

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services

Chloramphenicol in Honey Testing and Sale (LAC 7:XXXV.Chapter 1)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules governing the testing and sale of honey in Louisiana. These rules are being adopted in accordance with R.S. 3:2.A, 3:3.B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953.B of the Administrative Procedure Act.

The Commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in honey that are consistent with standards adopted by the FDA regarding chloramphenicol in foods. All honey sold in Louisiana must meet the standards adopted by the Commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, including bees (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, Canada, the United Kingdom, the European Union, and Japan have found chloramphenicol in honey imported from China. The Department has found chloramphenicol in honey imported from Thailand. Preliminary test results from Canada indicate about 80% of the samples are positive for chloramphenicol. The possibility exists that other countries may export chloramphenicol-contaminated honey to the U.S.A., either by diversion of Chinese honey or their own use of chloramphenicol.

The sale of such honey in Louisiana will expose Louisiana's citizens, including unborn children and nursing

infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of honey containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying honey from any source, including Louisiana honey. If consumers cease to buy, or substantially reduce, their purchases of Louisiana honey then Louisiana honey producers will be faced with substantial economic losses. Any economic losses suffered by Louisiana's honey producers will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. These rules become effective upon signature, July 10, 2002, and will remain in effect 120 days, unless renewed by the Commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, including bees, which produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Honey Any honey, whether raw or processed.

B. No honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana if such honey or food containing honey contains Chloramphenicol.

C. No honey that is harvested from or produced, processed or packed in a geographic area, that the Commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, including bees, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No honey from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The Commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, including bees or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The Commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals, including bees, in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Honey that comes from a geographic area declared by the Commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, including bees, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana:

1. Sampling

a. The numbers of samples that shall be taken are as follows:

- i. two samples are to be taken of honey that is in lots of fifty pounds or less;
- ii. four samples are to be taken of honey that is in lots of fifty-one to one hundred pounds;
- iii. twelve samples are to be taken of honey that is in lots of one hundred and one pounds up to fifty tons.

b. For honey in bulk wholesale containers, each sample shall be at least one pound or twelve fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least eight ounces in size and shall be taken at random throughout each lot.

d. If the honey to be sampled consists of packages of honey grouped together, but labeled under two or more trade or brand names, then the honey packaged under each trade or brand name shall be sampled separately. If the honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

e. A composite of the samples shall not be made. All samples shall be delivered to the lab. Each sample shall be clearly identifiable as belonging to a specific group of honey and shall be tested individually.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation. For small packages of honey up to and including eight ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The

Commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The Manufacturer's specified calibration curve must be run with each set. All results above 1 ppb must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the Commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless it is located in a geographic area that the Commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals. The Commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the Department prior to the honey or food containing honey being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the honey.

8. Upon the Department's actual receipt of a copy of the certified test results and written documentation required to accompany the certified test results, the honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the Commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment of such honey or food containing honey, and be attached to the documentation submitted with every shipment sent to each location in Louisiana, or shall be immediately accessible to the Department, upon request, from any such location.

F. Any person who is seeking to bring honey, or any food containing honey, that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such honey or food containing honey in Louisiana shall be responsible for having the honey, sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The Commissioner may reject the test results for any honey if the Commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. If any certified test results are rejected by the Commissioner then any person shipping or holding the honey or food containing honey will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the Commissioner. Thereafter, any such person shall abide by such order until the Commissioner lifts the order in writing. Any such person may have the honey retested in accordance with this Section and apply for a lifting of the Commissioner's order upon a showing that the provisions of this Section have been complied with and that the honey is certified as being free of Chloramphenicol.

I. The Department may inspect any honey and any food containing honey, found in Louisiana, and take samples for testing.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements of this Section. Any such order shall remain in place until lifted, in writing, by the Commissioner.

K. The Department may take physical possession and control of any honey or any food containing honey that violate the requirements of this Section if the Commissioner finds that the honey or food containing honey presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L.1. The Commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals, in certain geographic area(s):

- a. The geographic area or areas are:
- b. The country of the People's Republic of China.
- c. The country of Thailand.

2. All honey harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of honey or any food containing honey shall be maintained for two years and shall be open to inspection by the Department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is July 10, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, & 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of the Commissioner, LR 28: ().

SIGNED AND ATTESTED TO this 10th day of July 2002 at Baton Rouge, LA.

Bob Odom
Commissioner

0207#005

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary Division of Business Retention and Assistance Services

Small and Emerging Business Development Program
(LAC 19:II.Chapters 1-13)

The Department of Economic Development's Small and Emerging Business Development Program is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, in order to amend LAC 19:II.Chapters 1,3,5,7,9,11, and 13, expediting the delivery of managerial and technical assistance to the small and emerging business community, increasing the number of firms to be served through the program, improving the small business survival rate, and retaining and creating more jobs.

This Emergency Rule is effective on August 9, 2002, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information you may call the Small and Emerging Business Development Program at (225) 342-4320.

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging Business Development Program

Chapter 1. General Provisions

§101. Statement of Policy

A. In accordance with the provisions of R.S. 51:941-945 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended the Department of Economic Development's, Small and Emerging Business Development Program, administers these regulations which are intended to prescribe the procedures for qualifying and certifying Small and Emerging businesses; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protégé program; to recognize achievements for Small and Emerging businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§103. Purpose

A. The purpose and intent of this Chapter is to provide the maximum opportunity for Small and Emerging businesses to become competitive in a non-preferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

Certification C determination that a business qualifies for designation as a Small and Emerging business.

Program C the Small and Emerging Business Development Program in the Department of Economic Development.

Small and Emerging Business (SEB) C a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more Small and Emerging Business persons and which has its principal place of business in Louisiana. A nonprofit organization is not a Small and Emerging Business for purposes of this Chapter.

Small and Emerging Business Person C a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Director C the director of Office of the Secretary, Division of Business Retention and Assistance.

Firm C a business that has been certified as Small and Emerging.

Full-time C working in the firm at least 35 hours per week.

RFPC request for Proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§107. Eligibility Requirements for Certification

A. An SEB is a firm owned and controlled by one or more Small and Emerging Business person(s). Eligibility requirements fall into two categories, one applies to the individual owners and the other to the applicant's firm. In order to continue participation in the program, a firm and its individual owners must continue to meet all eligibility requirements.

B. Small and Emerging Business Person. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as a Small and Emerging Business person.

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. The person's net worth may not exceed \$200,000. The market value of the individual owner's personal residence will be excluded from the net worth calculation.

C. Small and Emerging Business

1. Ownership and Control. At least 60 percent of the company must be owned and controlled by one or more Small and Emerging Business persons.

2. Principal Place of Business. The firm's principal place of business must be Louisiana.

3. Lawful Function. The company has been organized for profit to perform a lawful, commercially useful function.

4. Business Net Worth. The business' net worth at the time of application may not exceed \$750,000.

5. Full Time. Managing owners who claim Small and Emerging Business person status must be full-time employees of the applicant firm.

6. Job Creation. An applicant firm anticipates creating new full-time jobs.

D. Requirement for Certification. An application containing an affidavit signed, dated, and notarized attesting to all of the aforesaid eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§109. Control and Management

A. Description. An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be a Small and Emerging Business person. In order for a Small and Emerging Business person to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The Small and Emerging Business person(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is a Small and Emerging Business person and one is not, the formers vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 60 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

2. Individuals who are not a Small and Emerging Business person may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouse(s) or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household

will be deemed excessive if it exceeds the compensation received by the Small and Emerging Business person chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the Small and Emerging Business owner(s) of the applicant or certified firm, unless the program determines that the contemplated relationship between the former employer and the Small and Emerging Business person or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interest of the certified firm.

B. Non-Small and Emerging Business Person Control. Non-Small and Emerging Business person(s) or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-Small and Emerging Business person such as an officer or member of the board of directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-Small and Emerging Business person or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-Small and Emerging Business person to gain control or direction of the firm;

3. a non-Small and Emerging Business person or entity controls the firm or the individual Small and Emerging Business person(s) through loan arrangements;

4. other contractual relationships exist with non-Small and Emerging Business person or entities, the terms of which would create control over the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§111. Responsibility for Applying

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process. Failure to provide complete, true, or accurate data may result in rejection of the application.

B. Certification materials will be distributed by SEBD Program upon written or verbal request. Written requests for certification materials should be directed to the SEBD Program office in Baton Rouge.

C. Certification as a SEB also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a Small and Emerging Business also does not constitute any determination by SEBD Program or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§113. Certification Application Procedure

A. Applicant submits an application containing a signed, dated, and notarized affidavit to the SEBD office.

B. The SEBD Program staff reviews the application and if it is found to be incomplete or further information is needed, the SEBD Program staff will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is seven years or when the firm graduates.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate and follow through on recommendations of the SEBD Program staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§117. Reports by Certified Small and Emerging Businesses

A. Report Form. On forms identified or prescribed by the SEBD Program, certified businesses shall report at times specified by the SEBD Program their financial position and attainment of the business' performance goals. Failure to do so may result in termination from the program.

B. Verification of Eligibility. The SEBD Program may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the SEBD Program with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The SEBD Program, as necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§119. Deception Relating to Certification of a Small and Emerging Business

A. Any person found guilty of the crime of deception relating to certification of an SEB as provided in R.S. 51:944 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. Purpose. The SEBD Program will coordinate technical, managerial, and indirect financial assistance through internal and external resources to assist certified Small and Emerging Businesses to become competitive in the market place.

B. Developmental Steps

1. The certified SEB owner will be required to participate in, and complete a SEBD Program approved entrepreneurial training program. The Small and Emerging Business owner that demonstrates adequate entrepreneurial skills or compelling reasons for not participating may be granted a waiver by the director.

2. Determination of Additional Assistance. In consultation with the business owner, the SEBD Program's staff or its designee will determine areas in which the business owner needs additional assistance.

3. Referral to Additional Resources. The SEBD Program will assist the firm obtain technical and/or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. Ongoing Evaluation. In conjunction with the Small and Emerging Business firm and appropriate external resources, the SEBD Program will periodically assess the SEB's progress toward attainment of its business goals. The SEBD Program, in conjunction with the SEB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the SEBD Program will investigate and take appropriate action.

5. Graduation from the Program. Upon completion of the Program's seven year term or attainment of the SEB's programmatic goals, the SEB will graduate from the program. Companies that do not make satisfactory progress and/or exceed the net worth prerequisites for certification will be terminated from the SEBD Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 5. Mentor-Protégé Program

§501. General Policy

A. The policy of the state is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of small and emerging businesses, through internal and external practices which include:

1. tone settingCintense and deliberate reinforcement by the governor's office of the state's provision for substantial inclusion of small and emerging businesses in all aspects of purchasing, procurement and contracting;

2. accountabilityCresponsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time;

3. partneringCteaming of Small and Emerging Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties;

4. capacity buildingCenhancing the capability of small and emerging businesses to compete for public and private sector contracting and purchasing opportunities;

5. flexibilityCpromoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding;

6. educationCsharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry;

7. monitoringCrequiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana state government;

8. reportingCinforming the governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Economic Development; and

9. continuous improvementCapproach to improving the performance of the Mentor/Protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§503. Incentives for Mentor Participation

A. Businesses participating as mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features may be instituted by the state of Louisiana to motivate Mentor participation.

1. Preferential Contract Award. The state of Louisiana may institute a system for awarding points to mentor participants which will confer advantages in the bid or selection process for contracting. The evaluation points granted a Mentor/Protégé Program participant will be proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Incentives. Contracts for goods or services may include a factor for evaluation of performance for the purpose of providing incentives for work performed or deliveries completed ahead of schedule. The incentive for contractors and suppliers who are Mentor/Protégé Program participants shall be not less than 5 percent greater than incentives awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§505. Incentives for Protégé Participation

A. Businesses participating as protégés will be eligible for the following program benefits.

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries.

