

I. EXECUTIVE ORDERS
 MJF 97-43—Community/Technical College and Adult Education Task Force 1471
 MJF 97-44—State Employees Group Benefits Program Study Commission 1472

II. EMERGENCY RULES
Economic Development
 Office of the Secretary—Regional Initiatives Program (LAC 13:I.Chapter 70) 1474
 Division of Economically Disadvantaged Business Development—Economically Disadvantaged Business
 Development Program and Small Business Bonding Program (LAC 19:II.Chapters 1 and 9) 1476
Governor's Office
 Division of Administration, Office of Facility Planning and Control—Public Contracts—Closed Specifications
 for Certain Products (LAC 34:III.901) 1480
 State Land Office—Wax Lake Waterfowl Hunting Season—1997-1998 1480
Health and Hospitals
 Office of the Secretary, Bureau of Health Services Financing—Disproportionate Share Hospital
 Payment Methodologies 1481
 Home and Community Based Services—Elderly Home Care 1483
 Long-Term Hospital Reimbursement Methodology 1485
 Private Intermediate Care Facility for the Mentally Retarded—Qualifying Loss Review 1486
 Substance Abuse Clinics 1488
Natural Resources
 Office of Conservation—Fees (LAC 43:XIX.Chapter 8) 1488
Public Safety and Corrections
 Corrections Services—Juvenile Transfer to Adult Facility (LAC 22:I.335) 1490

III. RULES
Agriculture and Forestry
 Office of Agricultural and Environmental Sciences, Structural Pest Control Commission—Wood Destroying
 Insects (LAC 7:XXV.107) 1493
 Office of Animal Health Services, Livestock Sanitary Board—Brucellosis and Pseudorabies Quarantining;
 Vaccinating and Testing of Swine (LAC 7:XXI.905 and 907) 1493
Economic Development
 Licensing Board for Contractors—License, Examination and Hearings (LAC 46:XXIX.303, 503 and 703) 1495
Environmental Quality
 Office of Air Quality and Radiation Protection, Air Quality Division—Chemical Accident Prevention Program
 (LAC 33:III.Chapter 59)(AQ157) 1495
 Chemical Accident Prevention Program, Fee Adjustment (LAC 33:III.223)(AQ154) 1496
 Crude Oil and Condensate (LAC 33:III.2104)(AQ151) 1497
 Fee Adjustment for Title V Permit Program (LAC 33:III.223)(AQ153) 1498
 Limiting Volatile Organic Compound Emissions from Batch Processing (LAC 33:III.2149)(AQ159) 1507
 SOCMi Chemicals Revision (LAC 33:III.2147 and Chapter 21, Appendix A)(AQ156) 1508
 Standards of Performance for Crematories (LAC 33:III.2531)(AQ155) 1508
 Radiation Protection Division—Synthetic Organic Chemical Manufacturing Industry Vent Stream
 Exemption (LAC 33:III.2147)(AQ150) 1510
 Office of Waste Services, Hazardous Waste Division—Financial Assurance and Cleanup
 (LAC 33:V.Chapters 1, 13, 19, 37, 43, and 49)(HW052) 1510
 Office of Water Resources—Louisiana Pollutant Discharge Elimination System (LPDES) Program
 (LAC 33:IX.Chapter 23)(WP025) 1522

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Health and Hospitals

Board of Dentistry—Advertising and Soliciting by Dentists (LAC 46:XXXIII.301) 1524
Dental Practice Address (LAC 46:XXXIII.304) 1525
Dental Services at Locations Other Than Dental Office (LAC 46:XXXIII.314) 1525
Dentists and Hygienists—Continuing Education (LAC 46:XXXIII.1611 and 1613) 1526
Dentists and Hygienists—Fees for Licenses, Permits, and Examinations (LAC 46:XXXIII.415 and 419) 1526
Health Care Provider Financial Interest Disclosure (LAC 46:XXXIII.316) 1527
Licensure by Credentials (LAC 46:XXXIII.306) 1528
Motions for Continuance of Hearing (LAC 46:XXXIII.915) 1528
Restricted Licensees (LAC 46:XXXIII.105) 1528
Term of License; Renewal (LAC 46:XXXIII.409) 1529
Board of Veterinary Medicine—Appeals and Review (LAC 46:LXXXV.105) 1529

