

Emergency Rules

DECLARATION OF EMERGENCY

Department of Civil Service Civil Service Commission

Furlough Extension

At its meeting on January 11, 2006 the State Civil Service Commission adopted the following Rule, on an emergency basis:

17.8 Furlough Without Pay

* * *

(d) When the Commission or Director determines that extraordinary circumstances exist, they may approve an extension of furlough beyond 450 hours. If any employees are recalled during this extended furlough period, the employee with the most state service for a given job title shall be recalled first. If such position requires specific licensure or certification the employee with the most state service who meets those requirements shall be recalled first.

Following Hurricanes Katrina and Rita, agencies have needed to use the furlough without pay as a mechanism to remove employees from their payrolls until such time as a formal layoff plan could be submitted, approved and implemented. Current rules impose specific time limits on the number of hours an employee can be furloughed. We have found that these limits do not always allow adequate time to implement the formal layoff process, particularly with regard to notifications and displacement offers. The Emergency Rule addresses this matter until such time as a permanent Rule change can be implemented. We will present the permanent Rule change proposal to the Civil Service Commission at its March meeting.

Anne S. Soileau
Acting Director

0602#004

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

8-Hour Ambient Ozone Standard and Nonattainment New Source Review (LAC 33:III.111.504, 607, 711, 2201, and 2202)(AQ253E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, 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 finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to implement rules concerning the revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and transitional provisions for

nonattainment new source review under the revised standard.

This is a renewal of Emergency Rule AQ253E1, which was effective on October 13, 2005, and published in the *Louisiana Register* on November 20, 2005. The department is drafting a rule to promulgate these regulation changes. In this renewal of the Emergency Rule, citation corrections have been made in LAC 33:III.504 to reflect rule changes that were promulgated in the December 20, 2005, issue of the Louisiana Register.

On April 30, 2004, EPA enacted 8-hour ozone NAAQS classifications, effective June 15, 2004 (69 FR 23858). The revised 8-hour NAAQS is more protective than the existing 1-hour ozone NAAQS. In order to transition from the existing 1-hour standard to the new 8-hour standard, EPA adopted a rule for implementation of the 8-hour ozone NAAQS-Phase 1 (the "Phase 1 Implementation Rule") on April 30, 2004 (69 FR 23951). In the Phase 1 Implementation Rule, EPA revoked the 1-hour standard in full, including the associated designations and classifications, effective on June 15, 2005.

Litigation by a number of stakeholders pending in the United States Court of Appeals for the District of Columbia Circuit challenged various aspects of the Phase 1 Implementation Rule, resulting in EPA's agreement to reconsider several portions of the Rule through renewed notice and public comment. EPA only recently made final decisions on reconsideration, thus clearing the way for effectiveness of the Phase 1 Implementation Rule (70 FR 30592, May 26, 2005). As a result, Louisiana is required to adopt the 8-hour revised standard and measures to implement such standard. This Emergency Rule is necessary to address two of the most immediate aspects of implementation: 1) revision of LAC 33:III.711 to replace the 1-hour primary ambient air quality standard with the 8-hour standard; and 2) revision of nonattainment new source review provisions for parishes that were reclassified from severe under the 1-hour standard to marginal under the 8-hour standard (parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge). Because such parishes are still in nonattainment, the department is adopting measures to ensure that these parishes continue to make progress toward attainment while still accommodating growth. Regulatory changes will also delete references to the 1-hour standard and substitute the 8-hour standard, and take other actions to transition to the 8-hour standard. The attainment date for the Baton Rouge area under the 8-hour standard is June 15, 2007. Failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare as the department would not have the authority to enforce the 8-hour standard.

This Emergency Rule is effective on February 10, 2006, 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 AQ253E2, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Ozone Exceedance—a daily maximum 8-hour average ozone measurement that is greater than the value of the standard.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. - A.1. ...

2. Except as specified in Subsection H of this Section, the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L.Table 1 of this Section to determine whether the source is major.

3. Except as specified in Subsection H of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L.Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. - d. ...

4. Except as specified in Subsection H of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L.Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. - 7. ...

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of the Section on or before

June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas shall apply to VOC and NO_x increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of the Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas shall apply to VOC and NO_x increases.

B. - D.4. ...

5. Except as specified in Subsection H of this Section, emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L.Table 1 of this Section, in the area where the national ambient air quality standard for that pollutant is violated.

D.6. - F. ...

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO_x credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection H of this Section, offsets shall be required at the ratio specified in Subsection L.Table 1 of this Section.

F.2. - G. ...

H. Notwithstanding the parish's nonattainment status with respect to the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, the provisions of this Subsection shall apply to sources located in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:

a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;

b. increase emissions of highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:

- i. acetaldehyde;
- ii. 1,3-butadiene;
- iii. butenes (all isomers);
- iv. ethylene;
- v. propylene;
- vi. toluene;
- vii. xylene (all isomers);
- viii. isoprene.

2. The following sources shall provide offsets for any net emissions increase:

a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;

b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph H.2 of this Section shall be 1.2 to 1.

4. This Subsection shall become effective June 15, 2005.

I. - L. Table 1, Footnote PM₁₀. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§607. Determination of Creditable Emission Reductions

A. - C. ...

1. If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory except that beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. ...

i. if the design value for the nonattainment area is above the NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 7. Ambient Air Quality

§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual geometric mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
Sulfur Dioxide (SO ₂)	80 µg/m ³	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m ³	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
Sulfur Dioxide (SO ₂)	1,300 µg/m ³	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

B.1. - C. Table 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 22. Control of Emissions of Nitrogen Oxides (NO_x)

§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence

A. - C.20. ...

D. Emission Factors

1. The following tables list NO_x emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence.

D.1. Table D-1A. - I.5. ...

J. Effective Dates

1. The owner or operator of an affected facility shall modify and/or install and bring into normal operation NO_x control equipment and/or NO_x monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO_x reduction controls or a NO_x monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2241 (October 2005), LR 32:

§2202. Contingency Plan

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:1170 (June 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0602#035

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of the Commissioner**

Small Entrepreneurship (Hudson Initiative)—Procurement (LAC 19:VIII.Chapters 11 and 13)

The Division of Administration, Office the Commissioner of Administration, has exercised the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 19:VIII, Subpart 2, under the authority of R.S. 39:2007(F). This action is taken to ensure the welfare of the state by establishing rules governing procurements made as part of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), R.S. 39:2001 through 2008 and R.S. 51:931. This Emergency Rule will allow for coordination of state procurement with the February 20, 2006, implementation of Small Entrepreneurship certification procedures by the Department of Economic Development pursuant to LAC 19:VIII, Subpart 1.

Title 19

CORPORATIONS AND BUSINESS

Part VIII. Small Entrepreneurship (Hudson Initiative)

Subpart 2. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The State of Louisiana's Small Entrepreneurship (Hudson Initiative) Program, hereinafter called SE (HI), was created to provide additional opportunities for Louisiana-based small entrepreneurs, hereinafter called SE's, to participate in contracting and procurement with the State of Louisiana. By formalizing existing practices and implementing new procedures, the SE (HI) will allow the state of Louisiana to target more effectively certified SE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the SE (HI).

B.1. The SE (HI) is a goal-oriented program, encouraging state agencies to contract with certified SE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified SE's. The SE (HI) is a race and gender-neutral program. SE (HI) participation is restricted to Louisiana-based certified SE's in accordance with rules promulgated by the Louisiana Department of Economic Development.

a. The state will establish annual goals for certified SE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified SE's, and price competitiveness.

b. To participate, SE's must be certified by the Louisiana Department of Economic Development. Certification is based on a firm's gross revenues, number of

employees, and other criteria as specified by Act 440 of the 2005 Legislative Session.

c. The SE (HI) has guidelines for counting certified SE participation.

d. The SE (HI) incorporates several procedures to help implement the initiative.

2. These procedures are designed to maximize the initiative's success, including:

a. assisting certified SE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified SE's and larger firms;

c. assisting in developing a mentoring program for certified SE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified SE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified SE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified SE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified SE directory and source list(s) on the Internet to help identify qualified and available certified SE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for SE participation.

3. For designated contracts, the SE (HI) requires good-faith efforts by contractors to use certified SE's in contract performance. The SE (HI) has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified SE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified SE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on an SE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to 3 years. Procedures are in place to provide an opportunity for due process for any contractor or SE prior to the suspension.

5. The SE (HI) is race and gender neutral. The SE (HI) shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors and/or certified SE's that violate the state's non-discrimination mandate in the operations of the SE (HI) will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon

statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the SE (HI), reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified SE's, the number of contracts that included a good faith SE subcontracting plan, and the dollar value of SE contracts.

2. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1103. Mission and Policy Statement

A. Act 440 of the 2005 legislative session enacted R.S. 39:2001, et seq. and R.S. 51:931, creating the Small Entrepreneurship (Hudson Initiative) Program for the State of Louisiana. As enacted, the SE (HI) is a goal-oriented program, encouraging the state to contract with certified SE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified SE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified SE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the SE (HI) to ensure opportunities for certified SE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The SE (HI) is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified SE participation in the state's contracting and procurement activities. In its operations, the SE (HI) will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, and certified SE's involved with SE (HI) contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and

those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the SE (HI) including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified SE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the SE (HI) to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified SE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified SE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified SE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified SE participation;

6. to carry out the mandate of the state as enacted by Act 440 of the 2005 Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified SE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1307. Reserved.

§1309. Overall Annual SE (HI) Goals and Agency

Participation Levels

A. Overall Annual Goals. Overall annual goals for SE (HI) participation for the state will be set each year by the commissioner of administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The commissioner of administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified SE capacity, certified SE availability, nature of the contract, past experiences with SE (HI) participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the SE (HI).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified SE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;

2. issuing an order to a certified SE (prime contractor or distributor) on statewide contract;

3. using an ITB process to award a contract either to a certified SE or to a bidder who can demonstrate a good faith plan to use certified SE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified SE or be able to demonstrate its good faith subcontracting plan.

a. Good Faith Subcontracting Plans in an Invitation to Bid

i. The ITB will require the bidder to certify that the bidder is either a certified SE or that the bidder has a good faith subcontracting plan.

ii. The following describes the process a non-certified SE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan.

