

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Ultra Low-Volume Pesticides (LAC 7:XXIII.145)

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

The applications of insecticides in accordance with the current concentration regulations have not been sufficient to control or plant bugs. Failure to allow the concentrations in ultra low-volume (ULV) malathion applications will allow the plant bugs the opportunity to destroy the cotton during the growing season, effectively destroying the cotton crop. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of northern Louisiana and to Louisiana agricultural producers thereby creating an imminent peril to the health and safety of Louisiana citizens.

This Emergency Rule become effective upon the signature, July 15, 2003, of the commissioner and shall remain in effect for 63 days.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

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

A. - A.5.b.xxxvi. ...

c. malathion insecticide applied with the following conditions to control plant bugs in cotton:

i. the Commissioner hereby declares that prior to making any aerial application of ULV malathion to cotton, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs (DPEP) in writing. Upon notification, LDAF shall inspect the aircraft prior to any ULV applications;

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

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

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

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

vi. aerial spraying shall not be conducted when wind velocity exceeds 10 mph;

vii. aerial applicators will terminate application if rainfall is imminent;

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

ix. spraying shall not be conducted in fields where other aircraft are working;

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

xi. all aerial applications of insecticide shall be at an altitude not to exceed 5 feet above the cotton canopy. However, in fields that are not near sensitive areas, if infield obstructions make the 5-foot aerial application height not feasible, then the aerial height may be extended to such height above the cotton canopy as is necessary to clear the obstruction safely;

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

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

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

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

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

xvii. ULV spraying systems with a pumping capacity that exceeds the discharge calibration rate shall have the bypass flow return to the tank bottom in a manner

that prevents aeration and/or foaming of the spray formulation. Pumps utilizing hydraulic drive or other variable speed drives are not required to have this bypass, provided the pump speed is set to provide only the required pressure and the system 3-way valve is used for on/off control at full throw position. Any bypass normally used to circulate materials other than the ULV will be closed for ULV spraying;

xviii. spray booms will be equipped with the quantity and type of spray nozzles specified by the Boll Weevil Eradication Program. The outermost nozzles (left and right sides) shall be equal distance from the aircraft centerline and the distance between the two must not exceed 3/4 of the overall wing span measurement. For helicopters, the outermost nozzles must not exceed three-fourths of the rotor span. For both fixed wing and helicopters, the program will accept the outermost nozzles between 60 percent and 75 percent of the wingspan/rotor span. Longer spray booms are acceptable provided modifications are made to prevent the entrapment of air in the portion beyond the outermost nozzle. Fixed wing aircraft not equipped with a drop type spray boom may require drop nozzles in the center section that will position the spray tips into smoother air to deliver the desired droplet size and prevent spray from contacting the tail wheel assembly and horizontal stabilizer. Most helicopters will be required to position the center nozzles behind the fuselage and dropped into smooth air in order to achieve the desired droplet size;

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

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

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

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

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

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

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

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

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

xxviii. aircraft shall have a DGPS with software designed for parallel offset in increments equal to the assigned swath width of the application aircraft. Fixed towers, portable stations, satellite, Coast Guard, or other acceptable methods may provide differential correction. However, the differential signal must cover the entire project area. In fringe areas from the generated signal, an approved repeater may be used. The system shall be sufficiently sensitive to provide immediate deviation indications and sufficiently accurate to keep the aircraft on the desired flight path with an error no greater than 3 feet. Systems that do not provide course deviation updates at 1-second intervals or less will not be accepted;

xxix. a course deviation indicator (CDI) or a course deviation light bar (also CDI) must be installed on the aircraft and in a location that will allow the pilot to view the indicator with direct or peripheral vision without looking down. The CDI must be capable of pilot selected adjustments for course deviation indication with the first indication at 3 feet or less;

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

xxxi. the DGPS must be equipped with a software for flight data logging that has a system memory capable of storing a minimum of 3 hours of continuous flight log data with the logging rate set at 1-second intervals. The DGPS shall automatically select and log spray on/off at 1-second intervals while ferry and turnaround time can be 2-second intervals. The full logging record will include position, time, date, altitude, speed in mph, cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect. Must be capable to end log files, rename, and start a new log in flight;

xxxii. the software must generate the map of the entire flight within a reasonable time. Systems that require 5 minutes or more to generate the map for a 3-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. The flight path must clearly differentiate between spray on and off when viewed on the monitor or the printed hard copy. The software must be capable of replaying the entire flight in slow motion; stopping and restarting the replay at any point during the flight; zooming to any portion of the flight for viewing in greater detail and printing the entire flight or the zoomed-in portion. It must have a measure feature that will measure distance in feet between swaths or any portion of the screen and to be able to determine the exact latitude/longitude at any point on the monitor;

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

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

xxxv. applications of ULV malathion shall not be made prior to sunrise on July 15, 2003 and shall not be made after sunset on September 15, 2003;

xxxvi. applications of ULV malathion shall be restricted to 7-day intervals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000).

Bob Odom
Commissioner

0308#001

DECLARATION OF EMERGENCY

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

Tree Seedling Prices (LAC 7:XXXIX.301)

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

An emergency has developed because of the timing factors related to the seasonal nature of forest tree seedling production and sales. This action is proposed to cover the increased costs of nursery production and keep the agency nursery operations within budget constraints. Costs for labor, fertilizers, chemicals, forest seed and equipment continue to increase and those additional costs must be covered by the sales prices of the seedlings produced. Nursery operations are funded entirely through an ancillary budget that is generated entirely by the sale of forest seedlings. The increase is necessary because this operation cannot operate in a deficit budget situation. The seedling crop for this year has already been sowed and is growing with extensive costs related to survival and quality control already invested. It is not possible for other nursery operations to increase their production at this point to compensate for a drop in production by LDAF nurseries. LDAF nurseries are a critically important and cost-effective operation that meets the needs of landowners for the benefit of the entire economy and environment in Louisiana. Every effort is made to keep costs as low as possible for landowners. Rate increases are carefully reviewed and justified, but in this case the timing of information related to those costs necessitated the adoption of an Emergency Rule to bring revenue as close as possible to production costs. These rate increases are necessary to insure continued production on a fiscally sound basis as required.

Advance seedling sales begin on August 1 of each year to allow landowners to plan for the reforestation activities. It is imperative that these rates are officially adopted prior to that date.

These rules become effective upon signature, July 29, 2003, and will remain in effect for 120 days.

These Rules comply with and are enabled by R.S. 3:4303.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 3. Tree Seedlings

§301. Seedling Prices

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

1. improved pine seedlings \$35 per 1000 seedlings;
2. advanced generation seedlings \$42 per 1000 seedlings;
3. special pine seedlings \$75 per 1000 seedlings;
4. hardwood seedlings \$200 per 1000 seedlings;
5. baldcypress seedlings \$200 per 1000 seedlings.

B.1. Volume discounts for bulk loblolly/slash pine seedling orders and contracts shall be as follows.

