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# Executive Orders

## EXECUTIVE ORDER MJF 97-14

### Emergency Response Commission

WHEREAS: Executive Order MJF 96-48, signed on October 17, 1996 establishes the Louisiana Emergency Response Commission (hereafter "Commission"); and

WHEREAS: it is necessary to expand the membership of that Commission to include three additional at-large members;

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: Section 1 (I) of Executive Order MJF 96-48 is amended to provide as follows:

I. Ten at-large members.

SECTION 2: All other Sections and Subsections of Executive Order MJF 96-48 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.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 3rd day of March, 1997.

M.J. "Mike" Foster  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#011

## EXECUTIVE ORDER MJF 97-15

### Violence-free Workplace

WHEREAS: the goal of the State of Louisiana is to have all the officers and employees in state government work in a violence-free workplace;

WHEREAS: a peaceful and secure work environment facilitates productivity and job performance;

WHEREAS: the occurrence of violence, aggressive acts, and verbal or nonverbal threatening behavior and harassment in the workplace has a negative impact on the officers and employees of state government and the public they serve; and

WHEREAS: developing and maintaining a violence-free workplace requires both the commitment of management and the involvement of the officers and employees of state government working to achieve the same goal;

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

SECTION 1: The goal of the State of Louisiana is to achieve and maintain a violence-free workplace.

SECTION 2: The Commissioner of Administration (hereafter "commissioner") shall develop and promulgate guidelines and a model plan for a violence-free workplace by April 1, 1997. The guidelines and a model plan shall provide practical information on the prevention of workplace violence and on the mitigation of its ill effects, specifically including information on the following:

A. prohibiting acts or threats of violence, by or against state officers and employees, at all work sites and whenever official state business is being conducted;

B. minimizing the chance of exposure of state officers and employees to violent, threatening, or harassing situations by implementing effective security measures and administrative procedures and practices;

C. analyzing each state work site from the perspective of preventing the occurrence and minimizing the effects of any violent, threatening, and harassing situations; and

D. educating state officers and employees to increase their awareness about security, health, and safety concerns and training them how to properly respond in the event that a violent, threatening, or harassing situation occurs.

SECTION 3: By January 1, 1998, each state agency shall implement a plan to maintain a violence-free workplace. Each agency's plan shall incorporate the guidelines and model plan promulgated by the commissioner, tailoring them to the specific needs of the agency. Each agency shall also provide seminar(s) for its officers and employees to educate and train them regarding the prevention of workplace violence. The commissioner shall monitor the implementation of each agency's plan, and shall report his findings and conclusions to the Governor by March 15, 1998.

SECTION 4: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the commissioner in implementing the provisions of this Order.

SECTION 5: This Order is effective upon signature of the Governor and shall continue 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 5th Day of March, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#020

#### EXECUTIVE ORDER MJF 97-16

##### International Trade Commission

WHEREAS: Executive Order MJF 97-12, signed on February 21, 1997, established the Louisiana International Trade Commission (hereafter "commission"); and

WHEREAS: it is necessary to amend a provision in the Order;

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: Section 5 of Executive Order MJF 97-12, is amended to provide as follows:

The membership of the commission shall elect all of its officers.

SECTION 2: All other Sections and Subsections of Executive Order MJF 97-12 shall remain in full force and effect.

SECTION 3: 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 6th day of March, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#010

#### EXECUTIVE ORDER MJF 97-17

##### Board of Parole

WHEREAS: the Board of Parole (hereafter "the board"), created within the Department of Public Safety and Corrections by R.S. 15:574.2, consists of seven members appointed by and serving at the pleasure of the Governor;

WHEREAS: R.S. 15:574.2 (A)(1) only provides for the position of chairman of the board (hereafter "chair"); and

WHEREAS: in order for the board to function more effectively, it is necessary to create a position of vice-chair;  
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 position of vice-chair of the Board of Parole is hereby created. The Governor shall select the vice-chair from its membership.

SECTION 2: The vice-chair shall not receive any compensation in addition or supplemental to the annual salary for members of the board set forth in R.S. 15:574.2 (A)(3).

SECTION 3: The vice-chair shall preside in the absence of the chair and shall, in addition to such other duties assigned by the Governor, be responsible for developing and administering the schedule of parole hearings in accordance with R.S. 15:574.4 (B)(1), and preparing for the board, for its adoption, such rules, regulations, and procedures deemed necessary and proper to facilitate the effective operation of the board.