2. Technical and Developmental Assistance. Protégé firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities.

3. Networking. The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. SEB firms participating in the program will be included in the Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégés will be held annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§507. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. Mentor Firms:

a. must be capable of contracting with the state;

b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and

c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. Protégé Firms:

a. must be a certified Small and Emerging Business with the state of Louisiana Department of Economic Development;

b. must be eligible for receipt of government and private contracts;

c. must graduate from the program within a period not to exceed 7 years or until the firm reaches the threshold of \$750,000 net worth as defined by the SEB certification guidelines.

3. Mentor/Protégé Plan

a. A Mentor/Protégé Plan signed by the respective firms shall be submitted to the Department of Economic Development, Program of Small and Emerging Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

b. The Mentor/Protégé plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protégé's developmental success. The plan shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protégé Agreement shall be reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the director of the Program of Small and Emerging Business Development acceptance of the submitted Agreement if the agreement is in compliance with the program's Mentor/Protégé guidelines.

4. Protégé Selection. Selection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of SEB's provided by the Department of Economic Development, Program of Small and Emerging businesses. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification as an SEB. The protégé must meet the department's guidelines for SEB certification as a condition of the Mentor/Protégé Plan acceptance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§509. Measurement of Program Success

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;

2. an increase in the number and value of contracts, subcontracts and supplier agreements by small and emerging businesses; and

3. the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, or

supplier to local, state, federal agencies or commercial markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§511. Internal Controls

A. The Program of Small and Emerging Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;
2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;
3. requesting and reviewing periodic reports and any studies or surveys as may be required by the program to determine program effectiveness and impact on the growth, stability and competitive position of Small and Emerging Businesses in the state of Louisiana; and
4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§513. Non-Performance

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the state. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the state contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégé who are selected for program participation are bound, in accordance with the terms of their agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet the terms of the agreement is considered a violation of contract with liabilities as outlined below.

B. Failure of the mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of state contract or purchasing agreement.

C. Failure of the protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§515. Conflict Resolution

A. The state will institute a system for independent arbitration for the resolution of conflicts between mentors and protégé as program participants and/or between program participants and the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1575 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 7. Recognition Program

§701. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A. Program Activities C Louisiana Contractors Accreditation Institute (LCAI)

1. Eligibility. All SEB construction contractors who are certified by the Small and Emerging Business Development Program, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive bond guarantee assistance until they have been certified by the SEBD Program.

2. Standards and Procedures for Determining Course Content. The staff of Bonding Assistance Program (BAP) will once a year, or as budget permits, consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. Accreditation without Institute Attendance. An SEB firm may request to be accredited without attendance. The staff of the BAP will conduct a review of the firm. If the contractor can present evidence he conducts business within standards set by Best Practices, an accreditation may be issued to the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified Small and Emerging construction businesses that have been accredited by the LCAI and all other certified SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. A Small Business Bonding Program applicant requesting a bond guaranty is first required to contact a surety company interested in insuring such a bond contingent on SEBD approval. The aforesaid surety will contact SEBD to discern eligibility requirements and submit a formal application on behalf of the business concern.

2. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the staff of the Bonding Assistance Program (BAP) and surety company.

3. Manager of BAP or designee will:

- a. determine and document that business is eligible to participate in program;
- b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;
- c. determine worthiness of the project based on advice and input from surety company.
- d. make recommendations to the BRAS director as required.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance, and appear in the most current edition of the *U.S. Treasury Circular 570*.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

- i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;
- ii. imprudent underwriting standards;
- iii. excessive losses (as compared to other participating sureties);
- iv. failure of a surety to consent to BAP audit;
- v. evidence of discriminatory practices; and
- vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety that has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract

together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§905. Calculation of Guarantee Fee Deduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), repealed by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28;

§907. Management Construction/Risk Management Company

A. Surety may require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings, this determination shall be made based on the Surety's standard underwriting procedures. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;
2. job cost breakdown and bid preparation assistance;
3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;
4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;
5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by Business Retention and Assistance Services, LR 28:

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the Small and Emerging Business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the Small and Emerging Business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the Small and Emerging Business'

experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of recordation of acceptance date shown on status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary

from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the director's exercise of the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. Reinsurance Agreement. In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. Default

a. Notice of Default. Surety shall notify BAP if it becomes aware of any circumstances which may cause the contractor to fail to timely complete the project in accordance with the provisions of the contract. Where BAP receives information from other sources indicating a contractor is in potential violation of his contract, the information is to be relayed to the surety for its information and appropriate action.

b. Default Claims, Indemnity Pursuit, and Settlement

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the director and undersecretary relative to BAP's guarantee. The director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP

is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. Reinstatement. A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:432 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§913. Audits

A. At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the director's written issuance of notice that no further guarantees will be issued. Otherwise the director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§915. Ancillary Authority

A. The director, with the approval of the undersecretary and assistant secretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would

include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 11. Promotion of Small and Emerging Businesses

§1101. Promotion

A. Directory

1. **Compilation.** The SEBD Program shall compile a directory of all certified SEBs and make it available to the businesses and governmental agencies.

2. **Frequency of Publication.** The directory shall be updated at least annually, based upon information provided by certified businesses. The SEBD Program may issue updated directories more frequently.

3. **Volume and Distribution.** At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the state library. Additional copies may be made available to the public and governmental agencies as SEBD Program's resources permit.

4. **Available Information.** Public information concerning a Small and Emerging Business may be obtained by contacting the Small and Emerging Business Development Program staff during normal working hours.

B. Other Promotional Means. The SEBD Program will utilize other feasible means of promoting Small and Emerging Businesses, such as, but not limited to, the internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility

A. Right To File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the SEBD Program. The complaint must contain sufficient information for SEBD Program staff to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No Small and Emerging Business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations; however, failure of the Small and Emerging Business to respond to the SEBD Program's notification within 30 calendar days of mailing from the Program may result in revocation of certification.

C. Investigative Procedure

1. **Notification of Allegation.** The SEBD Program shall notify the certified business which is subject of the

complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. **Investigation Conducted.** Within available resources, the SEBD Program shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. **Cooperation.** The Small and Emerging Business shall cooperate fully with the investigation and make its staff and records available to the SEBD Program, if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the SEBD Program that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the SEBD Program's staff shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the SEBD Program of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

§1303. Grounds and Procedure for Reconsideration of Denial

A. Right to Petition. A decision by the SEBD Program to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the staff of the SEBD Program.

B. Grounds. Grounds for petitioning the SEBD Program to reconsider a denial or revocation of certification are that the Small and Emerging Business Development Program:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal SEBD Program's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. **Petition Submitted.** The appellant business submits a written petition for reconsideration to the SEBD Program's staff. If the petition has not been received by the SEBD Program within 30 days of the date of the letter announcing the denial or revocation, the SEBD Program's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. **Acknowledgment.** Upon receiving a petition for reconsideration, SEBD Program shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The SEBD Program shall consider the petition and review all pertinent information, including additional information provided by the appellant business. The SEBD Program may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the SEBD Program shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:55 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 28:

Don J. Hutchinson
Secretary

0208#098

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV 301, 701, 703, 705, 805, 903,
1301, 1903, 2103, 2107, 2109, and 2303)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The emergency rules are necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective June 19, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

* * *

*Exceptional Child*Ca student defined as an exceptional child in accordance with R.S. 17:1943(4), excluding gifted and talented.

* * *

Full-Time StudentC

a. - b. ...

c. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the academic year he has earned at least 24 hours of total credit as reported by the institution for the fall and spring semesters at institutions defining 12 semester hours as the minimum for standing as a full-time undergraduate or as reported by the institution for the fall, winter and spring quarters at institutions defining 8 quarter hours as the minimum for standing as a full-time undergraduate. For purposes of TOPS and except where specified otherwise within these rules, a student shall be credited for hours earned as reported by the institution which the student attends in accordance with that institution's published policies. Students should be aware that these policies may differ depending on the school the student attends. (see 705.A, 705.D, 805.A, and 907.A for more expanded TOPS requirements);

d - g. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§701. General Provisions

A. - E.7. ...

8. Students funded under the Tuition Assistance Plan (TAP) or the Louisiana Honors Scholarship program during the 1997-98 award year, who lost eligibility due to their failure to maintain the required grade point average, shall be continued as TOPS Opportunity or Performance recipients, respectively, however, their eligibility for an award shall be suspended pending their satisfaction of the continuation requirements of §705.A.7 and 8. If a student satisfies the applicable requirements of §705.A.7 and 8 no later than the end of the 2000 Spring semester, he/she shall be eligible for reinstatement of the award in accordance with §705.B, for the semester following the satisfaction of the requirements of §705.A.7 and 8.

F. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000). Repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:

§703. Establishing Eligibility

A. - A.4.b. ...

c. if the student is eligible under the provisions of §703.A.5.d or e, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completes the home study program, which is deemed to be May 31st; or

d. if the student is eligible under the provisions of §703.A.5.d or e, and has Joined and is on active duty with the United States Armed Forces within one year of completion of the twelfth grade of an approved home study program, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the fifth anniversary of the completion of the approved home study program or within one year from the date of discharge, whichever is earlier; or

A.4.d. - D. ...

E. Students graduating in academic years 1996-97 and 1997-98 who qualified by reduction of the foreign language requirement must provide LASFAC a copy of their college transcript showing completion of one or more foreign language courses. Eligibility for an award is not established until receipt of the transcript verifying that the foreign language credit was earned and the student shall first be awarded for the semester or term following that in which eligibility was established. Under this provision, eligibility must be established not later than the conclusion of the 1998-99 award year.

F. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002), LR 28:

§705. Maintaining Eligibility

A. - A.11. ...

B. Students failing to meet the requirements listed in §705.A.7 or §705.A.8.a, b, or c may have their tuition awards reinstated upon regaining Steady Academic Progress (see §301) and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of 705.A.8.c, but who meet the continuation requirements of §705.A.8.a or b, shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to receive the award amount for the Opportunity Award.

C.-D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999); LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR

26, 1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A. - A.8. ...

B. Students failing to meet the requirements listed in §805.A.7 and 8 may have their tuition awards reinstated upon achieving Steady Academic Progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:

Chapter 9. TOPS Teacher Award

§903. Establishing Eligibility

A. - A.4.a. ...

i. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in §703.A.5.a.i of LAC 28:IV; and

4.a.ii. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:284 (March 2001), LR 27:1220 (August 2001), repromulgated LR 27:1135 (November 2001), LR 28:448 (March 2002), LR 28:774 (April 2002), LR 28:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - B. ...

C. Louisiana administers a decentralized LEAP Program. Certain functions of the program are delegated to participating schools. Schools approved for participation in the Louisiana LEAP Program must have federal eligibility and must annually submit a state application and be approved for state participation. Funding available for a specific award year is allocated to eligible in-state postsecondary institutions who select and certify recipients to LASFAC. LASFAC forwards award funding to the institutions for disbursement to the student or student's account.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999). Repromulgated LR 27:1860 (November 2001), LR 28:

Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

§1903. Responsibilities of Postsecondary Institutions

A. - B.7.b. ...

8. Before applying a TOPS award to pay a student's tuition, institutions shall first apply the student's "out-of-

pocket" payments, including student loans, toward tuition charges. In those cases when a student's tuition as defined in 26 U.S.C. 25A is paid from a source other than the TOPS award, the institution shall apply the TOPS award toward payment of expenses other than tuition which are described in the term "cost of attendance" as that term is defined in 20 U.S.C. 1087 ll, as amended, for the purpose of qualifying the student or his parent or guardian for the federal income tax credits provided for under 26 U.S.C. 25A.

C. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000). IR 27:1864 (November 2001), LR 28:448 (March 2002), LR 28:, LR 28:

Chapter 21. Miscellaneous Provisions and Exceptions
§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - E.1.b.ii. ...

c. Maximum Length of Exception. Up to two consecutive semesters (three consecutive quarters) per pregnancy.

