

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Division of Pesticides and Environmental Programs

Pesticide Restrictions Use of the Pesticide Icon (LAC 7:XXIII.143)

In accordance with the Administrative Procedures Act R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following Rules for the implementation of regulations governing the use of the pesticide, Icon (fipronil).

Icon is an essential pesticide in the control of rice pests. Without its use the rice crop in Louisiana is in imminent danger of being damaged by pests, to the extent that a substantial reduction in rice yield will result. Failure to control rice pests, therefore, poses an imminent peril to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The cumulative effect of Icon as a pesticide, saltwater intrusion, anticipated high water temperatures, and other weather related factors pose an imminent peril to the environment and to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The application of Icon in accordance with its label and labeling, but inconsistent with the department's rules and regulation and the potential misuse of this pesticide poses an imminent peril to the public health, safety and welfare and to the environment, especially if it gets into the waterways of this state.

The department has, therefore, determined that these emergency rules implementing a monitoring and registration program and governing Icon applications, during the current crop year, are necessary in order to alleviate these perils. Information will be gathered to determine whether the effectiveness of this chemical outweighs any potential risk to the public or the environment.

This Rule becomes effective upon signature, March 7, 2003, and will remain in effect 120 days.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticide

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - M.2. ...

N. Persons applying Icon to rice seed and persons selling or planting Icon treated rice seed, intended to be planted in Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Jefferson Davis, Lafayette, St. Landry, St. Martin, St. Mary, and Vermillion parishes shall comply with the following.

1. Registration Requirements

a. The commissioner hereby declares that prior to making any application of Icon to rice seed, the seed treatment owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The commissioner hereby declares that prior to selling Icon treated rice seed, the dealer must first register such intent by notifying the DPEP in writing.

c. The Commissioner hereby declares that prior to making aerial applications of Icon treated rice seed, the aerial owner-operator must first register such intent by notifying the DPEP in writing.

2. Growers of rice shall not force or coerce applicators to apply Icon treated rice, when the applicators, conforming to the Louisiana Pesticide Laws and Rules and Regulations or to the pesticide label and labeling, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use Icon treated rice seed, subject to appeal to the Advisory Commission on Pesticides.

3. Icon Application Restriction

a. Do not apply Icon treated rice seed by ground within 25 feet, or by air within 100 feet of lakes, reservoirs, rivers, permanent streams, marshes or natural ponds, estuaries and commercial fish farm ponds.

b. Do not allow Icon treated rice seed to drift into neighboring fields, ponds, streams or estuaries with fish, shellfish, or crustaceans (including crawfish).

c. All Icon label and labeling use restrictions shall be strictly followed.

4. Monitoring of Icon

a. Rice seed treaters, registered to treat rice seed with Icon, shall report daily to the DPEP, on forms prescribed by the commissioner, all treatments of Icon to rice seed. Information shall include but not be limited to:

- i. pounds treated;
- ii. treatment rate;
- iii. pounds sold or distributed;
- iv. purchaser and/or grower name, address, and phone number.

b. Dealers selling Icon treated rice seed shall report daily, to the DPEP, on forms prescribed by the commissioner all sales of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds sold;
- ii. treatment rate;
- iii. acres to be planted,;
- iv. planting date;
- v. purchaser and/or grower name, address, parish and phone number;
- vi. location and parish of field to be planted;
- vii. planting applicator-owner/operator (aerial or ground).

c. Aerial owner/operators planting Icon treated rice seed shall provide and maintain records daily, on forms

prescribed by the commissioner all applications of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds per acre planted;
- ii. acres planted;
- iii. date planted;
- iv. grower name, address, parish and phone number;
- v. location and parish of field planted;
- vi. pilot's name and certification number.

5. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

- a. stop orders for use, sales, or application;
- b. label changes;
- c. remedial or protective orders;
- d. any other relevant remedies.

O. - P.6.a.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (June 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 29:

Bob Odom
Commissioner

0303#026

DECLARATION OF EMERGENCY

Department of Economic Development Workforce Development and Training Program Office of Business Development

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

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, 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. This Emergency Rule was adopted on February 13, 2003, to become effective February 13, 2003. 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, Office of Business Development, Louisiana Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to publish these Rules because of recent statutory amendments and a recognized immediate need to remove the requirement that a sponsoring public entity be a party to the award agreement or contract, and for the Louisiana Economic Development Corporation be a party to the award agreement

or contract. The contract will now be between the corporation and the company being granted the Award.

The emergency action is deemed necessary to remove the inherent conflict of interest in having a public entity monitor the performance of the company under the contract. Public entities need 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. Preamble and Purpose

A. Workforce Development and Training is vital to support the State's commitment to Cluster Based Economic Development, and the State's long-term goals as set forth in Louisiana: Vision 2020, which is the Master Plan for Economic Development for the State of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

- 1. improving the competitiveness and productivity of Louisiana's workforce and business community; and
- 2. 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 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§303. Definitions

Applicant Cthe entity or company requesting a training award from LED and LEDC under this program.

Award Cfunding approved under this program for eligible training activities.

Company Cthe business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

Contract Ca legally enforceable Award Agreement between DED, the awardee and a sponsoring entity LEDC and the successful applicant-company governing the terms and the conditions of the training award.

