

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agro Consumer Services
Weights and Measures Division

Annual Fee for Registration of Taxi Meters
(LAC 7:XXXV.125)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules for the implementation of regulations governing the calibration and registration of taxi meters in accordance with R.S. 3:4622 and the emergency rule provisions of R.S. 49:953(B), of the Administrative Procedure Act.

The Louisiana Department of Agriculture and Forestry is the only governmental agency that checks on the accuracy of taxi meters in the state of Louisiana. The fee for registering and inspecting taxi meters has been set at \$15. This fee, however, falls far short of the cost incurred by the department in ensuring the accuracy of taxi meters. The registration and testing of taxi meters is vital and important to the citizens of Louisiana because the registering and testing of taxi meters insures that the public who utilizes taxis are not subjected to fraud and illegal and excessive fares. The people who use taxis are individuals who cannot either afford to own a vehicle of their own or are businessmen and tourists coming into the state.

The department, as a result of state budget deficits and cuts to the department's appropriations, is forced to look for ways to bring its budget in line with current appropriations. Therefore, the department is forced to either cut services, such as calibration of taxi meters or to increase fees to cover the cost of services provided.

If the department ceases to enforce the registration and calibration of register taxi meters, the citizens of the state and visitors to the state who utilize taxi services will be subject to fraud and illegal and excessive fares by taxi operators. In order to protect the public and taxi services from inaccurate fares, it is necessary to immediately increase the fees charged for calibrating and registering taxi meters in Louisiana.

This Rule becomes effective upon signature, January 3, 2003, and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§125. Metrology Laboratory Fee Structure

A. - E. ...

F. The annual fee for registration of taxi meters is \$50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, 3:4622.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services,

Division of Weights and Measures, LR 19:1534 (December 1993), amended LR 23:857 (July 1997), LR 29:

Bob Odom
Commissioner

0301#011

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary

Waste Tires
(LAC 33:VII.10505, 10519, 10525,
10527, and 10533)(SW034E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953.B, and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary in order to strengthen the regulations that will ensure proper disposal of waste tires processed in Louisiana. Waste tires that are not processed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community. The elimination of breeding areas for mosquitoes will reduce the exposure to these insects and the serious health problems associated therewith.

This Emergency Rule is effective on January 15, 2003, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning SW034E, you may contact the Regulation Development Section at (225) 765-0399.

Adopted this 10th day of January, 2003.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

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

* * *

Adjustment Tire—a tire that becomes unusable for any reason within the manufacturer's control and is returned to the dealer under a tire warranty by the tire manufacturer. Tire adjustments are initiated by the consumer.

* * *

Eligible Tire—a waste tire generated for which a fee was charged as per LAC 33:VII.10519.E.2.

* * *

Recall Tire—a tire that is specified as defective by the manufacturer and returned to the dealer so that the dealer may provide a replacement or repair. Recalls are initiated by the manufacturer.

* * *

Used Tire—a tire that can be salvaged and sold as a good, functional vehicle tire.

Used Tire Dealer—any person, business, or firm that engages in the sale of used tires for use on motor vehicles.

* * *

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

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

§10519. Standards and Responsibilities of Generators of Waste Tires

A. - E.1. ...

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

F. - O. ...

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

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

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

§10525. Standards and Responsibilities of Waste Tire Processors

A. Upon receiving a shipment containing waste tires, the processor shall be responsible for verifying the number of waste tires in each shipment by actually counting each waste tire. The processor shall sign each waste tire manifest upon receiving waste tires. In order to be reimbursed from the Waste Tire Management Fund, processors shall only accept eligible tires from authorized Louisiana transporters or in accordance with LAC 33:VII.10519.K. Each processor shall accept no more than five unmanifested tires per day per customer. The processor shall maintain a log for all unmanifested loads. The log shall include, at the minimum, the following:

1. name and address of customer;
2. license plate number of vehicle delivering the tires;
3. phone number of customer;

4. number of tires received;
5. date;
6. time; and
7. signature of customer delivering the tires.

B. - F. ...

G Processors shall maintain a complete set of records pertaining to manifested tires or shredded waste tire material coming in or leaving their place of business. This shall include, but is not limited to, manifests, monthly reimbursement reports, records of all payments from/to end markets, inventory records, logs, any documents related to out-of-state tire activity, and financial records. These records shall be maintained for a period of no less than three years and shall be open for inspection by the administrative authority at all reasonable hours.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 28:1953 (September 2002), LR 29:

§10527. Standards and Responsibilities for Waste Tire Collectors and Collection Centers

A. All collection center operators shall satisfy the manifest requirements of LAC 33:VII.10533. All collection center operators shall be responsible for counting the tires in the shipment. Each collection center shall accept no more than five unmanifested tires per day per customer. The collection center shall maintain a log for all unmanifested loads. The collection center shall report monthly to the administrative authority, due no later than the fifteenth of the following month, the total number of tires received at the facility. These records shall be maintained by the collection center for a minimum of three years and are subject to audit by the administrative authority. The log for all unmanifested loads shall include, at the minimum, the following:

1. name and address of customer;
2. license plate number of vehicle delivering the tires;
3. phone number of customer;
4. number of tires received;
5. date;
6. time; and
7. signature of customer delivering the tires.

B. - G.5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 29:

§10533. Manifest System

A. All shipments of more than 20 waste tires shall be accompanied by a waste tire manifest provided by the department and executed in accordance with this Section. Tires transported in Louisiana that are not eligible tires, as defined in LAC 33:VII.10505, shall be clearly labeled ineligible on the manifest.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 29:

L. Hall Bohlinger
Secretary

0301#065

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Worker's Compensation Insurance (LAC 46:XLI.531)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 19, 2002, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this Rule to clarify worker's compensation requirements for horse trainers in Louisiana.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLI. Horseracing Occupations

Chapter 5. Assistant Trainers and Other Employees

§531. Worker's Compensation Insurance

A. In addition to all other requirements for a trainer's license, each applicant therefor must furnish an individual certificate of insurance issued in his or her name only, of an insurance company licensed and/or authorized to do business in the state of Louisiana, showing he or she has worker's compensation insurance covering his or her employees and which names the Louisiana State Racing Commission as a certificate holder for purposes of coverage and cancellation of policy. Any exceptions to the form and content of the certificate may be considered on timely request.

B. Engaging in the profession of training horses on the grounds of any association licensed by the Racing Commission without proper worker's compensation insurance may result in a fine of not less than \$500 and/or suspension or revocation of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 29:

Charles A. Gardiner III
Executive Director

0301#024

DECLARATION OF EMERGENCY

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

Medicaid Eligibility/Medically Needy Program Incurred Deductions

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following emergency rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2001-2002 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). The Department provides Medicaid coverage under the Medically Needy Program that is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart D Section 435.300. The Medically Needy Program includes those individuals or families who meet all AFDC or SSI related categorical requirements and whose income is within the Medically Needy Income Eligibility Standard. It also includes those individuals or families whose resources fall within the categorical limits, but whose income is above the Medically Needy Income Eligibility Standard. These individuals or families having income in excess of the Medically Needy Income Eligibility Standard can reduce excess income by incurring medical and/or remedial care expenses. This method used for determining eligibility is referred to as spend-down. A state may choose to exclude from incurred expenses those bills for services furnished more than 3 months before the Medicaid application is filed for initial eligibility or in the case of a renewal more than 3 months before the first month of the new budget period or quarter of coverage. A state is required to deduct any current payment on such excluded expenses.

In compliance with Executive Order MJF 02-29, the Department proposes to amend the current policy governing the consideration of incurred expenses in the eligibility determination process for the Medically Needy Program. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce

expenditures in the Medicaid Program by approximately \$1,740,947 for state fiscal year 2002-2003.

Emergency Rule

Effective for applications filed on or after January 1, 2003 and those cases in which the eligibility renewal is due on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing deductions for incurred medical expenses in the eligibility determination process for the Medically Needy Program. Those bills for necessary medical and remedial services furnished more than 3 months before the Medicaid application is filed or for renewals more than 3 months before the first month of a new budget period or quarter of coverage will be excluded as an incurred expense. Current payments on excluded expenses will be allowed as an incurred expense.

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 at 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

0301#002

DECLARATION OF EMERGENCY

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

Medicaid Eligibility Treatment of Annuities

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the *Medicaid Eligibility Manual* in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). Section I of the *Medicaid Eligibility Manual* addresses the eligibility factors considered in the determination of eligibility.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917(c) of the Social Security Act and established Section 1917(d) to set forth rules wherein transfers of assets and trusts must be considered in determining eligibility for Medicaid. Current Medicaid

eligibility rules are not clear relative to the consideration of annuities in the eligibility determination process. The policy does not clearly state that an annuity is considered a legal instrument or device similar to a trust.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 and curb abuse in the transfer of assets, the Bureau proposes to amend Section I of the *Medicaid Eligibility Manual* in order to clarify current policy regarding annuities.

This action is being taken to avoid a budget deficit that will occur if applicants are allowed to continue to hide assets by not having annuities considered as an available resource. It is estimated that implementation of this emergency rule will reduce expenditures for services by approximately \$4,222,050 for state fiscal year 2002-2003.

Emergency Rule

Effective January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process.

An annuity is considered a legal instrument or device similar to a trust. An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will not be classified as an annuity for Medicaid eligibility purposes, but rather will be considered an available resource. A commercial (non-employment related) annuity purchased by or for an individual using that individual's assets will be considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the State of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime, and
4. is issued by an insurance company licensed and approved to do business in the State of Louisiana.