Order/Sales Volume (Number of seedlings)	Proposed Discounted Sales (M = 1,000 seedlings)
- 1,000,000	\$35.00/M
1,000,001 – 2,000,000	\$34.00/M
2,000,001 – 3,000,000	\$33.00/M
3,000,001 – 4,000,000	\$32.00/M
4,000,001 – 5,000,000	\$31.00/M
5,000,001 – 6,000,000	\$30.00/M
6,000,001 +	\$29.00/M

2. The Office of Forestry seed costs shall be deducted from these prices when seedlings are produced from seed supplied by the customers.

3. When there is a surplus of seedlings above planned or expected sales, a more accelerated rate of price reductions will be considered, subject to the approval of the State Forester and/or the Commissioner of Agriculture and Forestry.

4. This accelerated rate of discount will be applied no earlier than 30 days prior to the anticipated end of the annual lifting season.

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

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, Forestry Commission, LR 8:285 (June 1982), amended LR 10:468 (June 1984), amended by the Louisiana Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 13:432 (August 1987), LR 19:610 (May 1993), LR 21:671 (July 1995), LR 22:1210 (December 1996), LR 26:2437 (November 2000), LR 29:

Bob Odom
Commissioner

0308#005

DECLARATION OF EMERGENCY

Department of Economic Development Office of Business Development Business Resources Division

Louisiana Project Equity Fund
(LAC 13:III.Chapter 15)

The Department of Economic Development, Office of Business Development, Business Resources Division, pursuant to the Emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following Rules for the project Equity Fund program, as authorized by R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B). These Emergency Rules are adopted on July 15, 2003 in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective July 15, 2003, and shall remain in effect for the maximum period allowed under the Act or until adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of Business Development, Business Resources Division has found an immediate need to provide loan funding to companies on a project basis for the purchase of capital equipment, and accompanying necessary inventory and/or technology that introduce innovative development or production of products in Louisiana and that serve to enhance industry clusters. These Emergency Rules are being adopted in response to a market failure for businesses that have opportunities to perform on contracts with Louisiana companies but cannot receive favorable terms from the private sector financial institutions.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 15. Louisiana Project Equity Fund

§1501. Purpose

A. The purpose of this program is to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the introduction, growth and retention of Louisiana businesses by providing loan funding for defined business projects. The Louisiana Economic Development Corporation (LEDC) in accordance with R.S. 51:2301 et seq. and R.S. 51:2341 and these Rules may provide loan funding to companies on a project basis for the purchase of capital equipment, and accompanying necessary inventory and/or technology that introduce innovative development or production of products in Louisiana and that serve to enhance industry clusters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

§1503. Definitions

Applicant—the public entity requesting the loan funding from the Louisiana Project Equity Fund for equipment and other materials to be owned by the public entity during the pendency of the loan and to be utilized by the *company* for the project.

Award—the funding of the loan from the LEDC under this program to eligible *applicants*.

Company—a legal entity that is duly authorized to do and doing business in Louisiana in need of loan funding for a *project* pursuant to these Rules.

LED—the Louisiana Department of Economic Development charged by statute with administering the Project Equity Fund and the *LED* Cluster Directors and assigned staff shall administer the fund provided for by these Rules.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation and when referred to herein in terms of approval of an *award*, shall mean that the *award* has been approved in accordance with the by-laws and procedures of the Board of Directors whether such approval requires or does not require board approval under those by-laws and procedures.

Loan Agreement—the *loan agreement* of contract hereinafter referred to between DED, LEDC, *company* and *applicant* through which the parties by cooperative endeavor or otherwise, including attached or referenced promissory notes, securitization, lease or other appropriate documentation necessary to conventionally protect the interest of the LEDC in the funding of the loan, set forth the terms, conditions and performance objectives of the *award* provided pursuant to these Rules.

Project—the undertaking of the *applicant* and *company* for which a loan pursuant to these *Project* Equity Fund Rules are sought and includes introduction of innovative development or production of products to the state of Louisiana that furthers and promotes the development of cluster industries and businesses through the loan funding of capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of such equipment and results in increased economy and efficiency in Louisiana products.

Secretary—the Secretary of the *LED*, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

§1505. General Principles

A. The following general principles will direct the administration of the Louisiana Project Equity Fund.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and are subject to the discretion of the LED, the Secretary of the LED and the LEDC.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, including cluster development, whether in a particular circumstance, or overall.

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

4. Awards that promote retention and strengthening of cluster development of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

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

6. Whether or not an award will be made is entirely at the discretion of the LED, its cluster directors, the secretary and the LEDC board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the LED, its cluster directors, the secretary, or the LEDC board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

§1507. Eligibility

A. In order to be eligible for a Project Equity Funding Award pursuant to this program, the applicant and company must demonstrate to the satisfaction of the board that the award sought must be consistent with the principles set forth above, and the applicant and company must demonstrate a need for the project funding consistent with the requirements set forth below. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, upon recommendation of the LED and its contract monitor, withhold funding until there is substantial performance of the contingencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

§1509. Application for Project Funding

A. The applicant and the company must jointly submit an application to the LED through its assigned staff and cluster director(s) responsible for the business area that will be subject to the project for which the lending is being sought, in proposal form which shall contain the following information:

1. a business plan providing a detailed description of the project to be undertaken, particularly:

a. the project manufacturing materials and equipment, and/or technology for which the funding is sought and the economic scope of the investment involved in the project;

b. cash flow analysis of the project providing detailed support for the use of the funding provided;

c. the nature of the treatment of the funding in the business plan and cash flow analysis for the project, including a payment schedule for the loan that is consistent with the revenues generated by the innovative manufacturing or technology that is funded for the project;

2. a description of:

a. the project, the capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of the equipment;

b. the product being produced in the State of Louisiana as a result of the project;

c. the innovative, efficient and/or economical nature (to Louisiana) of the process of production that will result from the project;

d. a description as to how the project furthers and promotes the development of cluster industries and

businesses and will enhance the economic viability of the state and region of the state in which the project is located;

3. a description of the applicant local government entity and the company and the nature of the ownership by the applicant and agreed to by the company, including a schedule for the transfer of ownership from the applicant to the company upon fulfillment of the repayment obligations of the company to the LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

§1511. Loan Funding

A. All funding applications must be considered by the board after review by the assigned staff and upon recommendation of the relevant cluster director and the secretary. Thereafter, the LEDC board upon such review as may be necessary to make the determination as to the application in accordance with these Rules shall either approve or disapprove the application. Upon approval by the LEDC board:

1. the loan shall be funded pursuant to the loan agreement;

2. the credit provided shall be drawn down in accordance with the schedule provided as approved by the cluster director, secretary and LEDC and incorporated into the loan agreement;

3. the loan agreement shall include appropriate enforceable provisions for the monitoring of the contract;

4. the loan agreement shall include such conventional provisions as may be appropriate to protect and secure the Loan funding provided by the LEDC board pursuant to these Rules;

5. the cluster director making the recommendation for the loan funding shall be designated by the LEDC as the contract monitor for the loan agreement, and the contract monitor shall, on a semi-annual basis, report to the LEDC board on the status and progress of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

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

Don J. Hutchinson
Secretary

0308#002

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 507, 509, 701, 703, 705, 803,
805, 1701, 1703, 1705, 1903, 2103, and 2105)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to amend 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. LASFAC has 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 July 17, 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

A. Where the masculine is used, in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Award Amount can amount equal to Tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the Commission, which may be used by the student to pay any educational expense included in that student's "Cost of Attendance." The amount paid for TOPS and TOPS-Tech Awards shall be as follows.

a. - f. ...

g. For students with the TOPS Opportunity, Performance, and Honors Award enrolled in a Louisiana professional school, the amount shall be equal to the tuition charged or the tuition charged a student pursuing a baccalaureate degree at the highest cost public school, whichever is less or the Weighted Average Award Amount, depending upon whether the Louisiana professional school is a public or private school.

h. For students with the TOPS Opportunity, Performance and Honors Award enrolled in a Louisiana graduate degree program, the amount shall be equal to the tuition or the tuition charged for a student while pursuing a baccalaureate degree at the highest cost public school in the state, whichever is less.