(a). The bidder has or will use the SE (HI) certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified SE's capable of performing the subcontract. Notification must be provided to the certified SE's no less than five working days prior to the date of bid opening.

(b). Written notification is the preferred method to inform certified SE's. This written notification may be transmitted via fax and/or e-mail.

(c). Written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

(d). The successful bidder must be able to provide written justification of the selection process if a certified SE was not selected.

b. Post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to

demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.

4. using a request for proposals (RFP) process to award a contract to a certified SE or to a proposer demonstrating a good faith effort to use certified SE's as subcontractors;

a. If an agency decides to issue an RFP to satisfy its SE (HI) goal, the procurement process will include either of the following:

i. require that each proposer either be a certified SE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve 10 percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified SE or who have made a good faith effort to use one or more SE's in subcontracting.

b. In evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for SE participation beyond the designated amount set forth in the RFP.

c. Good Faith Subcontracting in a Request for Proposal

i. Proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below.

(a). The proposer divided the contract work into reasonable lots or portions.

(b). The proposer used the SE (HI) certification list maintained by the Department of Economic Development to provide notice to three or more certified SE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified SE's no less than five working days prior to the submission of the proposal.

(c). The notification from the proposer was in writing. This written notification may have been transmitted via fax and/or e-mail.

(d). The written notification gave the SE's complete information regarding the potential subcontract including such things as:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

ii. An RFP under Clause 4.a.i shall require all proposers who are not certified SE's to certify they made a good faith subcontracting effort in their proposals.

iii. An RFP under Clause 4.a.ii may require that proposals include a proposed schedule of certified SE participation that lists the names of potential certified SE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified SE subcontract.

iv. An RFP under Clause 4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e.: phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

v. Proposers responding to RFP's under either Clauses 4.a.i or 4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified SE is not used as a subcontractor.

d. If at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its SE (HI) goals the total dollar value of the contract awarded to the certified SE, if the certified SE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified SE.

C. The state may count towards its SE (HI) goals the total dollar value of a contract awarded to a joint venture, of which a certified SE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified SE.

D. The state may count toward its SE (HI) goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified SE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its SE (HI) goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Louisiana Department of Economic Development. (LAC 19:VII.Subpart A)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1317. Implementation Procedures

A. In an effort to maximize the SE (HI)'s success, the following procedures will be implemented to maximize opportunities for certified SE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the SE (HI).

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly

with certified SE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified SE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified SE's on challenges frequently encountered by certified SE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified SE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's SE (HI) initiative and to sensitize them to the problems of SE's;

g. inform certified SE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified SE's and larger firms to provide opportunities for certified SE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified SE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified SE subcontractors at the time of proposal review. Agreements between a proposer and a certified SE subcontractor in which the certified SE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

§1321. Reporting Procedures

A. The commissioner of administration is charged with the preparation of an annual report on the progress of the SE (HI) in the most recently ended fiscal year. The commissioner must present the report to the House Committee on Appropriations and the Senate Committee on

Finance by the 15th day of January each year. Therefore, information for the commissioner's report regarding an agency's achievement of SE (HI) goals must be submitted to the commissioner no later than the first day of October each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified SE's;

2. number of contracts and the value of the contracts that included a good faith certified SE subcontracting plan;

3. number of actual agency staff that attended Division of Administration training for SE (HI) and the number of certified SE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page. A new "activity code" will be established in ISIS to track expenditures related to SE (HI). Agencies that do not use ISIS must develop their own mechanism to capture SE (HI) expenditures in order to provide reporting information to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:

Jerry Luke LeBlanc
Commissioner

0602#088

DECLARATION OF EMERGENCY

Office of the Governor Office of Financial Institutions

Louisiana Community Development Financial Institution
Program (LAC 10:XV.Chapter 17)

The Office of Financial Institutions, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953.(B), adopts the following Emergency Rules of the Louisiana Community Development Financial Institutions Act as authorized by R.S. 51:3089. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective January 29, 2006, and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Office of Financial Institutions has found an immediate need to provide direction to Louisiana community development financial institutions who are seeking to participate in the Louisiana Community Development Financial Institution Act, which became effective July 12, 2005. Without these Emergency Rules the public welfare may be harmed as a result of the inability of Louisiana community development financial institutions to raise capital, to then invest in Louisiana entrepreneurial businesses operating in low income communities that are in need of capital for survival, expansion, new product development, or similar business purposes. The failure to adopt these rules may impede economic development in Louisiana.

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part XV. Other Regulated Entities

**Chapter 17. Louisiana Community Development
Financial Institution Program**

§1701. Description of Program

A. These rules implement the Louisiana Community Development Financial Institution (LCDFI) Program pursuant to R.S. 51:3081 et seq. This program was created by Act 491 of the 2005 Louisiana Legislature to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of Louisiana entrepreneurial businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1702. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate and/or Affiliated Company—

a. the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a Louisiana entrepreneurial business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled* by, or is under common control with, a Louisiana entrepreneurial business;

Applicant—a Louisiana corporation organized under an incorporating statute which applies to the commissioner for certification as a LCDFI.

Application—a completed application as determined by the commissioner.

Associate of a LCDFI—

a. any of the following:

i. a person serving a LCDFI, or an entity that directly or indirectly controls a LCDFI, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other employees), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), external accountant, or outside general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the LCDFI;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-

in-law, son-in-law or daughter-in-law of any person described in §1702. *Associate of a LCDFI*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §1702. *Associate of a LCDFI*.a.i, ii or iii;

v. a person that invests in the LCDFI and has received an income tax credit reduction under the LCDFI Act;

vi. an affiliate of any person described in §1702. *Associate of a LCDFI*.a.v; or

vii.(a). a person that, within six months before or at any time after the date that a LCDFI invests in the person, is controlled by a LCDFI or any of its affiliates;

(b). however, even though a LCDFI may not intend to control a business in which it invests, it may obtain short-term (less than one year) control over the Louisiana entrepreneurial business after its initial investment if such control is acquired as a means of protecting the LCDFI's investment resulting from a material breach of any financing agreement. Such control will not create an associate relationship under §1702. *Associate of a LCDFI*.a.vii.(a);

b. for the purposes of this definition, if any associate relationship described in §1702. *Associate of a LCDFI*.a.i-vi exists between a person and the LCDFI at any time within six months before or at any time after the date that the LCDFI makes its initial investment in such person, that associate relationship is considered to exist on the date of the investment.

Business Plan—a written narrative providing a general description of the proposed Louisiana community development financial institution (“LCDFI”) which should include, at a minimum, a description of the LCDFI's organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the LCDFI will operate as a profit or nonprofit corporation.

Capitalization—for purposes of initial certification, pursuant to R.S. 51:3086(B):

a. *Generally Accepted Accounting Principles (GAAP) Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. *LESS*—the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the LCDFI: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal of capital within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit reduction.

Change of Control—for purposes of R.S. 51:3087(F) shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding voting shares of the LCDFI; or

b. individuals who constitute the voting power of the Board of Directors, Board of Managers or other governing board of the LCDFI as of the later of the LCDFI's certification date or the date of the LCDFI's last notification under R.S. 51:3087(F) cease to comprise more than 50 percent of the voting power of such Board of Directors, Board of Managers, or other board; or

c. a change in the general partner or manager of the LCDFI or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the LCDFI that was the party to the merger or consolidation transaction.

Control—

a. Solely for purposes of determining whether a Louisiana entrepreneurial business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a LCDFI, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is exercised with respect to a specified person or legal entity.

b. For all other purposes, *control*—

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

Date on Which an Investment Pool Transaction Closes—date that a LCDFI designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all required documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the LCDFI receives a cash investment of certified capital that is available for investment in Louisiana entrepreneurial businesses.

Employees—

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis.

b. The term *employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a Louisiana entrepreneurial business on a contract basis; or

ii. employees of any business that perform services (contractor) for a Louisiana entrepreneurial business.

For example: a contractor may enter into an agreement to perform services for a Louisiana entrepreneurial business. The contractor's employees that perform services under that agreement would not be employees under this definition.

Equity Features—includes [pursuant to R.S. 51:3084(5)(b)] the following:

a. *Royalty Right*—rights to receive a percent of gross or net revenues, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests*—rights to receive a percent of operating or net profits, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership*—options on the stock of the Louisiana entrepreneurial business. The Louisiana entrepreneurial business may repurchase a warrant (a "call") or the Louisiana entrepreneurial business may be required to sell a warrant (a "put") at some stated amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right*—conversion options of debt, to convert all or a portion of the debt to the corporate stock of the Louisiana entrepreneurial business, then to participate in the sale of the stock of the Louisiana entrepreneurial business.

e. *Equity Rights*—the receipt or creation of a significant equity interest in a Louisiana entrepreneurial business.

f. And such other conceptually similar rights and elements as the OFI may approve.

Financing Assistance Provided in Cash and The Investment of Cash—transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; prepaid debt; loan collection expenses or legal fees incurred by a LCDFI in protecting its collateral interest in an investment.

Institution Affiliated Party—a director, officer, employee, agent, controlling person, and other person participating in the affairs of the LCDFI.