This policy change shall be applicable to all pending applications, renewals of eligibility or changes in situations (as defined in Section L of the *Medicaid Eligibility Manual*) where the applicant/recipient has an annuity. Existing annuities which do not meet all of the above criteria must be amended to comply with these requirements within 90 days of the first renewal or first change in their situation (as defined in Section L of the *Medicaid Eligibility Manual*) occurring after enactment of this rule.

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 at 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

0301#001

DECLARATION OF EMERGENCY

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

**Nursing Facilities Reimbursement Methodology
(LAC 50:VII.1305)**

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

Act 694 of the 2001 Regular Session of the Louisiana Legislature mandated that the Department of Health and Hospitals establish a case-mix reimbursement methodology for nursing homes. In accordance with Act 694, the bureau repealed the June 20, 1984 rule and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 8).

In compliance with Executive Order MJF 02-29, the department proposes to amend the requirements governing the prospective reimbursement methodology for nursing facilities in order to revise the capital cost component and clarify other components of the reimbursement methodology.

Taking into consideration the impact of the reduction in the capital cost component to per diem rates in state fiscal year 2002-03, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care. These proposed rates are considered to be sufficient to enlist enough providers so that private nursing facility services under the state plan are available at least to the extent that they are available to the general population in the state.

This action is necessary in order to avoid a budget deficit in the medical assistance program. It is estimated that the implementation of this proposed Rule will reduce expenditures in the Medicaid Program by approximately \$17,169,003 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of services on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the August 20, 2002 Rule governing the rate determination for nursing facilities.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.2.b. ...

c. The statewide administrative and operating price is established at 101.5 percent of the administrative and operating resident-day-weighted median cost.

2.c. - 3.b.i. ...

ii. A nursing facility's annual fair rental value (FRV) is calculated by multiplying the facility's current value times a rental factor. The rental factor shall be established by the Secretary of the Department of Health and Hospitals and shall be no less than 3 percent and no more than 7 percent.

iii. The nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 93 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate. Annualized total patient days will be adjusted to reflect any increase or decrease in the number of licensed beds by applying to the increase or decrease the greater of the facility's actual occupancy rate during the base year cost report period or 93 percent of the annualized licensed capacity of the facility.

3.b.iv. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 29:

Implementation of the provisions of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#060

DECLARATION OF EMERGENCY

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

Outpatient Hospital Services C Clinic Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 4953(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 January of 1996 which established a uniform reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). The January 1996 Rule was subsequently amended to revise the reimbursement methodology for specified outpatient surgical procedures and the interim reimbursement for all other outpatient hospital services (*Louisiana Register*, Volume 26, Number 12). The interim reimbursement rate for all outpatient hospital services, except for designated outpatient surgical procedures, is a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997. Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated additional funds to the Department of Health and Hospitals for enhancement of the reimbursement rates paid to hospitals for outpatient services. In compliance with Act 13, the bureau increased the reimbursement rates for outpatient hospital clinic services (*Louisiana Register*, Volume 28, Number 10). This emergency rule is being promulgated to continue the provisions contained in the October 21, 2002 Rule. This action is being taken to promote the health and well being of Medicaid recipients by encouraging the continued participation of hospitals providing outpatient clinic services.

Emergency Rule

Effective for dates of service on or after February 19, 2003 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for outpatient hospital clinic services. Hospitals must use the revenue codes and Physicians=Current Procedural Terminology (CPT)/Health Care Current Procedure Code System (HCPCS) specified by the Department when billing for services. The revenue codes and new reimbursement rates will be as follows.

Hospital Revenue Code	Description
510	General Internal Medicine Clinic
514	OB-Gyn Clinic
515	Pediatric Clinic
517	Family Practice Clinic
519	Specialty Clinic

Description	Payment Rate
Office/Outpatient visit, new	\$33.00
Office/Outpatient visit, new	\$33.00
Office/Outpatient visit, new	\$38.00
Office/Outpatient visit, new	\$57.00
Office/Outpatient visit, new	\$57.00
Office/Outpatient visit, established	\$33.00
Office/Outpatient visit, established	\$33.00
Office/Outpatient visit, established	\$38.00
Office/Outpatient visit, established	\$57.00
Office/Outpatient visit, established	\$57.00

Implementation of this Emergency Rule shall be contingent upon the certification of matching funds by nonstate public hospitals (except small rural hospitals as defined in R.S. 40:1300.143); or the completion of cooperative endeavor agreements to make public agency transfers to the Department as set forth in Act 13 of the 2002 Regular Session of the Louisiana Legislature; and the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at 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

0301#059

DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program
Prescriptions Limit

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 and as directed by the 2001-2002 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure 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 administers

the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. Although federal regulations permit states to establish recipient service limits with a provision for exemption of certain recipient groups, the bureau has not established any limits on the number of prescriptions allowed to Medicaid recipients. In compliance with Executive Order MJF 02-29, the department proposes to establish a limit of eight prescriptions per calendar month with a provision for exemption of certain recipient groups.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of the following Emergency Rule will reduce expenditures by approximately \$76,310,300 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on and after February 3, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the provision of prescription drug benefits offered to Medicaid recipients under the Medicaid Pharmacy Benefits Management Program.

1. The Department of Health and Hospitals will pay for a maximum of eight prescriptions per calendar month for Medicaid recipients.

2. The following recipient groups are exempt from the eight prescriptions per calendar month limitation:

- a. persons under 21 years of age;
- b. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities;
- c. persons participating in the Home and Community Based Waiver Programs;
- d. pregnant women;
- e. persons diagnosed with HIV/AIDS and receiving drugs related to the treatment of HIV/AIDS such as HIV anti-viral therapy; and
- f. persons who have had an organ transplant and are on anti-rejection medications.

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 at 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

0301#057

DECLARATION OF EMERGENCY

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

Physicians Services CCardiology, Maternal Fetal Medicine,
Inpatient Services CReimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with cardiologists, maternal fetal medicine specialists and other physicians around the state, the Bureau has determined that it is necessary to increase the reimbursement rate for designated CPT procedure codes for services rendered to Medicaid recipients.

This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to services and encouraging continued physician participation in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$945,582 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for selected cardiology, maternal fetal medicine and other physician services provided to Medicaid recipients. The following Physicians= Current Procedural Terminology (CPT) procedures shall be reimbursed at 84 percent of the Medicare Region 99 allowable for 2002.

Procedure Description
Transfusion, intrauterine, fetal
Amniocentesis; diagnostic
Chronic villus sampling, any method
Echocardiography, fetal, cardiovascular system, real time
Doppler echocardiography, fetal,...; follow-up or repeat study
Combined right heart catheterization and retrograde left heart catheterization, for congenital cardiac anomalies
Combined right heart catheterization and transseptal left heart catheterization through existing septal opening, with or without retrograde left heart catheterization, for congenital cardiac anomalies
Subsequent hospital care, per day (low complexity)
Subsequent hospital care, per day (moderate complexity)

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

Interested persons may submit written comments to Ben A. Bearden at 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

0301#004

DECLARATION OF EMERGENCY

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

Private Hospitals CEnhanced Outlier Payments

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or under. An outlier payment is calculated on an individual case basis and paid at cost if covered charges for medically necessary services exceeds 200 percent of the prospective payment. The June 20, 1994 Rule was subsequently amended to revise the qualification and calculation for outlier payments (*Louisiana Register*, Volume 22, Number 2). To qualify for an outlier payment, the covered charges for the case must

exceed both \$150,000 and 200 percent of the prospective payment.

Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated funds for the payment of hospital outlier reimbursements, but limited payment to 100 percent of marginal cost and based on the use of updated cost-to-charge ratios. In compliance with Act 13, the Bureau adopted an emergency rule to amend the definition of marginal cost contained in the February 20, 1996 rule and reduce the outlier payments made to private hospitals (*Louisiana Register*, Volume 28, Number 7). In addition, the base period was changed for the hospital specific cost-to-charge ratio utilized for the calculation of outlier payments and a deadline was established for receipt of the written request filing for outlier payments.

Act 13 also directed the Department of Health and Hospitals to pay enhanced outlier reimbursements to certain hospitals meeting specific criteria set forth by the Department and approved by the Centers for Medicare and Medicaid Services. In accordance with the Act 13 directive, the department promulgated an Emergency Rule developing a payment methodology for enhanced outlier reimbursements (*Louisiana Register*, Volume 28, Number 9). The department now proposes to adopt an emergency rule to repeal the September 7, 2002 Emergency Rule and to amend the February 20, 1996 Rule to provide enhanced outlier reimbursements to qualifying hospitals for state fiscal year 2002-2003.

This action is being taken to protect the health and welfare of Medicaid eligible children by encouraging the continued participation of hospitals that furnish neonatal and pediatric intensive care services in the Medicaid Program. It is estimated that implementation of this proposed Rule will increase expenditures for outlier payments to private hospitals by approximately \$2,000,000 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the September 7, 2002 Emergency Rule and amends the February 20, 1996 Rule to provide enhanced outlier reimbursements to qualifying hospitals for state fiscal year 2002-2003. A qualifying hospital is defined as a hospital whose losses calculated using the outlier payment methodology effective July 1, 2002 are at least 25 percent of the amount calculated using the outlier payment methodology in effect as of June 30, 2002. The calculation will be based on actual submitted claims for dates of service on and after January 1, 2003 that qualify for outlier payments. A one time lump sum payment will be issued which is equal to the product of each qualifying hospital's pro rata share of outlier losses and all qualifying hospitals' outlier losses multiplied by the amount appropriated for payment of enhanced outlier reimbursements for SFY 2002-2003.

Implementation of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at 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

0301#058

DECLARATION OF EMERGENCY

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

Professional Services Program
Antibiotic Injections Reimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the Bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with providers around the state, the bureau has determined that it is necessary to increase the reimbursement rate for antibiotic injections rendered to Medicaid recipients within a specific age range.