Court Ordered Custodian can adult appointed by a court of competent jurisdiction to have custody and care of a minor, and who demonstrates the requirement to provide the primary support for such minor.

Dependent Student can a student who is dependent on his parents for support and therefore is required to include parental information on the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA.

Eligible Noncitizen can individual who can provide documentation from the Bureau of Citizenship and Immigration Services (BCIS) that he is in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident, including, but not limited to, refugees, persons granted asylum, Cuban-Haitian entrants, temporary residents under the recent Immigration Reform

and Control Act of 1986, and others. A permanent resident of the United States must provide documentation from the BCIS to verify permanent residency. For 1997, 1998 and 1999 high school graduates, an Eligible Noncitizen shall be treated as meeting the citizenship requirements for an award under this Part.

Full-Time Student

a. - d. ...

e. a student enrolled in two or more institutions of higher education when such multiple enrollment is necessary for the student to gain access to the courses required for completion of the degree in the chosen discipline and where the total number of hours earned at all institutions during the academic year is the equivalent of carrying a full-time academic workload as determined by the institution which will award the degree;

f. correspondence courses may not be used to establish full time status;

g. ...

Honors Curriculum Courses can any course designated by the respective school district as advanced placement, honors or gifted.

Louisiana Resident

a. any independent student or any dependent student with at least one parent or court ordered custodian who has resided in the state for a minimum of 24 consecutive months immediately preceding the month of high school graduation or the month of May in the Academic Year (High School) that a student completes a home study program or some other period of residency which is required to qualify the person for a specific program administered by the LASFAC. To qualify for a program under Part IV of these rules, in addition to the certification of residency found on the application form, the administering agency may require an independent student applicant or the parent(s) or Court Ordered Custodian of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent or Court Ordered Custodian of the dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

i. if registered to vote, a Louisiana voters registration card; and

ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and

iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and

iv. if earning a reportable income, a Louisiana tax return.

b. any member of the Armed Forces on active duty whose official state of legal residence is Louisiana as demonstrated by the member's DD Form 2058 validated by the member's military personnel officer or other documentary proof and who has filed a Louisiana tax return for the most recent two years in compliance with Clause a.iv, above;

c. any member of the Armed Forces who is stationed in Louisiana under permanent change of station orders and who, not later than 180 days after reporting to such station, changes his military DD Form 2058 to reflect Louisiana as his state of legal residence, and complies with all Louisiana income tax laws and regulations while stationed in Louisiana. A copy of the Permanent Change of Station (PCS) Orders and a DD Form 2058 validated by the member's military personnel officer and showing Louisiana as the member's state of legal residence must be submitted to the Louisiana Office of Student Financial Assistance (LOSFA) at the time the service member's dependent applies for TOPS. The DD Form 2058 must reflect that it was filed within 180 days after the member reported to duty at a duty station in Louisiana;

d. - d.iii. ...

e. effective for high school graduates beginning with Academic Year (High School) 2002-2003, any independent or dependent student who actually resides in Louisiana during his last two full years of high school. In order to qualify pursuant to this subsection, the student's high school transcript must reflect that the student earned credit for the last four semesters of high school immediately prior to graduation and graduated from an approved Louisiana high school;

f. effective for high school graduates beginning with Academic Year (High School) 2000-2001, any dependent student who actually resided in Louisiana during his last two full years of high school and whose parent is a member of the United States Armed Forces living in Louisiana under permanent change of station orders, but who does not claim Louisiana as his official state of legal residence. In order to qualify pursuant to this subsection, the student's high school transcript must reflect that the student earned credit for the last four semesters of high school immediately prior to graduation and graduated from an approved Louisiana high school;

g. effective for high school graduates beginning with Academic Year (High School) 2001-2002, any dependent student who was continuously enrolled in a Louisiana public high school or nonpublic high school that is approved by BESE during his last two full years of high school whose parent or court ordered custodian:

i. is a resident of a state that adjoins Louisiana; and

ii. actually resides in a municipality having geographical boundaries that include a portion of Louisiana; and

iii. has filed a Louisiana state income tax return and has complied with state income tax laws and regulations; or

iv. is assessed ad valorem taxes on property owned in Louisiana.

In order to qualify pursuant to this subsection, the student's high school transcript must reflect that the student earned credit for the last four semesters of high school immediately prior to graduation and graduated from an approved Louisiana high school.

* * *

Orphan Ca person who does not live with either parent because the parent(s) is/are dead or has/have abandoned him or the parental rights of the parent(s) has/have been severed by competent authority.

* * *

Returning Student Ca student who graduated from high school beginning with Academic Year (High School) 2001-2002, met all the requirements for a TOPS Award and was notified of his TOPS eligibility by LOSFA, but who enrolled for the first time as a full time student no later than the deadline established in §703.A.4 in an out-of-state postsecondary institution accredited by a regional accrediting organization recognized by the United States Department of Education and thereafter returns to Louisiana and enrolls as a full time student in an Eligible College or University.

* * *

TOPS Cumulative High School Grade Point Average C

a. effective for high school graduates beginning with Academic Year (High School) 2002-2003, the grade point average calculated by LOSFA including only the grades achieved in those courses that were used to satisfy core curriculum requirements. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the TOPS Cumulative High School Grade Point Average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one Advanced Mathematics course, the Cumulative Grade Point Average shall be determined by using only the course in which the student has received the highest grade;

b. effective for high school graduates beginning with Academic Year (High School) 2002-2003, the grade point average for students qualifying for a Performance Award using a minimum ACT score of 24 and a minimum grade point average of 3.00 must include at least 10 Units of Honors Curriculum Courses (See §703.A.5.f.ii.);

c. effective for high school graduates beginning with Academic Year (High School) 2007-2008, the grade point average shall be calculated on 17.5 hours of courses that are included in the core curriculum;

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

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

For example, if a school awards a maximum of 5 points for honors courses, the school must use the following formula to convert an honors course grade of "C":

$$\frac{300}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

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

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

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 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 29:555 (April 2003), LR 29:879 (June 2003), LR 29:

Chapter 5. Application; Application Deadlines and Proof of Compliance

§507. Final Deadline for Submitting Documentation of Eligibility

A. - B. ...

C.1. Returning Students, who graduated high school prior to or during the 2002-2003 Academic Year (High School) must apply for reinstatement no later than May 1, 2004.