Investment—

a. at all times, in order to perfect the tax credits earned as a result of an investment described in R.S. 51:3084(3) and (9), or R.S. 51:3085(A) and (B), the LCDFI

shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

i. available to be invested in *qualified investments*;

ii. invested in qualified investments made subsequent to the date on which the investment pool transaction closes; or

iii. a combination of §1702.*Investment*.a.i and ii.

b.i. an *Investment* furthers economic development within Louisiana if the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the Louisiana entrepreneurial business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 90 percent of the proceeds derived from the investment are used by the Louisiana entrepreneurial business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a company buyout;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business. Such future debt financing must be obtained within three months of the *qualified investment date*;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause d above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the LCDFI shall request in writing and the commissioner shall issue a written response to the LCDFI that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the LCDFI, and shall be part of the annual review required to be performed by the office and billed according to provisions contained in §1710.A.1. However, upon written notification to the LCDFI, the 30-day review period can be extended by the commissioner if he determines that the initial

information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a LCDFI in an interim construction project shall not be considered to further economic development within Louisiana unless the same LCDFI also provides the permanent financing.

Net Income—net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth—net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office—the Louisiana Office of Financial Institutions (OFI).

Participation Between LCDFIs—are loans or other investments in which one or more LCDFIs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a LCDFI may only include its participation (ownership interest) as a qualified investment.

Permissible Investments—for purposes of R.S. 51:3087(G), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under Subsection a.(i) of the definition of *Investment* in LAC 10:XV.102 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the LCDFI within 10 days following demand by the LCDFI in connection with funding a qualified investment.

Person—a natural person or legal entity qualified to seek certification as a LCDFI.

Sophisticated Investor—any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual taxable income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital under Management for purposes of investment limits, pursuant to R.S. 51:3087(G):

a. *GAAP Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of

which shall be exchangeable for cash and which is available for investment in qualified investments; undivided profits or losses which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. PLUS—Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS—the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the LCDFI:

i. The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

d. The portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:3087(G).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1703. Applications

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:3081 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

1. An application fee as prescribed by LAC 10:XV.1712 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

2. This office reserves the right to return the application to the applicant if the fee submitted is incorrect. The application may be resubmitted with the correct fee. The application will not be considered officially received and accepted until the appropriate fee is submitted. Application fees are nonrefundable.

B. The forms for applying to become a LCDFI may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filing shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Applications and all submissions of additional information reported to the office shall be delivered via United States mail, or private or commercial interstate carrier, properly addressed and postmarked, and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. A previously incomplete application may be resubmitted, either in a partial manner or totally, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a LCDFI and/or the office may be subject to civil and/or criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1704. Certification Instructions and Guidelines

A. The application shall contain the following specific information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
5. a federal tax identification number;
6. phone number, address and zip code;
7. a copy of any bylaws executed by the board of directors;
8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;
9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for certification as a LCDFI, and to sign said application;
10. current (less than one year) financial statements for all incorporators and initial directors;
11. description of the LCDFI's business plan, in a narrative form, which shall include, at a minimum, the following:
 - a. a description of the LCDFI's statement of purpose and organization;
 - b. types of lending and financing it intends to offer and to whom;
 - c. whether it intends to provide management assistance, and if so, to what extent and to whom;
 - d. whether the LCDFI will be a profit or nonprofit corporation;
 - e. pro forma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;
 - f. a proposed net worth structure as required by R.S. 51:3086(B);
12. a list of all of current directors, officers and controlling persons;
13. biographical information concerning the proposed directors, officers and controlling persons, including

personal information, résumé of each person's education, their employment record and prior associations or position with other LCDFI's and in what capacity in or out of Louisiana;

14. Form granting the commissioner authority to obtain information from outside sources;

15. evidence that the applicant entity has been certified as a Community Development Financial Institution by the United States Department of the Treasury; and

16. other pertinent information as may be required by the commissioner in his sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1705. Conditions of Certification

A. All LCDFIs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a Louisiana Community Development Financial Institution and shall certify and acknowledge that the statement is true and correct.

1. The LCDFI has an initial capitalization of not less than \$500,000. If any capitalization is repurchased or contemplated to be repurchased by the LCDFI within five years after certification, the LCDFI will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the LCDFI will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification.

3. The board of directors/shareholders will not elect new or replace existing board members or declare dividends without prior written consent of the office during the first two years following certification as a LCDFI.

4. The LCDFI will immediately notify the office in writing when its total certified capital under management is not sufficient to enable the LCDFI to operate as a viable going concern.

5. The LCDFI will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The LCDFI will comply with the LCDFI Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The LCDFI will adopt and follow OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant by the commissioner.

B.1. If a LCDFI contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the LCDFI shall have a securities attorney

provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 calendar days prior to investor solicitation.

2. If a LCDFI seeks to certify capital pursuant to R.S. 51:3084(6)(b), the LCDFI shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow the office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 calendar days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1706. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:3087 and decertification of an investment pool under R.S. 51:3088:

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator:

a. no qualified investment may be counted more than once;

b. the date the investment of cash is made determines whether the one-year holding date is achieved. For multiple funding, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.

3. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a LCDFI's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a LCDFI may allocate its qualified investments to all open investment pools, provided such allocations are reasonable as determined by the commissioner.

C.1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of Subparagraph A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

- a. a sale that is executed in connection with a sale of control of a Louisiana entrepreneurial business; or
- b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the LCDFI may deliver to the office a letter of credit in form and substance, and issued by a federally insured bank. The letter of credit:

- a. shall be payable to the office as beneficiary;
- b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with Paragraph C.1 above;
- c. shall provide that the letter of credit is forfeitable in full if the LCDFI fails to comply with the requirements of Paragraph C.1 above; and
- d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to Paragraph C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of Subparagraph A.1.a above which have not yet been held by the LCDFI a minimum of one year.

3. If the LCDFI provides a letter of credit in accordance with Paragraph C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the LCDFI as the sole remedy for the failure of the LCDFI to comply with the requirements of Paragraph C.1 above; otherwise, the failure to comply with Paragraph C.1 above shall be considered a violation of R.S. 51:3087(E)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1707. Change of Control

A. In the event of a change of control of a LCDFI, the LCDFI shall provide written notification to the commissioner of the proposed transaction at least 30 days prior to the proposed change of control effective date. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner, provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the LCDFI or the date of the LCDFI's last notification under R.S. 51:3087(F) for whom the Office of Financial Institutions has received a current Biographical and Financial Report and conducted a current background check shall be disregarded;

2. a copy of the proposed business plan of the new owners covering a three year period;

3. a discussion of the previous experience the proposed owner has in the field of venture capital financing;

4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the LCDFI;

6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1708. Information Required from Louisiana Entrepreneurial Businesses

A. Prior to making a qualified investment in a Louisiana entrepreneurial business, a LCDFI shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the LCDFI in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business;

For example: a board resolution or such other appropriate evidence of a grant of necessary authority.

2. a binding waiver of rights and consent agreement sufficient to allow the LCDFI, upon request to the business, full access to all information and documentation of the business which is in any way related to the LCDFI's investment in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow access by the LCDFI of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of the investment proceeds, and that the business will provide to the LCDFI documentation to support the use of proceeds;

5. a statement certifying that the business meets the qualifications of a "Louisiana Entrepreneurial Business" as defined by R.S. 51:2303(5); and

6. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1709. General Provisions

A. Books and Records

1. A LCDFI shall make and keep its records in conformity with Generally Accepted Accounting Principles.

2. A LCDFI shall make and keep all of its records at its main office as identified in its application for certification or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a LCDFI shall be retained for a period of at least three years following decertification of the LCDFI in accordance with R.S. 51:3088.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1710. Directors and Officers

A. Election of Directors or Managers. At least 30 days prior to the election of any person as the director or manager

of a LCDFI, such LCDFI and such director or manager shall file with the commissioner a report containing the following information:

1. name, address and occupation of the proposed director or manager;

2. title of any office which the director or manager previously held with the LCDFI;

3. anticipated election date of the director or manager;

4. manner of election of the director or manager (that is, whether by the board or by the shareholders);

5. in case a director or manager is not an incumbent director or executive officer of the LCDFI, the LCDFI shall provide:

a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the proposed director or manager;

B. Appointment of Executive Officers. At least 30 days prior to the appointment of any person as an executive officer of a LCDFI, such LCDFI and such executive officer(s) shall file with the commissioner a report containing the following information:

1. name and address of the executive officer;

2. title of the office to which the executive officer will be appointed;

3. a summary of the duties of the office to which the executive officer will be appointed;

4. Title of any office which the executive officer previously held with the LCDFI and title of any office (other than the office to which the executive officer was will be appointed) which the executive officer currently holds with the LCDFI;

5. The LCDFI shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

C. Notification. Following approval by the Office, each LCDFI shall provide to the commissioner a written notice stating the effective date of the newly elected/appointed director, manager, or executive officer. Said notice must be received by the Office within 30 days of the stated effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1711. Income Tax Credits

A. Pursuant to R.S. 51:3084(6), an investment for the purposes of earning income tax credits means a transaction that, in substance and in form, is the investment of cash in exchange for either:

1. common stock, preferred stock, or an equivalent ownership interest in a LCDFI; or

2. a loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

B. In order to be eligible for any income tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a LCDFI voluntarily decertifies and preserves all income tax credits, if debentures, notes or any other quasi-equity/ debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:3088. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Chapter.

1. No LCDFI certified after December first of any year shall be entitled to receive an allocation pursuant to R.S. 51:3085 for the same calendar year in which it was certified.

2. By December 10th, the commissioner shall review all requests for allocation of income tax credits and notify the LCDFI of the amount of certified capital for which income tax credits are allowed to the investors in such institution. During this 10 day review period, no investor substitutions will be allowed.

3. If a LCDFI does not receive an investment of certified capital equaling the amount of the allocation made pursuant to R.S. 51:3085 within 10 days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining LCDFIs on a pro rata basis.

C. Conditions to sell or transfer income tax credits:

1. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. Furthermore, even though a transfer or sale of credits may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a LCDFI may only transfer or sell credits once during a calendar quarter and the entity that purchases or acquires the credits may not transfer credits obtained during the calendar quarter of purchase. In any subsequent calendar quarter, the purchaser or acquirer of the credits may make one election per calendar quarter, if needed.