This action is being taken to protect the health and welfare of Medicaid recipients within the specified age range by ensuring continued access to services and encouraging continued provider participation in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$459,159 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for antibiotic injections administered to Medicaid recipients up to the age of twenty one. Antibiotic IM injections shall be reimbursed at a flat rate of \$22.

Implementation of the provisions of this rule shall be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#003

DECLARATION OF EMERGENCY

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

Professional Services Program
Orthopedic Services Reimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent education to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with orthopedic physicians around the state, the bureau has determined that it is necessary to increase the reimbursement rate for designated CPT orthopedic procedure codes for services rendered to Medicaid recipients.

This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to orthopedic services and encouraging continued physician participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,100,306 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the

reimbursement paid to physicians for orthopedic services provided to Medicaid recipients. Physicians= Current Procedural Terminology (CPT) orthopedic procedure codes (20000-29898) shall be reimbursed at 80 percent of the Medicare Region 99 allowable for 2002, except for those procedure codes on file that are in non-pay status.

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

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

David W. Hood
Secretary

0301#005

DECLARATION OF EMERGENCY

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

Public Hospitals CInpatient Reimbursement Methodology Target Rate Per Discharge

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in July of 1983 which established a reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 7). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a Rule adopted in October of 1984 (*Louisiana Register*, Volume 10, Number 10), separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation. A Rule was adopted in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services. The reimbursement methodology was subsequently amended in a Rule adopted in June of 1994 which discontinued this reimbursement methodology for all nonstate hospitals and established a prospective payment methodology for nonstate hospitals (*Louisiana*

Register, Volume 20, Number 6). The department now proposes to rebase the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002.

This action is being taken to enhance federal revenues in the Medicaid Program. It is estimated that this Emergency Rule will have no fiscal impact in state fiscal year 2002-2003 because the Medicaid inpatient cost in excess of the target rate per discharge amount was previously included in the Medicaid unreimbursed cost component of the disproportionate share hospital adjustment payment.

Emergency Rule

Effective January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing rebases the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002. Allowable malpractice costs shall be included in the target rate per discharge and per diem limitations. Data from the twelve month cost reporting period of the base year shall be extracted to determine each hospital's cost per discharge or per day. Inpatient hospital services provided to children under one year of age in state owned or operated hospitals shall continue to be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services.

Implementation of the provisions of this emergency rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#062

DECLARATION OF EMERGENCY

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

Public Nursing Facilities CReimbursement Methodology (LAC 50:VII.1309)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and

shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

Act 694 of the 2001 Regular Session of the Louisiana Legislature mandated that the Department of Health and Hospitals establish a case-mix reimbursement methodology for nursing homes. In accordance with Act 694, the Bureau repealed the June 20, 1984 Rule and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 8). The Department subsequently promulgated an Emergency Rule revising the reimbursement methodology for state-operated nursing facilities in order to reimburse these facilities in accordance with the Medicare upper payment limit (*Louisiana Register*, Volume 28, Number 11). The bureau now proposes to amend the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities. In addition the bureau proposes to repeal the October 14, 2002 Emergency Rule.

This action is being taken to enhance federal revenue. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,816,216 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of services on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the October 14, 2002 Emergency Rule and amends the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1309. State-Owned or Operated and Nonstate

Government-Owned or Operated Facilities

A. Nonstate government-owned or operated nursing facilities will be paid a prospective reimbursement rate. Each facility will receive a Medicaid base rate calculated in accordance with other sections of this rule. Nonstate government-owned or operated nursing facilities may also receive a supplemental Medicaid payment on a quarterly basis. The aggregate supplemental payments for these facilities, calculated on a quarterly basis, will be the state's best estimate of what nonstate government-owned or operated facilities would be paid under Medicare's prospective payment system for skilled nursing facilities less the aggregate Medicaid base payments for these facilities. The acuity measurements used in the supplemental Medicaid payment calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to the aggregate supplemental Medicaid payments will be made to account for differences in coverage between the Medicare and Medicaid programs.

B. State-owned or operated nursing facilities will be paid a prospective reimbursement rate. The payment rate for each of these facilities will be calculated on a quarterly basis and shall be the greater of the state's best estimate of what the facility would be paid under Medicare's prospective payment

system for skilled nursing facilities or the nursing facility's allowable cost from the most recent filed Medicaid cost report trended forward to the midpoint of the rate year using the index factor. The acuity measurements used in the quarterly rate calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to these gross Medicare prospective payment rates will be made to account for differences in coverage between the Medicare and Medicaid programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1475 (June 2002), repromulgated LR 28:1793 (August 2002), amended LR 29:

Implementation of the provisions of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#056

DECLARATION OF EMERGENCY

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

Qualified Individuals Medicare Part B Buy-In

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

The bureau promulgated a Rule in July 1998 adopting the provisions of Section 4732 of the Balanced Budget Act of 1997 governing the payment of Medicare Part B premiums for Qualified Individuals (QIs) in the two mandatory eligibility groups (*Louisiana Register*, Volume 24, Number 7). The provisions were effective for premiums payable beginning January 1, 1998 and ending December 31, 2002. Payment for the Medicare premiums is provided by 100 percent federal funds, which are provided as a capped annual grant. The number of QIs certified is limited by availability of these funds. Individuals in the first group of QIs (QI-1s) were eligible if their incomes were above 120 percent of the Federal poverty line, but less than 135 percent. The

Medicaid benefit for QI-1s consisted of payment of the full Medicare Part B premium.

Federal statutory authority for the payment of Medicare Part B premiums benefits for QIs was originally intended to expire on December 31, 2002. A Continuing Resolution (Public Law No. 107-229, as amended by Public Law Nos. 107-240 and 107-244) was enacted to extend the QI-1 benefits at the current funding levels through January 21, 2003. The bureau promulgated an emergency rule to amend the July 20, 1998 Rule by extending the benefits of a QI-1 (*Louisiana Register*, Volume 28, Number 12). The Continuing Resolution was most recently amended by Public Law No. 107-294, extending the QI-1 benefits at the current funding levels through March 12, 2003. The bureau now proposes to amend the January 1, 2003 Emergency Rule and extend payment of Medicare Part B premiums for Qualifying Individuals-1 through March 12, 2003. This action is being taken to avoid federal sanctions by complying with changes in federal regulations. It is estimated that the implementation of this Emergency Rule has no fiscal impact for state fiscal year 2002-2003 other than the administrative cost of promulgating the Rule.

Emergency Rule

Effective January 21, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 1, 2003 Emergency Rule and extends payment of Medicare Part B premiums for Qualifying Individuals-1 through March 12, 2003.

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

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

David W. Hood
Secretary

0301#061

DECLARATION OF EMERGENCY

Board of Examiners for New Orleans and Baton Rouge Steamship Pilots

Enhanced Drug and Alcohol Policy
(LAC 46:LXXVI.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River and/or Board of Review (hereinafter "board") hereby promulgates an Emergency Rule regarding enhancement of current drug and alcohol policies, together with other violations and penalties associated therewith.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public

health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board adopts the following. The effective date for this Emergency Rule is January 3, 2003. This Emergency Rule shall remain in effect for 120 days or until the promulgation of the final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Steamship Pilots

Chapter 3. Enhanced Drug And Alcohol Policy

§301. Purpose and Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the board will maintain and enforce a policy of no tolerance for the violation of its policies, rules and regulations as to those river pilots who pursuant to R.S. 34:1041 et seq. have the duty to pilot sea-going vessels up and down the Mississippi River generally from mile 88 AHP to mile 304 AHP (Latitude 31). These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring available, safe and competent pilotage of vessels on the waterways under the jurisdiction of this board.

B. Further, the Louisiana Legislature formed this board for the additional purpose of establishing rules, regulations and requirements for all NOBRA pilots to establish standards for recommendation by the board to the governor of the state of Louisiana for such disciplinary matters who may have violated same.

C. The purposes of these rules and regulations are as follows:

1. to enhance general standards of conduct of pilots herein; and
2. for the board to recommend to the Office of the Governor such sanctions as are permitted herein; and
3. to enhance certain minimum standards of conduct relative to alcohol and substance abuse; and
4. to enhance a set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of this board.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§303. Application

A. The board hereby adopts the following enhanced rules and regulations relating to a drug and alcohol abuse policy applicable to all state licensed NOBRA Pilots pursuant to the provisions of R.S. 34:1041 et seq., together with all apprentices and candidates. These rules and regulations are not intended to replace those rules and regulations in existence. Current rules and regulations are not superceded nor replaced. What follows is intended only to enhance and strengthen the existing rules and regulations. Any conflict is to be construed and resolved in the stricter sense and implementation. With that end, all current rules and regulations are adopted herein in extenso.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§305. Statement of Findings

A. This board has always had a strong commitment and policy to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces these policies. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug use and abuse. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the State's or general public's safety, health and welfare.

B. While the board has no intention of intruding into the private lives of NOBRA pilots, apprentices or candidates, the board does expect that these persons report for work in a fit condition to perform their respective duties. The board recognizes that off-the-job incidents, as well as on-the-job incidents, and involvement with alcohol and drugs can have an impact on the work place and on a river pilot's ability to accomplish the board's goals herein.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§307. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements of oversight for NOBRA pilots, apprentices and candidates.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§309. Definitions

A. As used in this Chapter, the following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

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

Alcoholic Beverage/Alcohol 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/Candidate Any person who seeks or is seeking a pilot commission issued herein; also may be used interchangeably with "pilot."