2. Returning Students who graduate during the 2003-2004 Academic Year (High School) or later must apply for reinstatement no later than May 1 of the Academic Year (College) the student seeks reinstatement. For example, a student who graduates in May 2004 and seeks to return to an Eligible College or University for the spring semester of 2005 must submit his application for reinstatement no later than May 1, 2005.

D.1. A student who successfully completed an undergraduate degree prior to or during the 2001-2002 Academic Year (College) and wishes to receive his remaining award eligibility to attend a graduate or professional school must provide the documentation and certifications required to establish student eligibility no later than May 1, 2004.

2. A student who successfully completes an undergraduate degree during the 2002-2003 Academic Year (College) or later and wishes to receive his remaining award eligibility to attend a graduate or professional school must provide the documentation and certifications required to establish student eligibility no later than May 1 of the Academic Year (College) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2003-2004 Academic Year (College), the student must submit the required documents no later than May 1, 2004.

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), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 29:

§509. ACT Testing Deadline

A. - B. ...

C. Final ACT Testing Deadline for Reduced Awards

1.a. Beginning with awards made to applicants graduating in Academic Year (High School) 2000 through 2003, if an applicant does not achieve a qualifying score on the ACT or on the SAT for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying

score for any TOPS Award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the date of the applicant's high school graduation but prior to July 1 of the year of such graduation, the applicant's period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters. Except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS Award.

b. Beginning with awards made to applicants graduating in Academic Year (High School) 2004, if an applicant does not achieve a qualifying score on the ACT or on the SAT for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying score for any TOPS Award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation, the applicant's period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters. Except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS Award.

c. For the purpose of the Subsection, the "April national ACT test date" shall be defined as the month of April.

2. Students who fail to achieve an ACT or SAT qualifying score prior to July 1 of the year of high school graduation shall not be considered for an award.

D. - E. ...

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 26:1995 (September 2000), amended LR 26:2000 (September 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), repromulgated LR 27:1847 (November 2001), amended LR 29:

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

§701. General Provisions

A. - E.11.c. ...

12. A student who successfully completes an undergraduate degree without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in graduate or professional school at an Eligible College or University no later than the fall

semester following the student's completion of an undergraduate degree and has met the requirements for continued eligibility set forth in §705.A.6. The remaining eligibility may not be used to pursue a second undergraduate degree.

F. - 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 29:879 (June 2003), LR 29:

§703. Establishing Eligibility

A. To establish eligibility for a TOPS Opportunity, Performance or Honors Award, the student applicant must meet all of the following criteria:

1.a. for students graduating in Academic Year (High School) 2001-2002 and prior, be a United States citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided by May 1 of the following Academic Year (College). Students cancelled solely due to their failure to become a United States citizen within one year after the date of application shall be reinstated to their award if they are a United States citizen or a permanent resident as defined by the Bureau of Citizenship and Immigration Services and were eligible to apply for United States citizenship when cancelled and have met the requirements for maintaining eligibility for the award;

b. for students graduating in Academic Year (High School) 2002-2003 and thereafter, be a United States citizen or be a permanent resident as defined by the Bureau of Citizenship and Immigration Services and be eligible to apply for United States citizenship.

2 - 4. ...

5. a. graduate from an eligible public or nonpublic Louisiana high school or non-Louisiana high school defined in §1701.A.1, 2, or 3; and

i.(a). for students graduating in Academic Year (High School) 2006-2007 and prior, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Computer /Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (1/2 credit) Computer Science I (1 credit) Computer Science II (1 credit) Computer Systems and Networking I (1 credit) Computer Systems and Networking II (1 credit) Desktop Publishing (1/2 credit) Digital Graphics and Animation (1/2 credit) Multimedia Productions (1 credit) Web Mastering (1/2 credit) Independent Study in Technology Applications (1 credit)

(b). Beginning with the graduates of Academic Year (High School) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology

1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1 1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one and one-half units of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE). BESE has approved the following courses as computer related for purposes of satisfying the 1 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Computer/Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (1/2 credit) Computer Science I (1 credit) Computer Science II (1 credit) Computer Systems and Networking I (1 credit) Computer Systems and Networking II (1 credit) Desktop Publishing (1/2 credit) Digital Graphics & Animation (1/2 credit) Multimedia Productions (1 credit) Web Mastering (1/2 credit) Independent Study in Technology Applications (1 credit)

b. - e. ...

f.i. for students graduating in Academic Years (High School) 2000-2001 and 2001-2002, successfully complete a minimum of 10 units in honors courses graded on a 5.00 scale and graduate from an eligible public or nonpublic Louisiana high school or non-Louisiana high school defined in §1701.A.1, 2, or 3 and have completed the core curriculum defined in §703.A.5.a.i;-

ii. for students graduating Academic Year (High School) 2002-2003 through 2005-2006, successfully complete a minimum of 10 units in Honors Curriculum Courses used to satisfy the core curriculum requirement and graded on a 4.00 or higher scale and graduate from an eligible public or nonpublic Louisiana high school or non-Louisiana high school defined in §1701.A.1, 2, or 3, and have completed the core curriculum defined in §703.A.5.a.i; and

6. have achieved an ACT Score, as defined in §301 of at least:

- a. if qualifying under the terms of §703.A.5.a or b;
 - i. the state's reported prior year ACT composite average, rounded, but never less than 20 for the Opportunity Award; or
 - ii. a 23 for the Performance Award; or
 - iii. a 27 for the Honors Award; or
- b. if qualifying under §703.A.5.c or d;
 - i. the state's reported prior year average plus 3 points, rounded, but never less than 23 for the Opportunity Award; or
 - ii. a 26 for the Performance Award; or
 - iii. a 30 for the Honors Award; and
- c. if qualifying under §703.A.5.e, which is limited to the Opportunity Award only, the state's reported prior year average plus 3 points, rounded, but never less than 23;
- d. if qualifying under §703.A.5.f, which is limited to the Performance Award only, a 24; and

7. - 8. ...

B. Students Qualifying:

1. under §703.A.5.a and b, must have attained a cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

- a. a 2.50 for the Opportunity Award; or
- b. a 3.50 for the Performance or Honors Awards;

2. under §703.A.5.f and graduating in Academic Year (High School) 2000-2001 through 2005-2006, must have attained a TOPS Cumulative High School Grade Point Average, based on a 4.00 maximum scale, of at least a 3.00 for the Performance Award.

C. - G.2. ...

H. Returning Students

1. A Returning Student, as defined in §301, is eligible for a TOPS Award if:

a. he submits a request for reinstatement that includes:

- i. the name of the Louisiana school in which he has enrolled or will enroll; and
- ii. his official transcripts from all out-of-state colleges and universities attended; and

b. he met all the requirements to maintain his award that would have been applicable had the student enrolled in an Eligible College or University during the time the student was enrolled in an out-of state college or university; and

c. he enrolled in an Eligible College or University no later than the next semester or term, excluding summer sessions and intersessions, immediately following the last semester he was enrolled in the out-of state college or university.