2. Companies and/or individuals shall submit to the Louisiana Department of Revenue and Taxation in writing, a notification of any transfer or sale of income tax credits at least 30 days prior to the transfer or sale of such credits. The notification shall include the original investor's income tax credit balance prior to transfer, the projected remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If income tax credits are transferred between affiliates or sophisticated investors (acquirers), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and

each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquirer;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquirer; and
- c. credits taken by the transferor and each acquirer under R.S. 51:3085(A) and (B).

4. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:3085(A) and (C), respectively. Any income tax credits transferred or sold, which credits are subject to recapture pursuant to R.S. 51:3088, shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

§1712. Fees and Assessments

A. Pursuant to the authority granted under LSA-R.S. 51:3088(A) and 3089(4), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Community Development Financial Institution Act, LSA-R.S. 51:3081 et seq.

1. Fees and Assessments

Description	Fee
a. Application for certification as a LCDFI.	\$2,000
b. Annual assessment fee of each LCDFI at a floating rate to be assessed no later than May 15th of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.1702, as of the previous December 31st audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the Louisiana community development financial institution act by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the Louisiana community development financial institution act shall be added to the next variable assessment or billed on a pro rata basis.	Variable
c. Late fee for each calendar day that an assessment fee is late pursuant to the requirements of LAC 10:XV.1712(A)(2).	\$100 per day
d. Fee for request filed on December 1st of each year for certification of capital pursuant to LSA-R.S. 51:3085 in order obtain an allocation of certified capital.	\$1,000 Non-refundable
e. Fee for annual review of each LCDFI to determine the company's compliance with statutes and regulations.	\$50 per hour, per examiner, or \$500, whichever is greater.

2. Administration

a. The failure to timely submit a fee with the request for allocation as required in §1712.A.4 shall result in the denial of an allocation of certified capital.

b. The assessment described in §1712.A.2 shall be considered timely if received by the office on or before May

31st of each calendar year. If the office receives an assessment after May 31st, it shall not be deemed late if it was postmarked on or before May 31st.

c. Unless annual audited financial statements are submitted to the office by April 30th, annual unaudited financial statements shall be submitted no later than May 1st. These unaudited financial statements shall then be used to determine the assessment amount provided for in §1712.A.2. Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31st.

d. If neither an audited nor unaudited financial statement has been received by this office by May 1st, the late fee described in §1712.A.3 shall be assessed beginning on June 1st until the assessment has been paid in full.

e. If any of the dates prescribed in §1712.B.2 and §1712.B.3 with the exception of the April 30th and the December 31st due date for audited financial statements, occurs on an official state holiday, a Saturday, or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

f. The assessment for each Louisiana Community Development Financial Institution, as defined in LSA-R.S. 51:3084(9), and described in §1712.A.3 shall be based on the following formula:

i. The numerator will be the total certified capital under management of the LCDFI as of December 31st of the previous year;

ii. The denominator will be the total certified capital under management for all Louisiana community development financial institutions as of the previous December 31st.

3. Severability. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

John Ducrest, CPA
Commissioner

0602#011

DECLARATION OF EMERGENCY

**Office of the Governor
Patient's Compensation Fund Oversight Board**

Qualified Health Care Provider Services
(LAC 37:III.115-123)

Emergency Rule 2 (LAC 37:III.115) was adopted by the Patient's Compensation Fund Oversight Board (Oversight Board) on September 28, 2005, pursuant to Executive Order No. KBB 2005-40, which directed the Oversight Board to adopt emergency rules regarding a temporary suspension of the payment of Patient's Compensation Fund (PCF or Fund) surcharges by qualified health care providers (QHCPs) who reside, practice or operate in disaster affected areas (affected QHCPs). The Oversight Board hereby reiterates, reaffirms

and readopts all of the sections and provisions set forth in original Emergency Rule 2 by reference as if set forth herein *in extenso*.

At the time that Emergency Rule 2 was adopted by the Oversight Board, Proclamation No. 54 KBB 2005 effectively extended the State of Emergency through October 25, 2005. At that time, it was not anticipated that the State of Emergency would be extended beyond December 31, 2005. In Paragraph A.3.a. of LAC 37:III.115, Emergency Rule 2 provided that PCF surcharges for certain specified affected QHCPs would be due and owing on the date that the State of Emergency was lifted, but that these affected QHCPs would be allowed a "grace" period until January 1, 2006 to pay the appropriate PCF surcharges (renewal surcharge to extend PCF coverage for another year or to purchase a PCF extended reporting endorsement).

On November 1, 2005, Louisiana Insurance Commissioner J. Robert Wooley amended Emergency Rule 19 of the Department of Insurance to provide for the systematic and methodical termination of the suspension of statutory, regulatory and policy provisions requiring the timely payment of insurance premiums for continuous insurance coverage. Under the amendment to Emergency Rule 19, all suspensions were terminated no later than December 31, 2005.

On January 20, 2006, Governor Kathleen Babineaux Blanco issued Proclamation Nos. 9 KBB 2006 and 10 KBB 2006 and extended the State of Emergency within the State of Louisiana caused by Hurricanes Katrina and Rita through February 22, 2006.

The Oversight Board has determined that Emergency Rule 2 has had the desired effect of providing emergency relief to affected QHCPs by providing additional time to pay the appropriate PCF surcharge (renewal or tail) to maintain enrollment in the fund. Additionally, the Oversight Board believes that the fund may be negatively impacted if Emergency Rule 2 is not terminated at some reasonable date in the near future.

Accordingly, the Oversight Board has determined that it is appropriate to establish a definitive date for all affected QHCPs to pay the appropriate PCF surcharge to maintain their enrollment in the Fund and to set a date for the systematic and methodical termination of Emergency Rule 2. As such, Emergency Rule 2 is hereby amended to provide for a definitive date for all affected QHCPs to pay the appropriate PCF surcharge and to set a termination date for Emergency Rule 2. This Declaration of Emergency is made effective February 6, 2006.

Title 37

INSURANCE

Part III. Patient's Compensation Fund Oversight Board

Chapter 1. General Provisions

§115. Qualified Health Care Provider Services

Emergency Rule 2

A.1. Emergency Rule 2 shall only apply to QHCPs:

a. who resided in or who maintained operation(s) and/or practice(s) located in one or more of the following 14 parishes as of August 26, 2005 or in one or more of any parish(es) identified by Louisiana Insurance Commissioner J. Robert Wooley in an amendment to Emergency Rule 15 or any subsequent emergency rule regarding insurance matters affecting certain insureds in Louisiana caused by Hurricane

Rita: Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington; and

b. whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26, 2005 but prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

2. For purposes of this Emergency Rule, QHCPs who meet all of the above criteria shall be referred to herein as "affected QHCPs" The provisions of this Emergency Rule 2 shall not apply to any health care provider not previously enrolled in the PCF prior to August 26, 2005.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for affected QHCPs during the effective periods set forth in this Emergency Rule. Except as provided for in Section 2.5, the cancellation of PCF qualification for affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

a. PCF surcharges for all affected QHCPs (including self-insured QHCPs and those who are insured by an insurance company or by a trust fund), whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26, 2005 but prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath (suspension period), shall be due and owing on the date the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath, is lifted. However, all affected QHCPs shall be allowed a "grace" period until January 1, 2006 to pay the appropriate PCF surcharge (to extend PCF coverage for another year or to purchase a PCF extended reporting endorsement) to the insurer, agent, trust fund or directly to the PCF (in the case of self-insured affected QHCPs). Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an affected QHCP, then the renewal surcharge shall be remitted to the PCF consistent with the MMA and the Oversight Board's applicable rules.

5. A cancellation of PCF qualification shall not occur prior to the lifting of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath, unless upon the documented written request or written concurrence of the affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency

Rule 2 shall be construed to exempt or excuse an affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.

7. Emergency Rule 2 shall not relieve an affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of Emergency Rule 2 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the affected QHCPs and the citizens of Louisiana.

8. Emergency Rule 1, issued on September 19, 2005, is hereby rescinded and terminated.

9. Emergency Rule 2 became effective on the date of its adoption by the Oversight Board, September 28, 2005, and shall continue in full force and effect for the duration of the current State of Emergency, and any subsequent State of Emergency, declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Katrina or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3) and Executive Order No. KBB 05-26.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 32:

§117. Affirmation of Emergency Rule 2 and Amendment

A. Emergency Rule 2 was previously adopted by the Oversight Board on September 28, 2005. Emergency Rule 2 is hereby amended to provide for a definitive date for all affected QHCPs to pay the appropriate PCF surcharges to maintain their enrollment in the fund and to set forth a termination date for Emergency Rule 2. All provisions of Emergency Rule 2 not amended herein shall remain in full force and effect until terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and Executive Order No. KBB 05-40.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 32:

§119. Cancellation of PCF Qualification

A. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for affected QHCPs until March 1, 2006. The cancellation or nonrenewal of PCF qualification for affected QHCPs for failure to timely pay the applicable PCF surcharge (renewal or tail surcharge) is hereby suspended until March 1, 2006.

B. PCF surcharges for all affected QHCPs (including self-insured QHCPs and those who are insured by an insurance company or by a trust fund), whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurred on or after August 26, 2005 but prior to or on January 29, 2006 (suspension period), shall be due, owing and payable on March 1, 2006. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and Executive Order No. KBB 05-40.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 32:

§121. Termination; Survival

A. Emergency Rule 2 shall terminate at 12 a.m. (midnight) on March 1, 2006. However, Paragraphs A.6 through A.8 of §115 shall survive the termination of Emergency Rule 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and Executive Order No. KBB 05-40.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 32:

§123. Severability Clause

A. If any section or provision of Emergency Rule 2, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 2, as originally adopted and/or amended, to the affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to affected QHCPs or circumstances shall be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and Executive Order No. KBB 05-40.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 32:

Lorraine LeBlanc
Executive Director

0602#046

DECLARATION OF EMERGENCY

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

Hospital Services—Inpatient Hospitals
Disproportionate Share Hospital Payment Methodologies
(LAC 50:V.Chapter 3)

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1).

The Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan

how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Act 491 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department repealed and replaced all provisions governing disproportionate share hospital payments (*Louisiana Register*, Volume 29, Number 6). Acts 14, 526 and 1148 of the 2003 Regular Session of the Louisiana Legislature directed the department to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals. In compliance with Acts 14, 526 and 1148, the bureau amended the June 20, 2003 Emergency Rule (*Louisiana Register*, Volume 29, Number 9). The department subsequently promulgated an Emergency Rule to repeal and replace all rules governing disproportionate share hospital payment methodologies (*Louisiana Register*, Volume 31, Number 6).

Act 182 of the 2005 Regular Session of the Louisiana Legislature, enacted as the Healthcare Affordability Act, established the Louisiana Healthcare Affordability Trust Fund as a special fund in the state treasury for the purposes of preserving and enhancing the availability of inpatient and outpatient hospital care for all patients, enhancing the stability of Medicaid funding by capturing a reliable source of funding for a portion of the state's obligation, and easing "cost-shifting" to employers and private insurers by providing reimbursement for a portion of hospitals' uncompensated care and Medicaid underpayment. The monies in the fund shall be generated by a provider fee levied on all hospitals licensed by the state under R.S. 40:2100 et seq., except for those hospitals specifically exempted by the provisions contained in Act 182. In compliance with Act 182, the department amended the June 26, 2005 Emergency Rule governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 31, Number 7).

Act 323 of the 2005 Regular Session of the Louisiana Legislature amended R.S. 40:1300.143(3)(a)(xii), relative to the Rural Hospital Preservation Act, to provide an additional

definition of a rural hospital. An Emergency Rule was promulgated to amend the definition of a small rural hospital as contained in the June 26, 2005 Emergency Rule, in compliance with Act 323 (*Louisiana Register*, Volume 31, Number 9). The Bureau amended the June 26, 2005 Emergency Rule to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*, Volume 31, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 25, 2005 Emergency Rule. This action is being taken to enhance federal revenue.

Effective February 23, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the June 26, 2005 Emergency Rule to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §§305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits.

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only

hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

6. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

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 32:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

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

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for

patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; and

6. any hospital licensed by the state under R.S. 40:2100 et seq., but does not include:

- a. any hospital owned by the state;
- b. any hospital owned by the United States or any agency or department thereof;
- c. any hospital that generally seeks no reimbursement for its services;
- d. rural hospitals as defined in R.S. 40:1300.143; and

e. hospitals certified by Medicare as separately licensed long term acute care, rehabilitation or psychiatric hospitals; and

7. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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 32:

§305. High Uninsured Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital—a hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. DSH payments to individual high uninsured hospitals shall be calculated as follows.

1. Inpatient High Uninsured. Payments shall be equal to 100 percent of the hospital's cost of furnishing inpatient

hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E; and/or

2. Outpatient High Uninsured. Payments shall be equal to 100 percent of the hospital's cost of furnishing outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision in Subsection E below.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid, other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.1-6.

E. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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 32:

§307. Other Uninsured Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured

persons, supported by patient-specific data, net of any payments received from such patients.

Other Uninsured Utilization Rate Hospital—a qualifying hospital that is not included in §§305, 311, 313 or 315.

B. DSH payments to an individual other uninsured hospital shall be calculated as follows.

1. Private Other Uninsured. Hospitals shall be compensated for at least 75 percent of their uncompensated care as reported on the latest uncompensated care filing prior to May 31 of the previous fiscal year. Any hospital which has not filed previously or is not yet required by regulation to make an uncompensated care filing, or which is without a full year cost report, may file an estimate of its uncompensated costs within 45 days of the end of the quarter in which such care was provided. Any such hospital otherwise eligible for uncompensated care cost compensation shall be included in the payment to be made in the quarter in which the estimate is filed, subject to final adjustment as otherwise provided. Except as hereinafter provided, the uncompensated care payment shall be paid in equal quarterly installments due on the fifteenth day of the third month in each calendar quarter. The amount of the fourth quarter payments in any fiscal year for inpatient services, outpatient services, inpatient psychiatric services and disproportionate share hospital payments shall be reduced or increased proportionately as necessary to achieve the total annual cost to the state, including federal financial participation, of implementing this amended reimbursement methodology. Amounts due to individual hospitals shall be adjusted as necessary to reflect any differences between payments during the preceding 12 months to hospitals for estimates of uncompensated care and the amount actually due during the period based on uncompensated care filings by those hospitals.

2. Public Other Uninsured. Non-state public hospitals, except small rural hospitals, shall certify to the department of Health and Hospitals the state nonfederal share of expenditures for all of their Medicaid claims and shall provide a certification of incurred uncompensated care costs that constitute public expenditures that are eligible for financial participation under Title XIX of the Social Security Act. Both certifications shall be submitted in a form satisfactory to the department at the earliest possible date after July 1, but no later than October 1 of each fiscal year beginning July 1, 2005. The reimbursement methodology for the hospitals participating in the certification, except small rural hospitals, shall be 100 percent of their allowable costs.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid, and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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 32:

§309. All Other Qualifying Hospitals Not Included In Any Other Group

A. Definition

All Other Qualifying Hospitals Not Included In Any Other Group—a hospital that meets the federal DSH statutory utilization requirements in §303.A.4.a-b.ii. and is not included in any other qualifying group.

B. DSH payments to individual other qualifying hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual hospitals in this group shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by the department from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals included in this group. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; then

2. multiplying by \$248,267 which is the state appropriation for disproportionate share payments allocated for this pool of hospitals for SFY 2005–2006.

D. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for hospitals in this group will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this group; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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 32:

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003 of its intent to reduce its number of hospital beds to no more than 60 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003 and is located:

i. as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. as measured by the 2000 census, in a parish with a population of less than 90,000; or

l. has no more than 40 hospital beds as of January 1, 2005, and is located:

i. in a municipality with a population of less than 3,100; and

ii. in a parish with a population of less than 15,800 as measured by the 2000 census.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following four pools.

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 that are privately owned.

3. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.i-k.

4. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.l.

C. Payment to hospitals included in §311.B.1-3 is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. Payments to hospitals included in §311.B.4 shall be the lesser of the hospital's actual uncompensated care cost or \$250,000. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B.1-6 for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment is disbursed by the department for the state fiscal year. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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 32:

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Public State-Operated Hospital—a hospital that is owned or operated by the State of Louisiana.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient—specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

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 32:

§315. Repealed

A. 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.

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 32:

Interested persons may submit written comments to Jerry Phillips 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

0602#069

DECLARATION OF EMERGENCY

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

Medicaid Eligibility—Treatment of Loans, Mortgages,
Promissory Notes and Other Property Agreements

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference, including section I-1600 which addresses the treatment of resources in the eligibility determination process (*Louisiana Register*, Volume 22, Number 5). The May 20, 1996 Rule was amended to revise Medicaid policy in regard to the treatment of certain loans, mortgages, promissory notes, and property agreements (*Louisiana Register*, Volume 31, Number 8). The bureau now proposes to amend the August 20, 2005 Rule governing

the transfer of resources to further define and clarify the provisions governing the treatment of loans, mortgages, promissory notes, and other property agreements during the eligibility determination process. This action is being taken to avoid federal sanctions. It is estimated that implementation of this Emergency Rule will be cost neutral for state fiscal year 2005-2006.

Emergency Rule

Effective February 20, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the August 20, 2005 Rule governing the treatment of transfer of assets in the determination of Medicaid eligibility. This policy change applies to applications, renewals of eligibility or changes in situation for all individuals, except for those persons receiving Supplemental Security Income (SSI) or deemed to be receiving SSI.

Loans, Mortgages, Promissory Notes, and Property Agreements or Assignments

A. A loan, mortgage, promissory note, property agreement or property assignment is a countable resource and a potential transfer of assets regardless of any non-assignability, non-negotiability or non-transferability provisions contained therein.

Instruments Containing Certain Provisions

A. Any loans, mortgages, promissory notes, property agreements or property assignments executed that contain any of the following provisions shall not be considered bona fide and shall be evaluated as a transfer of resources:

1. self-canceling clauses or clauses that forgive a portion of the principle;
2. payments that are not in equal amounts for the term of the loan (contain balloon payments or interest only payments) even if the principle is due within the holder's life expectancy;
3. repayment terms that exceed the holder's life expectancy; or
4. evidence exists that there is not a good faith agreement to repay the entire principle.

B. Pursuant to the rules and regulations, the department shall establish what constitutes a bona fide transaction for establishing Medicaid eligibility.

C. An opportunity to rebut the treatment of such instruments as countable resources or transfer of resources shall be provided to the applicant/recipient through the appeals process.

Interested persons may submit written comments to Jerry Phillips, 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

0602#067

DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program
Erectile Dysfunction Drug Coverage

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the May 20, 1999 and March 20, 2005 Rules governing the coverage of erectile dysfunction drugs and terminated coverage of these drugs under the Medicaid Program (*Louisiana Register*, Volume 31, Number 11). Section 104 of Public Law 109-91 as enacted on October 20, 2005 by the 109th United States Congress, eliminated Medicaid coverage of erectile dysfunction drugs except for the treatment of conditions other than sexual or erectile dysfunction for which the drugs have been approved by the Food and Drug Administration.

In compliance with the directives of Section 104 of Public Law 109-91 and regulations established by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the bureau proposes to amend the November 20, 2005 Rule.

This action is being taken to avoid federal sanctions. Although the bureau is unable to determine the utilization rate of erectile dysfunction drugs for the treatment of conditions other than sexual or erectile dysfunction, minimal utilization is anticipated. It is estimated that the increase in expenditures due to implementation of this Emergency Rule will be nominal for state fiscal year 2005-2006.

Emergency Rule

Effective February 20, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall not cover and reimburse prescription drugs for the treatment of sexual or erectile dysfunction under the Medicaid Program. Erectile dysfunction drugs shall be covered for the treatment of conditions other than sexual or erectile dysfunction for which the drugs have been approved by the Food and Drug Administration.

