

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Sweetpotato Weevil Quarantine (LAC 7:XV.Chapter 1)

In accordance with the R.S. 3:1652 and 3:1732 and the emergency rule provisions of the Administrative Procedure Act, R.S. 49:953 B, the Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, is declaring an emergency due to the adverse damage the sweetpotato weevil is inflicting upon Louisiana's sweet potato industry.

The total value of Louisiana's sweet potato industry is over \$125 million per year. Louisiana's sweet potatoes are consistently considered, on a national basis, to be choice sweet potatoes. As a consequence, Louisiana sweet potato farmers can command a premium for their sweet potato crops.

Almost half of Louisiana's sweet potato crop is produced in areas infested with the sweetpotato weevil. The population of the sweetpotato weevil has increased to an alarmingly high level. The population increase is such that a substantial portion of the sweet potato crop in weevil-infested areas is in great jeopardy. Failure of the sweet potato crop in these areas will mean a loss of approximately \$60 million to Louisiana's agricultural economy.

The rules and regulations being adopted allows current methods and technology to be used in sweet potato quarantine programs and will allow the Department to develop an eradication program in infested areas of the state.

These rules become effective upon signature and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter A. General Plant Quarantine Provisions

§103. Definitions

*Certificate Permit*Ca written document, stamp, or other form of identification approved by the department, which authorizes the movement, sale or offer for sale or storage of plants, plant products or parts thereof or regulated materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:317 (April 1985), LR 27:

Subchapter C. Sweetpotato Weevil Quarantine

§133. Applicability of General Quarantine Regulations

A. Sweet potato plants, plant products and parts thereof and host materials for the sweetpotato weevil are subject to

all pertinent provisions of the general quarantine regulations contained in Subchapter A and to the regulations contained in this subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:702 (July 1992), LR 27:

§135. Definitions Applicable to this Subchapter

A. In addition to definitions found in §103, the following definitions shall also be applicable to this subchapter.

*Commercial Kiln and Storage Houses*Any buildings where sweet potatoes produced by different farmers or growers are assembled and stored.

*Compliance Agreement*Ca written agreement between the department and a sweet potato dealer in which the dealer agrees to comply with the General Plant Quarantine Regulations, the provisions of this subchapter and any conditions specified in the agreement.

*Farm Kiln or Storage House*Ca building or enclosed structure located on a farm in which sweet potatoes grown solely on said farm are stored.

*Non-Sweet Potato Area*Any area in which the planting, bedding, growing, or storing of any material which acts as a host for the sweetpotato weevil is prohibited.

*Platform Inspection*Ca visual examination by an inspector of sweet potatoes that have been cleaned and packed or containerized prior to the issuance of a certificate permit.

*Processing Plants*Ccanning, freezing and dehydrating plants.

*Sweet Potato Dealer*Ca person engaged in the growing for sale, offering for sale, moving or brokering of sweet potatoes, except as noted in §147C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:702 (July 1992), LR 27:

§137. Issuance and Use of Certificate Permits, Certificate Permit Tags, and Fumigation Certificates for the Movement of Regulated Material

A. From Sweetpotato Weevil-Free Designations

1. Green certificate permit tags will, upon request to the department, be issued to any person whose growing, packing and storage facilities are designated by the department as sweetpotato weevil-free and who meet the following conditions:

a. The person has a valid sweet potato dealer's permit as required by these regulations.

b. The properties or premises of the person, where regulated materials are grown or stored, have been trapped or surveyed for sweetpotato weevil during the growing season in a manner approved by the department and have

been found by the department to be free from sweetpotato weevil.

2. Certificate permits authorizing the movement of regulated material from sweetpotato weevil-free areas or properties or premises to points within and outside of Louisiana will be issued by the department under the following conditions.

a. The person moving the regulated material has a valid sweet potato dealer's permit as required under these regulations.

b. The person has signed a compliance agreement with the department specifying the handling of the regulated material to be moved and the proper use of the certificate permits.

3. Green certificate permit tags shall be attached to or placed within each container in a load or shipment of sweet potatoes, if moved within Louisiana or to any other state which may require such. green certificate permit tags shall not be reused.

4. Regulated material moving into areas or properties or premises of Louisiana or into a portion of any other state designated as sweetpotato weevil-infested, unless moving under the provisions set forth in §139.D.2.c, shall not be moved back into any Louisiana sweetpotato weevil-free designated area and shall lose its sweetpotato weevil-free status.

B. From Sweetpotato Weevil-Infested Designations

1. Pink certificate permit tags will, upon request to the department, be issued to any person whose growing, packing and storage facilities are designated by the department as sweetpotato weevil-infested and who possess a valid sweet potato dealer's permit as required under the provisions of these regulations.

2. Certificate permits authorizing the movement of regulated material from or within sweetpotato weevil-infested areas or properties or premises will be issued by the department under the following conditions.

a. The person has a valid sweet potato dealer's permit as required under the provisions of these regulations.

b. The person has signed a compliance agreement with the department specifying the handling of the regulated material to be moved and the proper use of the certificate permits.

c. The regulated material shall not be moved from a sweetpotato weevil infested designated area into a sweetpotato weevil-free designated area, or to any state which may prohibit entry of such regulated material, unless fumigated under the provisions set forth in §138.

d. If regulated materials are moved, then the regulated materials shall be completely enclosed in the vehicle body or covered tightly by tarpaulins or other means approved by the department in advance of movement.

e. Certificate permits attesting to regulated material fumigation and authorizing the movement of regulated material from areas or properties or premises designated as sweetpotato weevil-infested will be issued when such regulated material is inspected, found apparently free of the sweetpotato weevil and fumigated under the provisions set forth in §138 hereof.