Revenue and Taxation

Sales Tax Division—Sales Tax Return—Quarterly Filing (LAC 61:I.4351) 1529

Treasury

Housing Finance Agency—Homeownership Housing Program (LAC 71:II.Chapter 3) 1530

Wildlife and Fisheries

Wildlife and Fisheries Commission—Turkey Hunting Season—1998 1535
Waddill Wildlife Refuge (LAC 76:III.325) 1538

IV. NOTICES OF INTENT

Civil Service

Civil Service Commission—Definitions; Commission Powers; Temporary Employee; Probation; Witness;
Prohibited Activities; Layoff; and Reemployment 1539

Economic Development

Office of the Secretary—Regional Initiatives Program (LAC 13:I.Chapter 70) 1541
Division of Economically Disadvantaged Business Development—Economically Disadvantaged Business
Development Program and Small Business Bonding Program (LAC 19:II.Chapters 1 and 9) 1541

Education

Board of Elementary and Secondary Education—Bulletin 1794—Textbook Grievance
Procedure (LAC 28:I.919) 1542

Governor's Office

Commission on Law Enforcement and Administration of Criminal Justice—Uniform Crime Reporting
System (LAC 22:III.5501) 1543
Crime Victims Reparations Board—Definitions and Award Payments/Limits (LAC 22:XIII.103, 501, and 503) ... 1544
Division of Administration, Office of Facility Planning and Control—Public Contracts—Closed Specifications
for Certain Products (LAC 34:III.901) 1546

Health and Hospitals

Licensed Professional Counselors Board of Examiners—Appraisal (LAC 46:LX.503) 1546
Code of Conduct (LAC 46:LX.Chapter 21) 1548
Fees (LAC 46:LX.901) 1558
Office for Citizens with Developmental Disabilities—Admission to State-Operated Developmental
Centers (LAC 48:IX.511) 1559
Office of the Secretary—Memorandum of Understanding Between the Department of Health and Hospital;
and the Capital Area Human Services District—FY 97/98 (LAC 48:I.Chapter 27) 1560
Bureau of Health Services Financing—Ambulatory Surgical Centers (LAC 48:I.4561) 1567

Natural Resources

Office of Conservation—Underwater Obstructions Removal Program (LAC 43:XI.301 and 315-331) 1567

Public Safety and Corrections

Corrections Services—Death Penalty (LAC 22:I.103) 1570
Gaming Control Board—Appeals; Petitions for Declaratory Orders and Rulings, Statutes and Rules
(LAC 42:III.115 and 116) 1572
Office of Motor Vehicles—Vehicle Registration License Tax (LAC 55:III.351, 355, and 365) 1573

Social Services

Office of Family Support—Family Independence Temporary Assistance Program (FITAP)—Alien
Eligibility (LAC 67:III.1141 and 1143) 1575
Family Independence Temporary Assistance Program (FITAP), FIND Work Program and Refugee Cash
Assistance—Eligibility Conditions (LAC 67:III.Chapter 11, and §§1503, 2909, 3701-3710) 1577
Food Stamps—Alien Eligibility (LAC 67:III.1994 and 1995) 1582
Office of the Secretary and Office of Family Support—Child Care Assistance Program (LAC 67:I.101-107)
(LAC 67:III.1181, 2913 and 5101-5109) 1583

Wildlife and Fisheries

Wildlife and Fisheries Commission—Black Bass—Daily Take and Size Limits (LAC 76:VII.149) 1584
Reef Fish Daily Take and Size Limits (LAC 76:VII.335) 1585

V. COMMITTEE REPORTS

House of Representatives

Committee on Administration of Criminal Justice—Gaming Control Board—Hearings and Appeals (LAC 42:III.108 and 114) 1587

Committee on Insurance—Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results 1587

VI. POTPOURRI

Agriculture and Forestry

Office of Agricultural and Environmental Sciences, Horticulture Commission—Retail Floristry Examination 1589

Environmental Quality

Office of Air Quality and Radiation Protection—Revision to St. James Parish Redesignation Plan 1589