Full Time Permanent Job Can employed position requiring the employee to work a full 40 hour work week, and which is not a temporary position.

LEDC the Louisiana Department of Economic Development.

LEDCC the Louisiana Economic Development Corporation.

Net Benefit Return to the State Cthe determination of whether or not the value to the State is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract Can average of that portion achieved by the company of the full time permanent jobs created or upgraded, and that portion achieved by the

company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Preference—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program—the Workforce Development and Training Program.

Project—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to maintain or expand its Louisiana operations, to increase its capital investment in Louisiana, or to locate a facility in this State.

Secretary—the Secretary of the Louisiana Department of Economic Development, who is, by law, also the President of the Louisiana Economic Development Corporation.

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 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§305. General Principles

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

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

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

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

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

5. 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;

6. the anticipated economic benefits to the state will be considered as a requirement in making the award;

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

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

9. award funds shall be utilized for the approved training project only.

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 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§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 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§309. Eligibility

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

B. The following types of businesses are ineligible for the award of workforce development funds:

1. retail businesses;

2. trucking companies;

3. lodging or hospitality enterprises;

4. assisted living enterprises, retirement communities, or nursing homes; and

5. gaming or gambling enterprises.

C. 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.

D. 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 the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. Companies must be in full compliance with all state and federal laws.

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 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§311. Criteria

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

1. Preference may be given to applicants in industries identified by the state as targeted or cluster 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 LEDC, upon the recommendation of the Secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The 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 full-time permanent jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent 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 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§313. Application Procedure

A. LED will provide a standard application 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 LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information LED or LEDC 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 25:405, LR 25:1664

(September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§315. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, 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 the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC; and LEDC will then review and either approve or reject the application.

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 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§317. General Award Provisions

A. Award Agreement

1. An award agreement or contract will be executed between LEDC and the successful applicant-company. The contract will specify the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation, and the achievement of employee salary levels to be reached by the company.

2. LEDC will disburse funds to the company as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the company on the basis of cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting 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 of the company, the recommendation of LED, and approval of LEDC.

B. Funding

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 and/or equipment 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 LED by the company. Funds will not be available for reimbursement until a training agreement or contract between the company and LEDC has been executed. Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, reimbursements can be provided to the company only after final execution of a contract with LEDC.

2. Companies will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the

benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, companies shall be required to complete and submit to LED Cost Reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly Dept. of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

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, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or 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, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits of the training project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

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

5. LEDC shall retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, 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 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§319. Contract Monitoring

A. All monitoring will be done by LED. A portion of the fiscal year's appropriation, up to five percent or a maximum

of \$200,000.00, may be used by LED 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 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 25:405, LR 25:1664 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

§321. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation (LEDC), employee thereof, or employee of the Louisiana Department of Economic Development (LED), nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:

Don J. Hutchinson
Secretary

0302#002

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 701, 805, 1703, and 1705)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the Rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs 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 February 7, 2003, 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

* * *

Program Year (Non-Academic Program) Cthe schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible colleges and universities, beginning with the fall semester or term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

Qualified Summer Session Cthose summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or
2. the student can complete his program's graduation requirements in the summer session; or
3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or
4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

* * *

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 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29: LR 29:

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

§701. General Provisions

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each Academic Year (College) and Program Year (Non-academic Program), in addition to an amount equal to tuition for full-time attendance at an Eligible College or University, for a period not to exceed eight semesters, including Qualified Summer Sessions, 12 quarters, including Qualified Summer Sessions, or an equivalent number of units in an eligible institution which

operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each Qualified Summer Session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each Academic Year (College) and each Program Year (Non-academic Program), in addition to an amount equal to tuition for full-time attendance at an Eligible College or University, for a period not to exceed eight semesters, including Qualified Summer Sessions, twelve quarters, including Qualified Summer Sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each Qualified Summer Session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

E.4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the Average Award Amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each Program Year (Non-academic Program). The stipend will be paid for each Qualified Summer Session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - G.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 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A.-A.4. ...

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the Program Year (Non-Academic Program), unless granted an exception for cause by LASFAC; and

A.6. - B. ...

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 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:

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. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 Academic Year (High School), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 Academic Year (High School), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

B. Procedures for Reporting and Certifying Student Performance

1.a. Through the 2002 Academic Year (High School), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 Academic Year (High School), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 Academic Year (High School), the certification form shall contain, but is not limited to, the following reportable data elements:

$$5X = 12; X = 2.40$$

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum.); and

iv. through the graduating class of the Academic Year (High School) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended;. After the graduating class of the Academic Year (High School) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 Academic Year (High School), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the Academic Year (High School) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the Academic Year (High School) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 Academic Year (High School), 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.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used.