3. Pink certificate permit tags shall be attached to or placed within each container in a load or shipment of sweet potatoes, if moved within Louisiana or to any other state

which may require such tags. Pink certificate permit tags shall not be reused.

C. No regulated material may be moved or shipped within or out of Louisiana unless accompanied by a valid certificate permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 14:527 (August 1988), LR 16:600 (July 1990), LR 18:702 (July 1992), LR 27:

§138. Fumigation and Maintenance of Weevil-free Status of Regulated Materials Originating From Designated Sweetpotato Weevil-Infested Areas or Properties or Premises

A. Fumigation Measures. Persons operating storage houses and/or packing sheds who desire to move regulated materials from areas or properties or premises designated by the department as sweetpotato weevil infested into areas or properties or premises designated as sweetpotato weevil-free, or to any state which may prohibit entry of such regulated material, shall:

1. enlist the services of a certified fumigator to perform the fumigation;

2. possess a valid fumigation certificate issued by a certified fumigator, indicating that the fumigation was done in accordance with all fumigant label requirements and in a manner approved by the department. Each fumigation certificate shall state the conditions and dates of fumigation;

3. fumigate with fumigants labeled for use on the regulated material and formulated and used in a manner and at a concentration approved by the department.

B. Maintenance of Weevil-Free Status. Regulated materials shall be maintained in such a manner that the integrity of their weevil-free status following fumigation is retained.

1. Fumigation Chamber. Fumigated regulated materials may be stored in a fumigation chamber approved by the department, designed specifically for fumigating and storing regulated materials. The chamber shall be airtight with a self contained, screened exhaust system in place; shall possess doors that seal; shall contain a minimum of 1000 cubic feet of space, and larger chambers must be designed to contain an even multiple of 1000 cubic feet; shall be cleaned of all sweet potatoes, parts, and any other regulated materials between periods of fumigation and storage.

2. Tractor trailer rigs designed and constructed for use in fumigations may be used in place of a fumigation chamber provided the truck body meets the fumigation chamber requirements outlined above, with the exception of the cubic feet requirement. A variation in truck body cubic feet shall be allowed provided the variation allows adequate volume to fumigate according to the fumigant label. All entrances or openings on the truck body shall be sealed in a manner approved by the department, prior to shipment, by the use of not more than two seals.

3. If an approved fumigation chamber or tractor-trailer rig is not used then fumigation and storage of regulated materials shall be conducted as follows:

a. Regulated materials shall be placed in a storage area separate from and in no way connected to any other

storage or packing areas containing non-fumigated regulated materials. Storage area must be cleaned of all sweet potatoes, parts, and any other regulated materials between periods of storage.

b. The storage area shall have been treated with an appropriately labeled chemical and in a manner approved by the department prior to initial storage of sweet potatoes harvested and fumigated that season and the storage area shall not be used to store any non-fumigated regulated materials.

c. Fumigation shall be accomplished by tenting the regulated material with a sealed tarpaulin or other suitable sealable material of adequate thickness and construction for use in fumigation with commercial fumigants.

d. Regulated materials shall be completely enclosed with nylon, fiberglass, plastic or other synthetic screen material prior to, during and following fumigation. The screen mesh must be of a size sufficient to prevent entry of sweetpotato weevil and shall be free from tears, rips and holes.

4. Packing House or Shed. Sweet potatoes fumigated, screened and stored according to these regulations may be washed and packed in the same packing house or shed as non-fumigated sweet potatoes, provided:

a. The packing house or shed and all packing equipment is cleaned of all sweet potatoes, parts, and any other regulated materials prior to washing and packing of fumigated sweet potatoes.

b. Packing house or shed is treated with an appropriately labeled chemical and in a manner approved by the department prior to each packing period involving fumigated sweet potatoes.

5. All packing boxes and other packing and shipping materials shall be held in a storage area separate from and in no way connected to any other non-fumigated materials, or be fumigated and stored according to these regulations.

6. Fumigated sweet potatoes washed and packed under approved conditions must be shipped within seven days of packing. Washed and packed sweet potatoes shall be completely enclosed with nylon, fiberglass, plastic or other synthetic screen material immediately following packing and must remain enclosed until shipment. The screen mesh must be of a size sufficient to prevent entry of sweetpotato weevil and shall be free from tears, rips and holes. Fumigated, screened sweet potatoes awaiting shipment shall be labeled with the dates of fumigation.

7. Trucks or other vehicles used to ship fumigated sweet potatoes from sweetpotato weevil infested areas or properties or premises shall be cleaned of all sweet potatoes, parts, and any other regulated materials prior to hauling fumigated sweet potatoes. Vehicle compartments previously containing shipments of non-fumigated regulated materials that were moved from or within designated sweetpotato weevil infested areas or properties or premises must be treated with an appropriately labeled chemical and in a manner approved by the department prior to loading fumigated sweet potatoes for shipment.