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 Jerry Phillips, Department of Health and Hospitals, 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

0602#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community Based Services Waivers
New Opportunities Waiver—Reimbursement Reduction
(LAC 50:XXI.14101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14101 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 16 of the 2005 Regular Session, Executive Order KBB 05-82 and Act 67 of the 2005 First Extraordinary Session (Supplemental Appropriations Act). This Emergency Rule is being promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 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 Community Supports and Services promulgated a Rule implementing a new home and community based services waiver called the New Opportunities Waiver (NOW) which is designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The New Opportunities Waiver replaced the Mental Retardation/Developmental Disabilities (MR/DD) Waiver upon completion of the transition of all MR/DD participants to NOW.

The Governor's Executive Order KBB 05-82 directed the departments, agencies and/or budget units of the executive branch of the state of Louisiana, as described in and/or funded by appropriations through Act 16 of the 2005 Regular Session of the Louisiana Legislature, to reduce the expenditure of funds appropriated to the budget units by Act 16. Act 67 of the 2005 First Extraordinary Session of the Louisiana Legislature, which ratified and confirmed Executive Order KBB 05-82, further authorized and directed the commissioner of administration to reduce the state General Fund (direct) appropriations contained in Act 16 for designated agencies, including the Department of Health and Hospitals. In compliance with the directives of Act 67, the department proposes to reduce the reimbursement rates for Individual and Family Support-Day Services and Supported Independent Living Services under the NOW waiver. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the

Medicaid Program by approximately \$7,878,258 for state fiscal year 2005-2006.

Pursuant to Section 11 of Act 67 and the Deficit Reduction Omnibus Reconciliation Act of 2005, in the event that the federal government increases some component of federal financial participation in Louisiana's Medicaid Program to 100 percent for at least some part of Fiscal Year 2005-2006, the department shall restore the reductions in Medicaid reimbursement methodologies implemented in response to the decrease in the budget for Medical Vendor Payments. To the extent feasible and allowable by the federal Centers for Medicare and Medicaid Services (CMS), these restorations shall be retroactive to the day of implementation

Effective for dates of service on or after February 3, 2006, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the June 20, 2004 Rule governing reimbursement methodology for the New Opportunities Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 11. New Opportunities Waiver

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. - E.1. ...

F. Effective for dates of service on or after February 3, 2006, the reimbursement rate for Individualized and Family Support-Day services shall be \$3.12 per quarter hour.

G. Effective for dates of service on or after February 3, 2006, the per diem reimbursement rate for Residential Habilitation-Supported Independent Living services shall be \$15 per day.

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 30:1209 (June 2004), amended by The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Implementation of this Emergency 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 Kathy Kliebert, Office for Citizens with Developmental Disabilities, P. O. Box 3117, Baton Rouge, LA 70821-3117. 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

0602#009

DECLARATION OF EMERGENCY

Department of Health and Hospitals

Office of the Secretary

Office for Citizens with Developmental Disabilities

Home and Community Based Services Waivers

New Opportunities Waiver

Restoration of Reimbursement Reduction

(LAC 50:XXI.14101)

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 final Rule, whichever occurs first.

Act 67 of the 2005 First Extraordinary Session of the Louisiana Legislature, which ratified and confirmed the Governor's Executive Order KBB 05-82, authorized and directed the commissioner of administration to reduce the state General Fund (direct) appropriations for designated agencies, including the Department of Health and Hospitals. In compliance with the directives of Act 67, the department reduced the reimbursement rates for Individual and Family Support-Day Services and Supported Independent Living Services rendered in the New Opportunities Waiver which is designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 32, Number 2).

Section 11 of Act 67 directed the department to restore the reductions in Medicaid reimbursement methodologies if the federal government increased some component of federal financial participation in Louisiana's Medicaid Program to 100 percent for at least some part of Fiscal Year 2005-2006. The Deficit Reduction Act of 2005, signed into law by the President on February 8, 2006, increased the federal financial participation in the Medicaid Program. The department is subsequently proposing to repeal the February 3, 2006 Emergency Rule which reduced the reimbursement rates for Individual and Family Support-Day Services and Supported Independent Living Services rendered in the New Opportunities Waiver. This action is being taken to comply with the directive set forth in Section 11 of Act 67.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 11. New Opportunities Waiver

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. - E.1. ...

F. Repealed.

G. Repealed.

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 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P. O. Box 3117, Baton Rouge, LA 70821-3117. 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

0602#066

DECLARATION OF EMERGENCY

**Department of Justice
Office of the Attorney General
Public Protection Division**

Database Security Breach Notification (LAC 16:III.701)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) which allows the Attorney General to use emergency procedures to establish Rules, and under the authority of R.S. 51:3071 through 3077 the Attorney General hereby declares that an emergency action is necessary to implement Rules regarding reporting of database security breached to the Department of Justice so that the provisions of this statute may take effect.

This Emergency Rules is effective January 23, 2006 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 16

CONSUMER AFFAIRS

Part III. Consumer Protection

Chapter 7. Database Security Breach Notification

§701. Written Notification

A. Should notice to Louisiana citizens be required pursuant to R.S. 51:3074, the person or agency shall provide written notice detailing the breach of security of the system to the Consumer Protection Section of the Attorney General's Office.

B. Notice to the Attorney General shall be received within ten days of distribution of notice to Louisiana citizens. Notice shall be mailed to:

Louisiana Department of Justice
Office of the Attorney General
Consumer Protection Section
1885 North Third Street
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3071, et seq.

HISTORICAL NOTE: Promulgated by the Department of Justice, Office of the Attorney General, Public Protection Division LR 32:

Isabel B. Wingerter
Director

0602#003

DECLARATION OF EMERGENCY

**Department of Revenue
Policy Services Division**

Health Insurance Credit for Contractors of Public Works
(LAC 61:I.1195)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish Rules, R.S. 47:295 and R.S. 47:1511, which allow the department to make reasonable rules and regulations, the secretary of revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective February 20, 2006, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to administer the health insurance credit for contractors of public works for the 2005 and succeeding tax year. R.S. 47:287.759 as enacted by Act 504 of the 2005 Regular Session of the Legislature allows for a three million dollar statewide credit for contractors of public works who offer health insurance to their employees. Because the credit is capped at three million dollars statewide, the Department of Revenue is compelled to set a procedure for the administration of the credit. This credit and the procedure for its implementation must be available for taxpayers while preparing and filing their 2005 Louisiana income tax returns.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 11. Income: Corporation Income Tax

**§1195. Health Insurance Credit for Contractors of
Public Works**

A. Louisiana Revised Statutes 47:287.759 allows for a tax credit against corporation income tax to contractors and subcontractors constructing a public work who offer health insurance to their employees and their dependents.

1. The amount of the credit is 2 percent of the total amount of the contract for the public work less any amounts paid to a subcontractor for a portion of the work performed by the subcontractor.

2. The total tax credit for all taxpayers is limited to \$3 million per calendar year.

3. At least 85 percent of the full-time employees must be offered health insurance. Contractors and subcontractors must pay 75 percent of the total premium for the health insurance of employees who choose to participate and at least 50 percent for each participating dependent of such employees.

4. Employees do not include independent contractors.

B. Definitions

Dependents—spouse and those persons who would qualify as dependents on the employee's federal income tax return.

Earnings—gross wages of the employee not including fringe benefits.

Health Insurance—coverage for basic hospital care, and coverage for physician care, as well as coverage for health care.

Public Work—a building, physical improvement, or other fixed construction owned by the state or a political subdivision of the state.

C. Procedure for Allocation of the Health Insurance Credit

1. The department will determine if the \$3 million cap on the health insurance credit has been exceeded after all possible extensions to file have passed for all taxpayers.

2. If the \$3 million cap on the health insurance credit is not exceeded and all applicable extensions to file returns have expired, contractors and subcontractors who earn the health insurance credit will be allowed the full amount of the credit properly claimed on their tax return with appropriate interest.

3. However, if more than \$3 million is claimed statewide, the department will allocate the credit on a pro rata basis in proportion to the amount of health insurance credit properly claimed on each employer's timely filed tax return. The allocation will be made after the filing deadline inclusive of all applicable extension periods.

a. Contractors and subcontractors claiming the health insurance credit and an overall refund of overpayment for the taxable year should file their return with the department.

i. The department will reduce the taxpayer's total refund of overpayment by the amount of the health insurance credit claimed on the tax return.

ii. An initial refund of overpayment, the amount of which is exclusive of the health insurance credit amount, will be sent to the taxpayer with a letter stating that the taxpayer's claimed health insurance credit will be held in abeyance until after the extended filing deadline and subsequently will be refunded with appropriate interest.

iii. The health insurance credit will be processed and refunded proportionately after the last extension for filing deadline.

iv. If the health insurance credit is reduced as provided by §1195.C.3 and the taxpayer owes additional money to the department, an assessment will be sent exclusive of penalties and interest if paid within 60 days.

(a). If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed

within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

(b). If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

b. Contractors and subcontractors who claim the health insurance credit and still owe additional taxes for the taxable year, should file their return with the department and remit payment with the return.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3, the taxpayer will receive an assessment for the difference without being subject to penalties and interest if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

c. Contractors and subcontractors who claim the health insurance credit that reduce their tax liability to zero for a taxable year should file their return with the department.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3 such that the taxpayer owes additional tax, the taxpayer will receive an assessment for the taxes owed exclusive of interest and penalties if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest is abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

D. Information that must be submitted with the return in order to properly claim the credit:

1. statement that health insurance has been offered to at least 85 percent of the employees;

2. copy of the health insurance coverage plan from the insurance company;

3. number of full-time employees working for the contractor or subcontractor; and

4. amount of the contract for public work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.759, R. S. 47:1601, R.S. 47:1603, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:

Cynthia Bridges
Secretary

0602#049

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Taxable Transactions for Hotel Services (LAC 61:I.4301)

The Department of Revenue, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) accordingly amends and adopts LAC 61:I.4301.C.*Hotel*, to determine sales tax imposition on the taxable service of furnishing the accommodations of sleeping rooms, cottages or cabins. The Emergency Rule shall be effective February 1, 2006, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

The Department of Revenue, Office of the Secretary, hereby finds that imminent peril to the public welfare exists, and an Emergency Rule is necessary to ensure proper and immediate collection of taxes under R.S. 47:301(14) due to the state of Louisiana and local taxing jurisdictions at a time when state and local collections have been devastated by catastrophic events. The Emergency Rule is promulgated in the best interest of the state, local governments, and the citizens of the state of Louisiana. The purpose of the Emergency Rule is to provide direction and guidance to the hotel industry, travelers, and citizens for proper application of law, and to enable proper collection as required by law.