SECTION 4: The chair and the vice-chair shall work with the Governor's executive counsel and assistant executive counsel in accomplishing the duties set forth in Section 3 of this Order.

SECTION 5: This Order is effective upon signature of the Governor and shall continue 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 11th day of March, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#019

#### EXECUTIVE ORDER MJF 97-18

##### Bond Allocation—Housing Finance Agency

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

**EXECUTIVE ORDER MJF 97-19**

**Federal Property Assistance Program**

WHEREAS: the Louisiana Housing Finance Agency has requested an allocation from the 1997 Ceiling to be used in connection with financing mortgage loans for first time home buyers throughout the State of Louisiana, in accordance with the provisions of Section 143 of the *Internal Revenue Code* of 1986, as amended;

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 bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$50,000,000	Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bonds

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that such bonds are delivered to the initial purchasers thereof on or before June 10, 1997.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code* of 1986, as amended.

SECTION 6: 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 12th day of March, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#023

WHEREAS: Public Law 94-519, enacted on October 17, 1976, amended the Federal Property and Administrative Act of 1949, 40 U.S.C. §484 et seq., to permit the donation of federal surplus personal property to the states and local organizations for public purposes and for other purposes;

WHEREAS: the General Services Agency within the Executive Branch of the United States Government is the designated federal agency which allocates the surplus property among the states in a fair and equitable manner pursuant to criteria which are based on need and utilization;

WHEREAS: after the administrator of General Services transfers the surplus property to a designated state agency, the property is distributed by the state agency 1) to public agencies for use in carrying out or promoting for the residents of a given political area public purposes, which include conservation, economic development, education, parks and recreation, public health and public safety; and 2) to nonprofit educational or public health institutions or organizations, including medical institutions, hospitals, health clinics, schools, colleges, universities, schools for the mentally retarded or physically handicapped, child care centers, and certain radio and television stations;

WHEREAS: before any property may be transferred to a state agency by the administrator of General Services, the state shall develop, according to state law, a detailed plan of operation, developed in conformity with federal law, which includes adequate assurance for the federal government that the state agency has the "necessary organizational and operational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups";

WHEREAS: a permanent, revised plan of operation must be submitted to the administrator of General Services for approval in order that the state and/or state program may continue to qualify under Public Law 94-519; and

WHEREAS: in addition to the federal surplus personal property that may be transferred to the states pursuant to the Federal Property and Administrative Act of 1949, as amended, under 10 U.S.C. §2576 a, added by Public Law 104-181, the secretary of Defense may also transfer to federal and state agencies the personal property of the Department of Defense, including small arms and ammunition, which the secretary of Defense determines is excess to the needs of the Department of Defense, but suitable for use by state and federal agencies in law enforcement activities, such as counter-drug and counter-terrorism actions;

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 Louisiana Federal Property Assistance Agency is hereby renamed the Federal Property Assistance Program (hereafter "program").

SECTION 2: The program shall submit a revised Plan of Operation to the administrator of General Services for approval so that the state and/or the public agencies in the State of Louisiana may participate or continue to participate as donees under the Federal Property and Administrative Services Act of 1949, as amended.

SECTION 3: The program shall be the agency within the State of Louisiana that is responsible for carrying out the provisions of the Plan of Operation, as approved by the administrator of General Services, and the counter-drug program, as prescribed by the secretary of Defense.

SECTION 4: The program shall be a unit within the Louisiana Property Assistance Agency (hereafter "agency"), a section of the Division of Administration, within the Executive Branch, Office of the Governor. The program manager shall report to the commissioner of Administration, through the director of the agency.

SECTION 5: The director of the agency, acting through the program manager, shall possess all power and authority

necessary to exercise and perform all the functions, duties, and responsibilities cited in both the revised Plan of Operation and the counter-drug program, so as to comply with all applicable state and federal laws and regulations.

SECTION 6: All departments, commissions, boards, agencies, and officers of the state, and any political subdivisions thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 7: Upon signature of the Governor, the provisions of this Order shall be retroactive to January 1, 1997 and shall continue 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 17th day of March, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9704#021

# Emergency Rules

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Agro-Consumer Services  
Weights and Measures Commission

Bar Code Scanning Devices (LAC 7:XXXV.Chapter 175)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 3:4608, the Commissioner of Agriculture and Forestry finds that this Emergency Rule setting forth amendments to the weights and measures Regulations governing the use of bar code scanning devices is necessary in order to protect the welfare of the citizens of Louisiana.