8. No non-fumigated sweet potatoes shall be stored, loaded or shipped with fumigated sweet potatoes.

C. Issuance of Certificate Permit Tags. Manila certificate permit tags will be issued by the department to persons meeting all sweetpotato weevil quarantine regulation and

compliance agreement requirements and who desire to ship regulated materials that have been properly fumigated from areas or properties or premises designated by the department as sweetpotato weevil infested into areas or properties or premises designated as sweetpotato weevil-free, or to any state which may prohibit entry of such regulated material. Permit tags shall be attached to or within each container in a load or shipment of fumigated sweet potatoes and shall not be reused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 16:600 (July 1990), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:703 (July 1992), LR 27:.

§139. Effect of Quarantine for Sweetpotato Weevil

A. Sweetpotato Weevil-Free Designations of Louisiana

1. The growing or storing of regulated material, including seed beds and field plantings of sweet potatoes is prohibited in areas or properties or premises declared to be non-sweet potato areas, except under special permit issued by the department. Non-sweet potato areas may include but are not limited to sweetpotato weevil-infested properties or premises, as determined by survey or trapping procedures conducted in a manner approved by the department, located in those areas of the state designated by the department as sweetpotato weevil-free.

2. Any regulated material found in non-sweet potato areas shall be disposed of in a manner approved by the department.

3. Regulated materials, properties or premises found to contain sweetpotato weevil may be subject to required treatments, handling restrictions, or destruction as determined by the department.

B. Sweetpotato Weevil-Infested Designations of Louisiana

1. Owners or persons in charge of properties or premises supporting active infestations of sweetpotato weevil within those areas or properties or premises of the state designated as sweetpotato weevil-infested may save their own seed sweet potatoes, provided that:

a. such seed sweet potatoes are graded in a manner sufficient to render them apparently free of the sweetpotato weevil;

b. such seed sweet potatoes are properly treated in a manner approved by the department at the time of storage;

c. no seed sweet potatoes, plants, vines and/or cuttings shall be sold, offered for sale or moved except those which have been inspected by the department and found to be apparently free of the sweetpotato weevil.

2. Regulated materials, properties or premises supporting active infestations of sweetpotato weevil within those areas of the state designated as sweetpotato weevil-infested may be subject to required treatments, handling restrictions, or destruction as determined by the department.

C. Statewide

1. Sweet potatoes in seedbeds shall be destroyed within 15 days after such potatoes have served their purpose, and not later than July 15 of each year. Destruction shall be in such a manner that all sweet potatoes, plants and parts are brought to the soil surface and exposed, or in such other manner as may be prescribed by the department.

2. All sweet potato fields shall be harvested by December 1 of each year by the owner of the crop. Such fields shall be destroyed within 15 days after harvesting, and not later than December 15 of each year. Destruction shall be in such a manner that all remaining sweet potatoes, plants and parts are brought to the soil surface and exposed, or in such other manner as may be prescribed by the department.

3. Sanitary Measures. Persons operating packing sheds, assembly points, processing plants and/or storage houses shall:

a. not permit loose sweet potatoes or parts of sweet potatoes to accumulate in or around any structure in which sweet potatoes are cleaned, packed, processed or stored;

b. render waste sweet potatoes and sweet potato parts unsuitable for or unavailable to the sweetpotato weevil by processing or disposal in a manner approved by the department. If it is necessary to haul host material from the place of accumulation for processing or disposal, such hauling shall be done in an approved tight-body truck or container and covered with a tarpaulin when necessary;

c. not allow sweet potatoes, sweet potato crowns and roots or parts thereof to be carried away from storage houses, processing plants, packing sheds or assembly points in water used in washing sweet potatoes;

d. not permit the sale, offer for sale or movement to any person or farm of culled sweet potatoes or sweet potato parts, except under special permit issued by the department; and

e. not move empty containers or equipment used in the handling of sweet potatoes from packing sheds or processing plants unless cleaned free of all host materials.

D. Regulated Material From Other States

1. Sweet potatoes, sweet potato plants, plant products and parts thereof, host materials, and containers and equipment used in handling sweet potatoes may not enter Louisiana unless accompanied by valid certification from the state of origin.

2. A valid state-of-origin certificate permit tag shall be attached to or placed within each container in a load of sweet potatoes entering Louisiana.

a. Only regulated material certified as grown, stored and inspected in a portion of the state of origin designated as sweetpotato weevil-free, or fumigated in accordance with these regulations, shall enter those areas or properties or premises of Louisiana designated sweetpotato weevil-free unless moving under the provisions of this Section.

b. Regulated material grown, stored or inspected in a portion of the state of origin designated sweetpotato weevil-infested or sweetpotato weevil regulated, and inspected and found apparently free of sweetpotato weevil, shall enter only those areas or properties or premises of Louisiana designated sweetpotato weevil-infested unless moving under the provisions of this Section.

c. Movement of regulated material from sweetpotato weevil-infested or sweetpotato weevil regulated areas or properties or premises through those areas or properties or premises of Louisiana designated sweetpotato weevil-free is prohibited, except when moved by common carrier with a through bill of lading; or, if moved by truck or any other conveyance, said conveyance shall be sealed by the state of origin, shall have no additional regulated material added to the shipment, and shall not be unloaded

within designated weevil-free areas or properties or premises of Louisiana.

d. Regulated material originating in areas or properties or premises designated sweetpotato weevil-free that is moved into any area or property or premise designated sweetpotato weevil-infested or sweetpotato weevil regulated, except under the provisions of this Section, shall not be moved back into any designated sweetpotato weevil-free area or property or premise and shall lose its sweetpotato weevil-free status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:704 (July 1992), LR 27:

§141. Handling, Storage and Processing of Sweet Potatoes Within Those Areas or Properties or Premises of the State Designated Sweetpotato Weevil-Infested

A. Sweet Potatoes Treated with Approved Chemicals. There shall be no date limit on the shipment of sweet potatoes from those areas or properties or premises of the state designated sweetpotato weevil-infested, provided:

1. sweet potatoes to be marketed after April 1 following the year of production must be treated before February 28 with a chemical or chemicals labeled for sweet potato use and approved by the department; and

2. sweet potato packing sheds, processing plants and/or storage houses, and all containers and equipment used in handling sweet potatoes must be cleaned and treated in a manner prescribed by the department as soon as possible after final disposal of a crop of sweet potatoes.