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

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

By cross multiplying,

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 Academic Year (High School), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS Cumulative High School Grade Point Average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 Graduates for the TOPS Performance Award. 1998 Graduates who are ranked in the top 5 percent of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the following criteria shall be eligible for the Performance Award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 Academic Year (High School), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 Academic Year (High School), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 Academic Year (High School), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS Award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

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

24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26:1998 (September 2000), LR 26:2269 (October 2000), LR 27:1863 (November 2001), LR 29:

§1705. Notification of Certified Students

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS Performance and Honors Awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 Academic Year (High School), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

- a. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and
- b. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and
- c. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and
- d. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 Academic Year (High School), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Students (TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS Cumulative High School Grade Point Average, you must satisfy all of the following conditions to redeem a scholarship under this program:

- a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;
- b. LASFAC must determine that your TOPS Cumulative High School Grade Point Average based on the TOPS core curriculum meets the statutory requirements;
- c. you must be a Louisiana resident as defined by LASFAC;
- d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;
- e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state aid; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

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 24:644 (April 1998), amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), LR 29:

George Badge Eldredge
General Counsel

0302#004

DECLARATION OF EMERGENCY

**Tuition Trust Authority
Office of Student Financial Assistance**

START Interest Rates (LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATA) 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 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 authority 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 February 7, 2003, 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. - B.6. ...

7. For the year ending December 31, 2002, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.82 percent.

8. For the year ending December 31, 2002, the Earnings Enhancements Fund earned an interest rate of 5.91 percent.

C. - 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), amended LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:

George Badge Eldredge
General Counsel

0303#004

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Commercial Laboratories Pending Accreditation
(LAC 33:I.4501 and 4719)(OS039E4)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and R.S. 30:2074, which allows the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

This is a renewal of Emergency Rule OS039E3, which was effective November 11, 2002. The department has begun rulemaking (Log #OS039) to promulgate this regulation. OS039 is expected to be a final regulation on March 20, 2003.

The department relies on analytical data submitted both directly and indirectly to the department to determine compliance with both state and federal regulations. As a result of deadlines established in current Louisiana regulations, the department is prohibited from accepting data from commercial laboratories that have not received departmental accreditation. This Rule will allow the department to accept data from laboratories that have submitted complete applications and supporting documents, have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory, and have paid all appropriate fees. A finding of imminent peril to public health, safety, and welfare is based on the inability to accept and review analytical data. Furthermore, the environmental analytical laboratory industry could suffer a loss of jobs.

The department is adding an exemption for personnel monitoring services and those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*, due to the fact that they are licensed under other department regulations and to prevent an additional economic burden and duplication of effort by the department.

The department relies on the analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The department must have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment.

This Emergency Rule is effective on March 11, 2003, and shall remain in effect for a maximum of 120 days or until the final Rule OS039 is promulgated, whichever occurs first. For more information concerning OS039E4, you may contact the Regulation Development Section at (225) 765-0399.

Title 33

Environmental Quality

Part I. Office of the Secretary

Subpart 3. Laboratory Accreditation

Chapter 45. Policy and Intent

§4501. Description and Intent of Program

A. - D. ...

E. This Subpart shall not apply to the following:

1. laboratory analyses programs accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals; and

2. personnel monitoring services in accordance with LAC 33:XV.430.C and to those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), LR 29:312 (March 2003).

Chapter 47. Program Requirements

§4719. Implementation

A. - B. ...

C. The department will accept analytical data generated by laboratories that do not comply with the deadlines established in Subsection B of this Section for accreditation if such laboratories:

1. have submitted a complete application form and supporting documents;

2. have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory; and

3. have paid appropriate fees.

D. These regulations shall not apply to field tests as defined in LAC 33:I.4503.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003).

L. Hall Bohlinger
Secretary

0303#067

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Postponement of Permit Deadline
for Oil and Gas Construction Activities
(LAC 33:IX.2341)(WQ047E)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish Rules, and of R. S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the Environmental Protection Agency (EPA) Rule to postpone until March 10, 2005, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas related construction activity that disturbs one to five acres of land.

This Emergency Rule will allow operators at construction sites related to oil and gas exploration, production, processing, or treatment operations, or transmission facilities that disturb equal to or greater than one acre and less than five acres of land to legally conduct those construction activities without being permitted until the regulations found at LAC 33:IX.2341 can be revised to incorporate the new March 10, 2005, federal permit authorization deadline for those construction activities. The Department of Environmental Quality, Office of Environmental Services (previously known as the Office of Water Resources) became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. An Emergency Rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. Accordingly, the department adopts the following Emergency Rule.

This Emergency Rule is effective on March 10, 2003, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning WQ047E you may contact the Regulation Development Section at (225) 765-0399.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Chapter 23. The LPDES Program

Subchapter B. Permit Application and Special LPDES Program Requirements

§2341. Storm Water Discharges

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities,

requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

E.9 - G.4.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:

L. Hall Bohlinger
Secretary

0303#066

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Public Notification of Contamination
(LAC 33:I.Chapter 1)(OS042E2)

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary to comply with the Governor's October 1, 2001, Executive Order No. MJF 2001-46, entitled "Environmental Contamination Notification." The order states, "the health, safety, and welfare of the people of Louisiana would be improved, and the government would better fulfill its public trust obligations, if those executive branch agencies notified people who may be exposed to environmental contamination when such agency has sound scientific knowledge of environmental contamination that exceeds the applicable federal and state health standards and that may cause adverse health effects."