Due to recent publicity regarding the accuracy of scanning devices in commerce and the receipt of several citizen complaints regarding overcharges, the Commissioner conducted a baseline survey of businesses in Louisiana which use scanning devices in order to establish the accuracy of the scanning devices. The results of the survey were presented at a duly noticed and constituted meeting of the Weights and Measures Commission held on November 12, 1996, with the results indicating that consumers are overcharged an average of 2.73 percent per transaction. Following receipt of the survey results, the Department immediately began the process of amending the weights and measures Regulations through the normal promulgation process to put into place an inspection and enforcement program governing the use of bar code scanning devices. The normal promulgation process pursuant to the Administrative Procedure Act will not be complete for several months. The lack of an inspection and enforcement program for bar code scanning devices would cause imminent peril to public health, safety, and welfare of the citizens of this state in that citizens would continue to be overcharged in this, the busiest consumer spending period of the year.

In order to insure protection of the consumer pending final adoption of this Rule through the normal promulgation process, the Commissioner declares an emergency to exist and adopts by emergency process the following Emergency Rule setting forth an inspection and enforcement program for bar code scanning devices.

The effective date of this Emergency Rule is March 31, 1997, and it shall be in effect for 120 days or until the final Rule takes effect through the normal promulgation process, whichever occurs first.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XXXV. Agro-Consumer Services

#### Chapter 175. Weights and Measures

#### §17501. Specifications, Tolerances and Regulation for Commercial Weighing and Measuring Devices

The Commissioner of Agriculture and Forestry, under authority conferred by the Louisiana Revised Statutes of 1950, Title 3, Section 4608, and for the enforcement of requirements applicable to the equipment therein referred to, hereby adopts by reference all rules, regulations, standards, specifications and tolerances as contained in the *National Bureau of Standards and Technology Handbook H-44*, and amendments thereto, entitled *Specifications, Tolerances, and Regulations for Commercial Weighing and Measuring Devices*, and as contained in the National Conference on Weights and Measures Publication 19 entitled *Examination Procedure for Price Verification*, but only insofar as the Louisiana Revised Statutes of 1950, as amended, may provide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4606 and R.S. 3:4608 (formerly R.S. 55:4 and R.S. 55:6).

HISTORICAL NOTE: Adopted by the Department of Agriculture, Commission of Weights and Measures, April 1953, amended and promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1530 (December 1993), amended by the Weights and Measures Commission, LR 23:

#### §17502. Definitions

Wherever in these Regulations the masculine is used, it includes the feminine and vice versa; wherever the singular is used, it includes the plural and vice versa.

\* \* \*

*Hand-held Scanning Device*—a portable device that scans UPC codes that allows for the comparison of the price displayed on a shelf, item, or otherwise advertised, to the price for the item in the point-of-sale database.

\* \* \*

*Point-of-Sale*—an assembly of elements including a weighing element, indicating element, and receiving element (which may be equipped with a scanner) used to complete a direct sale transaction.

*Price Look-Up Code or PLU*—a pricing system where numbers are assigned to items or commodities and the price is stored in a data-base for recall when the numbers are manually entered. PLU codes are used with scales, cash registers, and point-of-sale items.

\* \* \*

*Scanner or Scanning Device*—an electronic system that employs a laser bar code reader to retrieve product identity, price and other information stored in computer memory.



*Universal Product Code* or *UPC*—a unique symbol that consists of a machine-readable code and human-readable numbers.

*Weights, Measures, or Weighing and Measuring Devices*—all weights, scales, scanners, taxi meters, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any such instruments. However, it does not include or refer to devices used to meter or measure, other than by weight, water, natural or manufactured gas, electricity, or motor fuel.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:4603 (formerly R.S. 55:3).

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Commission of Weights and Measures, LR 13:157 (March 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1531 (December 1993), amended by the Weights and Measures Commission, LR 23:

**§17514. Bar Code Scanning Devices and Labels**

A. The price of a commodity or item offered for retail sale which is labeled with a computerized bar code label shall be plainly displayed, either by a price marked in English on the package containing the individual commodity or item, or by a placard or card placed on the shelf in front of the commodity or item which is clearly visible and legible.