Application The written application supplied by the Board of Examiners to an applicant who desires to become a river pilot as per law and/or for the New Orleans-Baton Rouge Pilot Association.

Apprentice Any person enrolled and/or participating in the orientation program as established by this board; also may be used interchangeably with "pilot."

Association New Orleans-Baton Rouge Steamship Pilot Association

Board of Examiners or Board of Review The board of Examiners for New Orleans and Baton Rouge Steamship

Pilots for the Mississippi River and/or Board of Review, established in R.S. 34:1041 et seq.

Candidate Any person enrolled and/or participating in the orientation program as established by this board; also may be used interchangeably with "pilot."

Drug Any and all controlled dangerous substances as defined in R.S. 40:961(7). Drugs which are illegal under federal, state, or local laws include but are not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited or licensed physician.

Gender The use of "his" or "her" or any reference to masculinity or femininity are to be used interchangeably

NOBRA Pilot or Pilot A Mississippi River pilot under the jurisdiction of this Commission, as designated in R.S. 34:1041; any person as recommended by the board to the Office of the Governor and commissioned thereafter as per law; hereinafter "pilot."

Prescription Medication Any medication distributed by or with the authorization of a licensed physician as defined in R.S. 40:961 (30).

VTCC Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

Waterways The Mississippi River generally between mile 88 AHP and Mile 304 AHP (Latitude 31).

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§311. Severability

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

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§313. Effective Date

A. These rules and regulations shall be in full force and effective ninety days after final publication in the Louisiana Register or as per law, whichever is earlier.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§315. Violations of the Policy

A. Any pilot in violation of these policies, rules or regulations may be referred to the Office of the Governor for reprimand, fine, suspension and/or pilot commission revocation, unless otherwise provided for in this board's rules and regulations.

B. Any pilot in violation of this policy may be reprimanded, fined, evaluated, and treated for drug use and have his or her pilot commission suspended or revoked as provided by R.S. 34:1041 et seq.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:1041 et seq. and Revised Statute Title 49 upon the following:

1. tests positive for any drug;
2. uses any drug in violation of these rules and regulations;
3. refuses to submit to reasonable scientific testing for drugs and/or fails to cooperate fully with the testing procedures and/or in any way attempts to alter the test results;
4. tests positive for alcohol;
5. refuses to submit to a blood alcohol test and/or fails to cooperate fully with the testing procedure and/or in any way attempts to alter the test results.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§317. Standards of Safe Pilotage, Grounds for Recommendation to the Governor

A. Subject to the authority of the Office of the Governor, as per law, this board shall be exclusively and unilaterally be vested with the power and authority to recommend to the Office of the Governor of Louisiana revocation and/or suspension of all rights and privileges of river pilotage for appointment as a NOBRA Pilot, apprentice, and/or candidate for any violation of the board's drug and alcohol rules and regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§319. Effect of Positive Tests/ Disciplinary Action

A. Any NOBRA pilot, apprentice or candidate with alcohol or 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 or positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for alcohol or 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 alcohol test or drug screen shall be subject to disciplinary action by the board of Examiners/Board of Review, including the recommendation of revocation or suspension of his 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 and/or alcohol abuse shall do so at his 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 and/or alcohol test, or any attempts at alteration or substitution of samples is considered a violation of these rules. Any NOBRA pilot who refuses to

submit to a drug screen and/or alcohol test, 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, any refusal to submit to a drug screen and/or alcohol test, failure to cooperate fully with the testing procedures, or any attempt to alter the test results shall be considered by the Board of Examiners/Board of Review as a positive test result. In addition, 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 La. R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§321. Prohibitions and Requirements of the Policy

A. It shall be assumed that a NOBRA pilot, under any influence of alcohol or drugs or who uses alcohol or drugs on the job, has the potential for interfering with his own safety, as well as that of the vessel he is piloting and other vessels in the area, together with danger to related property and personnel. Consistent with existing board practices, such conditions shall be immediate cause for disciplinary action.

B. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§323. Drug and Alcohol Testing

A. All current NOBRA pilots, applicants and/or apprentices shall be subject to testing for the presence of alcohol and the presence of marijuana, opiates, cocaine, amphetamines, and phencyclidine, together with any and all other substances as may be tested as ordered by the board.

B. Types of Testing

1. All pilots shall submit to all reasonable scientific testing for drugs and alcohol when directed by the board. All procedures conducted in connection with such testing shall

comply with NOBRA rules and regulations as of this date, and as those that may be amended from time to time.

2. A pilot shall be required to submit a breath test and/or blood test and/or urine test and/or hair specimen test for the presence of drugs and/or alcohol under the following non-exclusive circumstances:

- a. prior to recommendation for appointment, as a part of the physical exam required by law and these Rules and Regulations;
- b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;
- c. upon written complaint investigated by this board;
- d. when and if any commissioner invokes the provision of any of its Rules and Regulations, including but not limited to LAC 46:LXXVI.111.L;
- e. when subject to the random drug or alcohol testing policy as created by the NOBRA Association
- f. when subject to the random drug or alcohol testing policy as created by this board
- g. when the pilot is reasonably suspected of using drugs in violation of this policy;
- h. when the pilot is determined to be directly involved in a marine casualty or accident;
- i. when there exists reasonable suspicion that a pilot is performing duties while under the influence of alcohol or drugs.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of alcohol and/or drugs or their metabolites in a pilot's system.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§325. Test Results

A. Any pilot, whose test is confirmed as positive, shall have the right of reasonable immediate access to drug tests records. Any and all pilot requests shall be in writing and delivered to the board without delay.

B. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, as per law, be confidential and disclosed only to this board and the pilot tested, except that:

1. the board may report the results to the Office of the Governor; and
2. in the event that the board determines that a hearing is required pursuant to R.S. 34:1041 et seq., there shall be no requirement of confidentiality in connection with such hearing or release of such medical records or test results, all as per law.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

Henry G. Shows
Chairman

0301#014

DECLARATION OF EMERGENCY

Board of Examiners for New Orleans and Baton Rouge Steamship Pilots

Standards of Conduct and Investigations
(LAC 46:LX XVI.Chapter 4)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River (hereinafter "board") hereby promulgates an Emergency Rule regarding standards of conduct, standards of proper and safe pilotage, standards of recency of service, conditions of reinstatement, procedures for investigations and enforcement, together with other violations and penalties associated therewith.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board adopts the following rules and regulations. The effective date for this Emergency Rule is December 18, 2002. This Emergency Rule shall remain in effect for 120 days or until the promulgation of the final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Steamship Pilots

Chapter 4. Standards of Conduct and Investigations

§401. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board, with respect to pilotage up and down the Mississippi River generally from mile 88 AHP to mile 304 (Latitude 31) along the Mississippi River:

1. will maintain and enforce a strict policy of no tolerance for the violation of its policies, rules and regulations;
2. will maintain and enforce a strict policy of no tolerance for misconduct or conduct unbecoming of a pilot while on or off duty;
3. will establish standards for recommendation of NOBRA pilots to the governor of the state of Louisiana for such disciplinary matters for pilots who pursuant to R.S. 34:1041 et seq. may have violated these rules and regulations and/or work related thereto, including but not limited to services rendered at the Vessel Traffic Center (commonly known as "VTC");
4. will maintain and enforce a strict policy of full and complete oversight as is necessary to ensure that pilots who return to duty after varying degrees of absences shall comply with the following rules and regulations hereinbelow;
5. will establish procedures in conformity with the requirements of the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) for investigating and conducting such hearings relative to incidents and/or complaints of pilot misconduct, carelessness, and/or incompetence;

6. will establish certain additional minimum standards of conduct, including but not limited to conduct relative to neglect of duty, drunkenness, habitual intemperance, substance abuse, incompetency, maintaining proficiency, remaining properly posted, and general bad conduct of river pilots;

7. will maintain and enforce a strict policy of conducting full and complete investigations, and possible subsequent referrals to the Office of the Governor of any and all violations of commission rules and state and/or federal law;

8. will maintain and enforce a strict policy no tolerance of the failure of a NOBRA pilot to maintain all applicable licenses, certificates and commissions as may be administered and/or issued by any local, state or federal governmental agency as are necessary to pilot vessels herein;

9. will maintain a policy of no tolerance for the failure of a NOBRA pilot, within the jurisdiction of this board, to pilot vessels for less than a certain number of trips within a specified time period, all in order to maintain familiarity and continuous working knowledge of the Mississippi;

10. to provide a situational policy for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of the NOBRA pilots;

11. will establish general standards of pilotage hereunder and herein;

12. will establish standards to recommend to the Office of the Governor such sanctions of NOBRA Mississippi River pilots as is permitted herein;

13. will establish certain minimum standards of pilotage time actually performed on the Mississippi River to assist in establishing competency of NOBRA pilots;

14. will provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of this board;

15. will establish standards by which this board may recommend a pilot to return to work as a pilot or, where applicable, otherwise recommend or deny to the Office of the Governor of the State of Louisiana such an individual for re-appointment as NOBRA Mississippi River pilots who pursuant to R.S. 34:1041 et seq.;

16. will ensure compliance by the board with the Public Meetings Law. These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring safe and competent pilotage of vessels on the waterways under the jurisdiction of this board;

17. to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services;

18. will establish standards of oversight and rules for apprentices and candidates; and

19. will maintain and enforce a policy where there shall be no other violation of these rules and regulations that is contrary, in the discretion of this board, to these rules and regulations herein.

B. In accordance with state law and in order the board of examiners proposes to adopt the following pertaining to the rules and regulations of the board.