2. - 11.a. ...

i. The following situations are not exceptional circumstances:

11.a.i.(a) - 11.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:, LR 28:

§2107. Funding and Fees

A. - C.2.a. ...

b. After the elimination of students under, § 2107.C.2.a if funds are still insufficient to award all of those students who remain eligible for award year 1998-99, then those students qualified by the actions of the First Extraordinary Session of 1998 shall be funded only after all awards to all students who are eligible pursuant to the requirements of this Chapter as they existed prior to any Act of the 1998 First Extraordinary Session of the Legislature are fully funded. Students qualified by actions of the First Extraordinary Session of 1998 include the following:

i. students qualified by reduction of Foreign Language requirement for 1996-97 and 1997-98 graduates;

ii. students qualified as Exceptional Students/Students with disabilities;

iii. students who graduated from out-of-state high schools; and

iv. students who completed an Approved Home Study Program.

c. After the elimination of students in §2107.C.2.a, and b, if funds are still insufficient to award all of the remaining students, then those who remain will be prioritized according to their ACT score and, within ACT score, by their EFC in ranges of \$1,000, from lowest to

highest. Beginning with the lowest qualifying ACT score, the students with the highest EFC shall be eliminated until the funds available are sufficient to award all remaining students or until all students with that ACT score have been eliminated. This process shall be repeated, beginning with the lowest ACT score and progressing to the highest ACT score, until the projected expenditure for awards equals the funds appropriated for that purpose.

d. After the elimination of students in §2107.C.2.a, if funds are sufficient to award all students who were eligible prior to the Act of the 1998 First Extraordinary Session of the Legislature, but are insufficient to award all students made eligible under such Act and listed in §2107.C.2.b, then those students made eligible by such Act shall be rendered ineligible by application of §2107.C.2.c, above, until funds available are sufficient to award all remaining students.

3. From among those students otherwise eligible who are denied an award because of the imposition of the procedures in §2107.C.2, if additional funds subsequently become available for expenditure in the same award year, those students who have the highest ACT scores and the least capacity to pay, as evidenced by their families' lower EFC, shall be the first to be awarded by reversing the procedure described in §2107.C.2.c.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), LR 28:449 (March 2002), LR 28:777 (April 2002), LR 28:

§2109. Agency Decisions Subject to Appeal

A. Right of Appeal

1. A person aggrieved by an adverse decision of LOSFA under §2103.E.11.a.(ii) may appeal the decision in accordance with the procedures provided in this section.

2. - 3. ...

B. Notice of Adverse Decision

1. Notice of an adverse decision by LOSFA under §2103.E.11.a.(ii) must be transmitted in writing to the applicant or participant. The notice must state with reasonable specificity the decision and the reason for the decision, state that the decision may be appealed, and set forth the procedure for submission of an appeal.

C. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1261 (June 2000). Repromulgated LR 27:1870 (November 2001), LR 28:

Chapter 23. Tuition Payment Program for Medical School Students

§2303. Establishing Eligibility

A. - A.4. ...

5. agree to the full time practice of the profession of medicine as a primary care physician in a Designated Area for at least two consecutive years after graduating from medical school and completing a residency program in a primary care field as defined in §2303.A.4 above; and

6 - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999) LR 25:2177 (November 1999), LR 26:2754 (December 2000), LR 27:1220 (August 2001), repromulgated LR 27:1872 (November 2001), LR 28:777 (April 2002), LR 28:

George Badge Eldredge
General Counsel

0208#008

DECLARATION OF EMERGENCY

**Office of the Governor
Office of Financial Institutions**

**Capital Companies Tax Credit Program
(LAC 10:XV.323)**

Under the authority of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.B relative to emergency rulemaking, and in accordance with R.S. 51:1929 of the Capital Companies Tax Credit program, R.S. 51:1921 et seq., the Commissioner of Financial Institutions hereby intends to adopt this Emergency rule which will provide for assessments and fees of certified Louisiana capital companies, ("CAPCO"s). These fees are necessary in order for this office to effectively discharge its duty of ensuring that these regulated entities invest their certified capital, for which tax credits were given, in small Louisiana businesses in need of capital for survival, expansion, new product development, or similar business purposes.

The Office of Financial Institutions is statutorily charged with the certification and supervision of all certified Louisiana capital companies. As part of those duties, this office performs annual examination of these entities to ensure compliance with applicable statutes and regulation. These statutes and regulations require CAPCOs to invest the funds they raise into qualified Louisiana businesses. Since the fostering of small businesses is essential in order to stimulate Louisiana's economy, it is critical that his office ensure that the CAPCOs are fulfilling their obligations to invest in these types of companies.

We have determined that additional resources and expenditures will be needed to effectively perform our duty as the administrator of this program. Therefore, the immediate collection of sufficient fees and assessments to cover these costs is essential. These additional resources and expenditures include such things as adequate training for field and main office personnel, sufficient travel funds to perform examinations, acquisition of computer equipment, additional salary expenses attributable to an increased work load associated with this program, etc. Without sufficient funding, this office will effectively be unable to discharge its duties in the short term.

Therefore, in accordance with R.S. 49:953.B and the provisions of R.S. 51:1929(5), the Commissioner hereby adopts this Declaration of Emergency. Accordingly, this Emergency Rule shall become effective on the Commissioner's signature (July 29, 2002) and shall remain

effective for a maximum of 120 days, or until the final rule is promulgated, whichever occurs first.

Title 10

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

Part XV. Other Regulated Entities

Chapter 3. Capital Companies Tax Credit Program

§323. Fees and Assessments

Pursuant to the authority granted under R.S. 51:1929(5), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the certified Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

A. Fees and Assessments

1. Request for certification of capital pursuant to LSA-R.S. 51:1924. Each certified Louisiana capital company seeking an allocation of certified capital shall submit a non-refundable fee with the request for allocation filed on October 1 and December 1 of each year.

Requested Amount	Fee
Less than \$250,000	\$1,000
\$250,000 < \$3,000,000	\$2,500
\$3,000,000 or greater	\$5,000

2. Annual assessment of each certified Louisiana capital company at a floating rate to be assessed no later than May 15 of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.303, as of the previous December 31 audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the certified Louisiana capital companies program 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 certified Louisiana capital companies program shall be added to the next variable assessment or billed on a pro rata basis.

Fee	Variable
-----	----------

3. Late Fee. For each calendar day that an assessment is late pursuant to the requirements of Section 323.B.2, a late fee shall be assessed.

Fee	\$100 per day
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B. Administration

1. The failure to submit a fee with the request for allocation as required in Section 323.A.1 shall result in the denial of an allocation of certified capital.

2. The assessment described in Section 323.A.2 shall be considered late if not received by this office on or before May 31 of each calendar year. If this office receives an assessment after May 31, it shall not be deemed late if it was postmarked on or before May 31.

3. If audited financial statements are not submitted to this office by April 30, unaudited financial statements shall be submitted no later than May 1. These unaudited financial statements shall then be used to determine the assessment amount provided for in Section 323.A.2. Accompanying these audited or unaudited financial statements shall be a

detailed calculation of total certified capital under management as of December 31.

4. If neither an audited nor unaudited financial statement has been received by this office by May 1, beginning on June 1, the late fee described in Section 323.A.3 shall be assessed until the assessment has been paid.

5. If any of the dates described in parts 2 and 3 above, except the April 30 and the December 31 due date for audited financial statements, occurs on an official state holiday or a Saturday or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

6. The assessment for each certified Louisiana capital company group, as defined in R.S. 51:1923(11), and described in Section 323.A.2 shall be based on the following formula.

a. The numerator will be the total certified capital under management for the group as of the previous December 31.

b. The denominator will be the total certified capital under management for all certified Louisiana capital companies as of the previous December 31.

C. Severability

1. 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. 51:1929(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions LR 28

The proposed rule will have no adverse fiscal or economic impact, nor will it adversely impact family formation, stability, and autonomy.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than September 19, 2002, at 4:30 p.m., to Gary L. Newport, General Counsel, Office of Financial Institutions, Post Office Box 94095, Baton Rouge, LA 70804-9095, or by delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

John D. Travis
Commissioner

0208#055

DECLARATION OF EMERGENCY

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

Mentally Retarded/Developmentally Disabled
Waiver/Supervised Independent Living

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts 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 adopted in accordance with the Administrative Procedure Act, R. S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Community Supports and Services provides reimbursement for Supervised Independent Living (SIL) services under the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver. SIL services include comprehensive plan of care development, implementation and monitoring; training; consultation and companion services. An Emergency Rule was adopted in July of 1995 to revise the reimbursement methodology for SIL services (*Louisiana Register*, Volume 21, Number 7). This Rule was subsequently repealed in October of 1995 (*Louisiana Register*, Volume 21 Number 10). As a result of allocation of additional funds by the Legislature during the 2001 Regular Session, a rule was adopted to increase the reimbursement rates for SIL day and night companion services (*Louisiana Register*, Volume 27, Number 11).

As a result of the allocation of additional funds by the Legislature during the 2002 Regular Session, the Bureau of Community Supports and Services proposes to increase the reimbursement rate for a certain designated procedure code for SIL services. This action is being taken to promote the health and welfare of Medicaid recipients and maintain access to Supervised Independent Living services by encouraging the continued participation of these providers in the Medicaid Program.

It is estimated that implementation of this emergency rule will increase expenditures for services by approximately \$5,280,000 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on and after July 18, 2002, the Department of Health and Hospitals, Bureau of Community Supports and Services increases the Supervised Independent Living per diem rate as follows.

Procedure Code	Name	Current Rate	New Rate
Z0006	SIL Per Diem	\$22.76	\$34.98

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is the person 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.

David W. Hood
Secretary

0208#010

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule May 20, 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, volume 25, number 5). This rule was adopted pursuant to Act 19 of the 1998 Legislative Session and Act 1485 (the Rural Hospital Preservation Act) of the 1997 Legislative Session. The May 20, 1999 rule was subsequently amended to revise the disproportionate share qualification criteria for small rural hospitals in compliance with Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature (*Louisiana Register*, Volume 26, Number 3).

The bureau subsequently adopted a rule to establish an additional disproportionate share hospital group, for state fiscal year 2001 only, composed of large public non state hospitals in order to facilitate the transfers of public funds from qualifying health care providers as directed in Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature (*Louisiana Register*, Volume 27, Number 2).

Act 1074 of the 2001 Regular Session of the Louisiana Legislature amended the Rural Hospital Preservation Act to add certain hospitals to the definition of rural hospitals. In compliance with Act 1074, the Bureau has determined that it is necessary to amend the March 20, 2000 rule to revise the disproportionate share qualification criteria for small rural hospitals.

Qualification for disproportionate share is based on the hospital's latest year end cost report for the year ended during the specified period of the previous year. Payment is equal to each qualifying hospital's pro rata share of the uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the specified period of the preceding year multiplied by the amount set for each pool. The specified cost reporting period for all hospitals except small rural hospitals is July 1 through June 30 of the previous year. The specified cost reporting period for small rural hospitals is April 1 through March 31 of the previous year. As a result of Medicare amending its reimbursement methodology for hospitals and granting extensions on the submission dates for hospital cost reports, the bureau amended the provisions governing cost reporting periods for qualification and calculation of payments for disproportionate share. This emergency rule is being adopted to continue the provisions contained in the August 8, 2001 rule.

Emergency Rule

Effective for dates of service on or after August 6, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends the provisions governing the disproportionate share payment methodologies for hospitals by incorporating the following revisions.

I. General Provisions

A. - C. ...

D. DSH payments to a hospital determined under any of the methodologies below shall not exceed the hospital's net uncompensated cost as defined in section I.G for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's 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 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. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. - I. ...