B. The price displayed on the shelf, commodity or item required by Subsection A of this Section shall be precisely equal to the price actually charged by the seller.

C. In calculating violations of this Section, multiple items contained in the same lot shall constitute one violation.

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

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1533 (December 1993), amended by the Weights and Measures Commission, LR 23:

**§17522. Fee Schedule**

A. - D. ...

E. The registration fee for each location utilizing scanning devices shall be as follows:

Category	Number of Point-of-Sale Devices	Fee
A	1 to 10	\$ 50
B	11 to 25	\$100
C	Over 25	\$150

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

**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 by the Weights and Measures Commission, LR 23:

**§17523. Registration**

A. Each commercial weighing and measuring device in use in Louisiana shall be registered annually with the Division insofar as is specified in this Regulation.

B. - C. ...

D. Scanning devices shall be registered according to the following criteria:

1. make;
2. model;
3. serial number; and
4. number of point-of-sale devices.

E. A late fee of \$25 will be assessed for each device, the maximum penalty of \$100 per outlet, when the application is submitted after December 31.

F. A late fee of \$25 will be assessed for each new device not registered within 30 days from the date it is put into service.

G. A compound weighing device shall be considered one or more devices for the purpose of registration in accordance with the following:

1. A compound weighing device that consists of a single load receiving element and more than one indicating element shall be considered a single device when all indicating elements may be tested during the same test for the purpose of sealing the device as correct. Said device shall be considered separate devices for each separate test necessary for sealing.
2. A compound weighing device that consists of one indicating element and more than one load receiving element shall for the purpose of registration be considered a separate device for each load receiving element.

H. Applicants for registration may request application forms, verbally or in writing, from the Division of Weights and Measures of the Department of Agriculture and Forestry.

I. Each application for annual registration shall be accompanied by payment of required fee and said registration shall be valid until December 31. To remain valid, each annual registration must be renewed before January 1. The initial annual registration and fees due for scanning devices for calendar year 1997 shall be payable on or before April 30, 1997. Registration renewals and fees due for scanning devices for calendar years after 1997 shall be due and payable as set forth in this Section.

J. Any registration obtained without complying with all of the requirements of these Regulations may be voided by the Division.

K. Before a device may be sealed to certify the accuracy and correctness of a device, that device must be registered with the Division of Weights and Measures of the Louisiana Department of Agriculture and Forestry.

L. In accordance with R.S. 3:4611, no one shall use a weight, measure or weighing or measuring device which has not been sealed by the Division, its director, or its inspectors, at its direction, within the year prior thereto, unless written notice has been given to the Division to the effect that the weight, measure or weighing or measuring device is available for examination or is due for re-examination.

M. Application for registration or renewal of registration shall fulfill the requirement of notification in Subsection L of this Section.

N. Applications for annual renewal of registration shall be mailed by the Division of Weights and Measures of the Department of Agriculture and Forestry to all registrants, at

the last address provided by the registrant, on or before November 15 and must be returned before January 1.

O. The record of all registrations shall be maintained by the Division of Weights and Measures and the director of the Division of Weights and Measures in its office in Baton Rouge.

P. Any registrant having a device registered under provisions of this Regulation, and that is taken out of commercial use at the location shown on the application for registration, shall notify the Commission's Office in writing to remove said device from its records.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4603 (formerly R.S. 55:3).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Commission of Weights and Measures, LR 13:158 (March 1987), amended LR 15:78 (February 1989), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1534 (December 1993), amended by the Weights and Measures Commission, LR 23:

Bob Odom  
Commissioner

9704#009

## DECLARATION OF EMERGENCY

Office of the Governor  
Division of Administration  
Architects Selection Board

Interview Procedure; Voting (LAC 4:VII.128)

In accordance with R.S. 38:2310 et seq., as amended, the Rules governing the voting procedure of the Architects Selection Board are hereby amended. This Emergency Rule is to be effective upon publication in the *Louisiana Register* and will remain in effect for 120 days or until a final Rule takes effect through the normal rulemaking process.

Emergency rulemaking is necessary in order to proceed immediately with the selection of a designer for the Capitol Complex—North Building. This selection is imminent and will benefit from the revised procedure by having more qualified architects included in the interview procedure.