C. This board has always had a strong commitment and policy to the pilot members of NOBRA Association to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces these policies. The board's stated goal will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the safety, health and welfare of the public's interests.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§403. Application

A. The board hereby adopts the following rules and regulations relating to all applicants, apprentices, and state licensed NOBRA Pilots pursuant to the provisions of R.S. 34:1041 et seq. These rules and regulations are not intended to replace those rules and regulations in existence. Current rules and regulations are not superceded nor replaced. Where applicable, what follows is intended only to enhance and/or clarify existing rules and regulations. Where applicable, any conflict is to be construed and resolved in the stricter sense and implementation. With that end, all current rules and regulations are adopted and incorporated herein in extenso. With that end, all current rules and regulations are to be read in para materii.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§405. Statement of Findings

A. This board has always had a strong commitment and policy to the general public and maritime industry, including but not limited to apprentices and candidates and the pilot members of NOBRA Association to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces all rules and regulations. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the state's or general public's safety, health and welfare.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§407. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for pilot oversight for NOBRA pilots, apprentices and candidates.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§409. Definitions

A. As used in this Chapter, the following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

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

Applicant/Candidate Cany person who seeks or is seeking a pilot commission issued herein.

Application Cthe written application supplied by the Board of Examiners to an applicant who desires to become a river pilot as per law and/or for the New Orleans-Baton Rouge Pilot Association.

Apprentice Cany person enrolled and/or participating in the orientation program as established by this board.

Association CNew Orleans-Baton Rouge Steamship Pilot Association.

Board of Examiners or Board Cthe Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Gender Cthe terms "his" and "her" are to be used interchangeably, as are any references to that which may be masculine or feminine.

NOBRA Pilot or Pilot Ca Mississippi River pilot under the jurisdiction of this Commission, as designated in R.S. 34:1041; any person as recommended by the board to the Office of the Governor and commissioned thereafter as per law; hereinafter "pilot."

Services of a Pilot Cany advice or assistance with respect to pilotage by the commissioned pilot, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

Time Cshall mean the period of time necessary to commence and complete a job assignment, as dispatched, aboard a vessel or at the Vessel Traffic Center (VTC) or other similar event.

Turn Cshall mean the overall time-period necessary to complete the designated scope of work to be performed, including but not limited to a vessel, drug testing continuing education or at the VTC.

VTC Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

Waterways Cthe Mississippi River generally between mile 88 AHP and Mile 304 (Latitude 31).

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§411. Severability

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

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§413. Effective Date

A. These rules and regulations shall be in full force and effect ninety days after final publication in the *Louisiana Register*, or as per law, whichever is earlier.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§415. Violations of the Policy

A. This board may take such action as is necessary for any violation of these policies, rules and regulations by any pilot, apprentice, or candidate who violate these policies, rules or regulations, or the board may refer such person to the Office of the Governor, if required by law, for reprimand, fine, suspension and/or pilot commission revocation.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§417. Standards Of Conduct: Proper And Safe Pilotage; Grounds for Disqualification and Suspension of Pilots, Apprentices, and Candidates; Grounds to Recommend Revocation of Pilot Commission

A. This board shall be exclusively and unilaterally vested with the power and authority to take action as to all rights and privileges of river pilotage as to a NOBRA Pilot, apprentice, and/or candidate for the following non-exclusive list of particulars.

B. This board shall be exclusively and unilaterally vested with the power and authority to recommend to the Office of the Governor of Louisiana revocation and/or suspension of all rights and privileges of river pilotage, for appointment as to a NOBRA pilot, apprentice, and/or candidate for the following non-exclusive list of particulars:

1. failure to pass any examination given by the board of Examiners;

2. failure to maintain, in good, valid and current standing, any and all maritime licenses and certificates necessary to pilot vessels as a NOBRA pilot, including but not limited to a U.S. Coast Guard First Class Pilot License of any gross tons between mile 88 AHP and mile 234 AHP;

3. conviction of any felony from any jurisdiction whatsoever;

4. denial, revocation or suspension of a pilot and/or maritime license and/or pilot commission by any local, state, or federal entity or jurisdiction whatsoever;

5. neglect of duty;

6. neglect of duty while piloting any vessel;

7. neglect of duty while performing services at VTC (Vessel Traffic Center) or other similar governmental facility;

8. conduct unbecoming a pilot while on-duty;

9. conduct unbecoming a pilot while off-duty;

10. failure to remain a qualified and registered voter of the state of Louisiana;

11. not successfully passing any physical examination as mandated by the U.S. Coast Guard;

12. any violation of the board's drug and alcohol rules and regulations;

13. refusal to submit to any and all scientific testing for drugs or alcohol ordered by the association and/or board as promulgated by the board's rules and regulations.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§419. Affirmative Duty to Report

A. There is an affirmative duty of apprentices, candidates, and pilots to immediately and timely provide proof of any and all test results and examinations to the board, including but not limited to medical, licensure, physical, drug, substance abuse or alcohol, where such results or examinations are related to safe pilotage.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§421. False Claims

A. This board shall be vested with the right and ability to sanction any person who levies a knowingly false claim against this board, any board member or staff hereof, or any member of the NOBRA Association.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§423. Absolute Insurer

A. A NOBRA pilot is the absolute insurer of his or her own state of mind, physical abilities, and overall well-being.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§425. Adoption of Navigational Rules

A. The board shall use a standard of that which adheres to common, local practices.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§427. Pilot's Duty To Remain on Board Ship

A. A NOBRA pilot shall remain on board the ship until properly relieved and/or has completed one's pilot assignment and/or is released by the ship master or his representative/agent.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§429. Pilot's Duty of Remain on Duty at the Vessel Traffic Center (VTC)

A. A NOBRA pilot shall remain on site and on duty at VTC (or similar facility) until properly relieved and/or released by the VTC Watch Supervisor or representative.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§431. Establishing Standards for Recency of Service on the River

A. In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the board hereby gives notice of intent to promulgate Rules regarding standards of mandated pilotage time on the Mississippi River and the necessity to obtain and maintain a current and valid Louisiana state pilot license and commission, together with other violations and penalties associated therewith.

B. In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public

health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board proposes to adopt the following.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§433. Other Qualifications to Maintain as a NOBRA Pilot while Performing Pilotage Services on the Mississippi River; Grounds for Disqualification and Suspension of Pilots, Apprentices, and Candidates; Grounds to Recommend of Revocation of Pilot Commission

A. All current NOBRA pilots, apprentices, and candidates shall always maintain each of the following:

1. a current and valid Louisiana voter's registration card as issued by the Louisiana Secretary of State, through the Office of the Registrar in the Parish where the NOBRA pilot, apprentice or candidate is domiciled as per Louisiana. A NOBRA pilot, apprentice or candidate may establishing residency elsewhere, as per law.

B. All current NOBRA pilots, apprentices, and candidates shall always:

1. have successfully passed a physical examination which, in the judgment of the board, includes, but is not limited to those standards, such as vision, color perception and hearing tests, necessary to perform duties as a pilot, together with those requirements as mandated by the United States Coast Guard;

2. cooperate fully with this board's testing procedures;

3. cooperate fully with this board's investigations of any matter.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§435. Pilot's Duty to Exhibit Identification

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof his identification card as a NOBRA pilot, attested to by the chairman of the Board of Examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§437. Administrative Policy and Application

A. The purpose of these rules and regulations is to ensure compliance by the board with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950 et seq. and R.S. 42:1 et seq.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§439. Meetings of Examiners

A. All meetings and notices thereof of the board shall be conducted in accordance with the Open Meetings Law (R.S. 42:1 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7 or as per law.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§441. Record Keeping

A. The Board of Examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950 et seq.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§443. Reinstatement of Commission Pilot Privileges as Relates to Inactivity of Pilot Services; Re-Appointment of Pilot; Testing and Examination of Apprentices and Active Pilots; Establishing Standards of Pilotage

A. These Sections shall apply to all NOBRA commissioned pilots, together with former commissioned pilots, apprentices or applicants who have not piloted a vessel and/or been assigned to a turn or vessel as discussed hereinafter.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§445. Request for Appearance before Board

A. Any person who is subject to these rules and regulations shall apply, in writing, to this board to request an appearance for an administrative determination as to the status of such person for re-appointment or recommendation to pilot re-commissioning.

B. Such a request shall be placed on the board's agenda, as per law.

C. Such a request shall be heard as per law.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§447. Applicability to Turns or Assignments

A. If an otherwise state-commissioned NOBRA pilot does not pilot or has not piloted a vessel or ship as assigned by the NOBRA Pilot Association during the normal course of dispatching of pilotage services for any period of six consecutive months, then before that pilot is eligible and authorized to pilot any such vessel along the NOBRA route, said pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, each of the following non-exclusive list of particulars.

1. A minimum of five trips or turns along the NOBRA route from the general area of the Baton Rouge harbor (or within three miles of the Baton Rouge Interstate 10 Bridge over the Mississippi River at river mile 234 AHP and then along the meandering line of the Mississippi River) to the Algiers cut-off canal at Mississippi River mile 88 AHP.

2. Two trips of these five trips shall cover the entire NOBRA route between Baton Rouge and New Orleans. One trip shall be northbound. One trip shall be southbound.

3. Two trips of these five trips shall be at night.

B. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall be subject to and shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specially designed and planned program to

reasonably re-orient such pilot to Mississippi River pilotage under the jurisdiction of this board.

C. These Sections shall not apply to any assignment or turn at the VTC (Vessel Traffic Center) and shall be excluded from these rules. Work performed at VTC shall not be considered as a turn or assignment for these purposes only.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§449. Re-orientation Period

A. Upon commencement of the re-orientation period, any pilot subject to these minimum requirements shall successfully complete all five trips and turns within 30 consecutive days. For good reason shown, and upon timely application by the pilot, additional time to complete these trips or turns may be granted by the board. The board shall have the exclusive and unilateral discretion to grant or deny any extension of time.