B. Sweet Potatoes Not Treated with Approved Chemicals and/or Heavily Infested with Sweetpotato Weevil. Unprocessed sweet potatoes shall not:

1. be held in processing plants, warehouses or other storage houses on properties or premises supporting active infestations of sweetpotato weevils;

2. be moved in any manner except as provided for in §139.C.3.b; or

3. be sold or offered for sale after April 1 following the year of production, except seed sweet potatoes that are apparently free of sweetpotato weevils and have been properly treated as prescribed in this Section.

C. This provision shall apply to all sweet potatoes even though previously inspected and certified for sale and movement.

D. Sweet potato packing sheds, processing plants and/or storage houses, and all containers and equipment used in handling sweet potatoes must be cleaned and treated in a manner prescribed by the department unless a special permit extending the deadline is issued by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:321 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:705 (July 1992), LR 27:

§143. Fees

A. A fee of four cents per bushel shall be charged for each bushel of sweet potatoes moved or shipped within or out of Louisiana.

B. The fee charged for sweet potatoes moving to processing plants shall be collected on the basis of the amount of purchase less 10 percent for breakdown and shrinkage while in storage.

C. A fee of five cents per thousand shall be charged for vines, plants, slips or cuttings moved or shipped within or out of Louisiana.

D. Method of assessing fees and time when fees are to be assessed.

1. Fresh Market

a. Fees will be assessed based on average marketable yield per acre for each acre of sweet potatoes planted. The Louisiana Sweet Potato Advertising and Development Commission will determine the average yield.

b. The total acres planted by each producer will be officially determined through the use of global positioning technology or other, similarly technical means, under departmental oversight. Each producer will be provided a mapped copy of his production fields and the acres of each field.

c. One-half of the total fee assessment shall be paid on or before November 1 of each year and the remaining balance shall be paid on or before March 15 of each year.

2. Processing plants are assessed at the time the sweet potatoes are moved into a plant for processing or packed to be shipped as non-processed potatoes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655, R.S. 3:1732 and R.S. 3:1734.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:321 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:77 (February 1989), LR 18:705 (July 1992), LR 27:

§145. Penalties for Violation of Sweetpotato Weevil Quarantine

A. Any person violating any portion of the sweetpotato weevil quarantine regulations, or any portion of a signed compliance agreement with the department, may be called to an adjudicatory hearing held in accordance with the Administrative Procedure Act and may be subject to a civil penalty of not more than \$5,000 per each violation per day. Proportionate costs of the hearing may be assessed against the violator. The amount of these costs shall be limited to attorneys' fees as charged to the department for the actual hearing and preparation for the hearing; and actual cost of departmental personnel time in processing violations.

B. A sweet potato dealer's permit may be suspended, revoked or placed on probation if the holder thereof fails to comply with the provisions of these regulations or with the provisions of a signed compliance agreement with the department, subject to a finding in support of such action in a properly conducted adjudicatory hearing.

C. Sweet potato plantings found in a non-sweet potato area may be destroyed at the expense of the person or persons responsible for the plantings.

D. Regulated material found in violation of these regulations or in violation of a signed compliance agreement with the department may be destroyed and/or disposed of in

a manner approved by the department at the expense of the person or persons responsible for the regulated material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1655 and R.S. 3:1732.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:322 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:705 (July 1992), LR 27:

§147. Sweet Potato Dealer's Permit

A. All persons, including sweet potato growers and farmers, commercially growing, selling or offering for sale sweet potatoes shall not grow, move, clean, grade, pack or repack for sale, or process in any manner sweet potatoes without a valid Sweet Potato Dealer's Permit.

B. Applicants for Sweet Potato Dealer's Certificate Permit shall:

1. complete and file the application required by the department, which shall set forth the following conditions:

a. a guarantee to reimburse any purchase price of sweet potatoes which are confiscated because of sweetpotato weevil infestation or unauthorized sale, offer for sale or movement;

b. an agreement to permit, at the dealer's cost, the disposal or destruction by an inspector of the department or the return to point of origin of any sweet potatoes sold, offered for sale, moved or moving without authorization, or infested with sweetpotato weevil.

c. a signed agreement to comply with any and all sweet potato quarantine regulations and any conditions specified in the agreement.

C. The provisions of this Section do not apply to retail grocers and other retail outlets selling or offering for sale sweet potatoes possessing a valid certificate permit and/or certificate permit tags indicating that the sweet potatoes have been inspected, and that are sold or offered for sale directly to the consumer from a permanent building at a permanent location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1653, R.S. 3:1655, R.S. 3:1732 and R.S. 3:1735.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:322 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:705 (July 1992), LR 27:

Bob Odom
Commissioner

0104#009

DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry
Office of the Commissioner**

Meat Labeling
(LAC 7:XXXV.153)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules for the implementation of regulations governing the labeling of meat in accordance with R.S. 3:3B, R.S. 51:614 and the emergency rule provisions of R.S. 49:953 B, in the Administrative Procedure Act.