### Title 4

### ADMINISTRATION

#### Part VII. Governor's Office

#### Chapter 1. Architects Selection Board

#### Subchapter B. Selection Procedure

#### §128. Interview Procedure

A.1. - 3.c. ...

4. The selection procedure (§127) will be followed from Subsections A and B.1, 2, 3, 4, and 6. However, if an applicant is not selected unanimously on the first ballot, the following procedure will be implemented.

a. After the results of the weighted ballot are reported, the board secretary will list all applicants receiving one or more points. They will be listed in order, ranked by number of points from highest to lowest.

b. After the list is prepared, there will be a roll call vote on each applicant starting with the first applicant on the list. Voting for each applicant will take place in the order that he is listed. Each applicant on the list will receive a "yes" or "no" vote from each board member. Each applicant who receives a majority will be invited to be interviewed.

c. Voting will end when the end of the list is reached or when there are five applicants to be invited to be interviewed, whichever comes first.

d. In the event that the end of the list is reached before there are at least three applicants to be interviewed, the board may begin voting again by the method of their choice.

e. All applicants selected by the foregoing process will be invited to be interviewed at an interview meeting.

5. The interview meeting will be held in accordance with criteria that the board sets forth in a letter to the applicants that have been selected to be interviewed.

6. At the interview meeting, the board will begin in an open meeting and vote to go into executive session to conduct the interviews in accordance with the criteria set forth in Paragraph 5 above and pursuant to R.S. 42:6 and 42:6.1.

7. After all the interviews have been conducted, the board will return to a public meeting, and the selection procedure will then resume from §127.B.5, 7, 8, and 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2310 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Architects Selection Board, LR 17:1206 (December 1991), amended LR 23:

Roger Magendie  
Director

9704#066

## DECLARATION OF EMERGENCY

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

### Eligibility of Aliens

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 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. Adoption of this Rule on an emergency basis is necessary to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations related to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) significantly changed Medicaid eligibility for individuals who are not citizens of the United States. Medicaid must be provided to eligible citizens or

nationals, but certain noncitizens may be eligible to receive only treatment for an emergency medical condition. This Emergency Rule adopts the mandatory provisions of P.L. 104-193 and states the options chosen by the state. This Emergency Rule addresses only the citizenship requirement: every applicant for Medicaid under any classification addressed in this Emergency Rule must meet all requirements for eligibility. Previous regulations for Medicaid eligibility of lawful permanent residents and aliens Permanently Residing in the United States Under Color of Law (PRUCOL) no longer apply and are replaced by this Emergency Rule. A previous Emergency Rule, effective January 1, 1997, redefined and replaced all definitions and categories of alien groups (*Louisiana Register*, Volume 23, Number 1, page 24). The following Emergency Rule will continue the provisions of the corresponding Emergency Rule in force.

All noncitizens are classified as qualified aliens or nonqualified aliens (which includes illegal aliens). Nonqualified aliens are eligible only for emergency services. Some specifically defined qualified aliens are eligible for regular Medicaid benefits. Those qualified aliens who are not eligible for regular Medicaid benefits are eligible only for emergency services.

In general, aliens who are refugees, asylees, or whose deportation is being withheld are eligible for consideration of Medicaid eligibility until five years after the date of entry into the United States, regardless of when they enter the country, and veterans and those on active duty in the armed services and their families.

Mandatory qualified alien groups eligible for regular Medicaid benefits are:

1. aliens receiving Medicaid on August 22, 1996 (until January 1, 1997);
2. aliens receiving SSI (until SSA notifies Medicaid that SSI benefits have stopped);
3. qualified aliens who were in the United States prior to August 22, 1996, who are members of these groups, whether or not receiving Medicaid on that date and meet any of these criteria:
  - a. lawful permanent residents to whom 40 qualifying quarters of Social Security can be credited;
  - b. refugees until five years after the date of the alien's entry into the United States;
  - c. asylees until five years after the grant of asylum;
  - d. aliens who have had deportation withheld under Section 243(h) of the INA until five years after the grant of withholding; and
  - e. honorably discharged veterans and aliens on active duty in the United States armed forces, and the spouse or dependent child(ren) of such individuals;
4. qualified aliens entering the United States on or after August 22, 1996, who are members of the groups below:
  - a. refugees for five years from date of entry;
  - b. asylees for five years from date of entry;
  - c. aliens whose deportation has been withheld under Section 423(h) of the INA for five years from grant of withholding;

d. veterans and aliens on active duty in the United States' armed forces, and the spouse or dependent child(ren) of such individuals;