This Emergency Rule is effective on March 7, 2003, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. This is a renewal of Emergency Rule OS042E1, which was effective on November 7, 2002. The department is drafting a Rule to promulgate these provisions. For more information concerning OS042E2, you may contact the Regulation Development Section at (225) 765-0399.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 1. Public Notification of Contamination

§101. Purpose

A. The purpose of this Chapter is to establish requirements for notifying those members of the public that the department determines are likely to be adversely affected by a release.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

§103. Definitions

Administrative Authority—the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

Applicable Federal or State Health and Safety Standard—such standards the department, based on its knowledge and expertise, determines are applicable to the release site.

Department—the Department of Environmental Quality.

Offsite—areas beyond the property boundary of the release site.

Person—any individual, municipality, public or private corporation, partnership, firm, the State of Louisiana, political subdivisions of the State of Louisiana, the United States government, and any agent or subdivision thereof or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, commissions, and interstate bodies.

Release—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release or other release authorized by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

§105. Notification Requirements

A. Notice shall be provided when the department confirms off-site impact that exceeds the applicable federal or state health and safety standard and the department determines that the off-site impact poses a risk of adverse health effects.

B. The department shall issue notice of a release to persons, within the area of contamination, where the department determines that the release poses a risk of adverse health effects.

C. The public notice shall be provided by means reasonably calculated to reach those members of the public directly affected by the release, as determined by the department, and shall provide information regarding potential adverse health effects posed by the contamination, as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

L. Hall Bohlinger
Secretary

0303#065

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Office of Group Benefits

EPO Plan of Benefits Employer Responsibility
(LAC 32:V.417)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of La R. S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment. Accordingly, the following Emergency Rule, revising and amending the EPO Plan of Benefits, is effective March 1, 2003, and shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, which ever occurs first.

Title 32

EMPLOYEE BENEFITS

Part V. Exclusive Provider (EPO) Plan of Benefits

Chapter 4. Uniform Provisions

§417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB,

then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), LR 29:

A. Kip Wall
Chief Executive Officer

0303#021

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Office of Group Benefits**

PPO Plan of Benefits C Employer Responsibility
(LAC 32:III.417)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment. Accordingly, the following Emergency Rule, revising and amending the PPO Plan of Benefits, is effective March 1, 2003, and shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, whichever occurs first.

Title 32

EMPLOYEE BENEFITS

Part III. Preferred Provider (PPO) Plan of Benefits

Chapter 4. Uniform Provisions

§417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A participant employer shall immediately inform the OGB Program whenever a *retiree* with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium

rates applicable to the classification for *retirees* without Medicare.

C. Any *participant employer* that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), LR 29:

A. Kip Wall
Chief Executive Officer

0303#022

DECLARATION OF EMERGENCY

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

Procurement of Computer Equipment and Services
(LAC 34:I.Chapter 55)

The Division of Administration, Office of State Purchasing is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend, repeal and adopt additional Rules in Chapter 55 on Procurement of Computer Equipment and Services under the authority of R.S. 39:199.C and D. The Office of the Governor, Division of Administration, Office of State Purchasing, hereby finds that these Rules are necessary to establish guidelines for Information Technology procurement activities to realize potential savings considering the current financial conditions of the state, and accordingly finds it imperative that the rules be implemented as soon as possible. These Rules shall become effective upon publication, March 20, 2003, for 120 days, or until promulgation of the final Rules, whichever occurs first.

These Rules will amend Rules relative to the purchase and lease of computer hardware and software; the procurement of hardware maintenance, software maintenance, and software support services; and the procedures for Procurement Support Team operations.

Further, the Office of State Purchasing proposes to repeal Rules relative to Emergency Procurement of Data Processing Equipment; Guidelines for Justification of Multi-Year Data Processing Leases; Unscheduled Maintenance of Data Processing Equipment; Procedures for Disposing of Leased, Rented or Purchased Data Processing Equipment; and Equipment Specifications in Solicitations, LAC 34:I.Appendix A.1-9:5, 1-9:6 and 1-9:7, 1-9:9, and 1-9:12, respectively.

The Office of the State Register will also renumber LAC 34:I.Appendix A to meet the APA mandate of prescribing "a

uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code." The following table should clarify the renumbering effort.

Former Section Number under Appendix A	New Section Number
New Material	5501
1-9:3	5503
1-9:4	5505, 5507, 5509, 5511
1-9:5	Repealed
1-9:6	Repealed
1-9:7	Repealed
1-9:8	5513
1-9:9	Repealed
1-9:12	Repealed

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Chapter 55. Procedures for Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance

§5501. General

A. This Chapter describes the procedures that all agencies in the executive branch must follow for the procurement of Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance. Situations not covered by these rules may be found in the general statutes and rules and regulations of the Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:

§5503. Procedures for Procurement of Information Technology Hardware

A. This Section describes the information that all agencies in the Executive Branch must furnish when seeking approval of the Office of State Purchasing for the procurement of information technology hardware including installation with a cost exceeding the agency's delegated purchasing authority. Information technology hardware, for the purpose of this Section, is defined as any electronic data processing device including but not limited to central processing units, memory, peripheral devices, unit record equipment, data communications equipment, mini-computers and peripherals, graphics equipment including digitizers and plotters, optical scanning equipment, and shared logic word processing equipment, printers, multifunctional devices, and scanners. Equipment that does not fit into any of the above categories will be handled on a case-by-case basis and the agency must contact the Office of State Purchasing for a ruling on the justification required.