2. A Returning Student who fails to enroll by the deadline established in §703.A.4 or to maintain full time enrollment or to earn 24 hours during an Academic Year (College) while enrolled in an out-of-state college or university, shall not be eligible for a TOPS Award unless granted an exception in accordance with §2103.

3. The period of eligibility of a Returning Student shall be reduced by each semester or term the student was enrolled in an out-of state college or university.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602, 1998 (August 2000), LR 26:1996, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), LR 27:1850 (November 2001), LR 28:772 (April 2002), LR 28:1760 (August 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:

§705. Maintaining Eligibility

A. To continue receiving the TOPS Opportunity, Performance or Honors Awards, the recipient must meet all of the following criteria:

1. have received less than four years or eight semesters of TOPS Award funds, except as provided in §701.E.1.b, §701.E.2.b and §701.E.3.b; and

2 - 4. ...

5. continue to enroll and accept the TOPS award as a full-time undergraduate student, professional or graduate student in an Eligible College or University defined in §301, and maintain an enrolled status throughout the academic term, unless granted an exception for cause by LASFAC; and

6. minimum academic progress:

a. in an academic undergraduate program at an Eligible College or University, by the end of each Academic Year (College), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or quarter in the Academic Year (College). These hours shall include remedial course work required by the institution, but shall not include hours earned during Qualified Summer Sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

b. ...

c. in an academic graduate or professional program at an Eligible College or University, by the end of each Academic Year (College), earn at least the total college credit hours required by the college or university for full time enrollment for each semester or quarter as determined by totaling the earned hours reported by the institution for each semester or quarter in the Academic Year (College). These hours shall not include hours earned during Qualified Summer Sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility, and

7. ...

8. maintain at an Eligible College or University, by the end of the spring semester, quarter, or term, a cumulative college grade point average (GPA) on a 4.00 maximum scale of at least:

a. a 2.30 with the completion of less than 48 credit hours, a 2.50 after the completion of 48 credit hours, for continuing receipt of an Opportunity Award, if enrolled in an academic program; or

b. ...

c. a 3.00 for continuing receipt of either a Performance or Honors Award; or

d. the minimum grade necessary to maintain good standing, if enrolled in a graduate or professional program; and

9. ...

10. has not been enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree for more than two years.

B. Students failing to meet the requirements listed in §705.A.7 or §705.A.8.a, b, or c may have their tuition awards reinstated upon regaining Steady Academic Progress (See §301.) and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of §705.A.8.c, but who meet the continuation requirements of §705.A.8.a or b., shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to

receive the award amount for the Opportunity Award. If the two year period is interrupted due to a student's active duty in the United States Armed Forces, the two year period will be extended for a length of time equal to the student's active duty service, not to exceed four years.

C. In the event the administering agency determines that an ineligible student has received an award as the result of an administrative error or erroneous information provided by the student or the student's parent(s) or Court Ordered Custodian or incorrect certification from the student's high school, the student's eligibility for the award shall be terminated and no further awards shall be made to the ineligible student. If an ineligible student has received an award due to an administrative error or incorrect certification, the administering agency will not pursue recoupment from the student of funds that were awarded. If an erroneous award has been made and the administering agency determines that the award was made based upon incorrect information submitted by the student or the student's parent(s) or Court Ordered Custodian, the administering agency may seek reimbursement from the student, the student's parent(s) or Court Ordered Custodian, and if it is further determined that the award was made due to an intentional misrepresentation by the student, the student's parent(s) or Court Ordered Custodian, then the administering agency shall refer the case to the Attorney General for investigation and prosecution. If a student or the student's parent(s) or Court Ordered Custodian is suspected of having intentionally misrepresented the facts which were provided to the administering agency and used by it to determine the eligibility of the student for the program and the administering agency has referred the case to the Attorney General for investigation, then the student shall remain ineligible for future award consideration pending an outcome of said investigation which is favorable to the student.

D. ...

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 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26, 1996, 2001 (September 2000), LR 27:1853 (November 2001), LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

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

1.a. for students graduating in Academic Year (High School) 2001-2002 and prior, be a United States citizen, provided however, that a student who is not a citizen of the United States but who is eligible to apply for such citizenship shall be deemed to satisfy the citizenship requirement, if within 60 days after the date the student attains the age of majority, the student applies to become a citizen of the United States and obtains such citizenship within one year after the date of the application for citizenship. Those students who are eligible for U. S. citizenship and who otherwise qualify for a TOPS award, will continue to satisfy the citizenship requirements for a

TOPS award for one year after the date of the student's application for citizenship, at which time, if the student has not provided proof of U.S. citizenship to the Office of Student Financial Assistance, the student's TOPS award will be suspended until such time as proof of citizenship is provided and canceled if such proof is not provided. Students cancelled solely due to their failure to become a United States citizen within one year after the date of application shall be reinstated to their award if they are a United States citizen or a permanent resident as defined by the Bureau of Citizenship and Immigration Services and were eligible to apply for United States citizenship when cancelled and have met the requirements for maintaining eligibility for the award;

b. for students graduating in Academic Year (High School) 2002-2003 and thereafter, be a United States citizen or be a permanent resident as defined by the Bureau of Citizenship and Immigration Services and be eligible to apply for United States citizenship.

2. - 10. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 29:

§805. Maintaining Eligibility

A. To continue receiving the TOPS-TECH Award, the recipient must meet all of the following criteria:

1. have received the TECH-TECH Award for not more than two years, except as provided by §805.C, or unless reduced as required by §503.D;

2. - 7. ...

8. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale; and

9. - 10. ...

B. Students failing to meet the requirements listed in §805.A.7 and 8 may have their tuition awards reinstated upon achieving Steady Academic Progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility. If the one year period is interrupted due to a student's active duty in the United States Armed Forces, the one year period will be extended for a length of time equal to the student's active duty service, not to exceed four years.