5. American Indians born in Canada who have at least 50 percent Indian blood who enter and reside in the United States.

The state has determined that the following optional groups of qualified aliens are not eligible for regular Medicaid services under this Emergency Rule, but may be eligible for emergency services if they meet all eligibility criteria other than citizenship:

1. aliens receiving Medicaid benefits on August 22, 1996, but not receiving SSI, are not eligible January 1, 1997 and afterward.

2. aliens who were in the United States prior to August 22, 1996, who are included in the definition of qualified alien, but not included in the mandatory group of qualified aliens living in the United States before August 22, 1996 are not eligible for Medicaid.

#### Definitions

*Illegal Aliens* either were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the United States when their period of time expired. Illegal aliens are eligible only for emergency services if they meet all eligibility criteria other than citizenship.

*Ineligible Aliens* are aliens lawfully admitted to the United States but only for a temporary or specified period of time as legal nonimmigrants. Ineligible aliens are eligible only for emergency services if they meet all eligibility criteria other than citizenship. The following categories of individuals are ineligible aliens:

1. foreign government representatives on official business and their families and servants;
2. visitors for business or pleasure, including exchange visitors;
3. aliens in travel status while traveling directly through the U.S.;
4. crewmen on shore leave;
5. treaty traders and investors and their families;
6. foreign students;
7. international organization representation and personnel and their families and servants;
8. temporary workers including agricultural contract workers; and
9. members of foreign press, radio, film, or other information media and their families.

*Qualified Aliens* are eligible for regular Medicaid if they also meet additional criteria described above for mandatory Medicaid eligibility, or are eligible only for emergency services if they do not. An alien must meet all eligibility requirements for Medicaid other than citizenship to receive either regular Medicaid eligibility or emergency services. Qualified aliens are aliens who are:

1. lawful permanent residents;
2. refugees;
3. asylees;

4. aliens who have had deportation withheld under Section 243(h) of the Immigration and Nationality Act (INA);
  5. aliens granted parole for at least one year by the INS;
- or
6. aliens granted conditional entry under immigration law in effect before April 1, 1980.

*Emergency Medical Services* are not related to either an organ transplant procedure or routine prenatal or post-partum care. The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

It is estimated that total savings resulting from implementation of this Emergency Rule is \$2,082,702 for SFY 1996-97.

**Emergency Rule**

Effective for dates of service May 1, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 401 of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) regarding Medicaid eligibility for noncitizens. The following optional groups of qualified aliens are not eligible for regular Medicaid services under this Emergency Rule, but may be eligible for emergency services if they meet all eligibility criteria other than citizenship:

1. aliens receiving Medicaid benefits on August 22, 1996, but not receiving SSI, are not eligible January 1, 1997 and afterward;
2. aliens who were in the United States prior to August 22, 1996, who are included in the definition of qualified alien, but not included in the mandatory group of qualified aliens living in the United States before August 22, 1996 are not eligible for Medicaid.

Bobby P. Jindal  
Secretary

9704#044

**DECLARATION OF EMERGENCY**

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

Hospital Program—Out-of-State Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and it shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

The Bureau of Health Services Financing adopted an Emergency Rule, with an effective date of July 1, 1995, to

reduce reimbursement for out-of-state inpatient hospital services to the lower of 50 percent of billed charges or the Medicaid per diem rate of the state where the services are provided and reduce out-of-state outpatient hospital services to 50 percent of billed charges (*Louisiana Register*, Volume 21, Number 7). Prior to the adoption of July 1, 1995 Emergency Rule, reimbursement for out-of-state inpatient hospital services was at 72 percent of billed charges. After a review of the prior authorization process for out-of-state care, the bureau has determined it is necessary to revise the reimbursement methodology for out-of-state inpatient hospital services rendered to recipients under the age of 21 by increasing the payment to 72 percent of billed charges. Outpatient services will continue to be reimbursed at 50 percent of billed charges except for ambulatory surgical procedures and outpatient laboratory procedures which are reimbursed in accordance with a fee schedule. This action is necessary to assure the health and welfare of these recipients by maintaining access to medical services when a recipient requires emergency care while out of state or when the medical services are not available in this state.

