

**Chapter 25. Permit Application and Special LPDES  
Program Requirements**

**§2511. Storm Water Discharges**

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities, requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by June 12, 2006.

E.9 - G.4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074.B.(3) and B.(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:701 (May 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:

Mike D. McDaniel, Ph.D.  
Secretary

0503#067

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of Public Health**

Vital Records (LAC 48:V.11707)

The Department of Health and Hospitals, Office of Public Health, promulgates the following Emergency Rule in the Vital Records and Statistics Program as authorized by R.S. 40:33(C). This Emergency Rule is promulgated in accordance with the Administrative Procedures Act, R.S.49:953(B)(1) et. seq., and shall be in effect for the maximum period allowed by law or until adoption of the Rule, whichever occurs first.

As a result of a shortage of death certificate banknote security paper and problems the vendor has encountered in printing this paper, the department has determined it necessary to issue electronic death certificates. This action is being taken in order to avoid the interruption in the availability of death certificates. Vital Records currently has electronic death certificate security paper and has the infrastructure in place at all parish health units to issue electronic death certificates. The shipment of security paper will not arrive before the supply of death certificate security paper is exhausted statewide. This Emergency Rule will allow department to continue to meet the needs of the public in this situation.

This Emergency Rule is effective February 18, 2005, and is to remain effective for a period of 120 days or until adoption of the final Rule, whichever occurs first.

**Title 48**

**PUBLIC HEALTH-GENERAL**

**Part V. Preventive Health Services**

**Subpart 45. Vital Records**

**Chapter 117. Availability of Records**

**§11707. Certified Copies of Records**

A. - B. ...

C. Electronic certified abstracts of vital events may be issued in lieu of certified copies of documents on file with the Vital Records Registry. Data items certified are determined by the state registrar of vital records. Copies which suppress protected health information shall be made available. Fees for certified abstracts shall be in accordance with R.S. 40:40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:32 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 15:473 (June 1989), LR 31:

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

0503#002

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of Public Health

#### Repeal of Emergency Rule Vital Records (LAC 48:V.11707)

Editor's Note: The referenced Emergency Rule may be viewed in this edition of the *Louisiana Register* on page 616.

The Department of Health and Hospitals, Office of Public Health, hereby repeals the following Emergency Rule in the Vital Records and Statistics Program as authorized by R.S. 40:33(C). The repeal of this Emergency Rule is promulgated in accordance with the Administrative Procedures Act, R.S.49:953(B)(1) et. seq. and is effective March 3, 2005.

#### Title 48

#### PUBLIC HEALTH GENERAL

#### Part V. Preventive Health Services

#### Subpart 45. Vital Records

#### Chapter 117. Availability of Records

#### §11707. Certified Copies of Records

A. - B. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:32 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 15:473 (June 1989), LR 31:

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

0503#074

## DECLARATION OF EMERGENCY

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

#### 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 66 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 promulgated an Emergency Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the rules governing programmatic allocation of MR/DD Waiver slots and adopted provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 30, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 20, 2004 Rule.

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.

Effective April 19, 2005, 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 de-institutionalized, 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 Paragraphs C.1, C.2, 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. Sixty-six 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 31:

#### **§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 31:

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, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 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

0503#032

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

#### Earned Income Tax Credit (EITC) Program (LAC 67:III.5581)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt §5581, Earned Income Tax Credit as a new TANF Initiative. This Emergency Rule effective February 11, 2005, will remain in effect for a period of 120 days.

Pursuant to Act 1 of the 2004 Regular Session of the Louisiana Legislature, the agency proposes to adopt Section 5581 to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance.

The authorization for emergency action in this matter is contained in HB 1 of the 2004 Regular Session of the Louisiana Legislature.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5581. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance effective January 1, 2005. Strategies include collaboration with the IRS, various state departments and the targeted expansion of existing outreach activities to assure that free taxpayer assistance is available statewide.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:

Ann Silverberg Williamson  
Secretary

0503#001