The Emergency Rule will apply to all state and local sales and use tax imposed by the state of Louisiana and the Louisiana Tourism Promotion District pursuant to R.S. 47:301 et seq. The authority for local taxing jurisdictions to collect special occupancy taxes where authorized is not affected by this Emergency Rule.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Uniform State and Local Sales Tax Definitions

A. ...

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. ...

Hotel—

a. The term *hotel* has been defined under R.S. 47:301(6) to be somewhat more restrictive than normally construed relative to the size of the establishment. Those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests that consist of six such accommodations at a single business location meet the statutory definition. If an establishment has fewer than six sleeping rooms, cottages or cabins at a single business location for transient guests, the establishment is not a *hotel* for purposes of *state* and *local sales or use tax*. The statutory definition of *hotel* excludes facilities with fewer than the specified number of accommodations from collection of *state* and *local sales or use tax*.

b.i. In determining whether an establishment furnishes hotel services to transient guests, it is determined that a guest who transacts for the services of a hotel, regardless of the length of time that the hotel services are used, is considered a transient guest and the transaction is subject to sales tax. Where a hotel provides permanent residences to permanent occupants, the transaction is not subject to *state* and *local sales or use tax*. For the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the *state* and *local sales or use tax*. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel rental contained the requisite physical properties of the hotel accommodations within a unit continuously rented by one person or family for a period greater than one year will be considered as evidence in support of permanent residency status. The department may require additional evidentiary support of claims of non-transient status.

ii. For the purposes of *state* and *local sales and use tax* collections under R.S. 47:301 et seq. a guest of a hotel is a natural person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 32:

Cynthia Bridges
Secretary

0602#051

DECLARATION OF EMERGENCY

Department of Social Services Office of Community Services

Neglect of Newborn Identified as Affected by Illegal Use of a Controlled Dangerous Substance (LAC 67:V.1510)

The Department of Social Services, Office of Community Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:V Subpart 3, Child Protection Services, Chapter 15, Conducting Investigation in Families, §1510, Neglect of Newborn Identified as Affected by Illegal Use of a Controlled Dangerous Substance, effective March 1, 2006.

This Emergency Rule shall remain in effect for a period of 120 days.

Emergency action is necessary in this matter due to imminent peril to the public health, safety and well being of newborns identified by a health care provider within 30 days of birth as affected by the illegal use of a controlled dangerous substance or withdrawal symptoms resulting from prenatal illegal drug exposure caused by the parent. In compliance with the Children's Code Article 603 (14) as amended by Act 338 of the Legislature of Louisiana Regular Session 2005, the Office of Community Services worked in conjunction with the medical community and other interested parties. The federal Child Abuse Prevention and Treatment Act amended in 2003 requires states to develop policies and procedures to address the needs of infants identified as being affected by illegal exposure to substances in utero. Approximately \$12,311,387 in federal funding is jeopardized until the state legislation is implemented to address the needs of infants affected by the illegal exposure to substances in utero.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 3. Child Protection Services

Chapter 15. Conducting Investigation in Families

§1510. Neglect of Newborn Identified as Affected by Illegal Use of a Controlled Dangerous Substance

A. The Department of Social Services, Office of Community Services will accept a report for investigation of child neglect under the following circumstances:

1. when a newborn is identified by a health care provider as affected by the illegal use of a controlled dangerous substance or withdrawal symptoms resulting from illegal drug exposure caused by the parent; and,

2. provided that such a report is made within 30 days of the newborn's birth by a health care provider involved in the delivery or care of the newborn.

B. For purposes of this rule "controlled dangerous substances" are those designated pursuant to the provisions of R.S. 40:961 et seq.

C. For the purpose of this rule "health care provider" are those persons designated as "health practitioner" by Children's Code Article 603 (13)(a) and "Mental health/social service practitioner" by the Children's Code Article 603 (13)(b), if employed by a hospital or other institution or agency licensed to provide health care that includes the delivery or care of the newborn.

D. For the purpose of this rule "affected by" means a newborn that has been identified by a health care provider involved in the delivery or care of such newborn within 30 days of birth as affected by including, but not limited to, a diagnosis of Neonatal Abstinence Addiction or a condition associated with in utero exposure which may include the following symptoms: pre-maturity (gestation less than 37 weeks); low birth weight (less than 5 pounds, 8 ounces in term newborn); increased weight loss during early neonatal period; microcephaly symptoms (head circumference of less than 32 centimeters in term newborn); neurobehavioral symptoms (the most common consequence, not specific to any one drug, and may not be immediately discernible), examples are: irritability, high pitched cry, poor response to stimulation, over response to stimulation, increased or

decreased muscle tone, restlessness, sleepiness, poor feeding; neurological (vascular accidents, strokes, seizures); maternal-infant interaction impaired; failure to thrive; or limb reduction (vascular accidents due to drug exposure, especially cocaine or methamphetamine).

E. The method for identification may be one of the following:

1. results of a blood, urine or meconium test of a newborn and/or a blood or urine test of the mother indicate the presence of illegal use of a controlled dangerous substance along with specific information about the adverse effects to the newborn;

2. a diagnosis by an attending physician or an assessment by a health care practitioner that the newborn has demonstrated withdrawal symptoms from an illegal use of a controlled dangerous substance caused by the parent;

3. a diagnosis by an attending physician that the child has a condition that is attributable to a pre-natal exposure to an illegal use of a controlled dangerous substance.

F. Notification by a health care provider shall not be construed as requiring prosecution for any illegal action, but rather is for the purpose to assure the immediate screening, risk and safety assessment, and prompt investigation of reports of a newborn affected by illegal use of a controlled dangerous substance or withdrawal symptoms resulting from prenatal illegal drug exposure caused by the parent. The development of a plan of safe care for the newborn includes a continuum of triage procedures from the appropriate referral of a newborn who is not at risk of imminent harm to a community organization or voluntary preventive service to procedures for immediate steps to ensure and protect the safety of the drug exposed newborn who is at risk of imminent harm.

AUTHORITY NOTE: Promulgated in accordance with 42 U. S. C. 5101 et seq.; 42 U.S. C. 5116 et seq., R.S. 40:961 et seq, R.S. 49:954(B), R.S. 46:231, R.S. 36:474, R.S. 36:476 and 477, R.S. 46:51, and Ch. C. Art.603.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:

Ann Silverberg Williamson
Secretary

0602#083

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Assistance—Repair and Improvement
Grants and Job Search (LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III.5102, 5103, 5104, 5107, and 5109 in the Child Care Assistance Program (CCAP) effective February 1, 2006, pursuant to ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations. This Rule shall remain in effect for a period of 120 days.

The devastation caused by Hurricane Katrina and Rita has left numerous child care facilities destroyed or damaged

and unsafe creating imminent peril to the health, safety, and welfare of the children in need of child care. Many of the CCAP providers will be unable to repair, rebuild, and reopen their businesses without financial assistance. The state currently provides Repair and Improvement Grants to certain child care providers but limits the receipt of these grants to one grant per state fiscal year. The amendment at §5107 will allow for the receipt of two Repair and Improvement Grants for state fiscal year 2005/2006 for providers in designated parishes.

Another consequence of the storms has been the significant loss of jobs throughout the state resulting in a dramatic increase in the number of people looking for work. CCAP does not currently provide assistance to low-income families who are searching for jobs. Therefore, the Agency also plans to expand the eligibility criteria at §§5102, 5103, 5104, and 5109 to include job search as a qualifying activity for child care assistance. These amendments will help insure that adequate child care is available and decrease the chance that the children will be left alone or in substandard care facilities.

Title 67
SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5102. Definitions

Training or Employment Mandatory Participant (TEMP)—a household member who is required to meet criteria described in 5103.B.4 (effective February 1, 2006) including the head of household, the head of household's legal spouse or non-legal spouse, the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:

§5103. Conditions of Eligibility

A. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria:

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed or effective February 1, 2006, conducting a job search a minimum average of 25 hours per

week and all countable employment hours must be paid at least at the Federal minimum hourly wage; or

b. ...

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage, or effective February 1, 2006, job search, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week.

d. ...

e. effective February 1, 2006, participation in job search as a countable TEMP activity can only be used for three calendar months per state fiscal year.

5. - 6. ...

7. The family requests child care services, provides the information and verification necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state. Required verification includes birth verification for all children under 18 years of age, proof of all countable household income, proof of the hours of all employment or education/training or, effective February 1, 2006, job search, and effective October 1, 2004, proof of immunization for each child in need of care.

B.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:

§5104. Reporting Requirements Effective February 1, 2004

A. ...

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. ...

2. an interruption of at least three weeks or a termination of any TEMP's employment, or training or, effective February 1, 2006, job search; or

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR 31:2263 (September 2005), LR 32:

Subchapter B. Child Care Providers

§5107. Child Care Provider

A. - I.1.c. ...

2. A provider can receive no more than one such grant for any state fiscal year. Exception: effective February 1, 2006, for the State Fiscal Year 2005/2006, providers in the following parishes will be eligible to receive two repair and improvement grants: Orleans, Plaquemines, Jefferson, St. Bernard, St. Tammany, Washington, Calasieu, and Cameron.

3. To apply, the provider must submit an application form indicating that the repair or improvement is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application. If a provider furnishes estimates to receive a grant, the grant must be spent for the requested purpose within three months of the date the grant is issued.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484 (July 2004), LR 30:1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - B.2.b. ...