III. Reimbursement Methodologies

B. Small Rural Hospitals

1. A small rural hospital is a hospital (excluding a long-term care hospital, rehabilitation hospital or free-standing 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 fifty thousand 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 sixty 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 fifty thousand 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 has been in continuous operation since July 1, 1994, is currently operating under a license issued by the department, and is located in a parish with a population, as measured by the 1990 census, of less than 50,000.

2. ...

3. Payment 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. 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.

4. ...

C. Large Public Non-State Hospitals

1. A large public non state hospital is defined as any hospital owned by a parish, city or other local government agency or instrumentality; and not included in section III. A or B of the May 20, 1999 rule. A qualifying hospital may be a long term hospital.

2. Qualifying hospitals must meet the qualifying criteria contained in section II.E and either section II. A, B, or C of the May 20, 1999 rule. Qualifying hospitals must maintain a log documenting the hospital's provision of uninsured care as directed by the department. Issuance of the disproportionate share payment is contingent on the public non state hospital certifying public funds as representing expenditures eligible for FFP in compliance with Act 12 of the 2001 Regular Session of the Louisiana Legislature.

3. Disproportionate share payments to each qualifying public non state hospital are equal to that hospital's pro rata share of uncompensated costs for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for this pool. Payment shall not exceed each qualifying hospital's actual uncompensated costs as defined in section I.G of the May 20, 1999 rule. If the cost reporting period is not a full period (12 months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

D. All Other Hospitals (private rural and urban hospitals, free-standing psychiatric hospitals exclusive of state hospitals, rehabilitation hospitals and long-term care hospitals)

1. - 2.c. ...

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 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.

David W. Hood
Secretary

0208#077

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
Small Rural Hospitals

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 34:254 and pursuant to Title

XIX of the Social Security Act. This Emergency Rule is adopted 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 May 20, 1999 governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 25, Number 5). This Rule was adopted pursuant to Act 19 of the 1998 Legislative Session and Act 1485 (the Rural Hospital Preservation Act) of the 1997 Legislative Session. The May 20, 1999 Rule was subsequently amended to revise the disproportionate share qualification criteria for small rural hospitals in compliance with Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature (*Louisiana Register*, Volume 26, Number 3).

Act 1074 of the 2001 Regular Session of the Louisiana Legislature amended the Rural Hospital Preservation Act to add certain hospitals to the definition of rural hospitals. In compliance with Act 1074, the bureau amended the March 20, 2000 rule to revise the disproportionate share qualification criteria for small rural hospitals (*Louisiana Register*, Volume 27, Number 3).

Act 35 of the 2002 First Extraordinary Session of the Louisiana Legislature provides changes to the criteria used to define rural hospitals. In compliance with Act 35, the bureau has determined it is necessary to revise the disproportionate share qualification criteria for small rural hospitals.

This action is being taken to enhance federal revenues. It is anticipated that the implementation of this emergency rule will be cost neutral as the total amount of disproportionate share payments available to small rural hospitals in fiscal year 2002-2003 will not change.

Emergency Rule

Effective for dates of service on and after August 5, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the disproportionate share payment methodologies for hospitals by incorporating the following revisions.

III. Reimbursement Methodologies

A. ...

B. Small Rural Hospitals

1.a.-g. ...

h. has no more than 60 hospital beds or has notified the Department of Health and Hospitals as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located, as measured by the 2000 census,

i. in a municipality with a population of less than 13,000; and

ii. in a parish with a population of less than 32,000.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

responding to all inquiries regarding this emergency rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0208#074

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Vagus Nerve Stimulators

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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 adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage for durable medical equipment and supplies under the Medicaid Program. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. In concurrence with the recommendations of the Medical Practices Committee, the bureau proposes to establish medical necessity criteria for the prior authorization of vagus nerve stimulators. Vagus nerve stimulators (VNS) are implantable devices used to assist in the control of seizures related to epilepsy.

Emergency Rule

Effective July 31, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following criteria for prior authorization of vagus nerve stimulators (VNS) under the Durable Medical Equipment Program. The VNS is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician.

A. Inclusion Criteria. Consideration shall be given for Medicaid reimbursement for implantation of the VNS if the treatment is considered medically necessary, the patient has medically intractable epilepsy and meets one or more of the following criteria:

1. is 12 years of age or older, although case by case consideration may be given to younger children who meet all other criteria and have sufficient body mass to support the implanted system; or
2. has a diagnosis of partial epilepsy confirmed and classified according to the International League Against Epilepsy classification. The patient may also have associated generalized seizures, such as tonic, tonic-tonic, or atonic. The VNS may have efficacy in primary generalized epilepsy as well. Video electroencephalographic monitoring is usually necessary for confirmation and classification of seizure type; or

3. has seizures that resist control by antiepilepsy treatment, with adequately documented trials of appropriate antiepilepsy drugs or documentation of the patient's inability to tolerate these medications; or

4. has undergone surgical evaluation and is not considered to be an optimal candidate for epilepsy surgery; or

5. is experiencing at least four to six identifiable partial onset seizures each month. The patient must have had a diagnosis of intractable epilepsy for at least two years. The two year period may be waived if it is deemed that waiting would be harmful to the patient; or

6. has undergone Quality of Life measurements (QOL). The choice of instruments used for the QOL must assess quantifiable measures of day to day life in addition to the occurrence of seizures. In the expert opinion of the treating physician, and clearly documented in the request for prior authorization, there must be reason to believe that QOL will improve as a result of the VNS. This improvement should be in addition to the benefit of seizure frequency reduction; or

7. has progressive disorders, psychosis, or mental retardation that are not contraindications to VNS implantation. Taking into consideration the additional diagnosis, the treating physician must document the benefits of VNS.

B. Exclusion Criteria. Medicaid reimbursement for implantation of a VNS shall not be made if the patient meets one or more of the following criteria:

1. has psychogenic seizures or other nonepileptic seizures; or
2. has systemic or localized infections that could infect the implanted system; or
3. the patient's body mass is insufficient to support the implanted system.

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

David W. Hood
Secretary

0208#007

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Program
Psychological and Behavioral Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopts 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 adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the

maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing, currently provides coverage for an extensive range of medical services, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for Medicaid recipients up to the age of 21. As a result of a lawsuit, the Department was ordered to make psychological and behavioral management services available to class members who meet certain criteria. The Bureau adopted an Emergency Rule to establish recipient criteria and the array of psychological and behavioral services available under the EPSDT Program (*Louisiana Register, Volume 28, Number 4*). The Bureau now proposes to repeal the April 20, 2002 Rule and to adopt new provisions governing EPSDT Psychological and Behavioral Services.

This action is being taken to promote the health and welfare of Medicaid recipients who are 21 years of age or younger and to ensure access to psychological and behavioral services by encouraging the participation of qualified providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$7,500,000 for state fiscal year 2002-2003.

Emergency Rule

Effective August 5, 2002 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, repeals the April 20, 2002 Rule and adopts the following provisions governing Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) Psychological and Behavioral Services.

A. Recipient Criteria

In order to be eligible for services, a Medicaid recipient must be under the age of 21, be a member of the Chisholm lawsuit class and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or
2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or
3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors are recurrent, not a single instance; or
4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors are recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

B. Covered Services

The following services, as identified by the accompanying Current Physicians Terminology (CPT) procedure codes, are covered under EPSDT Psychological and Behavioral Services:

1. necessary evaluations - CPT codes 90801 and 96100;

2. family education and training - CPT code 90847;
3. clinical interventions - CPT codes 90804 and 90806; and
4. periodic follow-up - CPT codes 90847, 90804, and 90806.

C. Provider Qualifications

In order to receive reimbursement as a Medicaid provider of EPSDT Psychological and Behavioral Services, a psychologist must provide verification that he or she meet all of the following qualifications:

1. have a PH.D;
2. be licensed to practice within the State of Louisiana; and
3. be professionally qualified to treat children, or to treat children and/or adults with PDD, including autism and/or developmental disorders.

D. Reimbursement Methodology

Reimbursement for EPSDT psychological and behavioral services shall be based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1.

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is the person 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.

David W. Hood
Secretary

0208#028

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waivers
Provider Training Requirement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts 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 adopted 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.

Under the provisions of Section 1915(c) of the Social Security Act, states may provide services not generally reimbursable by Medicaid to groups of individuals in the community who meet the qualifications for institutional care. Such programs are known as Home and Community Based Services waivers.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services currently administers five Home and Community Based Services Waiver Programs: the Elderly and Disabled Adult

Waiver, the Mental Retardation/Developmental Disabilities Waiver, the Children's Choice Waiver, the Personal Care Attendant Waiver, and the Adult Day Health Care Waiver.

Participation by service providers in these programs is voluntary. Knowledge of the waiver populations as well as the supports and services available in the community and from the Bureau of Community Supports and Services is considered crucial for the effective delivery of services by these providers. Act 13 of the 2002 Regular Session of the Louisiana Legislature authorizes the Department of Health and Hospitals to suspend the enrollment of new private MR/DD waiver service providers until such time as it has completed drafting the minimum qualifications and standards of performance expected of such providers. In order to increase provider knowledge of available supports and services and ensure the quality of services rendered, the department has determined it is necessary to require attendance at the bureau's provider enrollment orientation sessions prior to enrollment as a Medicaid provider of services for certain designated waivers.

This action is being taken to protect the health and welfare of Medicaid waiver recipients by enhancing provider knowledge and promoting the quality of service delivery. It is anticipated that implementation of this emergency rule will have no fiscal impact on waiver service costs for state fiscal year 2002-03.

Emergency Rule

Effective August 4, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following regulations governing participation as a Medicaid provider in designated Home and Community Based Services Waivers.

Attendance at a provider enrollment orientation shall be required prior to enrollment as a Medicaid provider of services under the following waivers:

1. the Elderly and Disabled Adult Waiver;
2. the Mental Retardation/Developmental Disabilities Waiver; and
3. the Children's Choice Waiver.

The frequency of the provider enrollment orientations shall be determined by the Bureau of Community Supports and Services, but they shall be conducted at least semi-annually.

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

David W. Hood
Secretary

0208#076

DECLARATION OF EMERGENCY

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

Long Term Hospitals CReimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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 adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1994 which established the reimbursement methodology for inpatient hospital services, including long-term acute hospitals under the specialty hospital peer groups (*Louisiana Register*, Volume 20, Number 6). Another rule was subsequently adopted to adjust the peer group rate payment to the lowest blended per diem rate for each specialty hospital category without otherwise changing the methodology (*Louisiana Register*, Volume 22, Number 1). The reimbursement methodology for psychiatric treatment was later disjoined from the methodology for other types of services in a long-term acute hospital in order to reimburse these services at the same prospective per diem rate established for psychiatric treatment facilities (*Louisiana Register*, Volume 23, Number 2). The June 20, 1994 rule was subsequently amended to restructure the prospective reimbursement methodology for inpatient services provided in long-term acute hospitals (*Louisiana Register*, Volume 23, Number 12).

Act 13 of the 2002 Regular Session of the Louisiana Legislature directs the Department of Health and Hospitals to allocate a specified amount from appropriated funds to be used for the enhancement of the reimbursement rates paid to long-term care hospitals. In compliance with Act 13, the bureau has determined that it is necessary to amend the December 20, 1997 rule to revise the reimbursement methodology for inpatient services provided by long term hospitals.

This action is being taken to promote the health and well-being of Medicaid recipients by encouraging the continued participation of long term hospitals in the Medicaid program. It is anticipated that implementation of this emergency rule will increase expenditures to long term hospitals by approximately \$3,000,000 for state fiscal year 2002-2003 as appropriated by the Legislature for this purpose in Act 13 of 2002.

Emergency Rule

Effective for dates of service on or after August 5, 2002 inpatient services provided by long term hospitals, excluding psychiatric services, will be reimbursed at a per diem rate

based on the 35th percentile facility (prorated) by cost category as reported on the as-filed cost report for the year ending between July 1, 1999 and June 30, 2000. Cost categories include operating costs, movable equipment, and fixed capital. Costs are trended forward to the midpoint of the rate year using the Centers for Medicare and Medicaid Services' PPS Market Basket Index.