It is anticipated that implementation of this Emergency Rule will increase expenditures by approximately \$1,277,157 for the fiscal year of 1997-1998.

**Emergency Rule**

Effective for dates of service on or after April 4, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing increases reimbursement to out-of-state hospitals to 72 percent of billed charges for inpatient services provided to recipients under the age of 21.

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

Bobby P. Jindal  
Secretary

9704#006

**DECLARATION OF EMERGENCY**

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

Low Income Families Eligibility Group

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 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. Adoption of this Rule on an emergency basis is necessary to avoid sanctions or

penalties from the federal government arising from failure to adopt appropriate regulations related to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193). A previous Emergency Rule (*Louisiana Register*, Volume 23, Number 1, page 29) established a new group of eligibles replacing AFDC eligibles. The following Emergency Rule continues the previous provisions in force.

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) eliminated the Aid to Families with Dependent Children (AFDC) program which provided financial assistance to families meeting certain requirements, and replaced it with a block grant program for Temporary Assistance for Needy Families (TANF) effective July 1, 1997, or such earlier date as the Secretary of DHHS receives the TANF State Plan. Receipt of TANF does not entitle the recipient to Medicaid. TANF provisions were adopted in Louisiana by Department of Social Services, effective October 1, 1996.

Also, P.L. 104-193 establishes criteria for a new category of Medicaid recipients. According to that Regulation, low income families are defined as follows:

1. the family includes a dependent child who is living with a caretaker relative;
2. the family income does not exceed the 185 percent gross income test limit; and
3. the family's countable income and resources do not exceed the applicable AFDC income and resource standards (including any special needs) established in the Medicaid State Plan. This description is now found in Section 1931 of the Social Security Act. The state has elected to maintain income and resource criteria in effect on July 16, 1996 as the basis for determining eligibility for this new classification of Medicaid recipients.

Among those who will meet the income and resource criteria for low-income families are persons who are eligible for TANF financial assistance because TANF criteria are currently more restrictive than low-income family criteria. Other families who meet the criteria for low-income family but are not TANF-eligible will be eligible for Medicaid under this definition. This Emergency Rule provides notification that the population described in Section 1931 of the Social Security Act constitutes an eligibility group covered by Medicaid and establishes the income and resource limitations applicable.

#### **Emergency Rule**

Effective May 1, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes a new Medicaid eligibility group for low income families with children who meet eligibility requirements described in Section 1931 of the Social Security Act. Eligibility criteria under the AFDC State Plan in effect on July 16, 1996 will be used to determine eligibility. Additionally, recipients of TANF are deemed to meet these criteria so long as TANF requirements are more restrictive than eligibility requirements under the AFDC State Plan in effect on July 16, 1996.

Bobby P. Jindal  
Secretary

## **DECLARATION OF EMERGENCY**

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

**Mentally Retarded/Developmentally Disabled  
Waiver Program—Annual Individual Cost Cap**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is 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, Bureau of Health Services Financing administers the waiver for Mental Retardation/Developmentally Disabled (MR/DD) individuals under the Home and Community Based Services Waiver Program. Waiver participation is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. Home and community based services waiver programs are based on federal criteria which allow services to be provided in a home or community based setting for a recipient who would otherwise require institutional care. Aggregate costs for participants in the MR/DD Waiver Program must not exceed the costs for recipients of institutional care.

The department has determined that the cost effectiveness of the waiver may be jeopardized as more institutionalized individuals requiring intensive care are considered for admission to the waiver program. Therefore, the bureau is establishing an annualized individual cost cap not to exceed \$100,000 for waiver services. For the purpose of monitoring waiver costs, waiver service expenditures for each participant will be reviewed on a quarterly basis to assure that the expenditures for the services identified on the care plan are within the cost cap. It is the responsibility of the case management services provider, with oversight from the Office for Citizens with Developmentally Disabilities (OCDD), to:

1. assure that the services identified on the care plan are adequate to meet the individual's needs;
2. document waiver service costs on the initial and updated care plans;
3. routinely monitor care plans to insure that waiver service costs do not exceed the cost cap; and
4. timely report any changes in the individual's circumstances that could impact the care plan and cost cap.