B. Where there has been no pilotage or vessel assignments in excess of such six months, and before resumption of pilot assignments, a NOBRA pilot shall have conducted a thorough U.S. Coast Guard physical as per Code of Federal Regulations (CFR) 10.709 and CFR 10.205, all as may be amended from time to time by the U.S. Coast Guard.

C. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall present for inspection and copying by the board a Form CG 719K/E (Rev. 7-01) or as may be amended from time to time by the U.S. Coast Guard.

D. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall produce to the board sufficient and verifiable documentation, to the exclusive discretion of the board, from any and all local, state, or federal governmental agencies to establish that said pilot is in good standing and is authorized to pilot such a vessel. Such documentation shall be reasonably determined by the board on a case-by-case basis.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§453. Investigations and Enforcement of Board Policies and Other Violations of Commission Rules and Regulations; Penalties Associated with Violations; Conducting Hearings Associated with any Complaint or Violation of Pilotage; Testing and Examination of Apprentices and Active Pilots; Establishing Standards of Pilotage

A. All complaints reported to the board shall be considered for investigation. A complaint, under the provisions hereinafter, is defined as:

1. any written, signed complaint involving a pilot commissioned as per law, and/or

2. any other event involving a pilot commissioned herein, that, in the discretion of the board, justifies further investigation.

B. The board shall appoint an Investigating Officer to conduct a preliminary investigation of the complaint and report their findings to the board. In no event shall the Investigating Officer be an active member of the board.

C. If the Investigating Officer, following the preliminary investigation, is of the opinion that the conduct in question is not sufficient to justify further proceedings, he/she shall make a written report to the board, which, in its exclusive discretion, may accept or reject the recommendation and dismiss the complaint.

D. If after the preliminary investigation, the board is of the opinion that the complaint is sufficient to justify a full investigation, the board shall, if so required by law, notify the Office of the Governor and request authority from the governor to conduct a full investigation and/or administrative hearing regarding the complaint. Following receipt of authority from the governor, if so required by law, the board shall authorize its Investigating Officer to conduct a full investigation of the complaint.

E. If the Investigating Officer, following the full investigation, is of the opinion that the conduct in question is not sufficient to justify further proceedings, he/she shall make a written report to the board, which, in its exclusive discretion, may accept or reject the recommendation and dismiss the complaint.

F. Following the full investigation, if the board is of the opinion that an administrative hearing is required, the board shall give notice to the pilot, by registered mail or personal service, of the complaint or allegations made against him/her and offer the pilot an opportunity to show compliance with the laws or regulations allegedly violated. Said notice shall be issued pursuant to R.S. 49:955(B) and shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is being held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

G. The board may make informal disposition of any investigation or adjudication/hearing by means of stipulation, agreed settlement, consent order or default. If required by law, approval of such informal disposition must be sought from the Office of the Governor before the informal disposition may be deemed final.

H. Any matter set for hearing shall be prosecuted by an Independent Prosecutor appointed by the board. The Independent Prosecutor may, in the discretion of the board, be the same party who acted as Investigating Officer. In no event shall the Independent Prosecutor be an active member of the board. The Independent Prosecutor may conduct further investigation and shall prepare and present the matter to the board in such manner as he/she may deem appropriate.

I. Any pilot may be represented in any adjudication/hearing before the board by an attorney at law duly admitted to practice in the state of Louisiana. Following receipt of proper notice of such representation, all further notices, subpoenas or other processes related to the proceedings shall be served on the pilot through his/her designated counsel of record.

J. Any pre-hearing motion shall be referred for decision to the board, who in its discretion, may rule on the motion prior to the hearing date or may defer the matter until the hearing date.

K. All investigations and hearings undertaken as authorized herein above, shall be conducted pursuant to the

Louisiana Administrative Procedure Act, R.S. 49:950 et seq. If any specific provision of this section in any way conflicts with the more general rule of the Louisiana Administrative Procedure Act, the more specific rule of this section shall govern.

L. The board shall docket and schedule the Hearing before the board not less than 10 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the Investigating Officer or respondent/pilot pursuant to a showing of proper grounds.

M. Within 30 days of service of the Administrative Notice, or such longer time as the board may permit, the respondent/pilot shall provide a written answer the Administrative Notice, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent/pilot does not timely file a response to the Administrative Notice, all matters asserted therein shall be deemed admitted.

N. All motions or other papers permitted or required to be filed with the board unless otherwise notified in writing.

O. Motions for continuances of hearings, for dismissals of the proceeding and all other pre-hearing motions shall be filed not later than 15 days prior to the hearing. The opposing party shall have seven to respond in opposition. Each pre-hearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion.

P. If an initial motion for continuance is not opposed, it may be granted by the presiding chairman of the board.

Q. Any pre-hearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any pre-hearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a pre-hearing motion may request that the motion be reconsidered by the entire board.

R. Upon request of any party and upon compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

S. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof,

shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

T. In any case of adjudication noticed and docketed for hearing, counsel for respondent and Independent Prosecutor may agree, or the presiding officer may require, that a pre-hearing conference be held among such counsel, or together with the board's independent counsel appointed herein whereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

U. Following such pre-hearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a pre-hearing stipulation which should include:

1. a brief statement from the Independent Counsel as to what is expected to be shown from the evidence to be presented;

2. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

3. a list of the witnesses to be called by all parties, together with a brief general statement of the nature of the testimony each such witness is expected to give;

4. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and

5. an estimate of the time required for the hearing.

V. Unless otherwise requested by the respondent/pilot, adjudication hearings, shall be conducted in closed session, unless otherwise expressly waived by the respondent/pilot, all as per law.

W. At the hearing, opportunity shall be afforded to all parties to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the Administrative Notice.

X. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings. The cost of the stenographer shall be initially be at the expense of the board; however, and in the event that the respondent/pilot is otherwise suspended, fined, or reprimanded then the respondent/pilot shall be liable for and may be assessed and taxed for all costs. If the respondent/pilot is referred or recommended to the Office of the Governor for action, then the respondent/pilot shall be liable for and may be assessed and taxed for all costs. Any and all witness, expert witness or hearing-related costs may likewise be assessed and taxed as to the respondent/pilot. Witness fees (expert or otherwise) and related hearing costs caused by the respondent/pilot shall be his/her responsibility; in no way whatsoever shall the board be liable for nor responsible for costs or fees caused by the respondent/pilot.

Y. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire

panel in or out of executive session, all as per law. At any such hearing, the board may be assisted by legal counsel, who is independent of the Independent Prosecutor and who has not participated in the investigation or prosecution of the case.

Z. The record in a case of adjudication shall include, but is not limited to:

1. the Administrative Notice, notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

2. evidence received or considered at the hearing;

3. a statement of matters officially noticed except those so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections, and rulings thereon;

5. proposed findings and exceptions, if any;

6. the decision, opinion, report or other disposition of the case made by the board;

7. findings of fact;

8. conclusions of law.

AA.1. In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written or recorded form.

2. All evidence, including records and documents in the possession of the board which the parties desire the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

BB.1. The final decision of the board in an adjudication proceeding shall be in writing and shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a copy thereof shall promptly be served upon all parties of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of Administrative Notices.

CC.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed hereinabove and shall set forth the grounds upon which such motion is based, as provided herein.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

- a. the decision is clearly contrary to the law and the evidence;
- b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;
- c. other issues not previously considered ought to be examined in order to properly dispose of the matter; or
- d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

DD. As per law and as may be levied and as may be recommended, the board shall have the specific authority to recommend imposition of a fine on any pilot, to recommend reprimand or removal from duty any pilot, or to recommend to the governor that the commission of any pilot be suspended or revoked if a pilot is found in violation of any rule or regulation adopted by the board of examiners.

EE. The authority established in these rules is in addition to and in no way limits the authority of the board to seek to remove a pilot from duty pursuant to the provisions of R.S. 34:1041 et seq.

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

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

Henry G. Shows, Jr.
Chairman.

0301#013

DECLARATION OF EMERGENCY

Department of Social Services Office of Community Services

Refugee Resettlement Program
(LAC 67:V.501-515)

Pursuant to R.S. 49:953(B) of the Administrative Procedure Act, the Department of Social Services, Office of Community Services (DSS/OCS) has adopted the following Emergency Rule continuing state administration of the Refugee Resettlement Program under its aegis and incorporating policy responsive to changes in the Code of Federal Regulations, 45 CFR 400.56-63 revised October 1, 2000 relative to services to public/private Refugee Cash Assistance (RCA) participants. The Refugee Resettlement Program is funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement. The program includes three

components: Refugee Cash Assistance, Refugee Medical Assistance and Refugee Social Services. DSS/OCS will deliver the Refugee Cash Assistance and Social Services components. The Department of Social Services, Office of Family Support (DSS/OFS) and the Department of Health and Hospitals shall deliver Refugee Medical Assistance via Memorandum of Understanding with DSS/OCS and each other.