Air Quality Division—Consolidated Fugitive Emission Control Program 1589

Office of Water Resources—Penalty Policy Draft Proposal—Request for Comments 1589

Governor's Office

Division of Administration, Office of Community Development—Fiscal Year 1998 Consolidated Annual Action Plan 1590

Health and Hospitals

Board of Veterinary Medicine—1998 Meeting Dates 1591

1998 Spring/Summer Examination Dates 1591

Insurance

Office of the Commissioner—Annual Assessment Percentage 1592

Natural Resources

Office of Conservation—Orphaned Oilfield Sites 1592

Executive Orders

EXECUTIVE ORDER 97-43

Community/Technical College and Adult Education Task Force

WHEREAS: the State of Louisiana recognizes the importance of having a flexible and responsive community/technical college and adult education system that is focused on providing an effective labor force adapted to the foreseeable needs of the businesses and industries in the state;

WHEREAS: the existing disparity between business needs and labor skills will broaden unless the community/technical college and adult education system and workforce development programs within the State of Louisiana adapt to the foreseeable and projected skilled labor and educational needs of the businesses and industries within the state;

WHEREAS: the State of Louisiana would benefit from an evaluation of its community/technical college and adult education system, which is currently governed by several different boards, to determine the ability of the system to effectively respond to Louisiana's future skilled labor needs and to determine whether operational and/or structural changes should be implemented to enable the state's skilled labor force to meet the foreseeable and projected needs of the state's businesses and industries; and

WHEREAS: the interests of the citizens of the State of Louisiana can be best served by the creation of a task force on community/technical college and adult education, composed of representatives of business, labor, education, the executive branch, and the legislature, that is focused on the evaluation of Louisiana's future workforce needs and recommending the strategies and structures that are necessary to strengthen Louisiana's community/technical college and adult education system so that the state will have a workforce that will be more competitive in global markets;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Community/Technical College and Adult Education Task Force (hereafter "task force") is established within the Executive Department, Office of the Governor.

SECTION 2: The duties of the task force shall include, but are not limited to, the following:

A. analyzing the economic and demographic trends which affect the State of Louisiana, and evaluating the impact of these trends upon the economic competitiveness of the businesses and industries within the state and the ability of Louisiana's skilled labor force to meet the foreseeable and projected needs of those businesses and industries;

B. assessing the strengths and weaknesses of the State of Louisiana's community/technical college and adult

education system in order to develop strategies necessary for present and future businesses and industries within the state to have a skilled workforce that enables them to compete successfully in global markets;

C. examining the efforts of other states in responding to the economic and demographic conditions or challenges faced by the businesses and industries in those states which are similar to the conditions or challenges faced by the businesses and industries in Louisiana, particularly with regard to those states' community/technical college and adult education strategies;

D. identifying operational strategies and/or governance structures which would improve the performance of Louisiana's community/technical college and adult education system to enable it to better respond to the foreseeable and projected skilled labor needs of Louisiana's present and future businesses and industries; and

E. recommending legislation which would improve Louisiana's ability to respond to and meet the foreseeable and projected skilled labor needs of the state's present and future businesses and industries.

SECTION 3: The task force shall be composed of 28 members appointed by, and serving at, the pleasure of the Governor. The membership of the task force shall be selected as follows:

A. the chief of staff, Office of the Governor, or the chief of staff's designee;

B. the chairs of the Senate Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

C. two additional members of the Senate to be nominated by the president of the Senate;

D. the chairs of the House Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

E. two additional members of the House of Representatives to be nominated by the speaker of the House of Representatives;

F. the secretary of the Department of Labor, or the secretary's designee;

G. the secretary of the Department of Economic Development, or the secretary's designee;

H. the superintendent of Education, or the superintendent's designee;

I. the commissioner of Higher Education, or the commissioner's designee;

J. three members of the Board of Elementary and Secondary Education, or the members' designees;

K. three representatives of higher education;

L. two representatives of organized labor; and

M. seven representatives of business and industry.

SECTION 4: The Governor shall select the chair and vice-chair of the task force from its membership. The membership of the task force shall elect all other officers.