3. The number of hours authorized for payment is based on the lesser of the following:

a. ...

b. the number of hours the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program and/or effective February 1, 2006, conducting job search, each week, plus one hour per day for travel to and from such activity; or

B.3.c. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 31:2265 (September 2005), LR 32:

Ann S. Williamson
Secretary

0602#014

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamp Program, FITAP—Lump Sum Payments
Resource Exclusion (LAC 67:III.1235 and 1949)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend

LAC 67:III, Subpart 2 and Subpart 3, effective March 1, 2006. This Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective November 1, 2005, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in March 2006).

Pursuant to P.L. 107-171, the Food Stamp Reauthorization Act of 2002 (also known as the Farm Bill), the agency will amend §1949 in the Food Stamp Program and §1235 in the Family Independence Temporary Assistance Program (FITAP) to exclude from countable resources, lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. Section 4107 of the Farm Bill gives the state the option to exclude certain types of resources that the state agency does not include for TANF purposes.

Emergency action in this matter is necessary, as thousands of Louisiana citizens have suffered extensive damage to their home and/or business property due to Hurricanes Katrina and Rita and have incurred enormous expense. Many will receive insurance settlements that may preclude the household's eligibility for food stamp benefits thereby creating imminent peril to public health and welfare. Therefore, it is the agency's intention to remove this barrier to food stamp eligibility and exclude these payments as a countable resource.

This resource exclusion currently applies to the Family Independence Temporary Assistance Program, although the *Louisiana Administrative Code* does not specify this exclusion. That oversight is being corrected by means of this declaration.

Title 67 SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1235. Resources

A. Assets are possessions which a household can convert to cash to meet needs. The maximum resource allowable for an assistance unit is \$2,000. All resources are considered except:

1. - 22. ...

23. lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. This exclusion shall apply for six months following receipt of the payment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 106-387, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:1031 (May 2002), LR 29:45 (January 2003), LR 32:

Subpart 3. Food Stamps
Subchapter H. Resource Eligibility Standards
§1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. - 5. ...

6. lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. This exclusion shall apply for six months following receipt of the payment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:

Ann Silverberg Williamson
Secretary

0602#081

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

Support Enforcement Services Program
Electronic Disbursement of Child Support
(LAC 67:III.2518)

The Department of Social Services, Office of Family Support, Support Enforcement Services (SES) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 4, effective March 1, 2006. This Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective November 1, 2005, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in March 2006).

Pursuant to Section 454A(g) of the Social Security Act, the agency is amending Chapter 25, Subchapter D, by adopting Section 2518, Electronic Disbursement of Child Support Payments, which allows for the electronic disbursement of child support payments. This Act allows the state to use its automated system for the effective and efficient collection and disbursement of support payments.

Emergency action in this matter is necessary to ensure that payments are received timely by eliminating postal delays caused by recent hurricanes. These changes are being made to avoid federal penalties and sanctions that could be imposed by the Administration for Children and Families, Office of Child Support Enforcement, the governing authority of the Support Enforcement Services Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter D. Collection and Distribution of Support Payments

§2518. Electronic Disbursement of Child Support Payments

A. Effective November 1, 2005, the agency will offer electronic disbursement of child support payments. Electronic disbursement of child support includes direct deposits to the custodial parent's bank account (checking or savings) or payments to a stored value card account.

B. A stored value card is a card-accessed account system where payments are electronically deposited into an account accessible for cash withdrawal or for credit purchases.

C. The fees associated with the use of the stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with Section 454A(g) of the Social Security Act and PIQ-04-02.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson
Secretary

0602#082

DECLARATION OF EMERGENCY

Department of Treasury
Teachers' Retirement System

Deferred Retirement Option Plan—Distributions
Provided for by the Gulf Opportunity Zone Act of 2005
(LAC 58:III.510)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees of the Teachers' Retirement System of Louisiana hereby adopts the following Emergency Rule to implement provisions of the Gulf Opportunity Zone Act of 2005. This Act allows for distributions, from a public pension plan qualified under the provisions of the Internal Revenue Code, Section 401(a), to be made by retirees residing in the Hurricane Katrina, Hurricane Rita, and Hurricane Wilma disaster areas. These distributions will be allowed through December 31, 2006 without penalty.

Title 58
RETIREMENT

Part III. Teachers' Retirement System of Louisiana
Chapter 5. Deferred Retirement Option Plan

§510. Distributions Provided for by Gulf Opportunity Zone Act of 2005

A. If a participant was impacted by Hurricanes Katrina, Rita, or Wilma they may be able to withdraw funds from their DROP/ILSB account in addition to those normally allowed under §509. In order to receive an additional distribution, the participant must have retired prior to the special withdrawal request.

B.1. A qualified hurricane distribution must be made on or after:

a. August 25, 2005 and before January 1, 2007, to an individual whose principal place of residence on August 28, 2005 was located in the Hurricane Katrina disaster area, and who sustained economic loss due to Hurricane Katrina;

b. September 23, 2005 and before January 1, 2007, to an individual whose principal place of residence on September 23, 2005 was located in the Hurricane Rita disaster area, and who sustained an economic loss due to Hurricane Rita (but is not a distribution described in Subparagraph B.1.a);

c. October 23, 2005 and before January 1, 2007, to an individual whose principal place of residence on October 23, 2005 was located in the Hurricane Wilma disaster area, and who sustained an economic loss due to Hurricane Wilma (but is not a distribution described in Subparagraphs B.1.a or b).

2. The aggregate amount of eligible distributions cannot exceed \$100,000 in any tax year. No distribution is allowable greater than the participant's account balance. A qualified distribution is not subject to any penalty that would normally be imposed because of the participant's age, and the distribution is not subject to any mandatory federal income tax withholding.

C. Participants eligible to receive funds under this provision must complete a notarized Hurricane Affidavit attesting to their eligibility.

D. If the participant is married, consent of the participant's spouse is required to receive a Hurricane Katrina, Hurricane Rita, or Hurricane Wilma distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791 and the U. S. Gulf Opportunity Zone Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System, LR 32:

Maureen H. Westgard
Director

0602#044

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season Extension in Sister Lake

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the Department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 4, 2005 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to reopen areas previously closed if the threat to the resource has ended, the Secretary hereby declares:

The oyster season in the Sister Lake Public Oyster Seed Reservation as described in R.S. 56:434.E shall be extended until one-half hour after sunset on January 31, 2006 except for that portion of the Sister Lake Public Oyster Seed Reservation west and north of a line originating at 29 degrees 12 minutes 50.56 seconds north latitude and 90 degrees 56 minutes 53.54 seconds west longitude thence northeast to a position at 29 degrees 15 minutes 06.06 seconds north latitude and 90 degrees 55 minutes 17.93 seconds west longitude thence east northeast to a position terminating at 29 degrees 15 minutes 20.89 seconds north latitude and 90 degrees 54 minutes 01.51 seconds west longitude.

The 2004 cultch plant located within the following coordinates will remain open from one-half hour before sunrise January 13 to one-half hour after sunset on January 15, 2006:

1. 29 degrees 13 minutes 36.49 seconds N
90 degrees 54 minutes 59.89 seconds W
2. 29 degrees 13 minutes 32.29 seconds N
90 degrees 54 minutes 43.89 seconds W
3. 29 degrees 13 minutes 15.72 seconds N
90 degrees 55 minutes 05.51 seconds W
4. 29 degrees 13 minutes 12.58 seconds N
90 degrees 54 minutes 46.94 seconds W

Despite hurricane-related impacts to the Sister Lake Public Oyster Seed Reservation and the harvest of significant numbers of marketable oysters, marketable quantities of oysters remain in these waters and have been noted during recent biological sampling. This continuation of harvesting activities within the areas to remain open should help facilitate the removal of sediment overburden, thereby re-exposing reefs and providing favorable habitat for future oyster spat sets.

Dwight Landreneau
Secretary

0602#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shrimp Season Closure—Remainder of Zone 1 and Additional Outside Waters

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 have the authority to open or close state outside waters to shrimping by zone each year as it deems appropriate, and allows the Wildlife and Fisheries Commission to delegate to the secretary of the department the powers, duties and authority to set seasons, and in accordance with a resolution adopted by the Wildlife and Fisheries Commission on August 4, 2005 which authorized the Secretary of the Department of Wildlife and Fisheries to change the closing dates of the 2005 Fall Shrimp Season if

biological and technical data indicate the need to do so or if enforcement problems develop and to close all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters, and to re-open these waters if significant numbers of marketable size shrimp are available for harvest, and in accordance with a resolution adopted by the Wildlife and Fisheries Commission on January 5, 2006 which authorized the Secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any part of remaining state outside waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer necessary, and to open and close special shrimp seasons in any portion of state inside waters where such a season would not detrimentally impact developing brown shrimp populations, the Secretary of the Department of Wildlife and Fisheries does hereby declare that the fall inshore shrimp season in that portion of Shrimp Management Zone 1 extending north of the south shore of the Mississippi River Gulf Outlet, including Lake Pontchartrain and Lake Borgne will close at official sunset January 30, 2006, and that portion of state outside waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at latitude 29°03'10" N and

longitude 90°50'27" W, shall close to shrimping at official sunset January 30, 2006.

Effective with these closures, all state inside waters are closed to shrimping except for the open waters of Breton and Chandeleur Sounds as described by the double-rig line [R.S. 56:495.1(A)2] which shall remain open until 6 a.m., March 31, 2006. State outside waters south of the inside/outside shrimp line westward from the western shore of Freshwater Bayou Canal at longitude 92°18'33" W and eastward from the northwest shore of Caillou Boca at latitude 29°03'10" N and longitude 90°50'27" W shall remain open to shrimping until further notice.

R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound except during the time period from October fifteenth through the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in these portions of state inside and outside waters do not average 100 possession count and additional small white shrimp are expected to recruit to these waters. This action is being taken to protect these small white shrimp and provide them the opportunity to grow to larger and more valuable sizes.

Dwight Landreneau
Secretary

0602#007