When an individual's waiver service costs exceed \$25,000 a quarter for one or more quarters, the bureau will notify OCDD that expenditures to date indicate that waiver service costs will exceed the cost cap if they continue at the current rate. If the services necessary to assure the health and safety of an individual cannot be provided at an annualized cost less

than the cost cap, then that individual shall not be determined eligible (at application) or continue to be eligible (at redetermination) for waiver participation. In the event that an individual loses waiver eligibility, the bureau will refer the individual to OCDD as member of their target population to coordinate alternate arrangements for care. In order to facilitate the management of the annualized individual cost cap in the MR/DD Waiver Program, the bureau is also transferring authority for the issuance of the waiver services authorization form (MR-14) from the case management services provider to the Health Standards Section. This action is necessary to maintain cost effectiveness in the waiver and to assure that the health and safety of waiver participants can be maintained in the community with the services available under the MR/DD Waiver Program.

#### **Emergency Rule**

Effective April 21, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the Mental Retardation/Developmentally Disabled Waiver Program: 1) establish an annualized individual cost cap not to exceed \$100,000 for wavier services and 2) transfer the authority for the issuance of the waiver services authorization form (MR-14) from the case management services provider to the Health Standards Section. The annualized individual cost cap shall be applicable for all admissions certified to the MR/DD waiver on or after April 21, 1997 and for subsequent updates to the care plan. For the purpose of monitoring waiver costs, waiver service expenditures for each participant will be reviewed on a quarterly basis to assure that the expenditures for the services identified on the care plan are within the cost cap. It is the responsibility of the case management services provider, with oversight from the Office for Citizens with Developmentally Disabilities (OCDD), to:

1. assure that the services identified on the care plan are adequate to meet the individual's needs;
2. document waiver service costs on the initial and updated care plans;
3. routinely monitor care plans to insure that waiver service costs do not exceed the cost cap; and
4. timely report any changes in the individual's circumstances that could impact the care plan and cost cap.

When an individual's waiver costs exceed \$25,000 a quarter for one or more quarters, the bureau will notify OCDD that expenditures to date indicate that waiver service costs will exceed the cost cap if they continue at the current rate. If the services necessary to assure the health and safety of an individual cannot be provided at an annualized cost less than the cost cap, then that individual shall not be determined eligible (at application) or continue to be eligible (at redetermination) for waiver participation. In the event that an individual loses waiver eligibility, the bureau will refer the individual to OCDD as member of their target population to coordinate alternate arrangements for care.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, 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 at the parish Medicaid offices for review by interested persons.

Bobby P. Jindal  
Secretary

9704#045

## **DECLARATION OF EMERGENCY**

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

**State-Funded Medically Needy  
Program—Organ Transplant Services**

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq., and it 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, Bureau of Health Services Financing adopted an Emergency Rule with an effective date of July 1, 1996 in compliance with Executive Order 96-17 to establish a State-Funded Medically Needy Program which limited eligibility to those individuals who were either certified under the Title XIX Medically Needy Program or had a pending application under the Title XIX Medicaid Program and were subsequently determined eligible for the Title XIX Medically Needy for June 1996 (*Louisiana Register*, Volume 22, Number 7). The July 1, 1996 Emergency Rule was subsequently amended effective October 8, 1996 to establish an eligibility determination process under the State-Funded Medically Needy Program for specified applicant groups (*Louisiana Register*, Volume 22, Number 10). The department has now determined it is necessary to expand the number of applicant groups who may participate in the eligibility determination process under the State-Funded Medically Needy Program. Therefore, the following Emergency Rule is being adopted to amend the general provisions of the State-Funded Medically Needy Program to include persons who meet the medical criteria for organ transplant surgery as the fifth category for the eligibility determination process.

Adoption of this Emergency Rule is necessary to protect the health and welfare of those persons who meet the medical criteria for organ transplant surgery from the imminent peril that would result if they have no resources to access necessary medical services. It is anticipated that implementation of this Emergency Rule will increase expenditures by approximately \$1,500,000 for state fiscal year 1996-1997.

#### **Emergency Rule**

Effective March 14, 1997 the Department of Health and Hospitals, Bureau of Health Services Financing amends Section D of the general provisions for the State-Funded Medically Needy Program to incorporate persons who meet the medical criteria for the following organ transplant