SECTION 5: The task force shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 6: Support staff for the task force and facilities for its meetings shall be provided by the Office of the Governor and outside sources as necessary.

SECTION 7: The task force shall submit to the Governor its report on the issues described in Section 2, no later than February 15, 1998.

SECTION 8: Task force members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, members who are not an employee of the State of Louisiana or one of its political subdivisions, or an elected official, may receive reimbursement from the Office of the Governor or actual travel expenses incurred, in accordance with state guidelines and procedures, and upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the task force in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge on this 24th day of October, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#072

EXECUTIVE ORDER MJF 97-44

State Employees Group Benefits Program Study Commission

WHEREAS: it is the responsibility of government, not only to provide a benefits program for its employees that includes a quality health insurance product, but also to periodically review and improve the governance, professional management, and accountability of that benefits program;

WHEREAS: to fulfill this duty, the State Employee Group Benefits Program (hereafter "SEGBP") was created to provide affordable health care to its members, who are the employees and retirees of the State of Louisiana;

WHEREAS: members of the SEGBP have raised a number of concerns regarding the implementation of the SEGBP health care program that should be heard in a public forum and then thoroughly reviewed, including premium increases, reductions in the number of available health care providers, and the manner in which claims are handled; and

WHEREAS: the interests of the members of the SEGBP can be best served by the creation of a commission, composed of members of the legislature, the executive branch, the SEGBP, and the health care community to study the issues raised by the SEGBP members and recommend appropriate solutions to resolve their concerns;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested through the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The State Employees Group Benefits Program Study Commission (hereafter "commission") is created and established within the Executive Department, Office of the Governor.

SECTION 2: The duties and functions of the commission shall include, but are not limited to, the following:

A. analyzing the SEGBP program; examining options for affordable health care from a variety of health care providers; examining industry standards for acceptable claim handling practices; examining industry standards for the governance, professional management and structure of a state health care program; and examining the benefits packages, the options, and the cost structure of the health care programs of other states;

B. studying the feasibility of improving the SEGBP through privatization; by providing legislative contractual review and oversight; and/or through rules and/or legislation designed to ensure that the SEGBP provides quality and affordable services to its members; and

C. conducting public hearings to receive input from SEGBP members, stakeholders and others that are impacted or affected by the SEGBP.

SECTION 3: The commission shall submit a comprehensive written report to the Governor by February 1, 1998, which addresses the issues set forth in Section 2.

SECTION 4: The commission shall be composed of 29 members who shall be appointed by and serve at the pleasure of the Governor. The members shall be selected as follows:

A. the chief of staff, or the chief of staff's designee;

B. the commissioner of Administration, or the commissioner's designee;

C. the commissioner of Insurance, or the commissioner's designee;

D. the secretary of the Department of Health and Hospitals, or the secretary's designee;

E. the legislative auditor, or the legislative auditor's designee;

F. one director of human resources management from a state college or university;

G. three members of the Louisiana House of Representatives;

H. three members of the Louisiana Senate;

I. one retired state employee who is a member of the SEGBP;

J. one current state employee who is a member of the SEGBP;

- K. one current SEGBP board member;
- L. one representative of health insurance providers;
- M. one representative of health care providers;
- N. one representative of the Louisiana Managed Healthcare Association, nominated by the association;
- O. one health industry business representative;
- P. one private corporation human resource representative;
- Q. two physicians;
- R. one representative of the AFL-CIO; and
- S. six at-large members.

SECTION 5: The Governor shall appoint the chair from its membership. All other officers shall be elected by the commission.

SECTION 6: The commission shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7: A simple majority of the members of the commission shall constitute a quorum for the transaction of business. All actions of the commission shall require a majority vote of the members of the commission.

SECTION 8: Commission members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, commission members who are not

employed by the state or an elected official may receive reimbursement for actual travel expenses, in accordance with state guidelines and procedures, upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until March 31, 1998, or until amended, modified, terminated, or rescinded by the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of October, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#008

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Regional Initiatives Program (LAC 13:I:Chapter 70)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 51:2341, the Department of Economic Development, Office of the Secretary hereby finds that emergency action is deemed necessary for the timely implementation of funding grants for economic development related to regional economic development marketing efforts under the provisions of the Regional Initiatives Program.