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

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

David W. Hood
Secretary

0208#075

DECLARATION OF EMERGENCY

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

Public Hospitals CReimbursement Methodology CUpper Payment Limit

Editor's Note: This Emergency Rule was submitted to the Office of the State Register on August 9, 2002.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established a prospective reimbursement methodology for inpatient services provided in non-state operated acute care hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology was subsequently amended in a rule adopted in January of 1996 which established a weighted average per diem for each hospital peer group (*Louisiana Register*, Volume 22, Number 1). The January 1996 rule was later amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates in those years when the rates are not rebased (*Louisiana Register*, Volume 25, Number 5).

In compliance with Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature, an emergency rule was adopted to establish supplemental payments to non-state public hospitals, which are not recognized by the Department as small rural hospitals, for unreimbursed Medicaid costs incurred in providing care to

Medicaid recipients (*Louisiana Register*, volume 26, number 12). Issuance of the supplemental payment is contingent on the public hospital entering into a cooperative endeavor agreement with the Department to certify public funds as representing expenditures eligible for federal financial participation (FFP).

The Bureau utilized the revised upper payment limit for non-state government-owned or operated hospitals as set forth in the 42 CFR §447.272(c) and §447.321(c). 42 CFR §447.272(c) and §447.321(c) states as follows: "Exceptions, (1) Non-State government-operated hospitals. The aggregate Medicaid payments may not exceed a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles in subchapter B of this chapter." This emergency rule is being adopted to continue the provisions contained in the April 1, 2001 rule.

Emergency Rule

Effective July 29, 2002 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, will utilize the revised upper payment limit for non-state government-owned or operated hospitals as set forth in the 42 CFR §447.272(c) and §447.321(c). The hospital payment differential for any year shall be the difference between the upper limit of aggregate payments to non-state government-owned or operated hospitals, as defined in the 42 CFR §447.272(c) and §447.321(c), and the aggregate Medicaid per diem reimbursement paid to these hospitals for the year.

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

David W. Hood
Secretary

0208#078

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Veterinary Medicine

Licensure Procedures (LAC 46:LXXXV.301 and 303)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rule effective August 1, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Veterinary Practice Act, R.S. 37:1518 et seq., and it shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first. The proposed Emergency Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Due to imminent peril to the health, safety, and welfare of the public, the members of the Louisiana Board of Veterinary Medicine have adopted these emergency rule amendments to assist in its ability to certify the education of foreign veterinary school graduates prior to receiving licensure to practice veterinary medicine in Louisiana. The current education certification program being accepted has

proven to have an extensive time duration for completion due to a backlog of applicants with the steady increase of American students attending foreign veterinary schools and returning to the United States to practice. A new program has been developed and found equivalent to the presently accepted program. Acceptance of both programs could possibly shorten the currently accepted program's completion time and allow qualified applicants to become licensed to practice veterinary medicine sooner. Participants of the new program may complete the program and be ready for licensure as early as Fall 2002. The emergency rule amendments will assist the board in ensuring there is a satisfactory number of qualified veterinarians licensed in Louisiana to provide veterinary services to the public. The emergency amendments to the rule are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 3. Licensure Procedures

§301. Applications for Licensure

A. - B.7. ...

8. Prior to licensure in Louisiana, a foreign veterinary school graduate must provide to the Board proof of successful completion of the Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered through the American Veterinary Medical Association (AVMA) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered through the American Association of Veterinary State Boards (AAVSB).

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 10:464 (June 1984), LR 16:224 (March 1990), LR 19:343 (March 1993), LR 23:964 (August 1997), LR 25:2231 (November 1999), LR 28:

§303. Examinations

A.1. - 3. ...

4. A candidate for examination must be:

a. ...

b. currently enrolled in or certified by the AVMA's ECFVG program or the AAVSB's PAVE program; or

A.4.c. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 19:344 (March 1993), LR 19:1327 (October, 1993), LR 23:964 (August, 1997), LR 25:2232 (November 1999), LR 28:

Kimberly B. Barbier
Administrative Director

0208#040

DECLARATION OF EMERGENCY

Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

This commission has declared an emergency that necessitates the printing and passage of rules and regulations relative to a comprehensive drug and alcohol testing of river pilots. There is an imminent peril facing the pilotage industry wherein any river pilot under the jurisdiction of this commission who may be under the influence and effects of any drug or alcohol that may otherwise affect his/her performance that the safety and welfare of persons and property require extensive oversight. The Board of Examiners for the New Orleans and Baton Rouge River Port Pilots finds it necessary to extend the time of this Emergency Rule, originally adopted on March 19, 2002, to continue these provisions until Rule promulgation in the August edition of the *Louisiana Register*.

The attached proposed rules and regulations are to remain in effect for a minimum of 120 days or until promulgation of the final rules are complete, whichever occurs first. The effective date of this Emergency Rule is July 17, 2002.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Pilots

Chapter 2. Drug and Alcohol Policy

§201. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board of Examiners/Board of Review will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs will not be used, possessed, nor distributed by any NOBRA pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA Pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and U.S. Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the Board of Examiners/Board of Review hereby establishes a more stringent drug screening program, over and above the federal rules. All NOBRA pilots, apprentices and applicants shall be subject to this more stringent drug screening program, in addition to any testing required under the federal rules. As outlined below, this more stringent drug screening program shall consist of screening in the following situations: pre-employment, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the U.S. Coast Guard and shall subject the pilot to disciplinary action by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§203. Definitions

A. As used in this chapter:

Administrative Procedure Act(APA) the Louisiana Administrative Procedure Act under R.S. 49:950, et seq.

*Alcoholic Beverage*Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

*Applicant*Any person who completes the written application supplied by the Board of Examiners to become a NOBRA Pilot.

*Apprentice*Any person duly elected by the members of the NOBRA Association, but not yet commissioned, to serve in an orientation program, as directed by the Board of Examiners.

*Board of Examiners*the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1041, et seq.

*Board of Review*the Board of Review for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1049, et seq.

*NOBRA Pilot or Pilot*Ca commissioned Mississippi River pilot for the territory established in R.S. 34:1041, et seq.

*Prescription Medication*Any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

*Prohibited Drug(s)*Any and all controlled dangerous substances as defined in R.S. 40:961(7); any substances which are illegal under Federal, State, or local laws; this term shall include, but is not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and/or stimulants not prescribed for current personal treatment by a licensed physician, as defined by R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:

§205. Circumstances for Drug Testing

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the Board of Examiners/Board of Review, the State, shipping clients and the general public that the NOBRA pilots are dedicated and aggressive in their enforcement of their zero tolerance policy towards prohibited drugs.

B. Additionally, the Board of Examiners/Board of Review reserves the right to require a pilot to submit to a drug screen whenever the Board of Examiners has reasonable suspicion to suspect a pilot is under the influence of a prohibited drug. Such a drug screen may be done by means of urine, hair, blood or any other type of screen chosen by the Board of Examiners/ Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§207. Urine Testing

A. Any pilot involved in an accident or incident while performing their duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and U.S. Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the Board of Examiners/ Board of Review. The results of all drug screens taken pursuant to this paragraph shall become part of the pilots' permanent personnel file.

B. In addition to these required drug screens, all NOBRA pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The Board of Examiners/Board of Review shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§209. Hair Testing

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the Board of Examiners/Board of Review. Each pilot shall appear for his/her hair drug screen when notified to do so by the Board of Examiners/Board of Review. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§211. Split Sample/Safety Net Testing

A. Whenever there is a positive test result, of any type, returned as to any pilot, that pilot shall be entitled to the following split sample/referee sample testing or safety net testing as is possible through the board's designated testing facilities.

B. The board shall designate, from time to time, an authorized testing facility or laboratory that is responsive and responsible to the needs of the board. Such designation may be unilaterally and exclusively changed by the board at any time for any reason. The board, after such change, shall reasonably notify all applicants, apprentices and pilots.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. The taking of samples shall be taken, witnessed and handled in accordance with the recognized community standard.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have 24 hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed, classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§213. Effect of Positive Drug Screen/Disciplinary Action

A. Any NOBRA pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive drug screen shall be subject to disciplinary action by the Board of Examiners/Board of Review, including the recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his/her own personal expense. In addition, the evaluation

and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any NOBRA pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§215. Prescription Drug Use

A. Every NOBRA pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair his/her ability to perform his/her piloting duties. If, after consultation with his/her treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the Board of Examiners/Board of Review and remove himself/herself from duty until such time that his treating physician, in consultation with a physician specializing in occupational medicine, certifies that he/she may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates that a pilot has in his/her system a prescription drug which may impair his/her ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty, without pay, pursuant to §111.L of the Commission's rules, until such time that the Board of Examiners/Board of Review, in consultation with a physician specializing in occupational medicine, or any other medical professional, can determine that the pilot is fit to return to duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§217. Alcohol Use

A. No pilot shall consume any alcohol, of any nature whatsoever, within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any accident involving a pilot in the

performance of their duties. The Board of Examiners and/or the Board of Directors may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol.

B. Alcohol testing may occur while a pilot is on duty or for six hours prior to coming on duty. Duty, in this case, shall be defined as the time the pilot is ordered on board the vessel. Testing positive for alcohol while on duty is directly reportable to the Board of Examiners/Board of Review and is not subject to review by a Medical Review Officer, as there is never a medical reason to use any form of alcohol internally while on duty. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the U.S. Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the Board of Examiners reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

C. Any positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's federal license in jeopardy. Any NOBRA pilot testing positive for alcohol shall be removed from duty as a pilot, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot with a positive alcohol test shall be subject to disciplinary action by the Board of Examiners, including recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be approved by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§219. Confidentiality

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. the Governor of Louisiana and the Board of Directors of the New Orleans/Baton Rouge Steamship Pilots Association; and
2. the U.S. Coast Guard; and
3. in the event that the Board of Examiners/Board of Review determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

B. In addition, the records of any pilot maintained by the Board of Directors of NOBRA shall not be confidential and shall be available to the Board of Examiners/Board of Review in connection with any investigation regarding the use of prohibited drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§221. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any

reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

§223. Applicable Procedures

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. At such time as the Board of Examiners promulgates its own investigatory and procedural rules, pursuant to R.S. 49:953, those rules shall supersede those of the Louisiana Administrative Procedure Act and become applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

Robert A. Barnett
Executive Director

0208#009

DECLARATION OF EMERGENCY

**Department of Revenue
Policy Services Division**

Tangible Personal Property
(LAC 61:I.4301)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to define tangible personal property as it relates to the first purchase of digital television conversion equipment.

This Emergency Rule is necessary to comply with Act 61 of the 2002 Regular Legislative Session, which excludes the first purchase of digital television conversion equipment from state sales tax and local sales tax when the local jurisdiction elects to exempt these purchases. The Act requires the Department of Revenue to adopt rules and regulations for implementing this exclusion no later than August 1, 2002. This regulation is also necessary because it instructs taxpayers in the proper application of Act 61. A delay could expose dealers and consumers of excluded digital television conversion equipment to unexpected tax liabilities and financial peril.

This Emergency Rule is effective August 3, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the permanent rule, whichever occurs first.