C. ...

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, LR 29:879 (June 2003), 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

§1701. Eligibility of Graduates Based upon the High School Attended

A. - A.3.d. ...

4. Out-of-State High Schools

a. All other public or non-public high schools located in one of the United States or territories of the United States, other than Louisiana, which have been approved by the state or territory's chief school officer as listed in the Louisiana Department of Education Bulletin 1462, or by the public body which is that state's or territory's equivalent of the Louisiana Board of Elementary and Secondary Education (BESE), or which high school has been approved by the Southern Association of Colleges and Schools' Commission on Secondary and Middle Schools and can demonstrate that it meets the standards adopted by BESE for approval of nonpublic schools of Louisiana as set forth in §1701.A.2, above or, for students graduating during the 2002-2003 school year and thereafter, which high school has been approved by a regional accrediting organization recognized by the United States Department of Education and can demonstrate that it meets the standards adopted by BESE for approval of nonpublic schools of Louisiana as set forth in §1701.A.2, above, and those high schools located in foreign countries which have been authorized or approved by a Department in the Executive Branch of the United States government to teach the dependents of members of the U.S. Armed Forces stationed abroad;

A.4.b. - 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 24:642 (April 1998), amended LR 24:1911 (October 1998), LR 25:849 (May 1999), LR 26:68 (January 2000), LR 26:1997 (September 2000), LR 27:1862 (November 2001), LR 29:

§1703. High School's Certification of Student Achievement

A. - B.1.b. ...

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

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. designation of each Honors Curriculum Course;

vi. the grading scale for each course reported;

vii. list the high school attended for each course reported; and

viii 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.3. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26: (September 2000), LR 26: (October 2000), LR 27:1863 (November 2001), LR 29:879 (June 2003), LR 23:

§1705. Notification of Certified Students

A. 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:

1. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

2. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

3. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

4. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

B. 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:

1. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

2. LASFAC must determine that your TOPS Cumulative High School Grade Point Average based on the TOPS core curriculum meets the statutory requirements;

3. you must be a Louisiana resident as defined by LASFAC;

4. 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;

5. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state aid; and

6. 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) and amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), amended LR 29:126 (February 2003), LR 29:879 (June 2003), LR 29:

Chapter 19. Eligibility and Responsibilities of Postsecondary Institutions

§1903. Responsibilities of Postsecondary Institutions

A. - B.5. ...

6. upon the school's certification that a recipient of a TOPS Award is enrolled full-time, institutions shall bill for and LASFAC will reimburse the institution for each such recipient as follows:

a. public colleges and universities may bill for an amount up to the maximum tuition for that institution, as defined in §301;

b. Louisiana Technical College campuses may bill for an amount up to the tuition for that institution, as defined in §301;

c. LAICU member colleges and universities may bill for students enrolled in academic programs an amount up to the Weighted Average Award Amount, as defined in §301;

d. LAICU member colleges and universities may bill for students enrolled in nonacademic programs an amount up to the Average Award Amount (TOPS-Tech), as defined in §301;

e. for recipients of the Performance and Honors awards, institutions may bill LASFAC for the stipend that accompanies these awards, in the amounts of \$200 or \$400 per semester, respectively;

f. for students enrolled in a public professional school, institutions may bill LASFAC an amount equal to the tuition charged or the tuition charged a student pursuing a baccalaureate degree at the highest cost public school, whichever is less;

g. for students enrolled in a LAICU professional school, institutions may charge the Weighted Average Award Amount;

h. for students enrolled in graduate school, institutions may bill LASFAC an amount equal to the tuition or the tuition charged for a student while pursuing a baccalaureate degree at the highest cost public school in the state, whichever is less.

7. ...

8. Before applying a TOPS award to pay a student's tuition, institutions shall first apply the student's "out-of-pocket" payments, including student loans, toward tuition charges. In those cases when a student's tuition as defined in 26 U.S.C. 25A is paid from a source other than the TOPS award, the institution shall apply the TOPS award toward payment of expenses other than tuition which are described in the term "cost of attendance" as that term is defined in 20 U.S.C. 1087 11, as amended, for the purpose of qualifying the student or his parent or Court Ordered Custodian for the federal income tax credits provided for under 26 U.S.C. 25A.

C. - G. ...

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 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25: 1459 (August 1999), LR 26:1998, 2002 (September 2000), LR 27:1864 (November 2001), LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 29:

Chapter 21. Miscellaneous Provisions and Exceptions
§2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - C.3. ...

D. Procedure for Requesting Exceptions to the Initial and Continuous Enrollment Requirement

1. The student should complete and submit an application for an exception, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. Through the 2000-2001 academic year, the student must submit application for an exception no later than May 30 of the academic year the student requests reinstatement. Commencing with the 2001-2002 academic year, the student must submit the application for exception no later than six months after the date of the notice of cancellation, except that a Returning Student must submit the application for exception no later than six months after the date of the notice of ineligibility due to failure to meet the continuing eligibility requirements of §705. The deadline for filing the exception shall be prominently displayed on the notice of cancellation. If the applicant for an exception is a Dependent Student, a parent or Court Ordered Custodian of the Dependent Student may submit the application for exception on behalf of the applicant.

2. - 3. ...

E. Qualifying Exceptions to the Initial and Continuous Enrollment Requirement. A student who has been declared ineligible for TOPS, TOPS-Tech, TOPS Teacher or the Rockefeller State Wildlife Scholarship because of failure to meet the initial or continuous enrollment requirements may request reinstatement in that program based on one or more of the following exceptions:

1. - 3. ...

4. Temporary Disability

a. Definition. The student/recipient is recovering from an accident, injury, illness or required surgery, or the student/recipient is providing continuous care to his/her

spouse, dependent, parent, stepparent, or custodian due to an accident, illness, injury or required surgery.

b. ...

c. Maximum Length of Exception

i. Up to four consecutive semesters (six consecutive quarters) for recipient;

ii. up to a maximum of two consecutive semesters (three consecutive quarters) for care of a disabled dependent, spouse, parent, or custodian.

5. - 7.c. ...

8. Death of Immediate Family Member

a. Definition. The student's spouse, parent, stepparent, custodian, dependent, sister or brother, step sibling, or grandparent dies.

8.b. - 10. ...

11. Exceptional Circumstances

a. Definition. The student/recipient has exceptional circumstances, other than those listed in §2103.E.1-10, which are beyond his immediate control and which necessitate full or partial withdrawal from, or non-enrollment in an eligible postsecondary institution.

i. The following situations are not exceptional circumstances:

E.11.a.i.(a) - (h). ...

(i). An involuntary drop, suspension, or withdrawal from enrollment because of academics, scholastics, or failure to attend classes or to comply with institutional regulations.

(j). A suspension or expulsion for misconduct.

(k). An inability to register because of failure to satisfy financial obligations.

E.11.a.ii - F. ...

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 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1017 (May 2000), LR 26:2004 (September 2000), LR 27:37 (January 2001), LR 27:1875 (October 2001), LR 27:1866 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330, 2333 (November 2002), LR 29:126 (February 2003), LR 29:

§2105. Repayment Obligation, Deferment and Cancellation

A. - B.3.c. ...

4. Temporary Disability

a. Definition. The recipient is recovering from an accident, injury, illness or required surgery, or the recipient is providing continuous care to his/her spouse, dependent, parent, stepparent, or custodian due to an accident, illness, injury or required surgery.

b. - b.iii. ...

c. Maximum Length of Deferment. Up to two years for recipient; up to a maximum of one year for care of a disabled dependent, spouse, parent, or custodian.

C. ...

D. Procedure for Requesting a Deferment

1. The recipient should complete and submit an application for a deferment, with documentary evidence, to the Office as soon as possible after the occurrence of the event or circumstance that supports the request. The recipient must submit the application for deferment no later than three months after the date of the notice of repayment.

The deadline for filing the request shall be prominently displayed on the notice of repayment. If the applicant for a deferment is a Dependent Student, a parent or Court Ordered Custodian of the Dependent Student may submit the application for exception on behalf of the applicant.