This emergency rule is effective November 10, 1997, and shall remain in effect for 120 days or until adoption of the rule, whichever occurs first.

Title 13

ECONOMIC DEVELOPMENT

Part I. Commerce and Industry

Subpart 3. Financial Incentives

Chapter 70. Regional Initiatives Program

§7001. Purpose

The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7003. Definitions

Applicant—the entity requesting financial assistance from DED under this program.

Award—grant funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

DED—Louisiana Department of Economic Development.

Operating Costs—ongoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program—the Regional Initiatives Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7005. General Principles

The following principles will direct the administration of the Regional Initiatives Program:

1. awards should be considered to be one time only funding to achieve a specific goal for a regional (multiparish) economic development organization or coalition of organizations;

2. grant proposals must delineate clearly what is proposed and what is to be achieved by the award;

3. awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment;

4. projects to be funded must augment the Louisiana Economic Development Council's plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7007. Eligibility

An eligible applicant for the grant award can include, but is not limited to, one of the following:

1. an existing regional economic development organization;

2. local chambers of commerce;

3. local economic development organizations;

4. multiparish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;

5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7009. Criteria

A. Preference will be given to projects that are regional (multiparish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Resolutions must be provided that the proposed project has the support of the parish government and the prevailing economic development organization(s), whether public or private.

E. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

F. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7011. Application Procedure

The applicant must submit an application on a form provided by DED which shall contain, but not be limited to, the following:

1. a narrative proposal (maximum of five pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested;
2. quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables;
3. a detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project;
4. résumé(s) of consultants involved with the project;
5. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7013. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and region;
2. determine whether the project's funding requirements are best met by the proposed award;
3. validate the information presented;
4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary. If the secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

2. The secretary will issue a letter of commitment to the applicant within five working days of the application review and approval.

3. The final 25 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7015. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify

the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's in-kind match.

2. Project costs ineligible for award funds include, but are not limited to:

- a. ongoing operating costs;
- b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12½ percent of the total project cost may be in-kind. For the purposes of this program, in-kind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

3. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress toward the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event an awardee knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

Kevin P. Reilly
Secretary

9711#039

DECLARATION OF EMERGENCY

**Department of Economic Development
Office of the Secretary
Division of Economically Disadvantaged
Business Development**

Economically Disadvantaged Business
Development Program and Small Business
Bonding Program (LAC 19:II.Chapters 1 and 9)

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development hereby amends and enacts rules pertaining to direct bonding assistance for economically disadvantaged businesses. The secretary of the Department of Economic Development is exercising the emergency provision to publish these rules because of a recognized immediate need to provide small economically disadvantaged businesses with direct bonding assistance.

Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the effective growth and development of the economically disadvantaged businesses. Such developmental disruption would result in lower market productivity, diminished job creation and increased risk of higher unemployment. These emergency rules are intended to mitigate the disruptions described above. These emergency rules are effective November 20, 1997, and will remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 19

CORPORATIONS AND BUSINESS

**Part II. Economically Disadvantaged Business
Development Program**

Chapter 1. General Provisions

§105. Definitions

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

* * *

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

RFP—Request for Proposal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

§107. Eligibility Requirements for Certification

A. - B. ...

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

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

3. Net Worth. Each individual owner's personal net worth may not exceed \$150,000.

4. Income. Each individual owner must submit personal federal income tax returns for the past three years.

C. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A.1. - 6.d. ...

7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:

§903. Direct Bonding Assistance

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

B. Application Process

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

2. Manager of BAP or designee will:

a. determine and document that business is eligible to participate in program;

b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;

c. determine worthiness of the project based on advice and input from surety coordinator and management construction/risk management company; and

d. make recommendation to executive director as required pertaining to specific project.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance.

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

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

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

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§905. Calculation of Guarantee Fee Deduction

A. Upon the contractor obtaining the RFP or contract for which BAP is guaranteeing a bid, payment or performance bond, the surety shall pay BAP a portion of the bond fee paid by the contractor.