This Emergency Rule is being promulgated simultaneously with an Emergency Rule by DSS/OFS repealing its administration of the Refugee Resettlement Program. This Emergency Rule is effective January 1, 2003 and shall remain in effect for 120 days.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 2. Community Services

Chapter 5. Refugee Resettlement Program

Subchapter A. Goals and Services

§501. Authority

A. The state of Louisiana administers the Refugee Resettlement Program through the Department of Social Services, Office of Community Services (DSS/OCS) in accordance with federal regulations including 45 CFR 400. The Office of Community Services is responsible for the administration and delivery of services through direct provision, memoranda of understanding with other state agencies, and, purchase of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), Department of Social Services, Office of Community Services, LR 29:

§503. Program Goals

A. The Refugee Resettlement Program is designed to effectively resettle refugees and to promote economic self-sufficiency for refugees within the shortest possible time after their entrance into the state. Those considered for receipt of the Refugee Resettlement Program services and benefits include individuals with the following Immigration and Naturalization Services statuses:

1. refugees;
2. asylees;
3. Cuban and Haitian entrants;
4. certain Amerasians from Vietnam; and
5. victims of a severe form of trafficking who receive certification from the Office of Refugee Resettlement.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

§505. Program Services

A. Services provided in the Refugee Resettlement Program are defined in the Louisiana State Plans for the Administration of the Refugee Resettlement Program and the Public Private Partnership/Refugee Cash Assistance Program which comply with 45 CFR 400 as amended. There are three components of the Refugee Resettlement Program. They are: Refugee Cash Assistance, Refugee Medical Assistance and Refugee Social Services.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

Subchapter B. Refugee Cash Assistance

§507. Application, Eligibility, and Incentive Bonuses for Refugee Cash Assistance

A. Application. The Office of Community Services will administer a Public Private Partnership/Refugee Cash Assistance program by contracting with local private resettlement agencies to provide direct cash assistance to eligible refugee clients. Any individual wishing to apply for benefits may do so. A determination of eligibility must be made within 30 days of the date of application.

B. Eligibility

1. General eligibility requirements for refugee cash assistance is limited to those who:

a. are new arrivals to the United States whose residence in the country is within the Refugee Cash Assistance (RCA) eligibility period determined by the Office of Refugee Resettlement Director;

b. are asylees recently granted asylum whose time since the date being granted asylum is within the RCA eligibility period determined by the Office of Refugee Resettlement Director;

c. are ineligible for TANF and SSI;

d. meet immigration status and identification requirements in Subpart D of 45 CFR Part 400, or who are the dependent children of, and part of the same family unit as, individuals who meet the requirements, subject to the limitation in Sec. 400.208 with respect to non-refugee children;

e. are not full-time students in institutions of higher education, as defined by the Office of Refugee Resettlement Director;

f. are residents of Louisiana in the jurisdiction of the local resettlement agency handling the application; and,

g. meet the following financial eligibility requirements.

2. Financial eligibility requirements are as follows.

a. The family unit will have gross income at or below 200 percent of the federal poverty level.

b. There will be a total earned income disregard for the first four months of their time eligibility period.

c. There will be a \$200 earned income disregard for the fifth month through the last month of their eligibility period.

3. Incentive Bonuses

a. Incentive bonuses will be available to eligible individuals up to a capped maximum of the standard payment amount times the months of the established eligibility period and are as follows:

i. a \$200 one time bonus per eligible individual for accepting a full time job and staying on that job for at least ten working days (\$100 bonus for part time employment);

ii. a \$200 one time bonus per eligible individual for remaining employed on the 90th day after being placed in a job and the 90-day retention date must be within the period of eligibility;

iii. an employable eligible individual may have the local resettlement agency make payment toward the cost of driving lessons, up to \$200, to an accredited driving instruction school, if driving lessons are needed by the individual, the individual is eligible to apply for a valid drivers license, and learning to drive is part of the employability plan for the individual.

C. Participants receiving RCA will also be eligible to receive employment, language training, and related support services under the Refugee Social Services Program.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

§509. Amount of Refugee Cash Assistance

A. The cash assistance standard payment amounts per month for the period of eligibility are as follows.

Size of Family Unit	Payment Amount
1	\$260
2	\$335
3	\$400
4	\$455
Incremental	\$50

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

§511. Mandatory Participation in Employment Services

A. All non-exempt eligible members of a family unit must participate in an employment plan developed by the local resettlement agency in conjunction with the non-exempt eligible member in order to be eligible for cash assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

Subchapter C. Refugee Medical Assistance

§513. Eligibility and Furnishing of Services for Refugee Medical Assistance

A. The DSS/OCS will administer Refugee Medical Assistance (RMA) in accordance with program regulations for Title IV-A and Title XIX of the Social Security Act and in accordance with the Memoranda of Understanding for actual delivery of services with the Department of Social Services, Office of Family Support and the Department of Health and Hospitals as reflected in the Louisiana approved Medicaid and SCHIP State Plans. Eligibility requirements for RMA will be in accordance with 45 CFR 400.94, 400.100-104. If a refugee who is receiving RMA receives earnings from employment, the earnings shall not affect the refugees continued medical assistance eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

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

Subchapter D. Refugee Social Services

§515. Application, Eligibility, and Furnishing of Refugee Social Services

A. Applications for services must be completed for all individuals and households who are referred for services or request services under this program prior to the delivery of services. Application forms should be completed as soon as possible after the initial request or referral for services but no later than 30 calendar days after the request or referral.

B. To be eligible for social services, an applicant must provide proof in the form of documentation issued by the Immigration and Naturalization Service of one of the following statuses under the Immigration and Nationality Act as a condition of eligibility:

1. paroled as a refugee or asylee under Section 212(d)(5);
2. admitted as a refugee under Section 207;
3. granted asylum under Section 208;
4. admitted as a Cuban or Haitian Entrant in accordance with requirements in 45 CFR part 401;
5. admitted as an Amerasian from Vietnam pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operation, Export Financing, and Related program Appropriations Acts, 1989, (Public Law 100-461 as amended).

C. Recipients of employment services and language training services must be sixteen years of age or older and not full-time students in elementary or secondary school, except that such a student may be provided services in order to obtain part-time or temporary (e.g. summer) employment while a student or full-time permanent employment upon completion of schooling.

D. Services to be provided include:

1. Employment Services which are defined as the provision of assistance for individuals to obtain and maintain suitable paid employment;
2. English as a Second Language (ESL) which is defined as the provision of formal or informal English instruction with emphasis on survival and/or vocational English or assistance in obtaining such from other established English programs;
3. Social Adjustment Services which are defined as the provision of therapeutic, educational, cultural and social enrichment activities to promote acculturation and inter/intra personal functioning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474(3)

HISTORICAL NOTE: Department of Social Services, Office of Community Services, LR 29:

Interested persons may submit written comments to Steven Thibodeaux, Department of Social Services, Office of Community Services, P.O. Box 57149, New Orleans, LA 70157-7149. He is responsible for responding to all inquiries regarding this Emergency Rule.

Gwendolyn P. Hamilton
Secretary

0301#006

DECLARATION OF EMERGENCY

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

**Child Care Assistance Program Incentive Bonus
(LAC 67:III.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 January 29, 2003. This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of October 1, 2002, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final rule regarding the Incentive Bonuses will be published in February 2003).

Current regulations governing child care assistance provide for a quality incentive bonus that is paid to Child Care Assistance Program (CCAP) eligible Class A providers who achieve and maintain National Association for the Education of Young Children (NAEYC) accreditation. The bonus, paid once each calendar quarter, is equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund. In an effort to encourage more providers to attain NAEYC accreditation, the agency will increase the incentive bonus to 20 percent of all payments received by that provider.

Additionally, a quality incentive bonus will be available to Family Child Day Care Home (FCDCH) providers who participate in the Department of Education (DOE) Child and Adult Care Food Program. The bonus will be paid once each calendar quarter and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund.

Pursuant to Act 152 of the 2002 First Extraordinary Session of the Louisiana Legislature, funds from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant were appropriated for expanding access and improving quality for low-income child care. A portion of these funds was transferred to the Child Care and Development Fund to maximize flexibility of program design. Authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

**Chapter 51. Child Care Assistance
Subchapter B. Child Care Assistance Program
§5107. Child Care Providers**

A. - E. ...

F. 1. Quality incentive bonuses are available to:

- a. CCAP eligible Class A providers who achieve and maintain National Association for the Education of Young Children (NAEYC) accreditation. The bonus will be

paid once each calendar quarter, and will be equal to 20 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund;

b. CCAP eligible Family Child Day Care Home (FCDCH) providers who participate in the Department of Education (DOE) Child and Adult Care Food Program. The bonus will be paid once each calendar quarter, and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund.

2. These bonus amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

G.1. - 2. ...

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 29:

Gwendolyn P. Hamilton
Secretary

0301#0042

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamp Program C2002 Farm Bill (LAC 67:III.Chapter 19)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt changes to LAC 67:III, Subpart 3, effective January 29, 2003. This Emergency Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of October 1, 2002, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule regarding the 2002 Farm Bill will be published in April 2003).

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1932, 1949, 1953, 1961, and 1983, to comply with mandates issued by the United States Department of Agriculture, Food and Nutrition Service. P.L. 107-171, also known as the 2002 Farm Bill, authorizes changes in alien regulations whereby a disabled alien will be eligible for benefits for an unlimited period of time; the addition of Individual Development Accounts as an excludable resource; an increase in the resource limit for households that include a disabled member; and changes in the method by which the standard deduction is determined.

Emergency action in this matter is necessary as failure to promulgate the Rule in a timely manner could result in the imposition of sanctions or penalties by the USDA, Food and Nutrition Service, the governing authority of the Food Stamp Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter B. Application Processing

§1932. Time Limitations for Certain Aliens

A. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 3. ...

4. individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997.

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711(April 1999), LR 29:

§1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. - 4. ...

5. effective October 1, 2002, an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security in LR 13:656 (November 1987). Amended in LR 13:249 (August 1987), LR 17:953 (October 1991). Amended by the Department of Social Services, Office of Family Support in LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:

§1953. Income Eligibility Standards

A. The income eligibility standards for the Food Stamp Program shall be as follows.

1. - 3. ...