B. This Section does not apply to acquisitions from State Brand Name Contracts. Terms and conditions for Brand Name Contracts may contain additional procedures that an agency must follow. However an approved IT-10 is needed for all IT procurements in excess of \$100,000.

C.1. For requests not covered by an existing contract, the following should be provided to the Office of State Purchasing to avoid delays in approval:

a. a general description of the mission to be accomplished using the requested equipment;

b. a detailed list of the proposed equipment, including quantities and estimated costs for lease, purchase, rental, maintenance, etc;

c. an approved IT-10 form with all requests for procurements in excess of \$100,000.

2. The Office of State Purchasing may require additional information or justification, as it deems appropriate for any particular procurement request.

D. Each agency contemplating a procurement greater than the agency's delegated purchasing authority shall, upon definition of the preliminary functional requirements, submit a draft solicitation to the Office of State Purchasing. If the procurement exceeds \$100,000, the Office of State Purchasing shall schedule a Procurement Support Team (PST) meeting. The Procurement Support Team participation may include assistance in finalizing the solicitation. The Procurement Support Team participation must include, as a minimum, assistance in evaluation of bids or proposals and negotiations of contract terms (if applicable).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

§5505. Procedures for the Procurement of Information Technology Software

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software.

B. Information technology software, for the purpose of this Section is defined as any program or series of programs offered commercially to computer installations.

C. If the cost of the information technology software including modifications, installation integration, training for the total project plus maintenance and support services, for a 12 month period to be acquired is under \$100,000, it is deemed to have the advance approval of the Office of State Purchasing and shall not be for a price greater than the vendor's published price.

1. The agency must include in the procurement file a list of all known information technology software packages investigated which claim to accomplish the required task. Name each investigated, its total cost, and the rationale for selection or rejection.

2. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software (including modifications, installation integration, training, etc.), with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology

software with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software procurements of \$100,000 or greater will be competitively obtained through and ITB, RFP or through an OIT pricing agreement administered by the Office of State Purchasing.

3. Information technology software procurements of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

4. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

§5507. Procedures for the Procurement of Information Technology Hardware Maintenance

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology hardware maintenance.

B. For purposes of this Section, information technology hardware maintenance consists of remedial maintenance, preventative maintenance, replacement parts, labor and engineering changes necessary to keep information technology hardware in good working condition.

C. Procurements for information technology hardware maintenance under \$100,000 may be handled non-competitively and are deemed to have the advanced approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology hardware maintenance with a total cost greater than \$100,000 whenever possible.

1. Information technology hardware maintenance over \$100,000 may be procured non-competitively from the original equipment manufacturer (OEM) if the maintenance is for mission critical equipment (such as mainframes, mainframe peripherals, enterprise servers, or network backbone components). The agency must submit a letter of justification signed by the head of the agency or his designee to the Office of State Purchasing.

2. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology hardware maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

3. Information technology hardware maintenance not covered in Paragraph D.1 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB), or Request for Proposal (RFP) process.

4. Information technology hardware maintenance of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

§5509. Procedures for the Procurement of Information Technology Software Maintenance

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software maintenance.

B. For the purposes of this Section, information technology software maintenance includes on-site, telephone and/or on-line troubleshooting, installation assistance, basic usability assistance, etc. Information technology software products and technologies to be covered include operating systems, application software and systems, application software, and systems and network management software, tools and utilities.

C. Procurements for information technology software maintenance under \$100,000 may be handled non-competitively and are deemed to have the advanced approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software maintenance with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software maintenance in which the software vendor is the only authorized entity to provide product fixes, patches, updates, or upgrades can continue to be handled non-competitively in accordance with R.S. 39:199.D. A letter from the information technology software vendor substantiating the above information is required.

3. Any other type of information technology software maintenance not covered in Paragraphs D.1 or D.2 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB) or Request for Proposal (RFP) process.

4. Information technology software maintenance with a cost of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

§5511. Procedures for the Procurement of Information Technology Software Support Services

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software support services.

B. For purposes of this Section, information technology software support services include capacity planning, performance analysis, on-site troubleshooting, custom modifications, etc.

C. Procurements for information technology software support services under \$50,000 may be handled non-competitively and are deemed to have the advance approval of the Office of State Purchasing. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. Procurements shall not be artificially divided to circumvent the \$50,000 threshold.

E. Information technology software support services of \$50,000 or greater must be procured using the Consulting and Support Services Agreement (CSSA) or the Request for Proposal (RFP) process in accordance with R.S. 39:1481 et seq. (Office of Contractual Review).

F. Information technology software support services of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

G. It is the state's intent to compete information technology software support services with a total cost of \$50,000 or greater whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199D

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February, 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

§5513. Procurement Support Team Operations

A. Procurement Support Team Composition

1. A Procurement Support Team (PST) shall be formed in accordance with the procedures defined herein for every information technology contract in an amount \$100,000 or greater for the procurement of information technology hardware, hardware maintenance, software, software maintenance, and software support services. All contracts shall be subject to the review and approval of other agencies as required by statute or regulations. Purchase release orders issued pursuant to a Direct Order Contract or a Brand Name Contract shall not constitute a contract for purposes of these procedures. The formation of a Procurement Support Team shall be accomplished by the Office of State Purchasing and shall include one or more representatives from each of the following: the Office of State Purchasing; the Legislative Legal Staff; the using agency initiating the procurement action; and the Legislative Fiscal Office. The Office of Information Technology will provide technical staff to assist the Office of State Purchasing and the Procurement Support Team.