The Louisiana Legislature, by Act 487 of the 1999 Regular Session, enacted R.S. 51:614 to require the labeling of meat and to provide for the enforcement thereof. As a result of the current outbreak of foot and mouth disease in European livestock and the fact that meat consumed in the United States, including Louisiana, is imported from foreign countries there is an imminent danger that Louisiana citizens will substantially decrease their consumption of meat, including meat raised or processed in Louisiana, if they cannot identify the source of the meat.

Louisiana's livestock industry has suffered severe financial distress as a result of the four-year drought that this state has experienced. The threat of a substantial decline in the consumption of meat poses an imminent peril to Louisiana's livestock industry. Additional economic losses threaten the continuation of the livestock industry in Louisiana. The livestock industry in Louisiana is a vital part of Louisiana's economic base. Therefore, financial deterioration and subsequent failures in the livestock industry pose an imminent peril to Louisiana's economy and to the welfare of the citizens of Louisiana, especially when it occurs in the midst of an economic slowdown.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary in order to immediately implement and enforce the labeling of meat in Louisiana as to country of origin.

These rules become effective upon signature and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§135. Meat Labeling

A. As used in this Section the following terms are defined as:

1. *American* Any meat that is produced in the United States or which is processed in the United States at a federal or state approved processing or repacking plant for distribution at wholesale.

2. *Blend* Any combination of American and foreign meat.

3. *Imported* Any meat produced in a foreign country that has not been processed at a federal or state approved processing plant for distribution at wholesale.

B. Unless otherwise provided in this Section, all processed or unprocessed meat sold in Louisiana, whether fresh or frozen, shall indicate the meat's country of origin.

1. The country of origin or designations *American*, *imported* or *blend* of imported and American meats shall be indicated in clear and conspicuous letters in English.

2. All meat shall be labeled with one of the following designations, *American*, *imported* or *blend* of imported and American meats or shall contain the name of the country of origin preceded by the "product of". Example: Meat produced in the United States would be labeled "American" or "Product of U.S.A."

3. Meat displayed for sale or sold unwrapped shall contain the proper designation as to the country of origin on the meat, or on the immediate container or wrapping, or on a sign included with the display.

4. If an establishment sells only American meat, then a placard indicating that only American meat is sold will be sufficient to meet the requirements of these regulations.

C. The provisions of this Section shall not apply to prepared meat that is sold at retail for consumption on the premises and fully cooked meat as defined by the United States Department of Agriculture Food Safety Inspection Service rules and regulations.

1. The Commissioner of Agriculture and Forestry, the Weights and Measures Commission and the Department of Agriculture and Forestry shall have the power and authority granted under the Weights and Measures Law to enforce the provisions of this Section.

D. The penalty for any violation of this Section shall be as provided in R. S. 51:614.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, 3:4607 and R.S. 51:614.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 27:

Bob Odom
Commissioner

0104#010

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Workforce Development and Training Program (LAC 13:III.Chapter 3)

The Department of Economic Development, Office of the Secretary, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend rules of the Louisiana Workforce Development and Training Program effective April 2, 2001. These rules will prescribe in accordance with LAC 13:III. Chapter 3. This Emergency Rule shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

The Department of Economic Development is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to publish these rules because of a recognized immediate need to remove the requirement that a sponsoring entity be a part of the award. The contract will be between the department and the company.

This emergency action is deemed necessary to remove the inherent conflict of having the sponsoring entity monitor the contract. The sponsoring entity needs to work closely with these companies to enhance job opportunities in their respective areas.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 3. Workforce Development and Training Program

§ 301. Purpose

A. The purpose of the program is to develop and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of improving the competitiveness and productivity of Louisiana's

workforce and business community; and, assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:242 (February 1999), LR 27:

§ 303. Definitions

Applicant—the entity requesting and receiving a training award from DED under this program.

Award—funding approved under this program for eligible training activities.

Contract—a legally enforceable agreement between DED and the applicant.

DEDC—Louisiana Department of Economic Development.

Program—the Workforce Development and Training Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:242 (February 1999), LR 27:

§ 305. General Principles

A. The following principles will direct the administration of the Workforce Development and Training Program:

1. training awards are not to be construed as an entitlement for companies locating or located in Louisiana;

2. awards must reasonably be expected to be a significant factor in companies location, investment, and/or expansion decisions;

3. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

4. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;

5. the anticipated economic benefits to the state will be considered in making the award;

6. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate; and

7. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:242 (February 1999), LR 27:

§ 307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be

created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:242 (February 1999), LR 27:

§ 309. Eligibility

A. An eligible applicant is an employer that seeks customized training services to provide training in a particular industry.

B. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

C. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if company has another contract with the Department of Economic Development in which the company is in default and/or is not in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:243 (February 1999), LR 27:

§ 311. Criteria

A. General (These apply to all training programs administered under these rules.)

1. Preference will be given to applicants in industries identified by the state as target industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the secretary, at his discretion, may cancel funding of the training.

4. Number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR

23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:243 (February 1999), LR 27:

§ 313. Application Procedure

A. DED will provide a standard form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;
2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;
3. the specific training programs for which DED assistance is requested, including descriptions of the methods, providers and costs of the proposed training; and
4. any additional information the Secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:243 (February 1999), LR 27:

§ 315. Submission and Review Procedure

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

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;
2. identify the availability of existing training programs which could be adapted to meet the employer's needs;
3. verify that the business will continue to operate during the period of the contract; and
4. determine if employer's training plan is cost effective.

B. A cost-benefit analysis tailored to the applicant's request shall be conducted by DED to determine the net benefit to the state of the proposed training award.

C. Upon determination that an application meets the criteria for this program, DED staff will then make a recommendation to the secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

1. the secretary of the Department of Economic Development;
2. the Governor; and
3. the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:243 (February 1999), LR 27:

§ 317. General Award Provisions

A. Award Agreement

1. A contract will be executed between DED and the applicant. The contract will specify the performance objectives expected of the company(ies) and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training and job creation.

2. DED will disburse funds to the applicant in a manner determined by DED.

3. DED will oversee the progress of the training and reimburse the applicant from cost reports submitted by the applicant on a form provided by DED. DED, at its discretion, may request the company to submit additional information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon request and approval of the applicant and the secretary.

B. Funding. Award may not exceed \$500,000 for total amount.

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs: travel for trainers, training coordinators and trainees.

c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and Computer Based Training (CBT) software; and

d. other costs: when necessary for training, such as facility rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks;

e. scrap produced during training;

f. food, refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to DED by applicant. Funds will not be available for reimbursement

until a training agreement between the applicant and DED has been executed. Only funds spent on the project after the secretary's approval will be considered eligible for reimbursement. However, reimbursements can only be provided upon final execution of a contract with the Department of Economic Development.

2. Companies will be eligible for reimbursement at 90 percent until all contracted performance objectives have been met. After the company has achieved 100 percent of its contracted performance objectives, the remaining 10 percent of the grant award will be made available for reimbursement.

D. Compliance Requirements

1. Applicants shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract with DED.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

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

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December, 1997), LR 25:243 (February 1999), LR 27:

§ 319. Contract Monitoring

A. All monitoring will be done by DED. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of \$200,000, may be used by the DED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 27:

Don J. Hutchinson
Secretary

0104#015

DECLARATION OF EMERGENCY
Student Financial Assistance Commission
Office of Student Financial Assistance

Student Tuition and Revenue Trust
(START Saving) Program
(LAC 28:VI. 315)

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

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance to effectively administer this program. 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 this Emergency Rules is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective March 9, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

**Part VI. Student Financial AssistanceC Higher
Education Savings**

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A.- C.2. ...

3. For the year ending December 31, 2000, the Louisiana Education Tuition and Savings Fund earned an interest rate of 6.51 percent.

4. For the year ending December 31, 2000, the Tuition Assistance Grant (TAGS) Fund earned an interest rate of 6.83 percent.

D. - R. ...

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 26:2267 (October 2000), amended LR 27:

Mark S. Riley
Assistant Executive Director

0104#003

DECLARATION OF EMERGENCY
Student Financial Assistance Commission
Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
Definitions and Eligibility
(LAC 28:IV.301 and 703)

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 (TOPS), R.S. 17:3042.1 and R.S. 17:3048.1.

This Emergency Rule is 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 this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective March 9, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION

**Part IV. Student Financial AssistanceC Higher
Education Scholarship and Grant Programs**

Chapter 3. Definitions

§301. Definitions

* * *

*High School Graduate*Cfor the purposes of these rules, is defined as a student certified by award of a high school diploma to have satisfactorily completed the required units at a high school meeting the eligibility requirements of these rules or a student who has completed at least the final two years of a BESE-approved home study program and has reported such to BESE. A student who graduates at any time during an Academic Year (High School) shall be deemed to have graduated on May 31 of that year for the purpose of applying deadlines. For the purposes of determining when a student must begin postsecondary enrollment, all students that report completion of an approved home study course to BESE during an Academic Year (High School) are deemed to have graduated on May 31 of that year.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 27:36 (January 2001), LR 27:

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

§703. Establishing Eligibility

A. - G.I.d. ...

2. A student who enters an eligible college or university early admissions program prior to graduation from high school shall be considered a first-time freshman, as defined in §301, not earlier than the first semester following the Academic Year (High School) in which the student graduated. A student who enters an early admissions program will remain eligible for a TOPS award until the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date that the student actually graduated.

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 24:636 (April 1998), amended LR 24:1902 (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 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:

Mark S. Riley
Assistant Executive Director

0104#002

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waiver Program
Children's Choice Crisis Designation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq. The 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, Office of the Secretary, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver called Children's Choice effective January 15, 2001 (*Louisiana Register*, Volume 26, Number 12). Children's Choice provides supplemental services, limited to \$7,500 per year per child for waiver services, to children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by Medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Families of children whose names are on the Mentally Retarded/Developmentally Disabled (MR/DD) waiver waiting list may choose to either apply for Children's Choice

or have the child remain on the MR/DD waiting list. Families will be offered this choice in the order that the child's name was added to the MR/DD waiver waiting list. A subsequent rule was adopted transferring responsibility for the waiting list to the Bureau of Community Supports and Services and setting forth provisions for the orderly transition from regional waiting lists to a single statewide request for services registry to be maintained in state office. The rule also changed the name of the waiting list to the MR/DD waiver request for services registry (*Louisiana Register*, Volume 27, Number 2).

Children's Choice is designed to provide an attractive alternative to the MR/DD waiver. Services are designed to allow greater flexibility to enhance family functioning. Another unique feature is portability of the child's waiver slot: children who "age out" (reach their nineteenth birthday) will transfer with their waiver slot into a waiver that serves adults with developmental disabilities. In a continuing effort to address the concerns of families who will consider choosing Children's Choice, the department now proposes to adopt provisions for additional supports outside the \$7,500 cap on waiver service expenditures should certain catastrophic events occur after a child has been found eligible for Children's Choice. This Emergency Rule is being adopted to continue the provisions contained in the January 15, 2001 rule.

Emergency Rule

Effective May 16, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following regulations regarding crisis provisions for children who participate in Children's Choice.

Families must choose to either accept Children's Choice services or remain on the MR/DD waiver request for services registry. This is an individual decision based on a family's current circumstances. In the event that a family chooses Children's Choice for their child and later experiences a crisis that increases the need for paid supports to a level that cannot be accommodated within the \$7,500 cap on waiver expenditures, they may request consideration for a crisis designation. A crisis is defined as a catastrophic change in circumstances rendering the natural and community support system unable to provide for the health and welfare of the child at the level of benefits offered under Children's Choice. The following procedure has been developed to address these situations.

Crisis Designation Criteria

In order to be considered a crisis, one of the following circumstances must exist:

1. death of the caregiver with no other supports (i.e., other family) available; or
2. the caregiver incapacitated with no other supports (i.e., other family) available; or
3. the child is committed to the custody of DHH by the court; or
4. other family crisis with no caregiver support available, such as abuse/neglect, or a second person in the household becomes disabled and must be cared for by same caregiver, causing inability of the natural caregiver to continue necessary supports to assure health and safety.

Provisions of a Crisis Designation

Additional services (crisis support) outside of the waiver cap amount may be approved by the Bureau of Community Supports and Services (BCSS) State Office. Crisis designation is time limited, depending on the anticipated duration of the causative event. Each request for crisis designation may be approved for a maximum of three months initially, and for subsequent periods of up to three months.

When the crisis designation is extended at the end of the initial duration (or at any time thereafter), the family may request the option of returning the child's name to the original application date on the MR/DD waiver request for services registry when it is determined that the loss of caregiver and lack of natural or community supports will be long-term or permanent. This final determination will be made by BCSS. Eligibility and services through Children's Choice shall continue as long as the child meets eligibility criteria.

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

0104#040

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies Provider Based Rural Health Clinics

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule to establish the provisions governing the disproportionate share payment methodologies for hospitals (*Louisiana Register*, Volume 24, Number 3). This March 20, 1998 rule was subsequently amended to include the definition of a teaching hospital as required by Act 19 of the 1998 Regular Session of the Louisiana Legislature (*Louisiana Register*, Volume 25, Number 5).

The department then adopted an emergency rule with an effective date of June 21, 1999 to establish an additional disproportionate share hospital group for state fiscal year 1999 only, for large public non state rural hospitals that had

at least 25 percent Medicaid inpatient days utilization (*Louisiana Register, Volume 25, Number 6*). The May 20, 1999 rule was later amended to revise the qualifying criteria for small rural hospitals as required by Senate Concurrent Resolution Number 48 and Act 1068 of the 1999 Regular Session of the Louisiana Legislature (*Louisiana Register, Volume 26, Number 3*). The Department later adopted an emergency rule with an effective date of October 21, 2000 to establish an additional disproportionate share hospital group for state fiscal year 2001 only, for public non state hospitals with no more than 60 licensed beds as of July 1, 2000 (*Louisiana Register, Volume 26, Number 10*).

The bureau provides coverage for rural health clinic services under the Medicaid Program. Currently, the uncompensated costs of rendering health care services in a provider based rural health clinic are not considered in the calculation of the hospital's uncompensated costs. The Bureau has now determined that it is necessary to include the uncompensated costs of a provider based rural health clinic in the calculation of the rural hospital's uncompensated costs. This action is being taken to enhance federal revenue. It is estimated that the expenditures necessary to implement this proposed emergency rule will be approximately \$1,668,000 for state fiscal year 2000-01.

Emergency Rule

Effective April 10, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the disproportionate share payments to small rural hospitals by including the uncompensated costs of health care services provided in a rural health clinic that is licensed as part of the small rural hospital in the calculation of the hospital's uncompensated costs. Qualifying hospitals must meet the qualifying criteria contained in section II. E and either section II. A, B, or C of the May 20, 1999 rule. In addition, qualifying hospitals must meet the definition for a small rural hospital contained in III. B.1. of the March 20, 2000 rule. Qualifying hospitals must maintain a log documenting the provision of uninsured care in the rural health clinic as directed by the Department. All other provisions contained in the May 20, 1999 rule shall remain in effect as previously promulgated.

The disproportionate share payments to each qualifying rural hospital shall continue to be equal to that hospital's pro rata share of uncompensated costs for uninsured patients only for all hospitals meeting these criteria for the cost reporting period ended during the period April 1, 2000 through March 31, 2001, multiplied by the amount set for this pool. Payment will not exceed each qualifying hospital's actual uncompensated costs for uninsured patients or the amount appropriated. If the cost reporting period is not a full period (twelve months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

Implementation of this rule shall be subject to the approval of the Health Care Financing Administration.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, 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

0104#037

DECLARATION OF EMERGENCY

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

Durable Medical Equipment/Ostomy Supplies Reimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously reimbursed certain durable medical equipment items identified by specific Health Care Financing Administration Common Procedure Codes (HCPC) at either 80 percent of the Medicare Fee Schedule, 80 percent of the Manufacturers Suggested Retail Price (MSRP) or billed charges, whichever was the lesser amount. As a result of a budgetary shortfall, the reimbursement for these durable medical equipment items was reduced to 70 percent of the Medicare Fee Schedule, 70 percent of the MSRP or billed charges, whichever was the lesser amount (*Louisiana Register, Volume 27, Number 1*). The Bureau now proposes to increase the reimbursement for ostomy supplies identified by specific HCPC codes to either 80 percent of the Medicare Fee Schedule, 80 percent of the MSRP or billed charges, whichever is the lesser amount.

If an item is not available at 80 percent of the Medicare Fee Schedule amount or 80 percent of the MSRP amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community. This action is being taken in order to protect the health and well being of Medicaid recipients by ensuring access to durable medical equipment supplies and services. It is estimated that the implementation of this emergency rule will increase expenditures in the Durable Medical Equipment Program by approximately \$16,236 for state fiscal year 2000-2001.

EMERGENCY RULE

Effective for dates of service April 6, 2001 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for ostomy supplies identified by specific

Health Care Financing Administration Common Procedure Codes. The reimbursement is increased to 80 percent of the Medicare Fee Schedule, 80 percent of the Manufacturers Suggested Retail Price (MSRP) or billed charges, whichever is the lesser amount, for the following HCPC codes:

Ostomy Supplies
A4360-A4421
A5051-A5149
K0137-K0139
K0278-K0280
K0421-K0437

If an item is not available at 80 percent of the Medicare Fee Schedule amount or 80 percent of the MSRP amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, 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

0104#039

DECLARATION OF EMERGENCY

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

Inpatient Hospital Services Reimbursement
MethodologyCWell Baby Care

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals (*Louisiana Register, Volume 20, Number 6*). Under the prospective reimbursement methodology, five general peer groups for hospitals and three peer groups for specialty hospital services were established for the reimbursement of inpatient hospital services. In addition, peer groups were established for the reimbursement of the following high intensity inpatient services: Neonatal Intensive Care, Pediatric Intensive Care, Burn Care and Transplants.

Four levels of Neonatal Intensive Care based on severity of illness and intensity of service are recognized under the current reimbursement methodology. Level 1 (nursery boarder) is a separate prospective per diem rate developed

for infants who remain in the hospital nursery after the mother is discharged. The principal cost of the birth is included with the payment for the mothers stay at the general peer group per diem rate. The nursery boarder rate is intended to cover incidental costs associated with an infants short-term stay in the nursery following the mothers discharge.

The bureau has now determined that it is necessary to establish a separate prospective per diem rate for services rendered to infants who are discharged at the same time that the mother is discharged. This action is being taken in order to protect the health and well-being of Medicaid eligible mothers and infants by ensuring the continuity of access to hospital services for deliveries. It is estimated that implementation of this emergency rule will increase expenditures to private hospitals for well baby care inpatient services by approximately \$679,980 for state fiscal year 2000-2001.

Emergency Rule

Effective for dates of service on or after April 10, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes a separate prospective per diem rate for well baby care rendered to infants who are discharged at the same time that the mother is discharged. The separate per diem rate for well baby care shall be available to private hospitals that perform more than 1500 Medicaid deliveries per year. The per diem rate for well baby care shall be the lesser of actual costs as documented on the last finalized cost report or the rate for a nursery boarder.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, 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

0104#038

DECLARATION OF EMERGENCY

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

Public Hospitals Reimbursement 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, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided

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

Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature directs the Department of Health and Hospitals to implement procedures to receive transfers of public funds from qualifying health care providers that will qualify as the state's matching share for the purpose of claiming federal financial participation (FFP). The Department defines a qualifying health care provider as any public provider owned by a parish, city or other local government agency or instrumentality. This definition includes facilities owned jointly by two or more government entities, but does not include facilities owned jointly by government and private organizations. The bureau proposes to amend the reimbursement methodology for all non-state public hospitals (other than those recognized as small rural hospitals) to pay each hospital's unreimbursed Medicaid costs incurred in providing care to Medicaid recipients. This emergency rule is being adopted to continue the provisions contained in the December 21, 2000 rule.

Emergency Rule

Effective April 21, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes a supplemental payment to be issued to non-state public hospitals, which are not recognized by the Department as a small rural hospital, for unreimbursed

Medicaid costs incurred in providing care to Medicaid recipients. Issuance of the supplemental payment is contingent on the public hospital entering into a cooperative endeavor agreement with the Department to certify public funds as representing expenditures eligible for federal financial participation.

The supplemental payment shall be calculated from each hospital's latest audited Medicaid cost report. The payment amount shall be determined by subtracting the actual Medicaid reimbursements from the total Medicaid costs as calculated from the audited cost report. The Medicaid reimbursements and Medicaid costs shall include inpatient (acute and psychiatric services) hospital services and outpatient hospital services. This amount shall then be inflated forward to State Fiscal Year 2001 using the annual Medicare PPS Marketbasket Index. There will be no adjustment to this payment if additional costs are identified subsequent to the completion of the audit process. Any overpayments that occur as a result of the issuance of the supplemental payment shall be the responsibility of the rural hospitals.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, 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

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