4. The income eligibility limits, as described in this Paragraph, are revised annually, to reflect OMB's annual adjustment to the nonfarm poverty guidelines for the 48 states and the District of Columbia, for Alaska, and for Hawaii.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:130 (March 1983), LR 29:

§1961. Adjustment of Standard Deduction

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to 6 persons with a minimum deduction of \$134. The standard deduction may be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Services.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), LR 29:

§1983. Income Deductions and Resource Limits

A. ...

B. The resource limit for a household is \$2,000, and the resource limit for a household that includes at least one elderly or disabled member is \$3,000.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:

Gwendolyn P. Hamilton
Secretary

0301#044

DECLARATION OF EMERGENCY

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

Repeal of Refugee Cash Assistance Program
(LAC 67:III.3501 and 3701-3710)

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 repeal Title 67, Part III, Chapters 37 and 39, effective January 1, 2003. This Emergency Rule will remain in effect for a period of 120 days.

Pursuant to 45 CFR Part 400, the Office of Refugee Resettlement has granted states the option of providing Refugee Cash Assistance services through a public/private partnership. The Department of Social Services has opted to provide services for RCA through a public/private partnership whereby the state will contract with refugee resettlement agencies that will provide refugee cash assistance benefits. The new program, Public Private Partnership/Refugee Cash Assistance Program, will be administered by the Office of Community Services (OCS) through contracts with various entities. OCS will promulgate rules to establish regulations governing the program under Title 67, Part V, of the Louisiana Administrative Code effective January 1, 2003. In order to prevent the duplication of services and conflicting eligibility requirements that could result in federal penalties and sanctions, the Office of Family Support will no longer administer the program and will therefore repeal Part III, Chapters 35 and 37, the Refugee Cash Assistance Program effective January 1, 2003.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Chapter 35. Administration

§3501. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with applicable sections of 45 CFR.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), repealed LR 29:

Chapter 37. Application, Eligibility and Furnishing Assistance

Subchapter A. Coverage and Conditions of Eligibility

§3701. Eligibility Determination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400(E), R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), repealed LR 29:

§3703. Eligibility Periods

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.202.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:953 (October 1991), LR 18:22 (January 1992), repealed LR 29:

§3704. Application Time Limit and Initial Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), repealed LR 29:

§3705. Coverage and Conditions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.62(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:401 (May 1984), repealed LR 24:353 (February 1998).

§3707. Resources

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3708. Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3709. Ineligibility Based on Lump Sum Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3710. Earned Income Deductions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61 and 233.20(a)(11).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

Gwendolyn P. Hamilton
Secretary

0301#007

DECLARATION OF EMERGENCY

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

TANF Initiatives
(LAC 67:III.5533, 5565, 5567, 5569, and 5571)

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 amend §5533 and adopt §§5565, 5567, 5569, and 5571, effective January 28, 2003. This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of September 30, 2002, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final rule regarding the TANF Initiatives will be published in February 2003).

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the Office of Family Support will adopt four new TANF Initiatives including Family Strengthening and Healthy Marriages Program, Parental Involvement Services Program, Alternatives to Abortion Services Program, and Parenting/Fatherhood Services Program, to further the goals and intentions of the Temporary Assistance For Needy Families (TANF) Block Grant to Louisiana. Additionally, the agency is amending §5533, Transportation Services Program, to provide low-income families with a variety of transportation services in order to overcome transportation barriers.

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. Family Support

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

Chapter 55. TANF Initiatives

§5533. Transportation Services Program

A. Effective September 30, 2002, the agency shall enter into contracts with public agencies, non-profit, or for-profit organizations to provide low-income families with transportation services to assist them in overcoming transportation barriers. These services may include but are not limited to: vehicle ownership, commuter shuttles, reverse-commute shuttles, vanpools, and other modes of transportation. The agency may also make funding available for transportation of participants in TANF Initiative Programs.

B. Eligibility for services is limited to persons participating in a TANF Initiative Program or to members of a needy family. A needy family consists of minor children, custodial and non-custodial parents, legal guardians, and caretaker relatives of minor children, who have earned income at or below 200 percent of the federal poverty level. An eligible person who is employed may be provided on-going services. An eligible, unemployed person may be provided short-term, non-recurrent services that shall not exceed four months and shall be associated with an episode of need or crisis situation.

C. Services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives or to end dependence of needy parents by promoting job preparation, work, and marriage.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), LR 29:

**§5565. Family Strengthening and Healthy Marriages
Effective September 30, 2002**

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to provide services to improve and promote family relationships, encourage marriage, reduce incidence of out-of-wedlock births, decrease the rate of divorce, and provide services that will educate and supply young people with the guidance to break the cycle of living in fatherless homes. These intervention and support services are designed to enable low-income parents to act in the best interest of their children.

B. Services offered by providers meet the TANF goals to end dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births, and to encourage the formation and maintenance of two-parent families and may be accomplished through a variety of projects including but not limited to:

1. development of an information clearing house;
2. best practices research;
3. development of a statewide network of marriage trainers and additional partners such as health care providers, members of the judiciary, and faith-based partners, to assist in implementing the initiative; and
4. development of handbooks and videos, media buys for outreach, curriculum development, and demonstration projects.

C. Eligibility for services is limited to needy families which consists of minor children, custodial and non-custodial parents, legal guardians, or caretaker relatives of minor children who have earned income at or below 200 percent of the federal poverty level.

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

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

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

**§5567. Parental Involvement Services Program
Effective September 30, 2002**

A. The Office of Family Support shall enter into contracts to provide pro bono or low cost legal services that may include: mediation; development of parenting plans or other services to obtain regular visitation arrangements with the children; or legal assistance to non-custodial parents in resolving disputes resulting from a deviation in an existing visitation order. Referrals that assist low-income, non-custodial parents to overcome social, financial, and emotional barriers that hinder access to their children will also be provided. These services are designed to enable low-income parents to act in the best interest of their children.

B. These services meet the TANF goals to end dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births, and to encourage the formation and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible fatherhood.

C. Eligibility for services is limited to non-custodial parents of minor children who have earned income at or below 200 percent of the federal poverty level.

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

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

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

**§5569. Alternatives to Abortion Services Program
Effective September 30, 2002**

A. The Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant or potentially pregnant women, their male partners, and/or minor children whose earned income is at or below 200 percent of the federal poverty level.

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

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

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

**§5571. Parenting/Fatherhood Services Program
Effective September 30, 2002**

A. The Office of Family Support shall enter into contracts with public agencies, non-profit, or for-profit organizations to create programs that will assist low-income fathers with various skills including employment, life, parenting, and other skills in order to increase their ability to provide emotional and financial support for their children, and to create a network of community- and faith-based programs that will provide linkages to and for state entities, specifically Child Support Enforcement Services.

B. These services meet the TANF goals to end the dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births and to encourage the formation and maintenance of two-parent families by eliminating emotional, social, financial, and legal barriers that hinder a father's ability to be fully engaged in his children's lives.

C. Eligibility for services is limited fathers of minor children, who have earned income at or below 200 percent of the federal poverty level.

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

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

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

Gwendolyn Hamilton
Secretary

0301#043

DECLARATION OF EMERGENCY

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

2003 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by emergency rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season and trip limit for the commercial harvest of king mackerel in Louisiana state waters.

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2003 and remain open until the allotted portion of the commercial king mackerel quota for the Western Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the Western Gulf of Mexico has been harvested or is

projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2004, which is the date expected to be set for the re-opening of the 2004 commercial king mackerel season in Federal waters.

The Commission also authorizes the Secretary to open an additional commercial king mackerel season in Louisiana state waters if he is informed that NMFS has opened an additional season and to close such season when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel. Effective with the closure, no person shall possess king mackerel in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained. Those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Terry D. Denmon
Chairman

0301#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003 Commercial Red Snapper Seasons

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF) and the National Marine Fisheries Services (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., generally three miles offshore. NMFS will provide rules for commercial harvest seasons for red snapper in the EEZ off of Louisiana. NMFS and the Gulf Council typically request consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for commercial harvest of red snapper in Louisiana state waters.

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon February 1,

2003. The commercial fishery for red snapper in Louisiana waters will close at 12 noon February 10, 2003, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month, for each month of 2003 until two-thirds (2/3) of the 2003 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that two-thirds (2/3) of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested, such closure order shall close the season until 12 noon October 1, 2003, which is the date expected to be set for the re-opening of the 2003 commercial red snapper season in Federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon October 1, 2003. The commercial fishery for red snapper in Louisiana waters will close at 12 noon October 10, 2003, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month for each month of 2003, until the remainder of the 2003 commercial quota is harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested; such closure order shall close the season until the date set for the opening of the year 2004 commercial red snapper season in Federal waters.

The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening dates for the commercial red snapper season in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the Regional Administrator of NMFS requests that the season be modified in Louisiana state waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with any commercial closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained, and those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Terry D. Denmon
Chairman

0301#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003 Recreational Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective midnight October 31, 2002 until 12:01 a.m., April 21, 2003 by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in Louisiana waters. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 2003 recreational red snapper season, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967

which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following seasons for recreational harvest of red snapper in Louisiana state waters.

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a.m., April 21, 2003 by reducing the bag limit to zero for that time period. The season will open at 12:01 a.m., April 21, 2003 and continue until midnight October 31, 2003. If the secretary is notified that the opening and closing of Federal seasons is changed, he is hereby authorized to change the opening and closing dates for state waters accordingly.

Effective with the recreational red snapper season closure, any person, except those who possess a Class 1 or Class 2 commercial red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish and who are legally taking red snapper during an open commercial season, shall not possess any red snapper whether taken from within or without Louisiana territorial waters.

Terry D. Denmon
Chairman

0301#030