1. The surety shall pay BAP a bond guarantee fee not to exceed 2 percent of the bond guarantee or LC.

2. BAP will deem acceptable bond premium charges which are:

a. authorized by the state insurance department rules or by applicable statutes; and

b. a minimum bond premium regardless of the contract price, if this minimum charge does not exceed \$250 and has been authorized by the appropriate state insurance department.

B. BAP will not recommend approval of an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate state insurance department.

C. BAP will not approve placement or finder's fees, fees for the use or attempted use of influence in obtaining or trying to obtain a surety bond guarantee or any part thereof. Agents

and brokers shall be compensated by surety companies for their efforts through the commission system, based upon fees charged to the applicant contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§907. Management Construction/Risk Management Company

A. Surety shall require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;

2. job cost breakdown and bid preparation assistance;

3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;

4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;

5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§909. Underwriting a BAP Guaranteed Bond

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

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

1. Bonds

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

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

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and

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

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

3. Ineligible Bond Situations and Exceptions

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

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

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

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

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

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

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

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

C. The surety must satisfy to BAP that there is reasonable expectation that the economically disadvantaged business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the economically disadvantaged business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted

on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

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

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

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

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

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

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

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

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

vii. the surety shall pay BAP a portion of the bond premium in accordance with BAP rules.

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

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the executive director's exercise of

the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

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

3. **Default**

a. **Notice of Default.** Ordinarily, BAP first is notified by the surety that a particular contractor is in trouble. Where BAP receives information from other sources indicating a contractor is in trouble, the information is to be relayed to the surety for its information and appropriate action.

b. **Default Claims, Indemnity Pursuit, and Settlement**

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

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

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file. The surety shall strongly consider the use of a collection agency versus attorneys on all indemnity actions, if it appears feasible and economically beneficial.

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

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

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

assure that BAP has been correctly credited with all funds recovered from any and all sources.

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§913. Audits

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§915. Ancillary Authority

The executive director, with the approval of the undersecretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

Henry Stamper
Executive Director

9711#017

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

**Public Contracts—Closed Specifications
for Certain Products (LAC 34:III.901)**

In accordance with R.S. 49:953(B) and R.S. 38:2290(B), the Office of Facility Planning and Control adopts the following emergency rule governing the closing of specifications for products that are necessary to expand or extend existing systems but for which a person or group of persons possesses the right to exclusive distribution. This emergency rule is being adopted in direct compliance with Act 678 of the 1997 Regular Session.

Under current purchasing procedures, products for the systems listed in the rule must be purchased separately from the construction contract and turned over to the contractor for installation. This causes a risk of improper installation and reduces the contractor's responsibility for the proper functioning of the system. The emergency rule will make it possible to include the products in the construction contract and improve the quality of installation and obtain a single source of responsibility.

This emergency rule is effective upon publication in the *Louisiana Register* and remains in effect for 120 days or until a final rule takes effect through the normal rulemaking process, whichever occurs first.

Adoption of this rule on an emergency basis is necessary in order to proceed immediately with the bidding of currently funded and designed sprinkler system projects which are required by Act 422 to be completed prior to January 1999. These systems require monitoring equipment that will electronically match the monitoring equipment of the existing fire alarm systems and will benefit substantially from the adoption of this rule. To delay bidding of these projects until this rule is adopted through the normal rulemaking process would jeopardize the timely completion of this work.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 9. Public Contracts

§901. Closed Specifications for Certain Products

A. This rule applies to the closing of specifications to products that are necessary to expand or match products in existing systems but for which a person or group of persons possesses the right to exclusive distribution.

B. A closed specification may be submitted and authorized where a person or group of persons possesses the right to exclusive distribution of the specified product when that product is required to expand or extend an existing system at a facility or site if that product is one of the systems listed in §901.B.1-11, or a component of one of them, and the approving authority has determined that all products other than the one specified would detract from the utility of the

system; and all other applicable requirements of R.S. 38:2290-2296 have been met:

1. energy management systems;
2. chillers when necessary for refrigerant conversion;
3. fire alarm systems;
4. electronic security systems;
5. elevators;
6. nurse call systems;
7. medical gas systems;
8. stage lighting systems;
9. sound systems;
10. clock systems;
11. brick and stone.