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

* * *

Tangible Personal PropertyC

- a. - d. ...
- e. - i. reserved

j. The *first purchase of digital television conversion equipment* by a taxpayer that holds a Federal Communications License issued pursuant to 47 CFR Part 73 is excluded from the definition of *tangible personal property* for state sales tax and local sales tax if the local authority adopts this exemption by ordinance.

i. *Digital television conversion equipment* items listed in R.S. 47:301(16)(i).

ii. *First purchase* the *first purchase* of each item from the categories of *digital television conversion equipment* listed in R.S. 47:301(16)(i).

iii. License holders may obtain a credit for sales taxes paid on the *first purchase of digital television conversion equipment* made after January 1, 1999, and before June 25, 2002, by submitting a request on forms prescribed by the Department of Revenue. Guidelines for claiming the credit will be published in a Revenue Ruling.

iv. License holders may obtain an exemption certificate from the Department of Revenue and make *first purchases* of qualifying digital equipment on or after June 25, 2002, without paying state sales tax or local sales tax in those local jurisdictions that elect to provide an exemption for these purchases. Sales tax paid on *first purchases* of qualifying digital equipment on or after June 25, 2002, may be refunded as tax paid in error.

v. License holders must submit to the Department of Revenue an annual report of the purchases of digital equipment for which exclusion has been claimed that includes all information required by the Department to verify the value of exclusion claimed. Guidelines for submitting this report will be published in a Revenue Ruling.

* * *

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:

Raymond E. Tangney
Senior Policy Consultant

0208#053

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Assistance Program Repair and Improvement
Grant Program and Definition of Disabled Adult
(LAC 67:III.5102, 5103 and 5107)

The Department of Social Services, Office of Family Support has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt the following changes in the Child Care Assistance Program effective September 1, 2002. This emergency rule will remain in effect for a period of 120 days.

Current regulations governing child care assistance for low-income households restrict the definition of disability of an adult household member to someone receiving Social Security Administration Disability benefits, Supplemental Security Income, or Veterans Administration Disability benefits for a disability of at least 70 percent. In an effort to assist more low-income households with child care, the agency is expanding the definition of a disabled adult to include an adult household member who is unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination.

Whereas, the possibility exists that a working parent would have to give up employment or job training, forcing the client to go on welfare because child care assistance was denied when another adult household member is unable to care for his/her children but does not meet the current definition of disabled, and whereas the possibility of danger exists if children are left alone with a disabled adult household member who cannot provide adequate care for these children or, in extreme situations, may be left unattended. Therefore, an emergency rule is needed to effect changes to provide child care assistance to families when there is an adult household member who is disabled, but does not receive Social Security Administration Disability benefits, Social Security Income, or Veteran's Administration Disability benefits and is unable to care for his/her child(ren) and another household member is working or attending a job training or educational program or engaged in a combination of both.

Additionally, the agency is amending the definition of Household to define a disabled adult parent. Head of Household and Training or Employment Mandatory Participant definitions are being amended for grammatical reasons only. An eligibility criterion is being added to the FIND Work Child Care participant to clarify that the household must include a child under the age of 13, and to expand on who is considered a disabled adult household member.

Pursuant to Act. 13 of the 2002 Regular Session of the Louisiana Legislature, to further the goals and intentions of the federal Temporary Assistance for Needy Families (TANF) Block Grant the agency will expand the Repair and Improvement Grant Program in an effort to assist more providers with the cost of repairs and improvements that are needed to improve the quality of child care to either licensed or registered providers, or to those who have applied to become licensed or registered.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5102. Definitions

Head of Household Can an individual who may apply for child care assistance for a child that customarily resides more than half the time with him/her. The individual may be the parent of a child needing child care assistance or may be the adult household member with primary responsibility for the child's financial support and care if the child's parent is not living in the home, or is living in the home but is under age 18 and not emancipated by law, or is disabled and is

unable to care for himself/herself and his/her child(ren) as verified by a doctor's statement or worker determination.

HouseholdCa group of individuals who live together, consisting of the head of household, that person's legal spouse or non-legal spouse (if the parent of a child in the household), the disabled adult parent who is unable to care for himself/herself and his/her child(ren) who are in need of care, and all children under the age of 18 who are dependent on the head of household and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the MUP's children.

Training or Employment Mandatory Participant (TEMP)Ca household member who is required to be employed or attending a job training or educational program, including the head of household, the head of household's legal spouse or non-legal spouse (if the parent of a child in the household), the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) lives with a 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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program (FIND Work), as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/FIND Work participant's child care costs, up to the maximum amounts listed in 5109.B. The following eligibility criteria must be met:

1. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or by receipt of Supplemental Security Income (SSI), or who is under court supervision.

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, Veteran's Administration Disability benefits for a disability of at least 70%, 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:

B.4.a. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

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:

§5107. Child Care Providers

A. - F. ...

G The Child Care Assistance Program offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. Effective September 1, 2002 the program will pay for 75 percent of the cost of such a repair or improvement, up to the following maximums:

a. for Class A centers the maximum grant amount will be equal to \$100 times the number of children listed in the licensed capacity, or \$10,000, whichever is less.

b. for Family Child Day Care Home (FCDCH) providers the maximum grant amount will be \$600.

2. A provider can receive no more than one such grant for any state fiscal year. 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.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

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 28:

Gwendolyn P. Hamilton
Secretary

0208#066

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

Child Welfare Programs (LAC 67:III.5549)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt §5549, OCS Child Welfare Programs, as part of the Temporary Assistance for Needy Families (TANF) Initiatives.

This Emergency Rule is effective August 10, 2002, and will remain in effect for a period of 120 days. This declaration is necessary to extend the original emergency rule of April 12, 2002, since it is effective for 120 days and will expire before the final rule takes effect. (The final rule will be published in November 2002.)

Under the provisions of the TANF Block Grant, a state may expend its Maintenance of Effort (MOE) funds on a variety of services, benefits, and supports that help families become self-sufficient. To effectuate the use of its MOE funds, the Office of Family Support will provide support to the Office of Community Services for programs intended to further the goals and intentions of the federal TANF Block Grant. Additional language has been added to §5549.A. to clarify when the agency began identifying eligible services. Emergency rulemaking is necessary as failure to meet MOE requirements could result in the loss of MOE funding which in turn could result in the loss of the TANF Block Grant or severe fiscal penalties which would result in a loss or reduction of services funded by the TANF Block Grant.

**Title 67
SOCIAL SERVICES**

Part III. Family Support

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

Chapter 55. TANF Initiatives

§5549. OCS Child Welfare Programs

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. Subsequent to the authorization of the U.S. Department of Health and Human Services, Administration for Children and Families, regarding TANF Maintenance of Effort funds, the agency will identify eligible services retroactive to January 1, 2002. The methods of collaboration include:

Child Protection Investigation (CPI) comprises services to assess the validity of a report of child abuse or neglect involving a minor child or children residing with a custodial parent or other adult caretaker relative, to determine whether an emergency exists, and when deemed necessary, to develop a safety plan which may include coordination of services, emergency removal and placement, referral to OCS Family Services or another appropriate agency, short term counseling, parenting guidance, and/or arrangements for concrete services, such as the Preventive Assistance Fund (PAF) and Reunification Assistance Fund (RAF). CPI, PAF, and RAF activities were previously part of the OCS Emergency Assistance Program, for which federal TANF funds are deemed eligible under section 404(a)2) of 42 USC 604.

Family Services comprises services to a child or children and their parents or adult relative caretakers, after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. Services are considered non-assistance by the agency.
AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:28:

Gwendolyn P. Hamilton
Secretary

0208#065

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

**Early Childhood Supports and Services Program
(LAC 67:III.5559)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953.B, the Administrative Procedure Act, to adopt §5559 effective August 2, 2002. This Emergency Rule will remain in effect for a period of 120 days.

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the Office of Family Support will adopt the TANF Initiative, Early Childhood Supports and Services Program (ECSS), to further the goals and intentions of the Temporary Assistance For Needy Families (TANF) Block Grant to Louisiana. The ECSS Program will function as a multi-agency network that identifies, screens, and refers eligible young children to the ECSS network for potential services in an effort to foster secure child/family relationships. The program will also develop effective means of prevention, assessment, and intervention related to developmental, social, and emotional factors affecting young children and their families.

The authorization for emergency action is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

**§5559. Early Childhood Supports and Services
Program Effective August 2, 2002**

A. The Department of Social Services, Office of Family Support, shall enter into a Memorandums of Understanding or contracts to create programs to identify and provide supports and services to young children, ages 0-5, and their families who are at risk of developing cognitive, behavioral,

and relationship difficulties. Services may include but are not limited to:

1. referral to appropriate supports and services provided by network members and other resources in the community;
2. case management;
3. clinical case management;
4. behavior modification;
5. counseling;
6. parent support groups;
7. training and technical assistance;
8. consultation to other providers and agencies;
9. infant mental health screening;
10. infant mental health assessment;
11. non-recurrent, short-term emergency intervention funds for use in a crisis situation; and
12. other services as specified in the Individualized ECSS Family Services Plan.

B. Services provided by providers meet one or more of the following TANF goals:

1. to provide assistance to needy families so that children can be cared for in their own home or the home of a relative;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; and
3. to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to at-risk families that include a child age 05 years, and who have earned income at or below 200 percent of the federal poverty level.

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

E. Services will be offered in the following parishes: Desoto, East Baton Rouge, Lafayette, Ouachita, St. Tammany, and Terrebonne. Services may be expanded into other parishes at the discretion of the assistant secretary based on the availability of funds and a determination of need.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

Gwendolyn Hamilton
Secretary

0208#039

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Early Migratory Bird Season

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

The hunting seasons for early migratory birds during the 2002-2003 hunting season shall be as follows.

Migratory Birds other than Waterfowl 2002-2003 Hunting Seasons

Mourning Dove: Split Season, Statewide, 70 days
September 7 - September 15
October 12 - November 24
December 21 - January 6

Mourning Dove and fully dressed Eurasian Collared-Doves and Ringed Turtle-Doves: Daily bag limit 12 in aggregate, Possession 24 but see below:

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

Teal: September 21 - September 29

Daily bag limit 4, Possession limit 8, Blue-winged, Green-winged and Cinnamon teal only. Federal and State waterfowl stamps required.

Rails: Split Season

September 21 - September 29

Remainder of season to be set in August with duck regulations.

King and Clapper:

Daily bag limit 15 in the aggregate, Possession 30. Sora and Virginia: Daily bag and possession 25 in the aggregate.

Gallinules: Split Season

September 21 - September 29

Remainder of season to be set in August with duck regulations.

Daily bag limit 15, Possession limit 30

Woodcock: December 18 - January 31

Daily bag limit 3, Possession 6

Shooting Hours:

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

Mourning Dove: One-half hour before sunrise to sunset except on September 7-8, October 12-13, and December 21-22 when shooting hours will be 12:00 noon to sunset.

Snipe:

Deferring to August with the duck regulations.

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

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2002 and extend through sunset on February 28, 2003.

James H. Jenkins, Jr.
Secretary

0208#035

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Fur Harvest Season

In accordance with the provisions of R.S. 56:259.A which authorizes the Wildlife and Fisheries Commission to set the open season for the taking of non-game quadrupeds and allows the Commission to extend, curtail or prohibit trapping in any area of the state each year and in accordance with emergency provisions of R.S. 49:953.B and R.S. 49:967.D of the Administrative Procedure Act, which allows the Louisiana Wildlife and Fisheries Commission to use emergency provisions to set seasons, the Wildlife and Fisheries Commission does hereby set the 2002-2003 fur harvest season, statewide from November 20, 2002 through March 31, 2003. The Wildlife and Fisheries Commission does hereby also authorize the Secretary of the Department of Wildlife and Fisheries to extend or shorten the adopted season.

Thomas M. Gattle, Jr.
Chairman

0208#033

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002-2003 Oyster Season

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

1. The oyster season in the following areas will open one-half hour before sunrise on September 4, 2002 and will close one-half hour after sunset on April 1, 2003: the Louisiana Public Oyster Seed Grounds not currently under lease located in areas which are bordered on the north by the Mississippi River Gulf Outlet and on the south by the Mississippi River and North Pass, the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and the Hackberry Bay Oyster Seed Reservation, and the outside portion of the Atchafalaya-Vermilion Bay Oyster Seed Ground as described in LAC 76:VII.509.

2. The oyster season in the Bay Gardene Public Oyster Seed Reservation will open one-half hour before sunrise on September 4, 2002 and close one-half hour after sunset on April 15, 2003.

3. The oyster season in the Louisiana Public Oyster Seed Grounds not currently under lease located in the area bordered on the east by the Louisiana/Mississippi state line and on the south by the Mississippi River Gulf Outlet, including that portion of Lake Borgne as described in LAC 76:VII.513, will open one-half hour before sunrise on

September 23, 2002 and close one-half hour after sunset on April 1, 2003.

4. The oyster season in the Bay Junop Oyster Seed Reservation will open one-half hour before sunrise on September 4, 2002 and close one-half hour after sunset on October 4, 2002.

5. The following areas will remain closed for the 2002/2003 oyster season: Sister Lake Oyster Seed Reservation, and the Public Seed Grounds located in portions of Lake Mechant, Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Baratavia Bay (as described in LAC 76:VII.517), and that portion of the Atchafalaya-Vermilion Public Oyster Seed Grounds as described in LAC 76:VII.507.

6. The season for the Calcasieu Lake public tonging area will open one-half hour before sunrise on October 15, 2002 and will remain open until one-half hour after sunset on April 30, 2003. However, these conservation actions will not supercede public health closures.

7. The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads.

8. The Secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended.

9. Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Thomas M. Gattle, Jr.
Chairman

0208#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002 Fall Shrimp Season

In accordance with the emergency provisions of R.S. 49:953.B and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters, the Wildlife and Fisheries Commission does hereby set the 2002 Fall Inshore Shrimp season to open as follows.

Zone 1, that portion of Louisiana's inshore waters from the Mississippi-Louisiana State line westward to the eastern shore of South Pass of the Mississippi River, and

Zone 2, that portion of the Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, and

Zone 3, that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at

Marsh Island westward to the Louisiana-Texas state line, all to open at official sunrise August 19, 2002.

The Commission also hereby sets the closing date for the 2002 Fall Inshore Shrimp Season in Zone 2 and Zone 3 at official sunset December 17, 2002, and Zone 1 at official sunset December 31, 2002 except in the open waters of Breton and Chandeleur Sounds as described in LAC 76:VII.307D, which shall remain open until 6:00 a.m., March 31, 2003. The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening or closing dates if biological and technical data indicate the need to do so or if enforcement problems develop.

Thomas M. Gattle, Jr.
Chairman

0208#031

DECLARATION OF EMERGENCY

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

2002 Shrimp Inshore Season Closure CZones 1 and 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 2, 2002 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2002 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the Secretary hereby declares:

The 2002 spring inshore shrimp season in Shrimp Management Zone 3 and that part of Zone 1 which is north and east of the Mississippi River Gulf Outlet (MRGO), and north of the Gulf Intracoastal Waterway from its juncture with the MRGO to its juncture with the Industrial Canal and including the MRGO, Gulf Intracoastal Waterway and Industrial Canal except for that portion of Mississippi Sound originating at a point along the Mississippi-Louisiana state line in Mississippi Sound at longitude 89E 30' 00" W thence due south to latitude 30E 05' 00" N longitude 89E 30' 00" W thence southeasterly to the USCG navigational light off the eastern shore of Three-Mile Pass at latitude 30E 03' 12" N and longitude 89E 21' 30" W thence northeasterly to a point which intersects the menhaden line north of Isle au Pitre at latitude 30E 10' 00" W, will close on Monday, July 15, at 6 a.m. The open waters of Breton and Chandeleur Sounds as described in the Menhaden Rule (LAC 76:VII.307D), will remain open to shrimping until further notice. The number of small white shrimp in the areas to be closed has increased substantially in the last week and the regions are being closed to protect these immigrating shrimp.

Zone 3 is that portion of Louisiana's inshore territorial waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line. Zone 1 comprises inshore waters from the Mississippi-

Louisiana state line to the eastern shore of South Pass of the Mississippi River.

With this closure, all inshore waters from the Mississippi-Louisiana state line west to the Louisiana-Texas state line except for Breton and Chandeleur Sounds and a portion of Mississippi Sound, are closed to the harvest of shrimp.

The State Territorial waters south of the Inside/Outside Shrimp Line, as described in R.S. 56:495, shall remain open.

James H. Jenkins Jr.
Secretary

0208#006

DECLARATION OF EMERGENCY

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

Commercial Red Snapper Season

In accordance with the emergency provisions of R.S. 49:953.B, the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its resolution of January 3, 2002 to change the opening dates and closing dates for the commercial red snapper season in Louisiana state waters when he is informed by the Regional Administrator of the National Marine Fisheries Service (NMFS) that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico have been modified, and that the Regional Administrator of NMFS requests that the seasons be modified in Louisiana state waters, the Secretary hereby declares:

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon August 1, 2002. The commercial fishery for red snapper in Louisiana state waters will close at 12 noon August 7, 2002, which is when the remainder of the 2002 commercial quota is projected to be reached. Effective 12 noon, August 7, 2002, the commercial fishery for red snapper in Louisiana waters will remain closed until 12 noon October 1, 2002. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen once the recreational season opens. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with closure, no person shall possess red snapper in excess of a daily bag limit, which may only be in possession during the open recreational season as described above. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5

The Secretary has been notified by NMFS that the 2002 spring commercial season for red snapper in federal waters will re-open on August 1, 2002 and close on August 7, 2002 when the quota is projected to be met. Re-opening the season in state waters is necessary to provide effective rules and efficient enforcement for the fishery. All other aspects of

the Declaration of Emergency adopted by the Commission on January 3, 2002 regarding the commercial harvest of red snapper remain in effect.

James H. Jenkins, Jr.
Secretary

0208#026

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Deer and Elk Importation (LAC 76:V.117)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, and under the authority of LSA Const. Art. IX Sec. 7; LSA 56:6(10), (13) and (15) and 20 and 171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following Emergency Rule. This action supercedes LAC 76:V.117.

This Rule is effective August 29, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The reasons for the promulgation of this Declaration of Emergency are as follows.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis (TB) occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota, Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Several of the CWD outbreaks in wild deer appear to be associated with captive elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeldt-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal

is infected until it exhibits symptoms) is at least 18 months and may be as long as 35 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis. The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana. Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what animals they have been in contact with, are seldom available. In some states, including Louisiana, captive deer and elk may be introduced into large enclosures containing wild deer. Once introduced into large, often heavily vegetated enclosures, the animals usually cannot be monitored or re-captured. Enclosures are not escape-proof and escapes or fence to fence contact with free ranging wild deer can be expected.

The Louisiana Department of Agriculture and Forestry has licensed approximately 120 alternative livestock farms that average about 12 acres in size and contain an average of about 10-20 deer each. In addition, 15 supplemented hunting preserves that are at least 300 acres each are licensed by LDAF. These supplemented hunting preserve enclosures may contain both released deer and native wild deer. The Louisiana Department of Wildlife and Fisheries licenses about 115 non-commercial game breeders that possess deer. The deer and elk farming industry in Louisiana is small, and as a whole, not highly dependent on imported deer. In 2000, the LDAF issued only 10 importation permits involving 57 deer.

In contrast, recreation associated with wild deer and wild deer hunting has significant economic impact in Louisiana. In 2001, there were approximately 172,000 licensed deer hunters in Louisiana. There were also an undetermined number that were not required to have a license (under age 16 or over age 60). The *1996 National Survey of Fishing, Hunting and Wildlife Associated Recreation* reports that deer hunting in Louisiana has an economic impact of

\$603,909,581 per year and provides over 8,500 jobs. Many landowners receive income from land leased for deer hunting. Recreation has been the driving force maintaining rural and timberland real estate values during the last several years.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment. They are requesting an additional \$2,300,000 in FY 2002/03 to address CWD outbreaks in their state.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. In Wisconsin, Department of Natural Resources personnel report that a significant decline in land value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). By way of example, Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. Other states, including Wisconsin and Utah have developed rules that require that imported deer and elk must originate from herds that have been certified free of CWD for at least 5 years. However, because few, if any, herds in the United States can meet that standard, this rule is effectively an importation prohibition.

The lack of a live animal test to detect CWD, an incubation period measured in years, and insufficient animal records make it extremely difficult to prevent the

introduction of CWD infected deer and elk into Louisiana under the current importation rules. The recent deer and elk importation ban in Texas, one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes that an immediate prohibition on the importation of deer and elk into Louisiana is warranted. This prohibition will remain in effect until no longer necessary.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§117. Deer and Elk Importation

A. Definitions

White-Tailed Deer Any animal of the species *Odocoileus virginianus*.

Mule Deer or Black-Tailed Deer Any animal of the species *Odocoileus hemionus*.

Elk or Red Deer Any animal of the species *Cervus elaphus*.

B. No person shall import, transport or cause to be imported or transported live white-tailed deer, mule deer, or black-tailed deer (hereinafter "deer"), into or through the state of Louisiana. No person shall import, transport or cause to be imported or transported, live elk or red deer (hereinafter "elk") into or through Louisiana in violation of any Imposition of Quarantine by the Louisiana Livestock Sanitary Board. Any person transporting deer or elk between licensed facilities within the state must notify the Department of Wildlife and Fisheries and provide information as required by the Department prior to departure from the source facility and again upon arrival at the destination facility. A transport identification number will be issued upon providing the required information prior to departure. Transport of deer or elk between licensed facilities without a valid transport identification number is prohibited. Notification must be made to the Enforcement Division at 1-800-442-2511. All deer or elk imported or transported into or through this state in violation of the provisions of this ban shall be seized and disposed of in accordance with LWFC and Department of Wildlife and Fisheries rules and regulations.

C. This Rule shall be in effect until May 30, 2005.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:1140 (June 1998), repromulgated LR 24:1325 (July 1998), amended LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#036

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Disposal of Illegal Live Deer and Elk (LAC 76:V.121)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, and under the authority of LSA Const. Art. IX Sec. 7; LSA 56:6(10), (13) and (15) and 20 and 171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following Emergency Rule.

This Rule is effective August 29, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

The reasons for promulgation of this Declaration of Emergency are as follows.

The disposition of confiscated live deer and elk is a problem with significant biological and sociological ramifications. Verification of the place of origin, history of contacts with other animals, and the route of translocation for illegally possessed animals is difficult to obtain. Improper handling of these animals can have serious consequences for Louisiana's native deer herd and legally held captive deer and elk.

LDWF's Nuisance Deer Complaint records indicate that 28 percent of all complaints in 2000 were problems concerning illegally possessed deer—predominantly fawns. The incidence of deer and elk/red deer confiscation (possibly in large numbers) can be expected to increase with the implementation of a state ban on their importation into or transport through Louisiana.

Currently, the Nuisance Deer Management Policy states that confiscated deer will be "disposed of in the most appropriate fashion." Typically adult deer are sent to a willing LDWF-authorized game breeder (if one can be found). "Orphaned" fawns are taken to LDWF-permitted rehabilitators and released back into the wild at the appropriate time. Injured or sick animals with a prognosis for low survivability are euthanized by LDWF according to AVMA guidelines. At the time this Nuisance Deer Policy was developed, social issues may have to some degree, overridden biological concerns. However, current conditions dictate that biological issues take precedent.

The proliferation of deer farming in Louisiana and nationwide has resulted in an increase in interstate and intrastate movement of pen-raised deer and elk. This development in conjunction with the emergence of serious diseases such as Chronic Wasting Disease (CWD) and Bovine Tuberculosis (TB), have focused attention on the proper disposition of deer and elk with uncertain histories.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota,

Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Some of the CWD outbreaks in wild deer and elk appear to be associated with outbreaks in captive deer and elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeld-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal is infected until it exhibits symptoms) is at least 18 months and may be as long as 35 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis.

The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time. For example, after CWD deer were removed from an enclosure in Colorado, the topsoil was plowed under, the enclosure was disinfected, and no deer were reintroduced for one year. When deer were returned to that enclosure one year later, they contracted CWD. Containment of confiscated deer or elk that are infected with CWD within an enclosure or other structure, could expose animals subsequently held in the enclosure to CWD, and thus spread the disease long after the infected animals have been removed.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana. Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado

herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what other animals they have been in contact with, are seldom available.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. They will spend an additional \$1,900,000 next year and will hire 12 new employees to address the CWD outbreak. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. By way of example, Wisconsin Department of Natural Resources personnel report that a significant decline in land value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). In Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions or limitations on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. The state of Texas will euthanize and incinerate the carcasses of illegally imported deer.

Genetic pollution is another concern which arises should confiscated deer be released into the wild. Genetic pollution results from the introduction of non-native deer to Louisiana. Native deer are tailored (genetically) by nature for survival

in Louisiana's varied habitats. Hybridization could have a detrimental and irreversible impact on Louisiana's deer resource. Diminished resistance to parasites/diseases and altered breeding ecology are two major concerns that could significantly reduce the fitness (productivity) of local deer.

Experience and research has shown that northern deer are inferior at surviving in southern environments. Northern deer are precisely engineered by nature to fit their northern environment. They are larger and have heavier winter coats to cope with extreme cold and have an immune system that has never been exposed to southern diseases and parasites. Conversely, southern deer are smaller by design to better cope with heat and humidity and their immune systems are genetically programmed to fight specific diseases and parasites. Recent research has shown that deer from other regions do not do well in Louisiana.

A serious outbreak of hemorrhagic disease (EHDV-2) at the Mississippi State University research pens in 1994 killed 36 of 114 deer originating from seven different states. The differences in mortality rates between the genetic groupings were significant with the probability of mortality increasing as the proportion of northern genes increased. Northern deer have very little resistance to EHD.

After 2 growing seasons in Louisiana, antler development on 24 translocated Wisconsin bucks was average or below average when compared to native bucks of similar age. At 2.5 years old, Wisconsin bucks averaged 5.3 points while native deer averaged nearly 7.5 points. Wisconsin deer did not develop the superior antlers they were genetically capable of when grown in Louisiana.

Humane treatment of confiscated deer is an important consideration to the LWFC, the LDWF, and the public, and toward that end confiscated deer will be handled and euthanized in the most humane manner possible. Of even more importance, however, is the long-term health and vitality of the Louisiana's wild deer resources.

The lack of a live animal test to detect CWD, an incubation period measured in years, insufficient animal records, and possible long-term CWD contamination of facilities, make it extremely difficult to prevent the introduction of CWD into Louisiana if imported deer and elk are integrated into existing captive deer herds or released into the wild. The recent deer and elk importation ban in Texas, formerly one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. Genetic pollution can have negative impacts on local native deer populations should non-native deer be released into the wild. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes euthanasia of all deer and elk imported contrary to LWFC regulations and state law is warranted. Furthermore, the LWFC believes that the Louisiana Department of Wildlife and Fisheries should euthanize illegally obtained deer with origins within the state if the Department believes such action is prudent and necessary based upon considerations including the certainty of origin, confinement history, and age.

**Title 76
WILDLIFE AND FISHERIES**

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§121. Disposal of Illegal Live Deer and Elk

A. Definitions

White-Tailed Deer Any animal of the species *Odocoileus virginianus*.

Mule Deer or *Black-Tailed Deer* Any animal of the species *Odocoileus hemionus*.

Elk or *Red Deer* Any animal of the species *Cervus elaphus*.

B. White-tailed deer, mule deer, black-tailed deer, elk, or red deer imported into Louisiana in violation of Louisiana Wildlife and Fisheries Commission (LWFC) rules or state statutes shall be euthanized by the Louisiana Department of Wildlife and Fisheries (LDWF), or its designee, in a manner conforming to the *2000 Report of the AVMA Panel on Euthanasia*. At the discretion of the LDWF, white-tailed deer originating from within Louisiana and possessed in violation of LWFC rules or state statutes, may be euthanized in a manner conforming to the *2000 Report of the AVMA Panel on Euthanasia*, or placed with a licensed game breeder in accordance with LDWF guidelines. Certainty of origin, confinement history, and age will be among the factors considered by LDWF in making a determination regarding disposition of white-tailed deer originating from within Louisiana. White-tailed deer placed with licensed game breeders shall remain in confinement for their entire lives and shall not be released into the wild.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#037

DECLARATION OF EMERGENCY

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

Hunting Regulations
Acadiana Conservation Corridor and
Floy McElroy Wildlife Management Areas

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

Acadiana Conservation Corridor

Deer: Archery only: October 1-January 31

Floy McElroy Wildlife Management Area

Doves: September 14-15 Youth hunt.
Deer: November 16 Youth gun hunt (lottery),
either-sex, total hunters - 8.

Hunts restricted to youths younger than 16 years of age and supervising adult who must be 18 years of age or older. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm and youths may possess only one firearm while hunting. The supervising adult must maintain visual and voice contact with the youth at all times.

A Declaration of Emergency is necessary to establish the hunting season for the Acadiana Conservation Corridor and the Floy McElroy WMA. The Acadiana Conservation Corridor is a recently acquired WMA and as such was not included with the original Notice of Intent. The transfer of the Floy McElroy WMA to the Department and the development of the hunting season was recently completed and as such was not included with the original Notice of Intent.

Thomas M. Gattle, Jr.
Chairman

0208#034

DECLARATION OF EMERGENCY

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

Shrimp Excise Tax (LAC 76:VII.365)

In accordance with the emergency provisions of the Administrative Procedure Act, the Wildlife and Fisheries Commission does hereby promulgate this Declaration of Emergency relative to the excise tax on shrimp.

Act 75 of the 2002 Regular Session of the Louisiana Legislature enacted a shrimp excise tax to be collected on shrimp harvested in Louisiana waters and shrimp imported into Louisiana. The legislation mandates that the Department begin the process for collection of this excise tax on July 1, 2002, the effective date of the Act. In order to meet the statutorily-mandated timeline, and to provide the mechanism which will allow wholesale/retail seafood dealers to comply with the Act, and to put other provisions in place which are essential for the effective administration of the program, the following Rule must be promulgated by a Declaration of Emergency.

Further, effectively enforcing regulations which enable the identification of both domestically-harvested and imported shrimp will provide mechanisms to more adequately monitor harvest information of shrimp in Louisiana.

Such regulations will further enable the identification of imported shrimp, which may be subject to testing for the antibiotic chloramphenicol under rules and regulations adopted by the Louisiana Department of Agriculture and Forestry. Chloramphenicol is used in some countries in connection with the production of shrimp and other seafood products. The United States Food and Drug Administration has banned the use of chloramphenicol in animals which are raised for human consumption. In January of 2002, the European Union banned imported Chinese products intended for human consumption or for use in animal feed, as a result

of the discovery of chloramphenicol residues in seafood products harvested from and produced in that country.

Implementation of this Emergency Rule will also provide information relative to the amounts and sources of imported shrimp in Louisiana's extremely important commercial markets. The inability of the state to measure the economic importance of imported shrimp in Louisiana poses an imminent fiscal and economic peril to the state and its citizens. It is critical for the State of Louisiana to track and monitor the importation of shrimp from other countries for health reasons. Previous and existing laws and regulations only accommodated the monitoring and tracking of shrimp harvested within the State. Imported shrimp numbers have been increasing nationwide over the past several years. Monitoring and tracking imported shrimp will enhance the enforcement effort required to monitor harvest, and track, and to prevent the mislabeling, commingling, smuggling, false reporting and under-reporting of domestically harvested Louisiana shrimp.

Additional revenue in the form of an import tax or excise tax or other revenue-generating mechanism will be necessary in order to accomplish this end; therefore it is imperative that the Department begin immediately to implement the Act and to put in place the mechanisms for doing so.

This Declaration of Emergency will become effective on August 1, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishing

§365. Shrimp Excise Tax

A. Shrimp Excise Tax, Shrimp Records, Shrimp Packaging

1. A shrimp excise tax shall be paid in accordance with the provisions as set forth in R.S. 56:506. Dealers shall file monthly tax reports and furnish all information required thereon on forms provided by the department. A wholesale/retail seafood dealer shall file a monthly report indicating **Azero** in amount due, for each month in which such wholesale/retail seafood dealer does not import shrimp into the state and does not purchase or acquire shrimp harvested in Louisiana directly from a harvesting vessel.

2. Wholesale/retail seafood dealers, retail seafood dealers, restaurants and retail grocers shall maintain records in accordance with R.S. 56:306.5 and 56:506. In addition to the requirements therein, wholesale/retail seafood dealers when selling or otherwise transferring shrimp shall specify on each invoice of sale or transfer required to be delivered to retail dealers, restaurants and/or retail grocers the specific country of origin of the shrimp being sold or transferred. All purchase and sales records of wholesale/retail seafood dealers, which are required to be maintained by law, shall specify the country of origin of all shrimp acquired and sold or transferred. All purchase records of retail dealers, restaurants and retail grocers which are required to be

maintained by law, shall specify the country of origin of shrimp acquired or purchased. Shrimp from different countries shall be recorded separately on all records.

3. All records for shrimp, which are harvested from Louisiana waters or which are landed in Louisiana from a harvesting vessel, shall indicate such shrimp are a **AProduct of Louisiana** or **ALouisiana Shrimp** or **ALouisiana** (and shrimp species).

4. It shall be a violation of this section for any wholesale/retail seafood dealer to purchase, barter, sell, exchange or possess any shrimp without paying all excise taxes owed on the shrimp as provided by law.

5. Wholesale/retail seafood dealers shall provide all information required on forms provided for the purpose of data collection relating to the shrimp excise tax.

a. Such information shall include but not be limited to:

i. wholesale/retail seafood dealer license number;
ii. month and year, indicating reporting month and year;

iii. date of submission, date in which the dealer or authorized representative completes and submits shrimp excise report form;

iv. legal name of business;

b. If purchasing or acquiring shrimp from vessels harvesting or landing in Louisiana waters, pounds of such shrimp purchased or acquired; shrimp that are landed in Louisiana by harvesting vessels are deemed to be taken in Louisiana waters.

c. If purchasing, importing, storing, brokering, or receiving shrimp domestically harvested within the United States, pounds of such shrimp purchased, imported, stored, brokered or received.

d. If purchasing, importing, storing, brokering, or receiving shrimp from a foreign country, pounds of such shrimp purchased, imported, stored, brokered or received.

e. If purchasing, importing, storing, brokering, or receiving shrimp which were taken, harvested or landed in Louisiana and excise tax has previously been paid and such shrimp are packaged, labeled and recorded to be a **AProduct of Louisiana** or **ALouisiana Shrimp** or **ALouisiana** (and shrimp species), indicate the pounds of such shrimp. No shrimp excise tax is due again on such shrimp.

f. For all shrimp reported, the shrimp excise report form shall indicate the form in which all shrimp is purchased, imported, received, brokered or stored (i.e. heads-on, headless, or peeled). Shrimp which are fully cooked, canned cooked or breaded cooked, and frozen cooked shrimp ready for immediate consumption, shall be exempt from the requirements herein.

j. All lines, columns and blocks on the shrimp excise tax report form shall be filled out in order for the form to be deemed completed.

k. Signature of dealer or authorized representative, (first and last name) and date.

6. No wholesale/retail seafood dealer, retail seafood dealers, restaurants or retail grocers shall knowingly possess, package, process, sell, barter, exchange or attempt to sell,

barter, trade or exchange shrimp which is represented to be a product of the United States or a product of Louisiana unless such shrimp is actually a product of the United States or a product of Louisiana.

7. No wholesale/retail seafood dealer, retail seafood dealers or restaurants shall possess, package, process, sell, barter, exchange or attempt to sell, barter, trade or exchange shrimp from a foreign country which is commingled with shrimp caught in the United States or which is represented to be a product of the United States.

B. Violations of the provisions of this Section shall constitute a class four violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:506.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Thomas M. Gattle, Jr.
Chairman

0208#030