2. At least two members of each Procurement Support Team shall have formal training in contract negotiations. The Legislative Fiscal Officer, the speaker of the House of Representatives and the president of the Senate (jointly), and the head of the Purchasing Agency (or his designee), shall each designate in writing to the Office of State Purchasing the names of a primary and an alternate team member. It shall be the responsibility of each named agency to keep the Office of State Purchasing advised of any changes in designated individuals.

3. The individual agencies represented on procurement support teams will have the following primary responsibilities. These responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Purchasing.

a. Legislative Fiscal Office. The Legislative Fiscal Office shall have the primary responsibility for the analysis of solicitations and review of funding procedures and certification of specific appropriation for the purpose prior to the final contract award.

b. Legislative Legal Staff. The Legislative Legal Staff shall have the primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, review to ensure compliance with statutes and regulations, and legal negotiations.

c. Office of State Purchasing. The Office of State Purchasing shall have primary responsibility for insuring compliance with procurement procedures and regulations, the drafting of solicitations, and the evaluation of bids and proposals.

d. The Procuring Agency. The procuring agency shall have primary responsibility for the determination of compliance of bids or proposals with the functional requirements, and for all management decisions at each phase of the procurement process.

4. The Office of Information Technology shall provide technical staff to assist the Office of State Purchasing and the Procurement Support Team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, developing the structure and content of solicitations, and evaluation of bids or proposals, as requested by the Office of State Purchasing.

B. Procurement Support Team Involvement. The Procurement Support Team participation may include assistance in finalizing the solicitation. Procurement Support Team participation must include, as a minimum, assistance in evaluation of bids and proposals, and negotiations of contract terms (if applicable). Assistance shall consist of reviewing the evaluation process and recommendation of award. Procurements requiring this level of support will involve the active participation of all of the members of the Procurement Support Team as a unit.

1. The Office of State Purchasing, pursuant to the guidelines established therein, shall be responsible for convening a Procurement Support Team if the procurement is \$100,000 or greater. The Office of State Purchasing will designate the team leader.

2. At least four members, one from each office designated, must be present to constitute a quorum.

3. There will be at least one meeting during the procurement process. Each member of the Procurement Support Team must assist in the evaluation of bids or proposals, and negotiation of contracts (if applicable). The Procurement Support Team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. This review must be indicated by the signature of each team member on the Procurement Support Team review form, which is maintained by the Office of State Purchasing. In the event a team member indicates acceptance or concurrence of any activity, and the team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual team member must submit to the team leader written reasons for their actions. The team leader shall file these documents in the final activity file.

4. In situations where formal negotiations with prospective vendors or a successful bidder or proposer are appropriate, such negotiations will be conducted by a negotiation team appointed by the Procurement Support Team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutorily required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in contract negotiations.

5. After the procurement process has been completed, one copy of the documentation related to the procurement will be retained on file by the Office of State Purchasing.

6. The Office of State Purchasing shall have final statutory approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

Denise Lea
Director

0303#062

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Vagus Nerve Stimulators
(LAC 50:XVII.Chapter 136)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage for durable medical equipment and supplies under the Medicaid Program. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. In concurrence with the recommendations of the Medical Practices Committee, the bureau established medical necessity criteria for the prior authorization of vagus nerve stimulators (*Louisiana Register, Volume 27, Number 12*). Vagus nerve stimulators (VNS) are implantable devices used to assist in the control of seizures related to epilepsy. This Emergency Rule is being adopted to continue provisions contained in the December 1, 2001 Rule. This action is being taken in order to protect the health and well being of Medicaid recipients who have epilepsy related seizures and may benefit from use of this medical device.

Effective March 30, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following criteria for prior authorization of vagus nerve stimulators (VNS) under the Durable Medical Equipment Program. The VNS is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XVII. Durable Medical Equipment

Subpart 1. Prosthetics

Chapter 136. Vagus Nerve Stimulator

§13601. Prior Authorization

A. The Vagus Nerve Stimulator (VNS) is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician. Implantation of the VNS device and all related procedures must be authorized by the department based on criteria in §§13603-13607.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§13603. Recipient Criteria

A. Inclusion Criteria. Consideration shall be given for Medicaid reimbursement for implantation of the VNS if the treatment is considered medically necessary and the patient meets all of the following criteria. The patient:

1. has medically intractable epilepsy;
2. is 12 years of age or older, although case-by-case consideration may be given to younger children who meet all other criteria and have sufficient body mass to support the implanted system;

3. has a diagnosis of partial epilepsy confirmed and classified according to the *International League Against Epilepsy* classification. The patient may also have associated generalized seizures, such as tonic, tonic-tonic, or atonic. The VNS may have efficacy in primary generalized epilepsy as well;

4. has seizures that resist control by antiepilepsy treatment, with adequately documented trials of appropriate antiepilepsy drugs or documentation of the patients inability to tolerate these medications;

5. has undergone surgical evaluation and is not considered to be an optimal candidate for epilepsy surgery;

6. is experiencing at least four to six identifiable partial onset seizures each month. The patient must have had a diagnosis of intractable epilepsy for at least two years. The two-year period may be waived if it is deemed that waiting would be harmful to the patient;

7. has undergone Quality of Life (QOL) measurements. The choice of instruments used for the QOL must assess quantifiable measures of day to day life in addition to the occurrence of seizures. In the expert opinion of the treating physician, and clearly documented in the request for prior authorization, there must be reason to believe that QOL will improve as a result of the VNS implant. This improvement should be in addition to the benefit of seizure frequency reduction.

B. Exclusion Criteria

1. Regardless of the provisions of §13603.A, authorization for implantation of a VNS shall not be given if the patient meets one or more of the following criteria. The patient:

- a. has psychogenic seizures or other nonepileptic seizures; or
- b. has systemic or localized infections that could infect the implanted system; or
- c. has a body mass that is insufficient to support the implanted system; or
- d. has a progressive disorder that is a contraindication to VNS implantation.

2. Examples are malignant brain neoplasm, Rasmussen's encephalitis, Landau-Kleffner Syndrome and progressive metabolic and degenerative disorders. Progressive disorders, psychosis, or mental retardation that are not contraindications to VNS implantation are not exclusion criteria. Taking into consideration the additional diagnosis, the treating physician must document the benefits of the VNS.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§13605. Reprogramming Vagus Nerve Stimulator

A. The programming of the VNS stimulator must be performed by the neurosurgeon who performed the implant procedure or a licensed neurologist. The procedure is subject to prior authorization. Authorization will only be considered when there is medical documentation to support the need for programming. This documentation must include clinical evidence to show that the recipient has experienced seizures since any previous programming attempts. Payment for the programming procedure will only be authorized when it is performed as an attempt to reduce or prevent future episodes of seizures. The success or failure of previous programming attempts to reduce the onset and/or severity of seizure activity will be considered. Authorization will not be considered when the clinical documentation does not show any seizure activity since the last programming of the VNS implant or the purpose of the programming is solely to reduce the level of anti-epileptic drugs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

§13607. Subsequent Implants/Battery Replacement

A. Requests to replace batteries or for new implants must be submitted with documentation that shows that the recipient was benefiting from the original VNS transplant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

0303#053

DECLARATION OF EMERGENCY

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

Medicaid Eligibility Qualified Individuals
Medicare Part B Buy-In

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

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

Federal statutory authority for the payment of Medicare Part B premiums benefits for QIs was originally intended to expire on December 31, 2002. A Continuing Resolution (Public Law No. 107-229, as amended by Public Law Nos. 107-240 and 107-244) was enacted to extend the QI-1 benefits at the current funding levels through January 21,

2003. The Bureau promulgated an emergency rule to amend the July 20, 1998 rule by extending the benefits for QI-1s (*Louisiana Register, Volume 28, Number 12*). The Continuing Resolution was again amended by Public Law No. 107-294, extending the QI-1 benefits at the current funding levels through March 12, 2003. The Bureau promulgated an emergency rule to amend the January 1, 2003 rule by extending the benefits for QI-1s (*Louisiana Register, Volume 29, Number 1*). Congress has subsequently passed the federal budget for fiscal year 2003 which includes an appropriation to extend the QI-1 benefits at the current funding levels through September 30, 2003. Therefore, Bureau proposes to amend the January 21, 2003 Emergency Rule and again extend coverage of benefits for Qualifying Individuals-1. This action is being taken to avoid federal sanctions by complying with changes in federal regulations. It is estimated that the implementation of this Emergency Rule has no fiscal impact for state fiscal year 2002-2003 other than the administrative cost of promulgating the Rule.

Emergency Rule

Effective March 21, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 21, 2003 Emergency Rule and extends payment of Medicare Part B premiums for Qualifying Individuals-1 through September 30, 2003.

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

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

David W. Hood
Secretary

0303#051

DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program Prescription Limit

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2001-2002 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish

these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. Although federal regulations permit states to establish recipient service limits with a provision for exemption of certain recipient groups, the bureau has not established any limits on the number of prescriptions allowed to Medicaid recipients. In compliance with Executive Order MJF 02-29, the department proposes to establish a limit of eight prescriptions per calendar month with provisions for exemption of federally mandated eligibles and for the prescriber to override the limit in medically necessary cases.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of the following Emergency Rule will reduce expenditures by approximately \$12,500,000 for state fiscal year 2002-2003.

Emergency Rule

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

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

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

- a. persons under 21 years of age;
- b. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities; and
- c. pregnant women.

3. The eight prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates to the pharmacist the following information in his own handwriting or by telephone or other telecommunications device:

- a. "medically necessary override"; and
- b. a valid ICD-9-CM Diagnosis Code that directly relates to each drug prescribed that is over eight. (No ICD-9-CM literal description is acceptable.)

4. The prescriber should use the Clinical Drug Inquiry. (CDI) Internet web application developed by Unisys in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than eight prescriptions per calendar month is required by the recipient.

5. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

6. An acceptable statement and ICD-9-CM are required for each prescription in excess of eight for that month.

7. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

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

0303#006

DECLARATION OF EMERGENCY

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

Private Hospitals COutpatient Services
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in January of 1996 which established the reimbursement methodology for outpatient hospital services at an interim rate of sixty percent of billed charges and cost settlement adjusted to eighty-three percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare Fee Schedule and outpatient surgeries (*Louisiana Register, Volume 22, Number 1*).

As a result of a budgetary shortfall, the Bureau amended the provisions contained in the January 1996 rule governing the reimbursement methodology for outpatient hospital services. Reimbursement for those surgical procedures that were not included on the Medicaid outpatient surgery list was set at the highest flat fee in the four Medicaid established outpatient surgery payment groups when the procedure is performed in an outpatient setting. In addition, the interim reimbursement rate for all other outpatient hospital services was changed to a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997 (*Louisiana Register, Volume 26, Number 12*).

As a result of a budgetary shortfall, the Bureau has determined it is necessary to adjust the interim reimbursement rate for hospital outpatient services in private hospitals to a hospital specific cost to charge ratio calculation based on the latest filed cost reports. The final reimbursement for these services will continue to be cost settlement at 83 percent of allowable costs. This action is necessary in order to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this emergency rule will reduce expenditures for outpatient services by approximately \$7,134,381 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service March 1, 2003 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for outpatient hospital services to a hospital specific cost to charge ratio calculation based on the latest filed cost report. These cost to charge ratio calculations will be reviewed on an ongoing basis as cost reports are filed and will be adjusted as necessary.

Implementation of the provisions of this Rule will be delayed until March 30, 2003 and shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0303#052

DECLARATION OF EMERGENCY

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

Private Nursing Facilities CReimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance

Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law". This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

In accordance with state law, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a system of prospective payment for nursing facilities, effective January 1, 2003, based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology. This system established a facility specific price for the Medicaid nursing facility residents served. It also provided for enhanced reimbursement for Medicaid residents who require skilled nursing services for an infectious disease and technology dependent care. Facilities may furnish any or all of these levels of care to residents. Every nursing facility must meet the requirements for participation in the Medicaid Program (*Louisiana Register, Volume 28, Number 8*).

As a result of a budgetary shortfall, the bureau has determined it is necessary to reduce each private nursing facility's per diem case mix rate by \$37.10, an average of 46.87 percent per facility. This action is being taken in order to avoid a budget deficit in the medical assistance program. It is estimated that implementation of this Emergency Rule will reduce expenditures to the private nursing facilities by approximately \$70,014,755 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after March 1, 2003 the Department of Health and Hospitals, Bureau of Health Services Financing reduces each private nursing facility's per diem case mix rate by \$37.10, an average of 46.87 percent per facility.

Implementation of the provisions of this Rule will be delayed until March 30, 2003 and shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0303#054

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Lease Moratorium (LAC 76:VII.505)

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429 and R.S. 56:432.1, the Wildlife and Fisheries Commission declares an immediate moratorium on the issuance of oyster leases and on the taking of oyster lease applications for state waterbottoms not presently under lease. Continuation of issuance of new oyster leases would pose an imminent peril to the public welfare and requires adoption of a rule upon shorter notice than provided in R.S. 49:953.A, the Wildlife and Fisheries Commission does hereby adopt the following Emergency Rule. Adoption of this Declaration of Emergency is necessary, according to the Department of Natural Resources, inasmuch as immediate action is essential to reduce the state's exposure to potential claims from oyster leaseholders and further, that failure to do so would pose an imminent peril to the coastal restoration program and to the federal/state partnership which is critical to the efforts of the state to obtain comprehensive coast-wide restoration authorization and funding.

This Declaration of Emergency will become effective on February 26, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

Title 76

WILDLIFE AND FISHERIES

PART VII. Fish and Other Aquatic Life

Chapter 5. Oyster

§505. Oyster Lease Moratorium

A. A moratorium on the issuance of oyster leases for waterbottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for waterbottoms not presently under lease. All pending applications will be held, along with all fees paid, pending a resolution of the moratorium, unless the applicant requests cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the department; and any lease ultimately issued shall only be issued to persons placed in possession of the application by Judgement of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

B. A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.

C. Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.

D. At such time as the moratorium is lifted, applications for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below.

1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.

2. On the date for taking of applications only one applicant at a time will be allowed in the office and this applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.

3. Applications will be taken 24 hours a day (on a first come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans Office, at which time anyone will be able to take an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 29:

James H. Jenkins, Jr.
Secretary

0303#003

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Turkey SeasonCFort Polk

In accordance with the emergency provision of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopt the following Emergency Rule.

Fort Polk Wildlife Management Area Lottery Youth Turkey Hunt	Canceled
Peason Ridge Wildlife Management Area Lottery Youth Turkey Hunt	March 15, 2003

A Declaration of Emergency is necessary to cancel the lottery youth hunting season on Fort Polk WMA. The U.S. Army has advised the Department of Wildlife and Fisheries that current military initiatives have resulted in an increased level of training resulting in only 2000 acres of land being available for this hunt. However, they have made available the Peason Ridge WMA as an alternate site for this hunt. This WMA encompasses 34,000 acres and harbors an extensive turkey population. As of this date, 3/6/03, nine youth hunters have already been drawn and notified of their selection for the hunt at Fort Polk WMA.

Terry D. Denmon
Chairman

0303#088