C. It is the responsibility of the approving authority to verify that the product for which the specification is closed is the only acceptable product and to comply with all applicable requirements of R.S. 38:2290-2296.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B) and R.S. 38:2290(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 24:

Roger Magendie
Director

9711#035

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
State Land Office**

Wax Lake Waterfowl Hunting Season—1997-1998

The Division of Administration, State Land Office has adopted the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., which emergency rule is effective November 1, 1997 and remains in effect for 120 days.

Emergency adoption is necessary because of a dispute between the State of Louisiana and Miami Corporation over the ownership of water bottoms and accretion areas generally between the north end of Wax Lake and the mouth of Little Wax Bayou. Miami Corporation has previously granted hunting leases to various parties in this area; and the State previously posted signs in this area evidencing the State's claims, leading some members of the public to assume that the area was open to unlimited hunting and other access, including the right to construct permanent hunting blinds in the area. Problems exist with enforcement of trespass laws in that portion of the Wax Lake Area claimed by Miami Corporation and the State during duck hunting season; therefore, both Miami Corporation and the State are united in their efforts to avoid any confrontation among armed hunters in this area and deem it advisable to create a uniform set of rules for use of the area during the opening hunting season.

Emergency Rule

Effective November 1, 1997 and thereafter, the State Land Office adopts the following rules to govern use of the area of Wax Lake claimed by the State (which has been marked on the ground by State Land signs on perimeter trees) for hunting during the duration of the 1997-1998 waterfowl hunting season:

1. For purposes of these regulations, "Wax Lake Area" shall include lands and water bottoms within Sections 34, 35, 44, and 45, Township 16 South, Range 10 East, St. Mary Parish, said area generally lying between the north limit of Wax Lake and the mouth of Little Wax Bayou. The lands and water bottoms within the Wax Lake Area are subject to competing claims of the State and private landowners.

2. No one shall use marsh buggies within the Wax Lake Area. Air boats shall be allowed within the channel of Wax Lake Outlet only.

3. Certain improvements have been placed on the area by parties claiming through private landowners. Pending resolution of the title disputes between the State and those landowners, those improvements may remain in place, and any new permanent improvements shall be spaced a minimum of 500 feet from any existing or newly constructed improvements. All blinds, stands, or other improvements placed on the lands or water bottoms for use in hunting shall be removed upon termination of the legal hunting seasons. Other than such temporary hunting blinds as may be constructed for personal use, no party shall construct any buildings, levees, dams, fences, or other structures or facilities on the lands or water bottoms within the Wax Lake Area, nor dredge or dig any additional canals, ditches, or ponds thereon or otherwise change or alter the premises in any manner.

4. No member of the public is allowed to "stake a claim" to any particular location within areas owned or claimed by the State of Louisiana for any purpose. Construction of permanent blinds shall not give such party any right to exclude others.

Mark C. Drennen
Commissioner

9711#005

DECLARATION OF EMERGENCY

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

**Disproportionate Share
Hospital Payment Methodologies**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This emergency rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum

period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

Disproportionate Share Hospital (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which amended §1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal legislation and to avoid a budget deficit in the medical assistance program, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under the methodology, public state-owned hospitals received DSH payments equal to 100 percent of the hospital's net uncompensated cost, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

Effective March 20, 1997, the department adopted an emergency rule pursuant to Act Number 17 (House Bill Number 1) of the 1996 Legislative Session that provided for separate treatment of disproportionate share funds for uncompensated cost in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals.

The following emergency rule implements Act Number 1485 of the 1997 Legislative Session, which provides that all rural hospitals meeting the requirements of Act 1485 are to receive maximum disproportionate share funding in amounts appropriated by the legislation.

Failure to adopt this emergency rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these rural hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients. It is estimated that the federal expenditure will be \$13,760,140.

Emergency Rule

Effective November 3, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies and establishes the following regulations to govern the disproportionate share hospital payment methodologies:

I. General Provisions

A. Reimbursement will no longer be provided for indigent care as a separate payment to hospitals qualifying for disproportionate share payments.

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

C. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments