

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Restriction on Application of Certain Pesticides (LAC 7:XXIII.143)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:3203, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached rules and regulations for the application of an ultra low volume insecticide to be applied to cotton fields infested with boll weevils.

The application of the insecticide, in accordance with the current concentration regulations, has not been sufficient to control or eradicate the boll weevil. Failure to allow the concentrations in ultra low volume (ULV) malathion applications will allow the boll weevil the opportunity to destroy the cotton bolls during the early growing season, effectively destroying the cotton crop. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of Northern Louisiana and to Louisiana Agricultural producers thereby creating an imminent peril to the health and safety of Louisiana citizens.

These emergency rules become effective upon signature and will remain in effect for 120 days or until these rules are adopted through the normal promulgation process.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§145. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A.1 - 4. ...

5. Unless further restricted by other regulations or labeling, the chemicals listed in §143.K above shall be applied in a minimum of five gallons of total spray mix per acre. With the following exceptions:

a. insecticides applied in the Boll Weevil Eradication Program, which shall be applied in accordance with their labels, all other agriculture pesticides, unless further restricted by other regulations or labeling, shall be applied in a minimum of one gallon of total spray mix per acre;

b. malathion insecticide applied with the following conditions to control boll weevil in cotton.

i. The commissioner hereby declares that prior to making any aerial application of ULV malathion to cotton, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental

Programs (DPEP) in writing. Upon notification, LDAF shall inspect the aircraft prior to any ULV applications.

ii. Spray shall be applied, handled, and stored in accordance with all conditions specified by state or federal regulations, including the strict observance of any buffer zones that may be implied.

iii. Aerial applicators shall strictly comply with any and all restrictions or mitigative factors, in regard to sensitive areas, including occupied buildings (churches, schools, hospitals, and homes), lakes, reservoirs, farm ponds, parks, and recreation areas that may be identified by Commissioner, and such restriction and mitigation are to be strictly complied with and observed by said aerial applicators.

iv. Aerial applicators will adjust flight patterns, to the degree possible, to avoid or minimize flying over sensitive areas. This restriction does not apply to overflight between take-off and the commencement of spray operations, or overflight between termination of spray operations and landing.

v. Aerial applicators shall be alert to all conditions that could cause spray deposit outside field boundaries and use their good faith efforts, including adjustment or termination of operations, to avoid spray deposit outside field boundaries.

vi. There shall be no aerial spraying when wind velocity exceeds 10 miles per hour.

vii. Aerial applicators will terminate application if rainfall is imminent.

viii. Insecticide spray will not be applied in fields where people or animals are present. It is the applicator's responsibility to determine if people are present prior to initiating treatment.

ix. Spraying will not be conducted in fields where other aircraft are working.

x. All mixing, loading, and unloading will be in an area where an accidental spill can be contained and will not contaminate a stream or other body of water.

xi. All aerial applications of insecticide shall be at an altitude not to exceed five feet above the cotton canopy. However, in fields that are not near sensitive areas, if infield obstructions make the five-foot aerial application height not feasible, then the aerial height may be extended to such height above the cotton canopy as is necessary to clear the obstruction safely.

xii. The aircraft tank and dispersal system must be completely drained and cleaned before loading. All hoses shall be in good condition and shall be of a chemical resistant type.

xiii. Insecticide tank(s) shall be leak-proof and spray booms of corrosion resistant materials, such as stainless steel, aluminum, or fiberglass. Sealants will be tested before use.

xiv. The tank(s) in each aircraft shall be installed so the tank(s) will empty in flight. Sight gauges or other means shall be provided to determine the quantity contained in each tank before reloading.

xv. A drain valve shall be provided at the lowest point of the spray system to facilitate the complete draining of the tanks and system while the aircraft is parked so any unused insecticide can be recovered.

xvi. A pump that will provide the required flow rate at not less than 40 pounds per square inch (psi) during spraying operation to assure uniform flow and proper functioning of the nozzles. Gear, centrifugal or other rotary types, will be acceptable on aircraft with a working speed above 150 miles per hour.

xvii. ULV spraying systems with a pumping capacity that exceeds the discharge calibration rate shall have the bypass flow return to the tank bottom in a manner that prevents aeration and/or foaming of the spray formulation. Pumps utilizing hydraulic drive or other variable speed drives are not required to have this bypass, provided the pump speed is set to provide only the required pressure and the system three-way valve is used for on/off control at full throw position. Any bypass normally used to circulate materials other than the ULV will be closed for ULV spraying.

xviii. Spray booms will be equipped with the quantity and type of spray nozzles specified by the Bill Weevil Eradication Program. The outermost nozzles (left and right sides) shall be equal distance from the aircraft centerline and the distance between the two must not exceed three-fourths of the overall wing span measurement. For helicopters, the outermost nozzles must not exceed three-fourths of the rotorspan. For both fixed wing and helicopters, the program will accept the outermost nozzles between 60 percent and 75 percent of the wingspan/rotorspan. Longer spray booms are acceptable provided modifications are made to prevent the entrapment of air in the portion beyond the outermost nozzle. Fixed wing aircraft not equipped with a drop type spray boom may require drop nozzles in the center section that will position the spray tips into smoother air to deliver the desired droplet size and prevent spray from contacting the tail wheel assembly and horizontal stabilizer. Most helicopters will be required to position the center nozzles behind the fuselage and dropped into smooth air in order to achieve the desired droplet size.

xix. Nozzles, diaphragms, gaskets, etc. will be inspected regularly and replaced when there is evidence of wear, swelling, or other distortion in order to assure optimum pesticide flow and droplet size. Increasing pressure to compensate for restricted flow is unacceptable. A positive on/off system that will prevent dribble from the nozzles.

xx. A positive emergency shut-off valve between the tank and the pump, as close to the tank as possible. This valve shall be controllable from the cockpit and supplemented by check valves and flight crew training which will minimize inadvertent loss of insecticide due to broken lines or other spray system malfunction.

xxi. Bleed lines in any point that may trap air on the pressure side of the spraying system.

xxii. An operational pressure gauge with a minimum operating range of 0 to 60 psi and a maximum of 0 to 100 psi visible to the pilot for monitoring boom pressure.

xxiii. A 50-mesh in-line screen between the pump and the boom and nozzle screens as specified by the nozzle manufacturer.

xxiv. Aircraft equipped so nozzle direction can be changed from 45 degrees down and back to straight back when it is necessary to change droplet size.

xxv. All nozzles not in use must be removed and the openings plugged.

xxvi. Nozzle tips for all insecticides shall be made of stainless steel.

xxvii. Aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time of the entire flight from take-off to landing and differentiate between spray-on and spray-off.

xxviii. Aircraft shall have a DGPS with software designed for parallel offset in increments equal to the assigned swath width of the application aircraft. Differential correction may be provided by fixed towers, portable stations, satellite, Coast Guard, or other acceptable methods. However, the differential signal must cover the entire project area. In fringe areas from the generated signal, an approved repeater may be used. The system shall be sufficiently sensitive to provide immediate deviation indications and sufficiently accurate to keep the aircraft on the desired flight path with an error no greater than three feet. Systems that do not provide course deviation updates at one-second intervals or less will not be accepted.

xxix. A course deviation indicator (CDI) or a course deviation light bar (also CDI) must be installed on the aircraft and in a location that will allow the pilot to view the indicator with direct or peripheral vision without looking down. The CDI must be capable of pilot selected adjustments for course deviation indication with the first indication at three feet or less.

xxx. The DGPS must display to the pilot a warning when differential correction is lost, the current swath number, and cross-track error. The swath advance may be set manually or automatically. If automatic is selected, the pilot must be able to override the advance mode to allow respraying of single or multiple swaths.

xxxi. The DGPS must be equipped with a software for flight data logging that has a system memory capable of storing a minimum of three hours of continuous flight log data with the logging rate set at one second intervals. The DGPS shall automatically select and log spray on/off at one second intervals while ferry and turnaround time can be two second intervals. The full logging record will include position, time, date, altitude, speed in miles per hour, cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect. Must be capable to end log files, rename, and start a new log in flight.

xxxii. The software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a three hour flight on a PC (minimum a 386 microprocessor with 4 MB

of memory) will not be accepted. When viewed on the monitor or the printed hard copy, the flight path will clearly differentiate between spray on and off. The software must be capable of replaying the entire flight in slow motion and stop and restart the replay at any point during the flight. Must be able to zoom to any portion of the flight for viewing in greater detail and print the entire flight or the zoomed-in portion. Must have a measure feature that will measure distance in feet between swaths or any portion of the screen. Must be able to determine the exact latitude/longitude at any point on the monitor.

xxxiii. Flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be "user friendly," as personnel will be responsible to operate the system in order to access the information.

xxxiv. Application of ULV malathion shall be at an application rate of 12 ounces per acre with no dilutions or tank mixes.

xxxv. Applications of ULV malathion shall not be made prior to May 20.

xxxvi. Applications of ULV malathion shall be restricted to seven day intervals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:

Bob Odom
Commissioner

0007#006

DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry
Office of Forestry**

Seedling Prices (LAC 7:XXXIX.301)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:4303, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached rules and regulations

The adoption of this rule is necessary so that seedling sales by the Louisiana Department of Agriculture and Forestry can begin as scheduled on August 1, 2000. Seedling prices must be set at a price that covers the cost of production, since department nurseries are required to operate entirely on self-generated seedling sales revenue. Total seedling production and related costs can only be completely verified after crops have germinated and successfully entered into the growing season, which has only recently occurred. Seedling inventory and fiscal information have confirmed the need to adopt this new price structure. Although seedlings are not lifted for replanting until winter months, pre-paid sales must begin in late summer so landowners can confirm reforestation plans. Final seedling

prices must be in effect prior to the acceptance of orders on August 1, 2000.

These emergency rules become effective upon signature and will remain in effect for 120 days or until these rules are adopted through the normal promulgation process.

**Title 7
AGRICULTURE AND ANIMALS**

Part XXXIX. Forestry

Chapter 3. Tree Seedlings

§301. Seedling Prices

A. The Louisiana Forestry Commission adopts the following prices for forest tree seedlings:

- | | | |
|---------------------------------------|----|------------------|
| 1. Improved Pine Seedlings | \$ | 32 per thousand |
| 2. Advanced Generation Pine Seedlings | \$ | 42 per thousand |
| 3. Special Pine Seedlings | \$ | 52 per thousand |
| 4. Hardwood Seedlings | \$ | 185 per thousand |
| 5. Baldcypress Seedlings | \$ | 175 per thousand |

B.1 - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1503, redesignated R.S. 3:4303.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, Forestry Commission, LR 8:285 (June 1982), amended LR 10:458 (June 1984), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 13:432 (August 1987), LR 19:610 (May 1993), LR 21:671 (July 1995), LR 22:1210 (December 1996), LR 26:

Bob Odom
Commissioner

0007#038

DECLARATION OF EMERGENCY

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Student Tuition and Revenue Trust (START Saving)
Program (LAC 28:VI.107, 301, 307, 309)**

The Louisiana Tuition Trust Authority (LATA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to re-promulgate and amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091-3099.2).

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

This declaration of emergency is effective June 1, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION

Part VI. Student Financial Assistance
Higher Education Savings

Chapter 1. General Provisions

Subchapter A. Student Tuition Trust Authority

§101. Program Description and Purpose

A. The Louisiana Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in 1995 to provide a program of savings for future college costs to:

1. help make education affordable and accessible to all citizens of Louisiana;
2. assist in the maintenance of state institutions of postsecondary education by helping to provide a more stable financial base to these institutions;
3. provide the citizens of Louisiana with financing assistance for education and protection against rising tuition costs, to encourage savings to enhance the ability of citizens to obtain access to institutions of postsecondary education;
4. encourage academic excellence, to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state; and
5. encourage recognition that financing an education is an investment in the future.

B. The START Saving Program establishes Education Savings Accounts by individuals, groups, or organizations with provisions for routine deposits of funds to cover the future educational costs of a designated Beneficiary or a group of beneficiaries.

1. In addition to earning regular interest at competitive rates, certain accounts are also eligible for Tuition Assistance Grants provided by the state to help offset the Beneficiary's cost of postsecondary Tuition.

2. The grant amount is determined by the Account Owner's federal annual income and total annual deposits of principal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:1267 (July 1998), repromulgated LR 26:

§103. Legislative Authority

Act Number 547 of the 1995 Regular Legislative Session, effective June 18, 1995, enacted the Louisiana Student Tuition Assistance and Revenue Trust (START) Saving Program as Chapter 22-A, Title 17 of the Louisiana Revised Statutes (R.S. 17:3091-3099.2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:1267 (July 1998), repromulgated LR 26:

§105. Program Administration

A. The Louisiana Tuition Trust Authority (LATTA) is a statutory authority whose membership consists of the Louisiana Student Financial Assistance Commission (LASFAC), plus one member from the Louisiana Bankers Association, the state treasurer, and one member each from the house of representatives and state senate.

B. The LATTA administers the START Saving Program through the Louisiana Office of Student Financial Assistance (LOSFA).

C. LOSFA is the organization created to perform the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the START Saving Program under the direction of the LATTA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:1267 (July 1998), repromulgated LR 26:

§107. Applicable Definitions

Account Owner—the person(s), Independent Student, organization or group that completes a Depositors Agreement on behalf of a Beneficiary or beneficiaries and is the Account Owner of record of all funds credited to the account.

Beneficiary—the person named in the Education Savings Account Depositors Agreement as the individual entitled to apply the account balance, or portions thereof, toward payment of their postsecondary Qualified Higher Education Expenses.

Depositor's Agreement—the agreement for program participation executed by the Account Owner which incorporates, by reference, R.S. Chapter 22-A, Title 17, and the rules promulgated by the LATTA to implement this statute and any other state or federal law applicable to the agreement.

Education Assistance Account (EAA)—an account which is eligible for Tuition Assistance Grants and is established on behalf of a designated Beneficiary by a parent, grandparent, legal guardian, or person claiming the Beneficiary as a dependent on their federal income tax or by an independent undergraduate on his own behalf.

Education Savings Account—a comprehensive term which refers to the two types of accounts that may be established under the program: an *Education Assistance Account* and an *Education Scholarship Account*.

Education Scholarship Account (ESA)—an account which is not eligible for Tuition Assistance Grants and is established on behalf of a Beneficiary or beneficiaries by a person or organization other than a parent, grandparent, legal guardian, Independent Student or person claiming the Beneficiary or beneficiaries as dependent(s) on that person's or organization's federal income tax return.

Educational Term—a semester, quarter, term, summer session, inter-session, or an equivalent unit.

Eligible Educational Institution—either a state college, university, or technical college or institute or an independent college or university located in this state that is accredited by the regional accrediting association, or its successor, approved by the U.S. secretary of education or a public or independent college or university located outside this state that is accredited by one of the regional accrediting associations, or its successor, approved by the U.S. secretary of education or a state licensed proprietary school licensed pursuant to R.S. Chapter 24-A of Title 17, and any subsequent amendments thereto.

Emergency RefundCa refund of the Redemption Value of an account due to an unforeseen event which has adversely impacted the Account Owner, such as termination of employment, death, or permanent disability and resulted in a severe reduction in income or extraordinary expenses.

Enrollment PeriodCthat period designated by the LATTA during which applications for enrollment in the START program will be accepted by the LATTA.

False or Misleading InformationCa statement or response made by a person which is knowingly false or misleading and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

Family MemberCin reference to the account Beneficiary:

1. an ancestor of such individual;
2. the spouse of such individual;
3. step-sibling(s) and their spouse;
4. a lineal descendant of such individual, of such individual's spouse or parent of such individual or the spouse of any lineal descendant described herein. A legally adopted child of an individual shall be treated as a lineal descendant of such individual.

Fully Funded AccountCan account having a Redemption Value equal to or greater than five times the annual Tuition at the highest cost Louisiana public college or university projected to the scheduled date of the Beneficiary's first enrollment in an Eligible Educational Institution. An account which is "fully funded" is no longer eligible for accrual of Tuition Assistance Grants. However, if subsequent cost projections result in the fully funded amount being more than the account balance, then Tuition Assistance Grants may resume until the level of the most recent Fully Funded Account projection has been met.

Independent StudentCa person who is defined as an Independent Student by the Higher Education Act of 1965, as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the Beneficiary of an Education Assistance Account.

Louisiana Education Tuition and Savings Fund (the Fund)Ca special permanent fund maintained by the Louisiana State Treasurer for the purpose of the START Saving Program, consisting of deposits made by Account Owners pursuant to the START Saving Application and Depositors Agreement, interest earned on said deposits as a result of investment by the Louisiana State Treasurer, accumulated penalties and forfeitures, and the Tuition Assistance Fund, which is a special sub-account designated to receive Tuition Assistance Grants appropriated by the State, and interest earned thereon.

Louisiana Office of Student Financial Assistance (LOSFA)Cthe organization responsible for administering the START Saving Program under the direction of the Louisiana Tuition Trust Authority.

Louisiana ResidentC

1. any person who resided in the state of Louisiana continuously during the 12 months immediately prior to the date of application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

- a. if registered to vote, is registered to vote in Louisiana;

- b. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;

- c. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;

- d. if earning an income, has complied with state income tax laws and regulations.

2. a member of the Armed Forces stationed outside of Louisiana, but who claims Louisiana as his "home of record" and is in compliance with Paragraph 1.d above, is exempt from the requirement of continuous residence in the state during the 12 months preceding the date of completion of the Depositors Agreement;

3. a member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation;

4. persons less than 21 years of age are considered Louisiana Residents if they reside with and are dependent upon one or more persons who meet the above requirements.

Louisiana Tuition Trust Authority (LATTA)Cthe statutory body responsible for the administration of the START Saving Program.

Maximum Allowable Account BalanceCthe amount, determined annually and expressed as a current dollar value, which is equal to five times the Qualified Higher Education Expenses at the highest cost institution in the state. Once the Redemption Value of an Education Assistance Account equals or exceeds the Maximum Allowable Account Balance, principal deposits will no longer be accepted for the account. However, if subsequent increases occur in the Maximum Allowable Account Balance, principal deposits may resume until the Redemption Value equals the most recently determined Maximum Allowable Account Balance.

Qualified Higher Education ExpensesCtuition, fees, books, supplies, equipment, and Room and Board required for the enrollment or attendance of a designated Beneficiary at an eligible institution of postsecondary education

Rate of ExpenditureCCthe rate [see §309.C] per Educational Term, at which funds may be disbursed from an Education Assistance Account to pay the Beneficiary's Qualified Higher Education Expenses at an Eligible Educational Institution.

Redemption ValueCthe cash value of an Education Savings Account attributable to the sum of the principal invested, the interest earned on principal and authorized to be credited to the account by the LATTA, any Tuition Assistance Grants appropriated by the legislature and authorized by the LATTA to be allocated to the account and the interest earned on Tuition Assistance Grants, less any Tuition Assistance Grants or interest thereon restricted from expenditure and less any penalties required by *Internal Revenue Code*, §529(b)(3). If the account has a Redemption Value after the Beneficiary has completed his educational program, this excess value shall be treated as a refund.

Refund RecipientCthe person authorized by the Depositors Agreement, or by operation of law, to receive refunds from the account.

Room and BoardCqualified Room and Board costs include the reasonable cost for the academic period incurred by the designated Beneficiary for Room and Board while

attending an Eligible Educational Institution on at least a half time basis, not to exceed the maximum amount included for Room and Board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 1087II) for the Eligible Educational Institution for such period. Room and Board are only Qualified Higher Education Expenses for students who are enrolled at least half time.

Scheduled Date of First-Enrollment for a dependent Beneficiary, is the month and year in which the Beneficiary turns 18 years of age. For an Independent Student, the scheduled date of first-enrollment is the expected date of enrollment reported by the Independent Student Beneficiary. This date is used to determine eligibility for Tuition Assistance Grants. See the term "*Fully Funded Account*."

Tuition the mandatory educational charges required as a condition of enrollment and limited to undergraduate enrollment. It does not include nonresidence fees, laboratory fees, Room and Board nor other similar fees and charges.

Tuition Assistance Grant a payment allocated to an Education Assistance Account, on behalf of the Beneficiary of the account, by the state. The grant amount is calculated based upon the Account Owners annual federal adjusted gross income and total annual deposits of principal. The grant and interest earned may only be used to pay the Beneficiary's Tuition, or portion thereof, at an Eligible Educational Institution.

Voucher a negotiable draft payable from the Louisiana Education Tuition and Savings Fund. All Vouchers issued by the LATTA shall bear an expiration date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), amended LR 25:1794 (October 1999), LR 26:

Chapter 3. Education Savings Account

Note: Except where otherwise provided, all terms, conditions, and limitations in this Chapter shall apply to both Education Assistance Accounts and Education Scholarship Accounts.

§301. Education Assistance Accounts (EAA)

A. An Education Assistance Account is an Education Savings Account eligible for Tuition Assistance Grants, which is established on behalf of a designated Beneficiary by a parent, grandparent, legal guardian or the person claiming the designated Beneficiary of the account as a dependent on their federal income tax return, or by an Independent Student on his own behalf to acquire an undergraduate certificate, associate degree, or undergraduate degree.

B. **Program Enrollment Period.** An account may be opened and an eligible Beneficiary may be enrolled at any time during the calendar year.

C. **Completing the Depositors Agreement**

1. This agreement must be completed, in full, by the Account Owner.

2. The Account Owner shall designate a Beneficiary.

3. The Account Owner may designate a limited power of attorney to another person who would be authorized to act on the Account Owner's behalf, in the event the Account Owner became incapacitated.

4. Transfer of Account Ownership is not permitted, except in the case of the death of an Account Owner.

5. Only the Account Owner or the Beneficiary may be designated to receive refunds from the account.

D. **Agreement to Terms.** Upon executing a Depositors Agreement, the Account Owner certifies that he understands and agrees to the following statements:

1. Admission to a Postsecondary Educational Institution that participation in the START Program does not guarantee that a Beneficiary will be admitted to any institution of postsecondary education;

2. Payment of Full Tuition that participation in the START Program does not guarantee that the full cost of the Beneficiary's Tuition will be paid at an institution of postsecondary education nor does it guarantee enrollment as a resident student;

3. Maintenance of Continuous Enrollment that once admitted to an institution of postsecondary education, participation in the START Program does not guarantee that the Beneficiary will be permitted to continuously enroll or receive a degree, diploma, or any other affirmation of program completion;

4. Guarantee of Redemption Value that the LATTA guarantees payment of the Redemption Value of any Education Savings Account, subject to the limitations imposed by R.S. 17:3098;

5. Conditions for Payment of Education Expenses that payments for Qualified Higher Education Expenses under the START Saving Program are conditional upon the Beneficiary's acceptance and enrollment at an Eligible Educational Institution;

6. Fees that except for penalties which may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of an account; financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

E. **Acceptance of the Depositors Agreement**

1. A properly completed and submitted Depositors Agreement will be accepted upon receipt.

2. Upon acceptance of the Depositors Agreement, the LATTA will establish the account of the named Beneficiary.

F. **Citizenship Requirements.** Both the Account Owner and Beneficiary must meet the following citizenship requirements:

1. be a United States citizen; or

2. be a permanent resident of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and provide copies of INS documentation with the submission of the Depositors Agreement.

G. **Residency Requirements**

1. On the date an account is opened, either the Account Owner or his designated Beneficiary must be a Louisiana Resident, as defined in §107 of these rules.

2. The LATTA may request documentation to clarify circumstances and formulate a decision that considers all facts relevant to residency.

H. **Providing Personal Information**

1. The Account Owner is required to disclose personal information in the Depositors Agreement, including:

a. his Social Security number;

b. the designated Beneficiary's Social Security number;

- c. the Beneficiary's date of birth;
- d. the familial relationship between the Account Owner and the designated Beneficiary;
- e. the Account Owner's prior year's federal adjusted gross income amount as reported to the Internal Revenue Service.

2. By signing the Depositors Agreement, the Account Owner provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the Depositors Agreement, the Account Owner certifies that both Account Owner and Beneficiary are United States Citizens or permanent residents of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and, if permanent residents have provided copies of INS documentation with the submission of the Application and Depositors Agreement, and that either Account Owner or Beneficiary is and has been a Louisiana Resident for 12 consecutive months.

4. Social Security numbers will be used for purposes of federal income tax reporting and to access individual account information for administrative purposes [see §315].

I. First Disbursement Restriction. A minimum of one year must lapse between the date the Account Owner makes the first deposit opening an account and the first disbursement from the account to pay a Beneficiary's Qualified Higher Education Expenses, which will normally be the Beneficiary's projected scheduled date of first-enrollment in an Eligible Educational Institution.

J. Number of Accounts for a Beneficiary. There is no limit on the number of Education Savings Accounts that may be opened for one Beneficiary by different Account Owners; however, the sum total of funds in all accounts for the same Beneficiary may not exceed the Maximum Allowable Account Balance for that Beneficiary and the sum of all Education Assistance Accounts will be used to determine when these accounts are fully funded for the purpose of earning Tuition Assistance Grants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:

§303. Reserved

§305. Deposits to Education Savings Accounts

A. Application Fee and Initial Deposit Amount

1. No application fee will be charged to participants applying for a START Program account directly to the LATTA.

2. Financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

3. An initial deposit is not required to open an Education Savings Account; however, a deposit of at least \$10 in whole dollar amounts must be made within 60 days from the date on the letter of notification of approval of the account.

4. A lump sum deposit may not exceed the Maximum Allowable Account Balance [see §107].

B. Deposit Options

1. The Account Owner shall select one of the following deposit options during the completion of the Depositors Agreement; however, the Account Owner may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

- a. occasional lump sum payment(s);
- b. monthly payments made directly to the LATTA or to a LATTA-approved financial institution;
- c. automatic account debit, direct monthly transfer from the Account Owner's checking or savings account to the LATTA;
- d. payroll deduction, if available through the Account Owner's employer.

2. Account Owners are encouraged to maintain a schedule of regular monthly deposits.

3. After acceptance of the Depositors Agreement and annually thereafter, the LATTA will project the amount of the monthly deposit that will assure the Account Owner of sufficient savings to meet the Qualified Higher Education Expenses of the Beneficiary at the scheduled date of enrollment at the selected institution, or the highest cost public institution if one was not preselected.

C. Limitations on Deposits

1. All deposits must be rendered in whole dollar amounts of at least \$10 and must be made in cash (check, money order, credit or debit card), defined as any of the deposit options listed in §305.B.1.

tuition assistance grants.

2. A minimum of \$100 must be deposited annually for the account to be considered for award of state tuition assistance grants.

3. Once the account becomes fully funded [see §107], it will no longer be considered for Tuition Assistance Grants, regardless of the total amount of annual deposits made to the account. 4. Once the Redemption Value has reached or exceeded the Maximum Allowable Account Balance [see §107], principal deposits will no longer be accepted to the account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), repromulgated LR 26:

§307. Allocation of Tuition Assistance Grants

A. Tuition Assistance Grants are state-appropriated funds allocated to an Education Assistance Account, on behalf of the Beneficiary named in the account.

1. The grants are calculated based upon the Account Owner's annual federal adjusted gross income and total annual deposits of principal.

2. Although allocated to individual accounts, Tuition Assistance Grants are state funds and shall be held in an escrow account maintained by the state treasurer until disbursed to pay Tuition costs at an eligible institution as set forth in §307.G.

B. Providing Proof of Annual Federal Adjusted Gross Income

1. The Account Owner's annual federal adjusted gross income is used in computing the annual Tuition Assistance Grant allocation.

2. To be eligible in any given year for a Tuition Assistance Grant, the Account Owner of an Education Assistance Account must:

a. authorize the LATTA to access the Account Owner's state tax return filed with the Louisiana Department of Revenue; or

b. provide the LATTA a copy of his federal income tax return filed for that year.

3. In completing the Depositors Agreement, the Account Owner of an Education Assistance Account authorizes the LATTA to access his records with the Louisiana Department of Revenue, for the purposes of verifying the Account Owner's federal adjusted gross income. In the event the Account Owner will not file his tax information with the Louisiana Department of Revenue by their May 15 deadline, he must provide the LATTA with:

a. a copy of the form filed with the Internal Revenue Service (Form 1040, 1040A, 1040EZ, or 1040TELE); or

b. a notarized statement as to why no income tax filing was required of the Account Owner.

4. To ensure timely allocation of Tuition Assistance Grants to the account, the Account Owner should provide these documents prior to July 1 following the applicable tax year. Tuition Assistance Grants will not be allocated to an Education Assistance Account until the LATTA has received verification of an Account Owner's federal adjusted gross income and interest on Tuition Assistance Grants will not accrue to the benefit of an Education Assistance Account until the LATTA has authorized the Tuition Assistance Grant allocation to the account.

5. If the Account Owner fails to provide the required tax documents by December 31 of the year following the taxable year, the account shall not be allocated a Tuition Assistance Grant for the year being considered.

C. Availability of Tuition Assistance Grants

1. The availability of Tuition Assistance Grants to be allocated to Education Assistance Accounts is subject to an appropriation by the Louisiana Legislature.

2. In the event that sufficient grants are not appropriated during any given year, the LATTA shall reduce Tuition Assistance Grant rates, pro rata, as required to limit grants to the amount appropriated.

D. Tuition Assistance Grant Rates. The Tuition Assistance Grant rates applicable to an Education Assistance Account are determined by the federal adjusted gross income of the Account Owner, according to the following schedule:

Reported Federal Adjusted Gross Income	Tuition Assistance Grant Rate*
0 to \$14,999	14 percent
\$15,000 to \$29,999	12 percent
\$30,000 to \$44,999	10 percent
\$45,000 to \$59,999	8 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	0 percent

*Rates may be reduced pro rata, to limit grants to amounts appropriated by the Legislature.

E. Restrictions on Allocation of Tuition Assistance Grants to Education Assistance Accounts. The allocation of

Tuition Assistance Grants is limited to Education Assistance Accounts which have:

1. principal deposits totaling at least \$100 annually; and

2. have an Account Owner's reported federal adjusted gross income of less than \$100,000; and

3. have a Redemption Value that is less than that of a Fully Funded Account [see §107]; and

4. have an Account Owner or Beneficiary who is a resident of the State of Louisiana, as defined in §107 in the year for which a Tuition Assistance Grant is allocated.

F. Frequency of Allocation of Tuition Assistance Grants to Education Assistance Accounts. Tuition Assistance Grants will be allocated annually and reported to Account Owners after July 1, following the Account Owners' required disclosure of their prior years' reported federal adjusted gross income.

G. Rate of Interest Earned on Tuition Assistance Grants. The rate of interest earned on Tuition Assistance Grants shall be the rate of return earned on the Tuition Assistance Fund as reported by the state treasurer.

H. Restriction on Use of Tuition Assistance Grants

1. Tuition Assistance Grants, and any interest which may accrue thereon, may only be expended in payment of the Beneficiary's Tuition, or a portion thereof, at an Eligible Educational Institution.

2. Tuition Assistance Grants may not be used to pay for any Qualified Higher Education Expenses other than Tuition.

3. Tuition Assistance Grants, although allocated to a Beneficiary's account and reported on the Account Owners' annual statement, are assets of the state of Louisiana until disbursed to pay a Beneficiary's Tuition at an eligible institution. 4. Tuition Assistance Grants are not the property of the Account Owner or Beneficiary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:

§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary

A. Vouchers.

1. Prior to each Educational Term, the LATTA will forward to the Beneficiary a Voucher with a statement specifying the Redemption Value of the Beneficiary's account, classified as Deposits or Tuition Assistance Grants, which may be expended for Qualified Higher Education Expenses and instructions for completion and submission of the Voucher.

2. The Beneficiary shall complete the Voucher by inserting the amount of the funds to be withdrawn and then signing it. The amount of funds to be withdrawn shall not exceed the Beneficiary's actual Qualified Higher Education Expenses for the Educational Term attended.

3. Upon completion, the Beneficiary shall submit the Voucher to the institution he shall attend.

B. Rate of Expenditure

1. As authorized by the Beneficiary on a payment Voucher, the amount to be disbursed from an account shall be drawn from deposits (including earnings on deposits) and

Tuition Assistance Grants (including earnings on grants) in the same ratio as these funds bear to the Redemption Value of the account.

2. For an Educational Term, the Beneficiary may not withdraw an amount in excess of the Qualified Higher Education Expenses for that term or the Redemption Value of the account or that amount calculated under 1, above, whichever is less.

C. Payments to Eligible Educational Institutions

1. Upon the Beneficiary's enrollment and the institution's receipt of a Voucher, the institution may bill the START program for the Qualified Higher Education Expenses of the Beneficiary, up to the amount specified on the Voucher or the Beneficiary's actual Qualified Higher Education Expenses for that Educational Term, whichever is less.

2. The institution shall bill the START program by endorsing the Voucher and submitting it to LATTA. Vouchers shall be submitted in batches. Submission of a Voucher is certification by an institution that the amount of the Voucher does not exceed the Beneficiary's actual Qualified Higher Education Expenses for that Educational Term, the Beneficiary has enrolled, and the Tuition Assistance Grant component of the payment was credited to Tuition.

3. Upon receipt of the Voucher(s), the LATTA will disburse funds from the appropriate accounts, consolidate and forward payment directly to the institution.

4. The LATTA will make all payments for Qualified Higher Education Expenses directly to the Eligible Educational Institution.

5. No payments by LATTA for Qualified Higher Education Expenses shall be disbursed directly to the Beneficiary.

6. Payments forwarded to an institution by LATTA on behalf of a Beneficiary which exceed institutional charges shall be promptly refunded to the Beneficiary for payment of other Qualified Higher Education Expenses.

D. Failure to Attend and Withdrawal During an Educational Term

1. If the designated Beneficiary of an Education Savings Account enrolls, but fails to attend or withdraws from the institution prior to the end of the Educational Term and disbursements from the Education Savings Account have been used to pay all or part of his Qualified Higher Education Expenses for that Educational Term, an institutional refund to the Education Savings Account may be required.

2. If any refund is due the Beneficiary from the institution, a pro rata share of any refund of Qualified Higher Education Expenses, equal to that portion of the Qualified Higher Education Expenses paid by disbursements from the Education Savings Account, shall be made by the institution to the LATTA.

3. The LATTA will credit any refunded amount to the appropriate Education Savings Account.

E. Receipt of Scholarships

1. If the designated Beneficiary of an Education Savings Account is the recipient of a scholarship, waiver of Tuition, or similar subvention which cannot be converted into money by the Beneficiary, the Account Owner or the Beneficiary may request a refund from the Education

Savings Account in the amount equal to the value of the scholarship, waiver or similar subvention up to the balance of principal and interest in the account.

2. Upon the institution's verification that the Beneficiary received a scholarship, waiver or similar subvention, the LATTA will refund, without penalty, the amount to the Account Owner or the Beneficiary, as designated in the Depositor's Agreement.

F. Advanced Enrollment. A Beneficiary may enroll in an Eligible Educational Institution prior to his scheduled date of first-enrollment [see §107] and utilize Education Savings Account funds; however, a Beneficiary may not utilize funds from an Education Savings Account prior to one year from the date the Beneficiary made the first deposit opening the account.

G. Part-Time Attendance and Nonconsecutive Enrollment. A Beneficiary may utilize funds in an Education Savings Account for enrollments which are nonconsecutive and for part-time attendance at an Eligible Educational Institution. Room and Board is only a qualified higher education expense for students who are enrolled at least half time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 26:

§311. Termination and Refund of an Education Savings Account

A. Account Contributions. Contributions to an Education Savings Account are voluntary.

B. Account Terminations

1. The Account Owner may terminate an account at any time.

2. The LATTA may terminate an account in accordance with §311.E.

3. The LATTA may terminate an account if no deposit of at least \$10 dollars in whole dollar amounts has been made within 60 days from the date on the letter of notification of approval of the account.

C. Refunds

1. A partial refund of an account may only be made as described in §311.F.3.

2. All other requests for refund will result in the refund of the Redemption Value and termination of the account.

D. Designation of a Refund Recipient

1. In the Depositor's Agreement, the Account Owner may designate the Beneficiary to receive refunds from the account; however, the Beneficiary, if so designated, must be enrolled in an Eligible Educational Institution to be eligible for receipt of any such refund, otherwise the refund will be made directly to the Account Owner or his estate.

2. Refunds of interest earnings will be reported as income to the individual receiving the refund for both federal and state tax purposes.

3. In the event the Beneficiary receives any refund of principal from the account, the tax consequence must be determined by the recipient.

E. Involuntary Termination of an Account with Penalty

1. The LATTA may terminate a Depositor's Agreement if it finds that the Account Owner or Beneficiary provided False or Misleading Information [see §107].

2. All interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

3. An individual who obtains program benefits by providing False or Misleading Information will be prosecuted to the full extent of the law.

F. Voluntary Termination of an Account without Penalty. No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded due to the following reasons:

1. the death of the Beneficiary; the refund shall be equal to the Redemption Value of the account, less unexpended Tuition Assistance Grants and interest thereon, and shall be made to the Account Owner;

2. the disability of the Beneficiary; the refund shall be equal to the Redemption Value of the account, less unexpended Tuition Assistance Grants and interest thereon, and shall be made to the Account Owner or the Beneficiary, as designated in the Depositor's Agreement;

3. the Beneficiary receives a scholarship, waiver of Tuition, or similar subvention that the LATTA determines cannot be converted into money by the Beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of Tuition, or similar subvention awarded to the Beneficiary.

G. Voluntary Termination of an Account with Penalty

1. Refunds for any reason other than those specified in §311.E and F will be assessed a penalty of 10 percent of interest earned on principal deposits accumulated in said account at the time of termination which has not been expended for Qualified Higher Education Expenses.

2. Reasons for voluntary account termination with penalty include, but are not limited to the following:

a. request by an Account Owner, an Account Owners estate or legal successor, for reasons other than those specified in §311.E and F.

b. decision not to attend; upon notification in writing that the Beneficiary has reached 18 years of age and has stated he does not intend to attend an institution of higher education;

c. upon notification in writing that the Beneficiary has completed his educational program and does not plan to pursue further education.

3. Refunds made under the provisions of §311.G shall be equal to the Redemption Value of the Education Savings Account at the time of the refund minus 10 percent of accumulated interest earned on principal deposits which has not been expended for Qualified Higher Education Expenses, and shall be made to the person designated in the Depositor's Agreement.

H. Effective Date of Account Termination. Account termination shall be effective at midnight on the last day of the calendar quarter in which the request for account termination is received. Accounts will be credited with interest earned on principal deposits through the effective date of the closure of the account.

I. Frequency of Refund Payments. Payment of refunds shall be made on or about the forty-fifth day of the calendar quarter following the quarter in which the account was terminated. Upon receipt of a request for an Emergency Refund [See ' 107], the LATTA will verify the emergency and notify the Account Owner in writing that a refund of all principal deposited in an Education Savings Account will be

made within 10 days of the close of the calendar quarter in which the request for refund was received. The refund of all interest earned on the principal, accrued through the end of the calendar quarter, will be refunded as soon as possible thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:

§313. Substitution, Assignment, and Transfer

A. Substitute Beneficiary. The Beneficiary of an Education Assistance Account may be changed to a substitute Beneficiary provided the Account Owner completes a Beneficiary Substitution form and the following requirements are met:

1. the substitute Beneficiary is a Family Member as defined under §107.

2. the substitute Beneficiary meets the citizen/resident alien requirements of §301.F, and if the Account Owner is a nonresident of the state of Louisiana, the substitute Beneficiary meets the applicable residency requirements [see §301.G];

3. if the original Beneficiary is an Independent Student [see §107], meaning he is also the Account Owner of the account, the substitute Beneficiary must be the spouse or child of the Account Owner.

B. Assignment or Transfer of Account Ownership. The ownership of an Education Savings Account, and all interest, rights and benefits associated with such, are nontransferable.

C. Changes to the Depositor's Agreement

1. The Account Owner may request changes to the Depositor's Agreement.

2. Changes must be requested in writing and be signed by the Account Owner.

3. Changes which are accepted will take effect as of the date the notice is received by the LATTA.

4. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the Account Owner.

5. The Account Owner will be notified by the LATTA in writing of any changes affecting the Depositor's Agreement which result from changes in applicable federal and state statutes and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), repromulgated LR 26:

§315. Miscellaneous Provisions

A. Account Statements and Reports

1. The LATTA will forward to each Account Owner an annual statement of account which itemizes the:

a. date and amount of deposits and interest earned during the prior year;

b. total principal and interest accrued to the statement date; and

c. total Tuition Assistance Grants and interest allocated to the account as of the statement date.

2. Tuition Assistance Grants shall be allocated annually and reported after July 1, following the Account Owners' required disclosure of their prior years' reported federal adjusted gross income.

3. The Account Owner must report errors on the annual statement of account to the LATTA within 60 days from the date on the account statement or the statement will be deemed correct.

B. Tuition Assistance Grants. Tuition Assistance Grants shall be allocated annually and reported to Account Owners by a separate letter of notification after July 1st, following the Account Owners' compliance with Section 307B of these regulations.

C. Earned Interest

1. Interest earned on principal deposits during a calendar year will be credited to accounts and reported to Account Owners after the conclusion of the calendar year in which the interest was earned.

2. The rate of interest earned shall be the rate of return earned on the Fund as reported by the state treasurer and approved by the LATTA.

D. Refunded Amounts

1. Interest earned on an Education Savings Account which is refunded to the Account Owner or Beneficiary will be taxable for state and federal income tax purposes.

2. No later than January 31 of the year following the year of the refund, the LATTA will furnish the State Department of Revenue, the Internal Revenue Service and the recipient of the refund an Internal Revenue Service Form 1099, or whatever form is appropriate according to applicable tax codes.

E. Maximum Allowable Account Balance Report

1. The Account Owner of an Education Savings Account will be notified, in writing, of the Maximum Allowable Account Balance.

2. The Maximum Allowable Account Balance is based on the cost of Qualified Higher Education Expenses for the Eligible Educational Institution designated on the Depositors' Agreement, projected to the date of the Beneficiary's Scheduled Date of First Enrollment.

3. If no Eligible Educational Institution was designated on the Depositors' Agreement, the Maximum Allowable Account Balance will be projected based upon the highest cost in-state eligible public educational institution.

4. If the Account Owner changes the institution designated on the Depositors' Agreement, a revised Maximum Allowable Account Balance will be calculated and the Account Owner will be notified of any change.

5. The Maximum Allowable Account Balance is revised and reported to Account Owners annually, and is based upon changes in the cost projections for Qualified Higher Education Expenses.

F. Rule Changes. The LATTA reserves the right to amend the rules regulating the START Program's policies and procedures; however, any amendments to rules affecting participants will be published in accordance with the Administrative Procedure Act and distributed to Account Owners for public comment prior to the adoption of final rules.

G. Determination of Facts. The LATTA shall have sole discretion in making a determination of fact regarding the application of these rules.

H. Individual Accounts. The LATTA will maintain an individual account for each Beneficiary, showing the Redemption Value of the account.

I. Confidentiality of Records. All records of the LATTA identifying Account Owners and designated beneficiaries of Education Savings Accounts, amounts deposited, expended or refunded, are confidential and are not public records.

J. No Investment Direction. No Account Owner or Beneficiary of an Education Savings Account may direct the investment of funds credited to an account.

K. No Pledging of Interest as Security. No interest in an Education Savings Account may be pledged as security for a loan.

L. Excess Funds

1. Principal deposits to an Education Savings Account are no longer accepted once the account total reaches the Maximum Allowable Account Balance [see §305.C]; however, the principal and interest earned thereon may continue to earn interest and any Tuition Assistance Grants allocated to the account may continue to accrue interest.

2. Funds in excess of the Maximum Allowable Account Balance may remain in the account and continue to accrue interest and may be expended to an Eligible Educational Institution in accordance with §309, or upon termination of the account, will be refunded in accordance with §311.

M. Withdrawal of Funds. Funds may not be withdrawn from an Education Savings Account except as set forth in §309 and §311.

N. NSF Procedure

1. A check received for deposit to an Education Savings Account which is returned due to insufficient funds in the depositor's account on which the check is drawn, will be redeposited and processed a second time by the START Program's financial institution.

2. If the check is returned due to insufficient funds a second time, the check will be returned to the depositor.

O. Effect of a Change in Residency

1. On the date an account is opened, either the Account Owner or Beneficiary must be a resident of the state of Louisiana [see §301.G]; however, if the Account Owner or Beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the Depositors' Agreement.

2. The Account Owner may elect to terminate the account or request a "rollover" of account funds to a qualified state Tuition program in the new state of residence. Only the principal deposited, and interest earned thereon, may be "rolled over."

3. Tuition Assistance Grants allocated to an Education Assistance Account are not transferrable nor refundable.

P. Effect on Other Financial Aid. Participation in the START Program does not disqualify a student from participating in other federal, state or private student financial aid programs; however, depending upon the regulations which govern these other programs at the time of enrollment, the Beneficiary may experience reduced eligibility for aid from these programs.

Q. Change in Projected School of Enrollment

1. The Account Owner may redesignate the Beneficiary's projected school of enrollment, but not more than once annually.

2. If the change in school results in a change in the account's fully funded or Maximum Allowable Account Balance, the Account Owner will be notified.

R. Abandoned Accounts. Abandoned accounts will be defined and treated in accordance with R.S. 9:151 et seq., as amended, the Louisiana Uniform Unclaimed Property Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:

Mark S. Riley
Assistant Executive Director

0007#095

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
High School Grade Point Average Calculator
(LAC 28:IV.301, 703, 803, 903, 1703)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students (R.S. 17:3042.1 and R.S. 17:3048.1).

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

This Declaration of Emergency is effective June 1, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

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

Chapter 3. Definitions

§301. Definitions

* * *

Cumulative High School Grade Point Average the final cumulative high school grade point average calculated on a 4.00 scale for all courses attempted, including each course that is repeated. Effective for high school graduates beginning with the Academic Year (High School) 2002-2003, the Cumulative High School Grade Point Average shall be calculated by using only the course grades achieved for those courses included in the core curriculum. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the

Cumulative High School Grade Point Average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one Advanced Mathematics course, the Cumulative Grade Point Average shall be determined by using only the course in which the student has received the highest grade. In the event a student takes the same core course more than one time, the Cumulative High School Grade Point Average shall be calculated using the average of the grades earned in each repeated course. For example, a student who earns an F in Algebra I and who earns a B by repeating the course would add 0 for the F to 3 for the B and divide by two, resulting in a 1.5 grade for calculating the Cumulative Grade Point Average.

For those high schools that utilize other than a 4.00 scale, all grade values must be converted to a 4.00 scale utilizing the following formula:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

For schools awarding a maximum of 5 points for honors courses, the formula would be used to convert the honors course grade of AC as shown in the following example.

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying, $5X = 12$; $X = 2.40$

Quality points = Credit for course multiplied by the value assigned to the letter grade.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 (August 1999), LR 25:1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:

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

§703. Establishing Eligibility

A. - A.9. ...

B. Students qualifying under '703.A.5.a and b, must have attained a cumulative high school grade point average based on a 4.00 maximum scale, for all courses attempted of at least:

1. a 2.50 for the Opportunity Award; or
2. a 3.50 for the Performance of Honors Awards.

C. - G.1.b. ...

c. The college courses taken to satisfy core curriculum requirements and the grades reported on those courses are reflected in the student's official high school records. The student is awarded a high school diploma and the grade point average and core curriculum are certified to LASFAC by the high school in the same manner as that of other high school graduates.

G.1.d. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:67 (January 2000), LR 26:689 (April 2000), LR 26:

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

A. To establish eligibility for the TOPS-TECH Award, the student applicant must meet the following criteria:

1. - 7. ...

8. if qualifying under §703.A.5.a, have attained a cumulative high school grade point average, based on a 4.00 maximum scale, for all courses attempted of at least 2.50; and

9. - 11. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:67 (January 2000), LR 26:

Chapter 9. TOPS Teacher Award

§903. Establishing Eligibility

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

iii. graduate with a cumulative high school grade point average of at least a 3.25, calculated on a 4.00 scale, for all courses attempted; or

A.4.b. - A.9. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 23:1650 (December 1997), repromulgated LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:

Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools

§1703. High School-s Certification of Student Achievement

A. - B.2.e. ...

3. The responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

B.3.a. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17:959 (October 1991), amended LR 22:338 (May 1996), repromulgated LR 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26:

Jack L. Guinn
Executive Director

0007#094

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment

Environmental Planning Division
Privately Owned Sewage Treatments
(LAC 33:IX.2331, 2381, 2383, 2385,
2769 and 2801-2809)(WP035E3)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the Secretary of the Department of Environmental Quality declares that an emergency action is necessary as a result of Act 399 of the 1999 Legislative Session, which required all privately-owned sewage treatment facilities, regulated by the Public Service Commission, to obtain financial security prior to receiving discharge authorization. This Act applies to any issuance, renewal, modification, or transfer of such permits after July 1, 1999, and mandates that the department establish by rule the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. Therefore, after July 1, 1999, and until the necessary rule is in effect, the department would be required to withhold all new discharge permits, renewal of existing, modification of existing, and transfers of existing discharge permits to all privately-owned, for-profit community sewage treatment facilities.

This is a renewal of Emergency Rule WP035E2, which was effective February 26, 2000, and published in the *Louisiana Register* on March 20, 2000. The text of the February 26, 2000 rule remains the same with the exception of the addition of provisions for a waiver or exemption in LAC 33:IX.2331.P, 2381.B.4, 2383.C and 2385.A.4. The original emergency rule WPO35E was effective July 1, 1999.

The delays inherent in the normal rulemaking process would imperil public health, safety, and welfare by precluding the legal operation of some sewage treatment facilities subject to Act 399. The legal operation of those sewage treatment facilities is essential for the proper treatment of sewage, necessary to reduce disease-causing microorganisms and pollutants that are harmful to fish and other aquatic life. The cessation of operation of such a treatment facility, as would be required by law, would necessitate either bypassing the treatment facility (resulting in the discharge of untreated sewage) or blocking all flow of sewage through the collection system (rendering uninhabitable every building served by that system). The Department cannot ensure protection of public health, welfare, and the environment without the issuance of discharge permits with proper effluent limitations and monitoring requirements.

The immediate impact of this rule is to give effect to the terms and conditions of Act 399, thus allowing the Department to continue regulating treated sanitary discharges from private treatment facilities which serve large segments of Louisiana's population.

This emergency rule is effective June 26, 2000, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever comes first. For more information concerning WP035E3, you may contact the

Regulation Development Section at (225) 765-0399. Adopted this 26th day of June, 2000.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Subchapter B. Permit Application and Special LPDES Program Requirements

§2331. Application for a Permit

* * *

[See Prior Text in A - O. Editorial Note]

P. Additional Requirements for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately-owned sewage treatment facilities regulated by the Public Service Commission must also comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W. Following receipt of the permit application the administrative authority shall calculate and subsequently notify the applicant of the "waste discharge capacity per day" for the facility. The applicant will use this figure to determine the amount of the financial security required by LAC 33:IX.Chapter 23.Subchapter W. The applicant shall subsequently obtain and supply the department with the financial security document in accordance with LAC 33:IX.Chapter 23.Subchapter W. No permit shall be issued after July 1, 1999, without the required financial security, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination

§2381. Transfer of Permits

* * *

[See Prior Text in A - B.1]

2. the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;

3. the state administrative authority does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this Subsection may also be a minor modification under LAC 33:IX.2385. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in LAC 33:IX.2381.B.2; and

4. additional requirements are met for privately-owned sewage treatment facilities regulated by the Public Service Commission when transferred after July 1, 1999. The new permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2383. Modification or Revocation and Reissuance of Permits

* * *

[See Prior Text in A - B.2]

C. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2385. Minor Modifications of Permits

A. Upon the consent of the permittee, the state administrative authority may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of LAC 33:IX.Chapter 23.Subchapters E- G. Any permit modification not processed as a minor modification under this Section must be made for cause and with LAC 33:IX.Chapter 23.Subchapters E- G draft permit and public notice as required in LAC 33:IX.2383. Minor modifications may only:

1. correct typographical errors;
2. require more frequent monitoring or reporting by the permittee;
3. change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
4. allow for a change in ownership or operational control of a facility where the state administrative authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the state administrative authority. The new permittee of a privately-owned sewage treatment facility regulated by the Public Service Commission must additionally comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

* * *

[See Prior Text in A. 5 - 7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945

(September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter V. Additional Requirements Applicable to the LPDES Program

§2769. Additional Requirements for Permit Renewal and Termination

A. The following are causes, in addition to those found in LAC 33:IX.2387, for terminating a permit during its term or for denying a permit renewal:

* * *

[See Prior Text in A.1]

2. due consideration of the facility's history of violations and compliance;

3. change of ownership or operational control (see LAC 33:IX.2381); and/or

4. failure to provide or maintain financial security in accordance with LAC 33:IX.Chapter 23.Subchapter W.

* * *

[See Prior Text in B - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter W. Financial Security

§2801. Applicability

A. This Subsection shall be applicable to the following actions, for privately-owned sewage treatment facilities regulated by the Public Service Commission, when taken after July 1, 1999:

- 1. issuance of a new discharge permit;
- 2. renewal of an existing discharge permit;
- 3. modification of an existing discharge permit; and
- 4. transfer of an existing discharge permit to a different permittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2803. Acceptable Form of Financial Security

A. Financial security required by R.S. 30:2075.2 may be established by any one or a combination of the following mechanisms.

1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to the following requirements:

a. the bond must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;

b. the bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority;

c. under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond;

d. under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority at the address indicated in Subsection A.1.a of this Section. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts; and

e. the wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name(s) and business address(es)]

[Site identification number, site name, facility name, facility permit number, facility address, amount for each facility guaranteed by this bond]

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and, for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., to have a permit in order to discharge wastewater from the facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W, as a condition of the permit; and

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform, in a timely manner, the requirements of LAC 33:IX applicable to the facility for which this bond guarantees the requirements of LAC 33:IX, in accordance with the other requirements of the permit as such permit may be amended and pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide other financial assurance as specified in LAC 33:IX.Chapter 23.Subchapter W and obtain written approval of the administrative authority of such assurance within 90 days after the date of notice of cancellation of this bond is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the requirements of LAC 33:IX or of its permit, for the facility for which this bond guarantees performances of the requirements of LAC 33:IX.Chapter 23.Subchapter W, the Surety shall either perform the requirements of LAC 33:IX.Chapter 23.Subchapter W, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in

no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed, beginning on the date that both the Principal and the administrative authority received the notice of cancellation as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.2803.A.1, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]

CORPORATE SURETY

[Name and address]
State of incorporation: _____
Liability limit: \$ _____

[Signature(s)]
[Name(s) and title(s)]

[For every cosurety, provide signature(s) and other information in the same manner as for Surety above.]

Bond premium: \$ _____

2. Letter of Credit. The requirements of this Section may be satisfied by obtaining a letter of credit that conforms to the following requirements:

a. the letter of credit must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;

b. the issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;

c. the letter of credit must be irrevocable and issued for a period of at least one year, unless at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority at the address indicated in Subsection A.2.a of this Section by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts; and

d. the wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Financial Services
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W for its [list site identification number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

(1). A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(2). A statement, signed by the administrative authority, declaring that the amount of the draft is payable pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.2803.A.2, effective on the date shown immediately below.

[Signature(s) and title(s) of
official(s) of issuing
institution(s)]
[date]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2805. Amount of Required Financial Security

A. The amount of the financial security must be equal to or greater than \$1 per gallon of wastewater discharge per day from the facility, as determined by the administrative authority, up to a maximum of \$25,000.

B. The secretary may, in his discretion, allow a single financial security instrument to satisfy the requirements of this Subchapter for up to four permits held by the same permittee, if the amount of financial security provided by that instrument is large enough to satisfy the requirements of Subsection A of this Section for the facility with the greatest amount of wastewater discharge per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2807. Conditions for Forfeiture

A. The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security, if he determines that:

1. the continued operation or lack of operation and maintenance of the facility covered by this Subsection represents a threat to public health, welfare, or the

environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:

- a. the discharge of pollutants exceeding limitations imposed by applicable permits;
- b. failure to utilize or maintain adequate disinfection facilities;
- c. failure to correct overflows or backups from the collection system;
- d. a declaration of a public health emergency by the state health officer; and
- e. a determination by the Public Service Commission that the permittee is financially unable to properly operate or maintain the system;

2. reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

3. it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2809. Use of Proceeds

A. The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under LAC 33:IX.2807.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

J. Dale Givens
Secretary

0007#003

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of the Secretary**

**Beneficial Environmental Projects (BEPs)
(LAC 33:I.2501-2505)(OS037E1)**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary to ensure efficient enforcement of the environmental laws of this state. Beneficial environmental projects (BEPs) have been proposed which will substantially benefit neighboring communities and reduce the load of pollutants discharged into the environment.

This is a renewal of Emergency Rule OS037E, which was effective March 10, 2000, and published in the *Louisiana Register* on March 20, 2000. Rulemaking procedures have begun to promulgate this regulation, Log #OS037.

This rule will serve to facilitate the settlement of environmental actions and promote the use of BEPs. Without this rule, projects that are otherwise advantageous to the state may be delayed, withdrawn, or not performed.

This emergency rule is effective on July 8, 2000, and shall remain in effect for the maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS037E1, you may contact DEQ's Regulation Development Section at (225) 765-0399. Adopted this 7th day of July, 2000.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Department Administrative Procedures

Chapter 25. Beneficial Environmental Projects

§2501. Applicability

A. These regulations apply when the department has decided to enter into a settlement in which a beneficial environmental project (BEP) is utilized. The department reserves the right to settle for the amount of cash penalty, if any, it deems appropriate in considering all of the circumstances relating to the case in which the settlement is perfected. The decision to enter into a settlement that includes a BEP is solely within the discretion of the department. Nothing in these regulations requires that the department enter into a settlement or that the settlement include BEPs. Any BEP may be accepted if it meets the terms of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2503. Definitions

Beneficial Environmental Project (BEP)—a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation(s) or penalty assessment.

Environmental Mitigation—that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

Not Otherwise Legally Required to Perform—the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2505. Project Categories

A. A BEP must be within one or more of the following categories.

1. Public Health. A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health. This may include, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. Pollution Prevention

a. A pollution prevention project is one that reduces the generation of pollution through "source reduction," i.e., any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

b. Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. In-process recycling, wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

c. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. Pollution Reduction. If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection. An environmental restoration and protection project is one that

goes beyond repairing the damage caused by the violation to enhance the condition of any ecosystem or geographic area. These projects may be used to restore or protect natural environments (including ecosystems) and man-made environments (including the removal/mitigation of contaminated materials, such as soils, asbestos, and leaded paint, from facilities and buildings). Also included is any project which protects the ecosystem from actual or potential damage resulting from violations of state environmental regulations or improves the overall environmental condition of the ecosystem or geographic area. Examples of these projects include: restoration of a wetland; purchase and management of a watershed area or environmentally sensitive area; and providing for the protection of endangered species, i.e. developing conservation programs or habitat protection and enhancement.

5. Assessments and Audits

a. The four types of assessments/audits are:

- i. pollution prevention assessments;
- ii. site assessments;
- iii. environmental management system audits; and
- iv. compliance audits.

b. These assessment or audit projects must be performed by an entity approved by the department. The defendant/respondent must agree to provide a certified copy of the assessment or audit to the department along with an implementation report to detail the action(s) taken and/or to defend the facility's decision to forego implementation of the suggested changes listed in the audit report. Settlement agreements which include assessment and/or audit projects may be constructed with stipulated penalty amounts for failure to implement suggested changes included in the report that the department deems appropriate based on an assessment of the certified implementation report provided by the facility. Assessments and audits may not include projects that are required by enforcement and/or legal requirements.

6. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to identify, achieve and maintain compliance with applicable statutory and regulatory requirements; avoid committing a violation with respect to such statutory and regulatory requirements; go beyond compliance by reducing the generation, release, or disposal of pollutants to a level below the legally required limits; or promote environmental education, including awareness of potential risks or harm to the public health and the environment. In all cases, the department will specify the approved party responsible for developing and providing the environmental compliance promotion project. Acceptable projects may include, but are not limited to, the production and/or sponsorship of seminar(s) related to environmental obligations, regulations, and improvement techniques.

7. Emergency Planning, Preparedness, and Response. An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity. This is to enable these organizations to further fulfill their obligations to collect information to assess the dangers of hazardous chemicals present in a response situation, to develop emergency plans and/or procedures, to train emergency response personnel, and to better respond to emergency

situations. These projects may include providing computers and software, communication systems, chemical emission detection and inactivation equipment, or hazardous materials equipment or training.

8. Other Projects. Projects determined by the department to have environmental merit that do not fit within at least one of the seven categories above may be accepted if they are otherwise fully consistent with the intent of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

J. Dale Givens
Secretary

0007#074

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Board of Trustees of the State Employees
Group Benefits Program**

EPO Plan of Benefits CPrescription Drug Benefits
(LAC 32:V.325)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the Emergency Rule provisions of R. S. 49:953(B).

The board finds that it is necessary to amend the EPO Plan Document regarding dispensing limits and co-payments for maintenance drugs. Failure to adopt this rule on an emergency basis will result in a substantial fiscal impact on the plan which may affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule is effective July 8, 2000 and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first, revising and amending the EPO Plan of Benefits in the following particulars.

**Title 32
EMPLOYEE BENEFITS**

**Part V. Exclusive Provider (EPO) Plan of Benefits
Chapter 3. Medical Benefits
§325. Prescription Drug Benefits**

A. - B. ...

C. Outpatient prescription drug benefits are adjudicated by a third-party prescription benefits manager with whom the program has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this plan document, the following apply to expenses incurred for outpatient prescription drugs.

1. - 4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations:

a. up to a 34-day supply of acute drugs may be dispensed at one time;

b. up to a 90-day supply of maintenance drugs may be dispensed at one time, provided that:

i. a separate co-payment shall be due and payable for each 34-day supply, or portion thereof; and

ii. drugs prescribed for treatment of diabetes together with over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs, shall be considered as one prescription for the purposes of this section; and

c. refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1815 (October 1999), amended LR 26:

A. Kip Wall
Chief Executive Officer

0007#067

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Board of Trustees of the State Employees
Group Benefits Program**

PPO Plan of Benefits CPrescription Drug Benefits
(LAC 32:III.325)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

The board finds that it is necessary to amend the PPO Plan Document regarding dispensing limits and co-payments for maintenance drugs. Failure to adopt this rule on an emergency basis will result in a substantial fiscal impact on the plan which may affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule is effective July 8, 2000 and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first, revising and amending the PPO Plan of Benefits in the following particulars.

Title 32
EMPLOYEE BENEFITS

Part III. Preferred Provider (PPO) Plan of Benefits
Chapter 3. Medical Benefits

§325. Prescription Drug Benefits

A. - B. ...

C. Outpatient prescription drug benefits are adjudicated by a third-party prescription benefits manager with whom the program has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this plan document, the following apply to expenses incurred for outpatient prescription drugs.

1. - 4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations:

a. up to a 34-day supply of acute drugs may be dispensed at one time;

b. up to a 90-day supply of maintenance drugs may be dispensed at one time, provided that:

i. a separate co-payment shall be due and payable for each 34-day supply, or portion thereof; and

ii. drugs prescribed for treatment of diabetes together with over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs, shall be considered as one prescription for the purposes of this section; and

c. refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1815 (October 1999), amended LR 26:

A. Kip Wall
Chief Executive Officer

0007#068

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
and Alternative Communication (AAC) Devices

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is promulgated in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Service Financing currently provides coverage for durable medical equipment under the Medicaid program. All medical equipment, appliances and supplies must be prior authorized in order to determine medical necessity. Currently, augmentative and alternative communication devices are prior authorized for rental or purchase under the

durable medical equipment program according to specific criteria set forth in the *Medicaid Eligibility Manual*. However, only recipients under the age of 21 are eligible to receive these devices (*Louisiana Register*, Volume 22, No. 5). The department determined that it was necessary to amend the May 20, 1996 rule regarding prior authorization of augmentative communication devices by removing the age restriction for provision of these devices to Medicaid by recipients, and expanding the criteria for prior authorization of these devices (*Louisiana Register*, Volume 25, No. 6). This Emergency Rule is being adopted in order to continue the provisions of the October 2, 1999 rule in force.

Emergency Rule

Effective June 15, 2000, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing removes the age restriction for the provision of augmentative and alternative communication devices to Medicaid recipients and expands the criteria for prior authorization of these devices under the Durable Medical Equipment Program.

I. Definitions

Augmentative and Alternative Communications (AAC) Devices Electronic or non-electronic aids, devices, or systems that assist a Medicaid recipient to overcome or ameliorate (reduce to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected medically necessary daily activities. Examples of AAC devices include:

1. communication boards or books, speech amplifiers, and electronic devices that produce speech and/or written output;

2. devices that are constructed for use as communication devices as well as systems that may include a computer, when the primary use of the computer serves as the recipient's communication device; and

3. related components and accessories, including software programs, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, printers, and necessary supplies, such as rechargeable batteries.

Meaningful Participation Effective and efficient communication of messages in any form the recipient chooses.

Speech-Language Pathologist Can individual who has:

1. been licensed by the Louisiana Board of Examiners for Speech Pathologists and Audiologists;

2. a Certificate of Clinical Competence in speech language pathology from the American Speech-Language-Hearing Association;

3. completed the equivalent educational requirements and work experience necessary for the certificate; or

4. completed the academic program and is acquiring supervised work experience to qualify for the certificate.

II. Recipient Criteria

Consideration shall be given for Medicaid reimbursement of AAC devices if the device is considered medically necessary, the recipient has the ability to physically and mentally use a device and its accessories, and if the following criteria is met.

A. Medical Necessity Determinations

1. The following medically necessary conditions shall be established for recipients who/whose:

a. have a diagnosis of a significant expressive or receptive (language comprehension) communication impairment or disability;

b. impairment or disability either temporarily or permanently causes communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and

c. had a speech-language pathologist (and other health professional, as appropriate):

i. perform an assessment and submit a report pursuant to the criteria set forth in sub-section B. Assessment/Evaluation; and

ii. recommend speech-language pathology treatment in the form of AAC devices and services; and

iii. document the mental and physical ability of a recipient to use, or learn to use, a recommended AAC device and accessories for effective and efficient communication; and

iv. prepare a speech-language pathology treatment plan that describes the specific components of the AAC devices and the required amount, duration, and scope of the AAC services that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities; and

d. requested AAC devices constitute the least costly, equally effective form of treatment that will overcome or ameliorate communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities.

2. The following are additional general principles relating to medical necessity determinations for AAC devices.

a. No cognitive, language, literacy, prior treatment, or other similar prerequisites must be satisfied by a recipient in advance of a request for AAC devices.

b. The unavailability of an AAC device, component, or accessory for rental will not serve as the basis for denying a prior approval request for that device, component, or accessory.

c. The cause of the recipient's impairment or disability (e.g., congenital, developmental, or acquired), or the recipient's age at the onset of the impairment or disability, are irrelevant considerations in the determination of medical need.

d. Recipient participation in other services or programs (e.g., school, early intervention services, adult services programs, employment) is irrelevant to medical necessity determination for AAC devices.

B. Assessment/Evaluation

1. An assessment, or evaluation, of the individual's functioning and communication limitations that preclude or interfere with meaningful participation in current and projected daily activities must be completed by a speech-language pathologist with input from other health professionals, (e.g., occupational therapists and rehabilitation engineers) based on the recommendation of the speech language pathologist and a physician's prescription, as appropriate. Reimbursement for

assessments or evaluations for ACC devices is covered by the Medicaid program.

2. Requests for AAC devices must include a description of the speech-language pathologist's qualifications, including a description of the speech-language pathologist's AAC services training and experience.

3. An assessment (augmentative & alternative communication evaluation) must include the following information about the recipient:

a. identifying information:

i. name;

ii. Medicaid identification number;

iii. date of the assessment;

iv. medical and neurological diagnoses (primary, secondary, tertiary);

v. significant medical history;

vi. mental or cognitive status; and

vii. educational level and goals;

b. sensory status:

i. vision and hearing screening (no more than one year prior to AAC evaluation);

ii. if vision screening is failed, a complete vision evaluation;

iii. if hearing screening is failed, a complete hearing evaluation;

iv. description of how vision, hearing, tactile, and/or receptive communication impairments or disabilities affect expressive communication;

c. postural, mobility, and motor status:

i. gross motor assessment;

ii. fine motor assessment;

iii. optimal positioning;

iv. integration of mobility with AAC devices;

v. recipient's access methods (and options) for AAC devices;

d. current speech, language, and expressive communication status:

i. identification and description of the recipient's expressive or receptive (language comprehension) communication impairment diagnosis;

ii. speech skills and prognosis;

iii. language skills and prognosis;

iv. communication behaviors and interaction skills (i.e., styles and patterns);

v. functional communication assessment, including ecological inventory;

vi. indication of past treatment, if any;

vii. description of current communication strategies, including use of an AAC device, if any;

Note: If an AAC device is currently used, describe the device, when and by whom it was previously purchased, and why it is no longer adequate to meet the recipient's communication needs.

e. communication needs inventory:

i. description of recipient's current and projected communication needs;

ii. communication partners and tasks including partners' communication abilities limitations, if any; and

iii. communication environments and constraints which affect AAC device selection and/or features (e.g., verbal and/or visual output and/or feedback; distance communication needs);

- f. summary of communication limitations.
 - i. description of the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities (i.e., why the recipient's current communication skills and behaviors prevent meaningful participation in the recipient's current and projected daily activities);
 - g. AAC devices assessment components:
 - i. vocabulary requirements;
 - ii. representational system(s);
 - iii. display organization and features;
 - iv. rate enhancement techniques ;
 - v. message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output;
 - vi. access techniques and strategies; and
 - vii. portability and durability concerns, if any;
 - h. identification of AAC devices considered for recipients:
 - i. identification of the significant characteristics and features of the AAC devices considered for the recipient; and
 - ii. identification of the cost of the AAC devices considered for the recipient (including all required components, accessories, peripherals, and supplies, as appropriate);
 - i. AAC device recommendation:
 - i. identification of the requested AAC devices including all required components, accessories, software, peripheral devices, supplies, and the device vendor;
 - ii. identification of the recipient's and communication partner's AAC devices preference, if any;
 - iii. assessment of the recipient's ability (physically and mentally) to use, or to learn to use, the recommended AAC device and accessories for effective and efficient communication;
 - iv. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered;
 - v. justification stating why the recommended AAC device (including description of the significant characteristics, features, and accessories) is the least costly, equally effective, alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the recipient's meaningful participation in current and projected daily activities;
 - j. treatment plan and follow-up:
 - i. description of short term communication goals (e.g., 6 months);
 - ii. description of long term communication goals (e.g., 1 year);
 - iii. assessment criteria to measure recipient's progress toward achieving short and long term communication goals;
 - iv. description of amount, duration, and scope of AAC services required for the recipient to achieve short and long term communication goals; and

- v. identification and experience of AAC service provider responsible for training (these service providers may include, e.g.: speech-language pathologists, occupational therapists, rehabilitation engineers, the recipient's parents, teachers and other service providers);
- k. summary of alternative funding source for AAC device:
 - i. description of availability or lack of availability, of purchase of AAC device through other funding sources.

C. Trial Use Periods

1. In instances where the appropriateness of a specific AAC device is not clear, a trial use period for an AAC device may be recommended (although it is not required) by the speech-language pathologist who conducted the AAC evaluation.
2. Prior authorization for rental of AAC devices shall be approved for trial use periods when the speech-language pathologist prepares a request consistent with the established requirements. The reasons for a trial use period request include, but are not limited to:
 - a. the characteristics of the recipient's communication limitations;
 - b. lack of familiarity with a specific AAC device; and
 - c. whether there are sufficient AAC services to support the recipient's use of the AAC device, or other factors.
3. If the speech-language pathologist recommends a trial use period, he/she must prepare a request that includes the following information:
 - a. the duration of the trial period;
 - b. the speech-language pathologist information and the recipient information as required in Section II.B;
 - c. examination of the AAC device during the trial period, including all the necessary components (e.g., mounting device, software, switches, or access control mechanism);
 - d. the identification of the AAC service provider(s) who will assist the recipient during the trial period;
 - e. the identification of the AAC services provider(s) who will assess the trial period; and
 - f. the evaluation criteria, specific to the recipient, that will be used to determine the success or failure of the trial period.
4. Trial use period requests must request the rental of all necessary components and accessories of the AAC device. If an accessory necessary for the trial use of a device by a recipient is not available for rental, but the communication device is available for rental, Medicaid may consider purchasing the accessory for the trial use of the communication device by that recipient.
5. Trial periods may be extended and/or different AAC devices provided, when requested by the speech-language pathologist responsible for evaluating the trial use period.
6. Results of trial use periods must be included with any subsequent request for prior authorization of purchase of the AAC device. Recommendations for the purchase of an AAC device, as a result of a trial use period of the device, must clearly indicate the patient's ability to use the device during the trial period.

D. Repairs

1. Medicaid will cover repairs to keep AAC devices, accessories, and other system components in working condition. Medicaid coverage for repairs includes the cost of parts, labor, and shipping, when not otherwise available without charge pursuant to a manufacturer's warranty.

a. Providers of AAC devices are expected to comply with the Louisiana New Assistive Devices Warranty Act, which includes, but is not limited to the following provisions.

i. All persons who make, sell, or lease assistive devices (including AAC devices) must provide those who buy or lease the equipment with a warranty that lasts at least one year from the time the equipment is delivered to the customer.

ii. If, during the warranty period, the equipment does not work, the manufacturer or dealer must make an attempt to repair the equipment.

b. Medicaid additionally requires providers to provide the recipient with a comparable, alternate AAC device while repairing the device during a warranty period.

c. Reimbursement may be provided for rental of an alternate AAC device during a repair period after expiration of the warranty.

d. Medicaid will not cover repairs or rental of a loaner device when repairs are made during a warranty period.

2. When a device is received by the provider for the purpose of repair, the provider will conduct an assessment of the device to determine whether it can be repaired, and if so, prepare a written estimate of the parts, labor, and total cost of the repair, as well as the effectiveness (i.e., estimated durability) of the repair. If the manufacturer or provider concludes that the device is not repairable and a replacement device is needed, written notice will be provided to the recipient.

3. Medicaid coverage for repairs greater than \$300.00 must be accompanied by a statement from the speech-language pathologist. The statement must indicate:

a. whether there have been any significant changes in the sensory status (e.g., vision, hearing, tactile); postural, mobility or motor status; speech, language, and expressive communication status; or any other communication need or limitation of the recipient as described in Section II.B.3. (b through g, and j); and

b. whether the device remains the speech language pathologist's recommendation for recipient's use.

E. Replacement or Modification

1. Modification or replacement of AAC devices will be covered by Medicaid subject to the following limitations.

a. Requests for modification or replacement of AAC devices and/or accessories may be considered for coverage after the expiration of three or more years from the date of purchase of the current device and accessories in use, except as stated in Section II.E.1.d and II.E.1.e.i.

b. Requests for modification or replacement require prior authorization and must include the recommendation of the speech-language pathologist.

c. Requests for replacements of AAC devices may be submitted for identical or different devices.

d. Requests for replacements of identical AAC devices must be accompanied by a statement from the

provider that the current device can not be repaired or that replacement will be more cost effective than repair of the current device. Data must be provided about the following:

i. age;

ii. repair history; and

(a) frequency;

(b) duration; and

(c) cost.

iii. repair projections (estimated durability of repairs).

e. Requests for modification or replacement of AAC devices with different devices must include the following additional information:

i. documentation that a significant change has occurred in the recipient's expressive communication, impairments, and/or communication limitations. Modification or replacement requests due to changed individual circumstances must be supported by a new assessment of communication limitations by a speech-language pathologist, and may be submitted at any time; or

ii. even though there has been no significant change in the recipient's communication limitations, there has been a significant change in the features or abilities of available AAC devices (i.e., a technological change) that will overcome or permit an even greater amelioration of the recipient's communication limitations as compared to the current AAC device. A detailed description of all AAC device changes and the purpose of the changes must be provided with the results of a re-evaluation by a speech-language pathologist.

f. Requests for replacements of AAC devices due to loss or damage (either for identical or different devices) must include a complete explanation of the cause of the loss or damage and a plan to prevent the recurrence of the loss or damage.

III. Prior Authorization

A. All requests for AAC devices and accessories must be prior authorized by Medicaid in accordance with the criteria described in this rule.

B. Medicaid will not consider purchase of an AAC device when an alternative means of funding through another agency or other source (e.g., Louisiana Rehabilitation Services, school systems, private insurance, etc.) is available for the recipient. All requests should indicate the availability or lack of availability of purchase through other funding sources. AAC devices are covered under the durable medical equipment program for recipients residing in nursing facilities if the criteria described in this rule are met.

C. When the medical necessity cannot be determined for an AAC device in accordance with the criteria stated above and utilizing the supporting documentation submitted with the prior authorization request, the following steps shall be taken:

a. if it is determined that any essential information in establishing medical necessity for the AAC device is incomplete or has been omitted from the prior authorization request, the prior authorization unit will contact the speech-language pathologist who conducted the assessment to request submission of the specific, additional information that is needed to determine medical necessity; and/or

b. if it is determined that an additional interpretation of information contained in the prior authorization unit request is needed in order to establish medical necessity for an AAC device, the prior authorization will consult with speech language pathologist(s) who have extensive AAC experience as recommended by the American Speech Language & Hearing Association (ASHA), the United States Society for Augmentative & Alternative Communication (USSAAC), and/or the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), to obtain the required interpretation.

i. Only one request for additional information by direct contact with the speech/language pathologist who conducted the assessment and/or only one interpretation with a consulting speech-language pathologist will be made per prior authorization request.

ii. If additional information requested by Medicaid from the speech/language pathologist, or the additional interpretation requested from a consulting speech-language pathologist is not received within the 25 day time frame required for a Medicaid prior authorization determination, a decision will be made by the medical reviewer utilizing the information submitted with the initial prior authorization request and based on the reviewer's interpretation of that information. If the additional information or interpretation is provided at a later time, the provider must submit a new prior authorization request form for review.

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

David W. Hood
Secretary

0007#005

DECLARATION OF EMERGENCY

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

Early Periodic Screening Diagnosis and
Treatment (EPSDT) Dental Services

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental services under the Medicaid Program. Reimbursement for these services is a flat fee established by the Bureau

minus the amount which any third-party coverage would pay. As a result of the budgetary shortfall, the Bureau adopted a rule to reduce the reimbursement fees for EPSDT dental services by seven percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau has now determined it is necessary to restore the seven percent reduction that was previously made to the reimbursement fees for EPSDT Dental services. In addition, the reimbursement fees for certain designated procedure codes will be increased.

This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to participate in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures for EPSDT Dental services by approximately \$3,285,683 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the seven percent reduction that was previously made to the reimbursement fees for the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) dental services. In addition, the reimbursement fees for certain designated procedure codes will be increased to the following rates.

Procedure Code	Procedure Name	New Rate
02110	Amalgam-1 Surface Deciduous	\$ 35.00
02120	Amalgam-2 Surface Deciduous	\$ 45.00
02130	Amalgam-3 Surface Deciduous	\$ 55.00
02140	Amalgam-1 Surface Permanent	\$ 35.00
02150	Amalgam-2 Surface Permanent	\$ 45.00
02160	Amalgam-3 Surface Permanent	\$ 55.00
02930	Stainless Steel Crown-Primary	\$ 75.00
02931	Stainless Steel Crown-Permanent	\$ 75.00
02950	Crown Buildup	\$ 75.00
05211	Upper Acrylic Partial w/Clasp	\$355.00
05212	Lower Acrylic Partial w/Clasp	\$355.00
07110	Simple Extraction	\$ 35.00
07210	Surgical Extraction	\$ 50.00

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

David W. Hood
Secretary

0007#051

DECLARATION OF EMERGENCY

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

Early Periodic Screening Diagnosis and Treatment (EPSDT) KidMed 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. This emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) KidMed Services under the Medicaid Program. Reimbursement for these services is the flat fee established by the bureau minus the amount which any third party coverage would pay. As a result of a budgetary shortfall, the bureau adopted a rule to reduce the reimbursement fees for EPSDT KidMed services by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement fees for EPSDT KidMed services. It is estimated that implementation of this Emergency Rule will increase expenditures for EPSDT KidMed services by approximately \$1,961,277 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction to reimbursement fees for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) KidMed services.

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

David W. Hood
Secretary

0007#079

DECLARATION OF EMERGENCY

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

Early Periodic Screening Diagnosis and Treatment (EPSDT) Rehabilitation Services Reimbursement Reduction

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Rehabilitation services under the Medicaid Program. Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third-party coverage would pay. As a result of a budgetary shortfall, the Bureau adopted a rule to reduce the reimbursement fees for EPSDT Rehabilitation services by seven percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement fees for EPSDT Rehabilitation services. This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to participate in the Medicaid Program. It is estimated that the implementation of this Emergency Rule will increase expenditures for EPSDT Rehabilitation services by approximately \$279,342 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction to reimbursement fees for Early Periodic Screening Diagnosis and Treatment (EPSDT) Rehabilitation services.

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

David W. Hood
Secretary

0007#058

DECLARATION OF EMERGENCY

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

Emergency Medical Transportation Program
Emergency Ambulance Transportation Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medical Assistance Program in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. This emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. Reimbursement for these services is the base rate established by the bureau minus the amount which any third party coverage would pay. As a result of a budgetary shortfall, the bureau adopted a rule to reduce the reimbursement for emergency ambulance transportation services by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the 7 percent reduction previously made to the reimbursement rates for emergency ambulance transportation services. In addition, the base rate for these services will be increased by 2 percent. This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to participate in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures for emergency ambulance transportation services by approximately \$934,790.14 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction previously made to the reimbursement rates for emergency ambulance transportation services. In addition, the base rate for these services is increased by 2 percent.

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

David W. Hood
Secretary

0007#081

DECLARATION OF EMERGENCY

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

Family Planning Clinics CReimbursement Reduction

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. This emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage for family planning clinic services. Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay. As a result of a budgetary shortfall, the bureau adopted a rule to reduce the reimbursement rate for family planning services by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement rate for family planning services. This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to participate in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures for family planning services by approximately \$33,366 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction to reimbursement for family planning clinics.

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

David W. Hood
Secretary

0007#078

DECLARATION OF EMERGENCY

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

Home Health Extended Skilled Nursing
Visits Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Service Financing has adopted the following emergency rule is in accordance with the Administrative Procedure Act, R. S. 49:950 et seq. This Emergency Rule shall be in effect of the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for home health extended skilled nursing visits provided to medically fragile Medicaid recipients under the age of 21. Reimbursement is made at a prospective rate established by the Bureau. As a result of a budgetary shortfall, the Bureau adopted a rule to reduce the reimbursement rate for the first hour of the Home Health extended skilled nursing visit to \$20.00 (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to increase the reimbursement rate for the home health extended skilled nursing visit to \$24.50 per hour. It is estimated that implementation of this emergency rule will increase expenditures in the home health program by approximately \$1,473,577 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increase the reimbursement rate for home health extended skilled nursing visits to \$24.50 per hour.

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

David W. Hood
Secretary

0007#052

DECLARATION OF EMERGENCY

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

Laboratory and Portable X-Ray Services
Reimbursement Reduction

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage for laboratory and portable x-ray services under the Medicaid Program. Reimbursement for laboratory services is made on the basis of either the lower of billed charges, the state maximum amount, or the Medicare fee schedule amount. Reimbursement for portable x-ray services is on a flat fee basis. As a result of a budgetary shortfall, the Bureau adopted a rule to reduce the reimbursement rates for laboratory and portable x-ray services by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement rates for laboratory and portable x-ray services. It is estimated that implementation of this emergency rule will increase expenditures for laboratory and portable x-ray services by approximately \$3,063,006 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, the Bureau of Health Services Financing restores the 7 percent reduction to reimbursement for laboratory and portable x-ray services.

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

David W. Hood
Secretary

0007#062

DECLARATION OF EMERGENCY
Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Medical Transportation Program
 Non-Emergency Ambulance 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. This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for non-emergency ambulance transportation services. Reimbursement for these services is the base rate established by the bureau minus the amount which any third party coverage would pay. As a result of a budgetary shortfall the bureau adopted a rule to reduce the base rate for non-emergency ambulance transportation services to the rate that was in effect prior to July 1, 1999 (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the base rate for non-emergency ambulance transportation services to the rate that was in effect July 1, 1999. In addition, the reimbursement fees for certain designated procedure codes will be increased. It is estimated that implementation of this Emergency Rule will increase expenditures for non-emergency transportation services by approximately \$3,597,022 for the state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the base rate for non-emergency ambulance transportation services to the rate that was in effect July 1, 1999. In addition, the reimbursement fees for certain designated procedure codes will be increased to the following rates:

A0360	Base rate, BLS, 1 st Trip	\$125.00
A0364	Base rate, no specialized ALS services, 1 st trip	\$125.00
A0366	Base rate, Specialized ALS services, 1 st trip	\$125.00
A0380	Loaded miles, BLS, 1 st trip	\$ 4.32
A0390	Loaded miles, ALS, 1 st trip	\$ 4.32
Z5100	Transfer, loaded miles, BLS, 1 st trip	\$125.00
Z5101	Transfer, loaded miles, ALS, 1 st trip	\$125.00
Z5102	Loaded miles, ALS or BLS, 2 nd trip	\$4.32
Z9497	Base rate, ALS or BLS, 2 nd trip	\$125.00

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

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
 Secretary

0007#080

DECLARATION OF EMERGENCY
Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Mental Health Rehabilitation Services
 Reimbursement Reduction

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for mental health rehabilitation services under the Medicaid Program. Reimbursement for these services is a prospective, negotiated and non-capped rate based on the delivery of services as specified in the service agreement and the service package required for the adult and child/youth populations. As a result of a budgetary shortfall, the bureau adopted a rule to reduce the reimbursement rates for mental health rehabilitation services by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the Legislature during the 2000 Second Special Session, the Bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement rates in the Mental Health Rehabilitation Program for high need services for adults and children as well as moderate need services for children. It is estimated that implementation of this Emergency Rule will increase expenditures in the Mental Health Rehabilitation Program by approximately \$1,110,707 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction to reimbursement rates in the Mental Health Rehabilitation Program for high need services for adults and children as well as moderate need services for children.

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

DECLARATION OF EMERGENCY

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

Nursing Facilities CReimbursement Methodology

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage under the Medicaid Program for private nursing facility services. Payments for nursing facility services are made in accordance with the prospective reimbursement methodology adopted effective August 1, 1984 (*Louisiana Register*, Volume 10, No. 6). A rule was subsequently adopted to establish patient specific classifications of care in accordance with requirements of the Omnibus Budget Reconciliation Act (OBRA) of 1987 (*Louisiana Register*, Volume 16, No. 12). Subsequent rules were adopted to establish specialized nursing facility levels of care for specific types of patients in skilled nursing units such as Skilled Nursing/Infectious Disease (SN/ID) and Skilled Nursing/Technology Dependent Care (SN/TDC). The payment for SN/ID and SN/TDC was established as a cost-based reimbursement methodology (*Louisiana Register*, Volume 14, Number 12 and Volume 15, Number 11). The Bureau has decided that it is necessary to amend the December 20, 1988 and November 20, 1989 rules to convert the reimbursement methodology from a cost-based to a prospective methodology for SN/ID and SN/TDC services.

This action is necessary to ensure health and welfare of Medicaid recipients by assuring continued access for specialized levels of care for skilled nursing services. This emergency rule is being adopted to continue the provisions of the October 21, 1999 Rule.

Emergency Rule

Effective June 15, 2000, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will reimburse nursing facilities for Skilled Nursing-Infectious Disease (SN/ID) and Skilled Nursing-Technology Dependent Care (SN/TDC) services under a prospective reimbursement methodology. This methodology utilizes the skilled nursing (SN) rate inflated to the applicable rate year, plus an average allowable cost per day. The allowable cost per day is determined through the Department's audit process in accordance with allowable cost guidelines for SN/ID and SN/TDC and based on cost

reports for the provision of these services plus a five percent incentive factor inflated to the midpoint of the year preceding the rate year.

A. Reimbursement Methodology. Reimbursement for SN/ID and SN/TDC services shall be set at the rates paid for skilled nursing level of care plus a prospective statewide enhancement to ensure reasonable access to appropriate services. The enhancement shall be based on average allowable incremental costs of all acceptable cost reports for the year on which the rates are based and in accordance with guidelines for allowable incremental costs and inflated forward to reflect current costs. In addition, the following requirements must be met:

1. the facility must have a valid Title XIX provider agreement for provision of nursing facility services;
2. the facility must be licensed to provide nursing services; and
3. the facility must have entered into a separate contractual agreement with the Bureau to provide SN/ID and/or SN/TDC services in accordance with standards for the care of individuals with infectious diseases or technological dependency and meet all applicable staffing and services requirements.

B. Allowable Incremental Costs for SN/ID

1. Direct nursing costs are based on demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/ID services. Nursing services personnel includes head/charge nurse, registered nurses (RNs), licensed practical nurses (LPNs), nurse assistants, and orderlies. These costs exclude administrative nursing costs not directly related to patient care.

a. A minimum of 4.0 nursing hours per patient day for infectious disease residents is required. Costs for direct patient care in excess of 9.6 hours per patient day are not allowable on the SD/ID supplemental cost report.

b. The marginal portion of demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/ID services in excess of nursing requirements for routine skilled nursing services will be allowed as SN/ID cost.

2. Other direct care services are based on demonstrated appropriate services including the following:

a. respiratory therapy, social services or any other specialized services that are directly attributable to SN/ID status and not covered in the SN rate;

b. specialized nursing supplies related to SN/ID status must be supported by detailed justification that substantiates the cost of any specialized nursing supplies;

c. specialized dietary needs related to SN/ID status must be supported by detailed justification to substantiate the cost of any specialized dietary needs.

3. Plant and maintenance costs are based on demonstrated dependency of SN/ID special equipment. Costs associated with demonstrated enhanced infection control measures are included. Capitalized purchases are not included.

4. Allocated costs are based on the ratio of direct nursing hours required for SN/ID service not covered in the regular skilled rate (1.4 hours per resident day) related to total facility direct nursing hours. The following costs are allocated: administrative and general, nursing administration (DON), housekeeping, medical supplies and dietary.

5. Incentive factor is equal to five percent of the average allowable incremental costs added to the enhanced rate in order to assure reasonable access to SN/ID services.

C. Allowable incremental costs for SN/TDC:

1. Direct nursing costs are based on demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/TDC services. Nursing service personnel includes head/charge nurse, registered nurses (RNs), licensed practical nurses (LPNs), nurse assistants, and orderlies. These costs exclude administrative nursing costs not directly related to patient care.

a. A minimum of 4.5 nursing hours per patient day for technology dependent care residents is required. Costs for direct patient care in excess of 9.6 hours per patient day are not allowable on the SN/TDC supplemental cost report.

b. The marginal portion of demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/TDC services in excess of nursing requirements for routine skilled nursing services will be allowed as SN/TDC cost.

2. Other direct care services are based on demonstrated appropriate services including the following:

a. respiratory therapy, social services or any other specialized services that are directly attributable to SN/TDC status and not covered in the SN rate;

b. specialized nursing supplies related to SN/TDC status must be supported by detailed justification that substantiates the cost of any specialized nursing supplies;

c. specialized dietary needs related to SN/TDC status must be supported by detailed justification that substantiates the cost of any specialized dietary needs.

3. Plant and maintenance costs are based on demonstrated dependency of SN/TDC special equipment. Capitalized purchases are not included.

4. Allocated costs are based on the ratio of direct nursing hours required for SN/TDC service not covered in the regular skilled rate (1.9 hours per resident day) related to total facility direct nursing hours. The following costs are allocated: administrative and general, nursing administration (DON), housekeeping, medical supplies and dietary.

5. Incentive factor is equal to five percent of the average allowable incremental costs added to the enhanced rate, in order to assure reasonable access to SN/TDC services.

Facilities shall submit cost reports at the end of each 12 month period. Providers shall be required to segregate SN/ID or SN/TDC costs from other long term care costs and to submit a supplemental cost report which shall be subject to audit. No duplication of costs shall be allowed and allowable costs shall be in accordance with Medicare cost principles.

Rates for SN/ID and SN/TDC services will be rebased as determined necessary by the Department to ensure that appropriate services are reimbursed on a reasonable cost basis, recognizing the need for accountability for public funds, as well as the provider's right to a fair payment for services rendered. Base rate adjustments will result in a new base rate component which will be used to calculate the rate for subsequent years. A base rate adjustment may be made when the event, or events, causing the adjustment is not one that would be reflected in inflationary indices.

Annual inflationary adjustments shall be contingent upon appropriation by the Legislature.

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

David W. Hood
Secretary

0007#004

DECLARATION OF EMERGENCY

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

Professional Services Program Physician Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 49:950 et seq. and in accordance with the Administrative Procedure Act. This emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC) Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third party coverage would pay. As a result of a budgetary shortfall, the Bureau determined it was necessary to reduce the reimbursement paid to physicians for specific procedure codes by seven percent (*Louisiana Register*, Volume 26, Number 2). Reimbursement was reduced for selected locally-assigned HCPCS and the following CPT procedure codes: surgery codes (10040-69979), medicine codes (90281-99199), evaluation and management codes (99201-99499), radiology codes (70010-79999) and pathology and laboratory codes (80048-89399).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the seven percent reduction that was previously made to the reimbursement to physicians for specific procedure codes. In addition, the reimbursement fees for certain designated procedure codes will be increased.

It is estimated that implementation of this emergency rule will increase expenditures for physician services by approximately \$33,562,102 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restore the seven percent reduction that was previously made to the

reimbursement fees for selected locally-assigned HCPCS and the following CPT procedure codes: surgery codes(10040-69979), medicine codes (90281-99199), evaluation and management codes (99201-99499), radiology codes (70010-79999) and pathology and laboratory codes (80048-89399). In addition, the reimbursement fees for certain designated procedure codes will be increased to the following rates:

Evaluation and Management		
99212 - \$30.13	99213 - \$36.13	99214 - \$41.13
99215 - \$49.63	99283 - \$35.23	
Follow-up Prenatal Visit		
Z9005 - \$33.43 (03*)	\$36.13 (09*)	
* type of service		

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

David W. Hood
Secretary

0007#059

DECLARATION OF EMERGENCY

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

Rehabilitation Centers Services CReimbursement Reduction

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for services delivered by rehabilitation centers that are not part of a hospital, but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies. As a result of a budgetary shortfall, the bureau adopted a rule to reduce the reimbursement rates paid to rehabilitation centers by 7 percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 second special session, the bureau has now determined it is necessary to restore the 7 percent reduction that was previously made to the reimbursement rates for rehabilitation centers. This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to participate in the

Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures to rehabilitation centers by approximately \$61,775 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the 7 percent reduction to reimbursement for rehabilitation centers. Rehabilitation centers are facilities that are not part of a hospital, but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies.

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

David W. Hood
Secretary

0007#060

DECLARATION OF EMERGENCY

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

Targeted Case Management Services
Reimbursement Reduction

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for targeted case management services rendered to the following targeted populations: infants and toddlers, high risk pregnant women, HIV-infected persons and elderly and disabled adult waiver recipients. Reimbursement for these services is a fixed monthly rate for the provision of the core elements of case management services. As a result of a budgetary shortfall, the bureau adopted rule to reduce the reimbursement rates for case management services provided to the above-referenced targeted populations by seven percent (*Louisiana Register*, Volume 26, Number 2).

As a result of the allocation of additional funds by the legislature during the 2000 Second Special Session, the Bureau has now determined it is necessary to restore the seven percent reduction previously made to the fixed monthly reimbursement rate for case management services provided to the above-referenced targeted populations. This action is necessary to protect the health and welfare of recipients by ensuring the availability of providers to

participate in the Medicaid Program. It is estimated that the implementation of this emergency rule will increase expenditures for case management services by approximately \$225,234 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service July 1, 2000 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing restores the seven percent reduction previously made to the fixed monthly reimbursement rate for targeted case management services provided to the following targeted populations: infants and toddlers, high risk pregnant women, HIV-infected persons and elderly and disabled adult waiver recipients.

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

David W. Hood
Secretary

0007#063

DECLARATION OF EMERGENCY

**Department of Revenue
Office of Alcohol and Tobacco Control**

Caterer's Permits (LAC 55:VII.325)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 26:793, the Department of Revenue, Office of Alcohol and Tobacco Control, hereby finds that emergency action is deemed necessary to provide for a Class A-Caterer's Permit. The Office of Alcohol and Tobacco Control finds that this action is necessary in order to protect the public from the imminent threat to public health and safety associated with the sale of beverage alcohol from unlicensed caterers.

For the foregoing reason, the Office of Alcohol and Tobacco Control hereby amends LAC 55:VII.325 to provide for a Class A-Caterer's Permit. Act 987 of the 1999 Regular Session of the Louisiana Legislature amended R.S. 26:793(A) to provide that the Commissioner establish by rule and regulation a Class A-Caterer's Permit for any person who does not otherwise qualify for a retail dealers permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2.

The effective date of this emergency rule is August 1, 2000, and it shall remain in effect for 120 days or until the final rule takes effect through normal promulgation process, whichever occurs first.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Chapter 3. Liquor Credit Regulations

§325. Caterer's Permits

A. The Office of Alcohol and Tobacco Control may issue a Class A-Caterer's permit to persons who meet the qualifications and criteria of either Paragraph 1 or 2 below:

1. Holders of any Class A or B liquor or beer retail permit will be allowed to sell and serve alcoholic beverages, on a temporary basis, limited to three days in duration, at events other than on the premises for which the holder's regular permit is issued.

a. This holder of a Class A-Caterer's permit must use the permit in conjunction with their Class A or B liquor and/or beer permit and shall expire at the same time as the regular Class A or B permit.

b. If the regular Class A or B permit ceases to be valid for cause, the caterer's permit ceases to be valid.

2. Persons who do not otherwise qualify for a retail dealer permit pursuant to the provisions of R.S. 26:71.1 or R.S. 26:271.2, but who operate a facility with a fully equipped kitchen where food is prepared for the purpose of catering functions, will be allowed to obtain a Class A-Caterer's permit under the following conditions:

a. This holder of a Class A-Caterer's permit must derive 70 percent of their gross annual revenue from the sale of food or food-related product, and 40 percent of the gross revenue per event must be derived from the sale of food or food-related product.

b. This holder of a Class A-Caterer's permit must maintain separate sales figures for alcoholic beverages.

B.1. An application for a Class A-Caterer's permit shall be made on forms prescribed by the Commissioner of the Office of Alcohol and Tobacco Control.

2. A Class A-Caterer must display the permit on the premises of the event being catered.

3. A Class A-Caterer must only cater events in an area in which the sale of alcoholic beverages has been authorized by local option election and with permission from the local governing authority.

4. A Class A-Caterer must provide the Office of Alcohol and Tobacco Control with written notice of the date, time, and place of each catered event at least one week prior to the date of the event.

5. All alcoholic beverages at a catered event must be dispensed by the holder of the Class A-Caterer's permit or his employee, agent, or servant.

6. Class A-Caterers must comply with the provisions of the Responsible Vendor Program of R.S. 26:931 et seq.

7. The cost of the Class A-Caterer's permit is \$200 per year or any portion thereof; costs shall not be prorated.

8. Class A-Caterer permits shall be renewed annually in accordance with the provisions relative to all other retail permits, specifically R.S. 26:88 and 285 and LAC 55:VII.321.

C. - 10. ...

D. Any violation of these regulations or causes enumerated in Title 26 of the Louisiana Revised Statutes shall subject the retailer to revocation, suspension, or withholding of his alcoholic beverage permits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:793.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 19:904 (July 1993), amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 26:

Murphy J. Painter
Commissioner

0006#033

DECLARATION OF EMERGENCY

Department of Social Services Rehabilitation Services

Vocational Rehabilitation Services Policy Manual
Applicant/Client Appeal Rights
(LAC 67:VII.107)

The Department of Social Services, Louisiana Rehabilitation Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following Rule in the Vocational Rehabilitation Services Policy Manual: Section 107: Applicant/Client Appeal Rights.

The rule governing Applicant/Client Appeal Rights outlines the due process policy for anyone who is dissatisfied with a decision made by the agency. This Emergency Rule must be effective June 23, 2000, as the initial Emergency Rule will expire on this date, and the final Rule is projected to become effective on July 20, 2000. This Rule is being amended as the Louisiana Rehabilitation Services' (LRS) appeals process has undergone a significant change as a result of the 1998 amendments to the Rehabilitation Act. The fourth level of review by the director of LRS was removed. However, it is within the express authority of the Rehabilitation Act for LRS to implement this level of review. It is significant to note that although the new amendments do allow for a fourth level of review, the characteristic of this fourth level of review is that it must be conducted, at a minimum, by the DSS Secretary.

Currently, the final administrative level of appeal is the impartial hearing officers, who are required to review agency determinations and issue decisions based upon the provisions of the state plan, the Rehabilitation Act (including regulations implementing the act) and state regulations or policies that are consistent with the federal requirements specified in the act.

DSS General Counsel has strongly recommended to LRS to put the fourth level review in place, and LRS did so with an Emergency Rule effective February 25, 2000. This recommendation was necessary due to the influx of controversial rulings from impartial hearing officers, which have exposed the agency to sanctions or penalties by the United States as being contrary to the state plan, the Rehabilitation Act (including regulations implementing the act) and state regulations or policies that are consistent with the federal requirements specified in the act. These unlawful rulings have not been based upon the act's authorities (including specific guidance and directives by RSA), but have evidenced the hearing officers' subjective interpretation of the substantive law.

Because the Rehabilitation Act requires implementation of the hearing officer's decision pending a civil action for review, LRS may be mandated to comply with and/or implement a decision which violates the law and policy of the state plan, the Rehabilitation Act (including regulations implementing the act) and state regulations or policies that are consistent with the federal requirements specified in the

act, as well as a disregard of a specific directive of Rehabilitation Services Agency (RSA), the federal agency authorized to implement and administer the provisions of the Act. However, said compliance with the hearing officer's decision would subject Louisiana Rehabilitation Services to an audit exception by RSA and concurrent sanctions. Moreover, such unauthorized spending, when paired with the resultant sanctions/loss of federal funding, would greatly reduce the services available and imperil the public health, safety, and welfare of the state's VR population. These unlawful decisions have and will result in VR Program abuse, as numerous clients have been advised to resort to the appeals process in bad faith in order to take advantage of these beneficial rulings.

RSA has scheduled a compliance review of LRS for April 10, 2000. LRS has been informed by RSA that agency action in accord with said hearing officers' decisions constitutes "substantial compliance failure"; under the Rehabilitation Act, said failures will subject LRS to penalties and sanctions.

The LRS policy manual is referenced in LAC 67:VII. as follows.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§107. Applicant/Client Appeal Rights

A. - B.12.f ...

C. Fair Hearing

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review; at any point after a mediation session; or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing will be conducted by an impartial hearing officer after receipt of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute if mediation has not been exercised already.

2. An impartial hearing officer shall be selected on a random basis to hear a particular case by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The impartial hearing officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services as expeditiously as possible.

3. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the fair hearing process unless the services being provided under the current Individualized Plan for Employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to

pursue a fair hearing, adequate notification by the counselor and/or regional manager must include:

- a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);
- b. the basis for, and effective date of, that decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

Note: All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

D. Review of Fair Hearing Decisions

1. The impartial review for decisions rendered by impartial hearing officers is the final level of appeal within the Department of Social Services regarding disputes arising within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the impartial review by the Department of Social Services, any further review of the issue by the applicant/client (or, as appropriate, the applicant/client's representative) or the agency must be by civil action through the public court system.

2. The applicant/client or the agency can request a review of an impartial hearing officer's decision by making a written request to the secretary of the Department of Social Services within statutory guidelines. The secretary cannot delegate the responsibility for making this final decision to any officer or employee of Louisiana Rehabilitation Services. The applicant/client and the agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

3. The Department of Social Services' secretary may not overturn or modify a decision of an impartial hearing officer, or part of such a decision, that supports the position of the applicant/client unless the secretary determines, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to the state plan, the Rehabilitation Act (including regulations implementing the act) or any state regulation or policy that is consistent with the federal requirements specified in the act.

4. The secretary shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services. This decision shall include a full report of the findings and grounds for the decision.

E. Civil Action. Any party aggrieved by a final decision from an impartial review by the Department of Social Services may bring civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the Department of Social Services shall be implemented pending review by the court. In any action brought under this subsection, the court shall:

- 1. receive the records relating to the hearing;

2. hear additional evidence at the request of a party to the action; and

3. base the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:189 (February 1995), amended LR 25:1266 (July 1999), amended LR 26:

J. Renea Austin-Duffin
Secretary

0007#008

DECLARATION OF EMERGENCY

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

2000 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by emergency rule, and R.S. 56:6(25)(a) and R.S. 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish and the authority granted to the secretary by the Wildlife and Fisheries Commission at its regular meeting on June 1, 2000, the secretary hereby set the following season for the commercial harvest of king mackerel in state waters.

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2000, and will remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

James H. Jenkins, Jr.
Secretary

0007#019

DECLARATION OF EMERGENCY

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

2000 Spring Inshore Shrimp Season Closure

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 4, 2000, which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2000 spring inshore shrimp season in

any area or zone when biological and technical data indicates the need to do so, the secretary hereby declares:

The 2000 spring inshore shrimp season will close in inshore waters west of the western bank of Bayou Lafourche, on Saturday, June 24, 2000, at 6 a.m. This closure includes that part of Zone 2 from the western bank of Bayou Lafourche to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, and all of Zone 3. Zone 3 is the portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island, westward to the Louisiana-Texas state line.

That part of Zone 2 east of the west bank of Bayou Lafourche, and all of Zone 1 will remain open until further notice.

The state territorial waters south of the inside/outside shrimp line, as described in R.S. 56:495 shall remain open.

The number of small white shrimp in these areas has increased substantially in the last week. The region is being closed to protect these immigrating shrimp.

James H. Jenkins, Jr.
Secretary

0007#007

DECLARATION OF EMERGENCY

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

2000 Spring Shrimp Season Closure CZone 2

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 4, 2000, which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2000 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the Secretary hereby declares:

The 2000 spring inshore shrimp season in the open portion of Zone 2 will close on Monday, July 3, 2000, at 6:00 a.m.

With this closure, all inshore waters from the eastern shore of South Pass of the Mississippi River, west to the Louisiana-Texas state line, are closed to the harvest of shrimp.

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

The number of small white shrimp in these areas has increased substantially in the last week. The region is being closed to protect these immigrating shrimp.

James H. Jenkins, Jr.
Secretary

0007#020

DECLARATION OF EMERGENCY

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

2000 Wild Alligator Harvest Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set seasons, the Wildlife and Fisheries Commission does hereby set the 2000 wild alligator harvest season.

The 2000 wild alligator harvest season shall be from official sunrise August 30, 2000 through official sunset September 30, 2000. Alligators taken from the wild may be removed from hook and line and taken with other legal capture devices only during daylight hours between official sunrise and official sunset.

Emergency procedures are necessary to allow department biologists adequate time to gather the biological data required to recommend season dates and harvest quotas.

The Wildlife and Fisheries Commission does hereby also authorize the Secretary of the Department of Wildlife and Fisheries to delay, extend, close or reopen this season based on technical data or if enforcement problems develop.

Thomas M. Gattle, Jr.
Chairman

0007#046