E. - 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 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), LR 28:775 (April 2002), LR 28:2331 (November 2002), LR 29:

George Badge Eldredge
General Counsel

0308#047

DECLARATION OF EMERGENCY

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

Student Tuition and Revenue
Trust (START Saving) Program
(LAC 28:VI.107, 301, 303, 305,
307, 309, 311, 313, and 315)

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

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has 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 July 17, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

**Part VI. Student Financial Assistance Higher
Education Savings Tuition Trust Authority**

Chapter 1. General Provisions

§107. Applicable Definitions

Beneficiary The person named in the education savings account owner's agreement or the person named by the Authority when authorized to make such a designation by an account owner as classified under §303.A.5, as the individual entitled to apply the account balance, or portions thereof, toward payment of their Qualified Higher Education Expenses.

Beneficiary's Family For purposes of §303.A.5, the beneficiary's family must be one of the following persons:

a. the beneficiary's parent(s) or court ordered custodian; or

b. a person who claims the Beneficiary as a dependent on his or her federal income tax return for the previous year; or

c. a person who certifies that the beneficiary lives with him, that he provides more than 50 percent of the beneficiary's support for the previous year and that he was not required to file an income tax return for the previous year.

Trade Date The date that a deposit to an investment option that includes variable earnings is assigned a value in units or the date a disbursement or refund from an investment option that includes variable earnings is assigned a value.

Variable Earning That portion of funds in an education savings account invested in equities.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997). Amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:566 (April 2003), LR 29:

**Chapter 3. Education Savings Account
§301. Education Savings Accounts**

A. An education savings account is established on behalf of a designated beneficiary to provide the funding necessary for the beneficiary to acquire an undergraduate certificate, associate degree, undergraduate degree, graduate degree or professional degree. Education savings accounts may offer investment options that provide either fixed earnings or variable earnings.

1. The account owner classified under §303.A.1, 2, 3 and 4 shall designate the beneficiary in the owner's agreement.

2. The account owner classified under §303.A.5 may designate the beneficiary in the owner's agreement, provided the beneficiary is not a member of the account owner's family, or authorize the LATTA to select a beneficiary for the account.

3. A beneficiary selected by the LATTA must meet the following criteria:

a. the beneficiary is a Louisiana resident;

b. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);

c. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the authority or the Office of Student Financial Assistance;

d. demonstrate superior early academic preparation in the third grade by achieving a score on the Iowa Tests of Basic Skills, Stanford 9 Test or TerraNova Test that is in the top two quartiles; and

e. the guidelines provided by the account owner, if any; provided such guidelines are lawful.

4. Procedure for Selection (To be added at a later date.)

B. - C.1. ...

2. The account owner shall designate a beneficiary, except as provided in Paragraph A.2 above.

3. ...

4. Transfer of account ownership is not permitted, except in the case of accounts classified under §303.A.1-4 in the event of the death of an account owner, who is a natural person or the dissolution of the account owner, who is a legal entity.

a. The account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, may designate a person who will become the substitute account owner in the event of the original account owner's death.

b. Eligibility for earnings enhancements will be based on the substitute account owner's classification at the time of the original account owner's death.

c. In the event of the death of an account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, and who has not named a substitute account owner, the account shall be terminated and the account shall be refunded to the beneficiary, if designated to receive the refund by the account owner, or the account owner's estate.

d. In the event of the dissolution of an account owner who is a legal entity classified as an account owner under §303.A.3 or 4, the beneficiary shall become the substitute account owner. If the account owner, who is a legal entity classified as an account owner under §303.A.3 or 4, is dissolved, the beneficiary designated to receive the refund has died, and there is no substitute beneficiary named, the refund shall be made to the beneficiary's estate.

e. In the event of the death or dissolution of an other person classified as an account owner under §303.A.5, the beneficiary shall become the substitute account owner, provided that, in the case of an account classified under §303.A.5, all the rights and restrictions provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc., shall be applicable to the beneficiary that becomes the owner of an account established under §303.A.5. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible educational institution by age 25, and no substitute beneficiary has been designated by the account owner, the Authority shall designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

5. Only the account owner or the beneficiary may be designated to receive refunds from the account owned by an account owner who is a natural person other than a natural person classified as an account owner under §303.A.5. In the event of the death of the account owner when the account owner is designated to receive the refund and there is no substitute account owner named, the refund shall be made to the account owner's estate.

D. - D.6. ...

7. That an account whose owner is a legal entity or is classified under §303.A.5 cannot be terminated and the funds deposited in the account will not be refunded to the account owner.

8. That an account owner who is a legal entity or is classified under §303.A.5, can change the beneficiary of an account to one or more persons who are not members of the family of the beneficiary in accordance with §313.A.4.c, however, in such case:

a. ...

b. the earnings enhancements and interest thereon will not be transferred to the new beneficiary. (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

c. the provisions of §301.A.2 shall apply to account owners classified in accordance with §305.A.5.

9. That in the event an account owner who is a legal entity classified as an account owner under §303.A.3 or 4 is dissolved, the beneficiary will become the owner of the account.

10. That in the event an other person classified as an account owner under §303.A.5 dies or is dissolved, the beneficiary will become the account owner, provided that, all the restriction provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc. shall be applicable to the beneficiary that becomes the owner of an account established under §303.A.5. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible college or university by age 25, and no substitute beneficiary has been designated by the account owner, the Authority is authorized designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

E. - G. ...

H. Providing Personal Information

1. The account owner is required to disclose personal information in the owner's agreement, including:

a. In the case of an account owner classified under §303.A.5:

i. the social security number of the beneficiary's family and authorization from that person for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purpose of verifying federal adjusted gross income; and

ii. if applicable, proof that the beneficiary is a ward of the court; or

iii. if applicable, proof the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.).

2. By signing the owner's agreement, the account owner who is classified under §303.A.1 or 2 (does not include legal entities or other persons classified as account owners under §303.A.5) provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the owner's agreement:

a. the account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, certifies that:

a.i. - b.vi. ...

c. the natural person classified as an account owner under §303.A.5 certifies that:

- i. the beneficiary is a Louisiana Resident;
- ii. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary is eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);
- iii. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the Authority or the Office of Student Financial Assistance;
- iv. the account owner acknowledges and agrees that once funds are deposited in a START account, neither the deposits nor the interest earned thereon can be refunded to the account owner; and
- v. the information provided in the application is true and correct.

H.4 - J. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997). Amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:450 (March 2002), LR 28:778 (April 2002), LR 28:2334 (November 2002), LR 29:

§303. Account Owner Classifications

A. - A.4. ...

5. any other person or any government entity, and at the time of the initiation of the agreement:

- a. the beneficiary is a resident of the state;
- b. the federal adjusted income of the beneficiary's family is less than \$30,000 or the beneficiary must be eligible for a free lunch under the Richard B. Russell National School Act (42 USC 1751 et seq.);
- c. the beneficiary is not a member of the account owner's family nor a member of the family of any member or employee of the Authority or the Office of Student Financial Assistance;
- d. the deposits to the account are an irrevocable donation by the owner.

B. - C. ...

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 27: 1879 (November 2001), LR 28:779 (April 2002), LR 28:2334 (November 2002), LR 29:

§305. Deposits to Education Savings Accounts

A. - C. ...

D. Investment Options

1. The State Treasurer shall select fixed earnings and variable earnings investment options.
2. The Authority shall furnish each account owner with information that discloses each of the investment options offered by the program.
3. The account owner shall select one or more of the investment options in completing the owner's agreement. If more than one option is selected, the account owner shall indicate the percentage of each deposit for each investment option and the percentages must total 100 percent.
4. Investment options and the percentage of each deposit to an option can be changed no more than once in any 12 month period.

5. Once a selection is made, all deposits shall be directed to the investment options selected and in the percentages designated.

E. Deposits

1. Deposits for investment options that are limited to fixed earnings will be considered to have been deposited on the date of receipt

2. Deposits for investment options that include variable earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date five days after the business day during which they were received.

b. Deposits made by electronic funds transfer will be assigned a trade date of one business day after the business day during which they were received.

3. Deposits received on weekends and holidays will be considered received on the next business day.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 29:

§307. Allocation of Earnings Enhancements

A. Earnings enhancements are state-appropriated funds allocated to an education savings account, on behalf of the beneficiary named in the account.

1.a. The earnings enhancements for account owners who are classified under §303.A.1 and 2 are calculated based upon the account owner's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement and the account owner's total annual deposits of principal.

b. The earnings enhancements for account owners who are classified under §303.A.5 are calculated based:

i. upon the beneficiary's family's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement and the account owner's total annual deposits of principal; or

ii. if the beneficiary is a ward of the court, using the highest earnings enhancement available and the account owner's total annual deposits of principal.

2. ...

B. Providing Proof of Annual Federal Adjusted Gross Income

1.a. For account owners who are classified under §303.A.1 or 2 (does not include Legal Entities nor other persons classified as account owners under §303.A.5), the account owner's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement allocation.

b. For account owners who are classified under §303.A.5, the beneficiary's family's annual federal adjusted gross income for the year immediately preceding the year for which the beneficiary of the account is being considered for an earnings enhancement is used in computing the annual earnings enhancement or proof that the beneficiary is a ward of the court.

2.a. To be eligible in any given year for a Earnings Enhancement in accordance with §307.D., the account owner of an Education Savings Account classified under §303.A.1, 2 or 3 must:

i. authorize the LATTA to access the account owner's state tax return filed with the Louisiana Department of Revenue for the purpose of obtaining the account owner's federal adjusted gross income; or

ii provide the LATTA a copy of the account owner's federal or state income tax return filed for the year immediately preceding the year in which the beneficiary of the account is being considered for an earnings enhancement.

b. To be eligible in any given year for a earnings enhancement in accordance with §307.D., the account owner of an education savings account classified under §303.A.5 must:

i. provide authorization from the beneficiary's family for the LATTA to access the beneficiary's family's state tax return filed with the Louisiana Department of Revenue for the purpose of obtaining the federal adjusted gross income of the beneficiary's family; or

ii provide the LATTA a copy of the beneficiary's family's federal or state income tax return filed for the year immediately preceding the year in which the beneficiary of the account is being considered for an earnings enhancement; or

iii. provide documentation establishing that the beneficiary is a ward of the court.

3.a. In completing the owner's agreement, account owner's who are classified under §303.A.1 or 2 (does not include legal entities or other persons classified as account owners under §303.A.5), authorize the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the account owners' federal adjusted gross income. In the event the account owner does not file tax information with the Louisiana Department of Revenue, they must provide the LATTA with:

i a copy of the form filed with the Internal Revenue Service; or

ii a statement as to why no income tax filing was required of the account owner.

b. In completing the owner's agreement, account owners who are classified under §303.A.5, provide authorization from the beneficiary's family for the LATTA to access their records with the Louisiana Department of Revenue for the purpose of verifying the beneficiary's family's federal adjusted gross income. In the event the beneficiary's family does not file tax information with the Louisiana Department of Revenue, the beneficiary's family must provide:

i a copy of the form filed with the Internal Revenue Service; or

ii a statement that the beneficiary lives with them, that they provide more than 50 percent of the beneficiary's support and an explanation as to the beneficiary's family was not required to file an income tax return; or

iii. provide documentation establishing that the beneficiary is a ward of the court.

B.4. - C.2. ...

D. Earnings Enhancement Rates. The earnings enhancement rates applicable to an education savings account under §303.A.1, 2 and 5 are determined by the federal adjusted gross income of the account owner or the beneficiary's family, as applicable, according to the following schedule.

Reported Federal Adjusted Gross Income	Earnings Enhancement Rate*
0 to \$29,999	14 percent
\$30,000 to \$44,999	12 percent
\$45,000 to \$59,999	9 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	2 percent

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

E. - F. ...

G. Restrictions on allocation of earnings enhancements to education savings accounts. The allocation of earnings enhancements is limited to education savings Accounts which:

1. are not fully funded accounts (See §107); and

2. have an account owner who falls under one of the classifications described in §303.A.1, 2, 3 or 5.

H. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:1263 (June 2000), LR 26:2263 (October 2000), LR 27:37 (January 2001) LR 27:1221 (August 2001), LR 27:1157 (November 2001), LR 28:779 (April 2002), LR 29:

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

A. Request for Disbursement

1. For each term the account owner intends to fund the beneficiary's qualified higher education expenses, the account owner shall submit a request for disbursement.

2. The request for disbursement must include:

a. the START Account number;

b. the account owner's name, address, Social Security Number and signature (may be electronic);

c. the beneficiary's name, address, and Social Security Number;

d. the amount to be disbursed and to whom; and

e. the name and address of the eligible education institution.

3. The account owner may select the investment options from which the disbursement shall be made; provided that if no selection is made, the disbursement shall be made proportionally from each investment option in the account.

4. If there is more than one account with the same beneficiary, each account owner requesting a disbursement must complete a request for disbursement and the disbursements shall be made from each account, in turn, in the order the disbursement requests were received.

5. Disbursements from all accounts with the same beneficiary shall not exceed the qualified higher education expenses of the beneficiary for the school attended.

6. Disbursements may be made to the eligible education institution, account owner and/or beneficiary; however, for each disbursement, as a minimum, that portion of the disbursement representing earning enhancements and the interest thereon must be sent to the eligible educational institution in which the student is enrolled or intends to enroll.

7. Disbursements from investment options with variable earnings will be assigned a trade date of one business day after the business day of receipt.

B. Rate of Expenditure

1. As authorized by the account owner, the amount to be disbursed from an account shall be drawn from deposits (including earnings on deposits) and earnings enhancements (including earnings on earnings enhancements) in the same ratio as these funds bear to the total value of the account as of the date of the disbursement.

2. For an educational term, the account owner may not withdraw an amount in excess of the beneficiary's qualified higher education expenses for that term or the value of the account, whichever is less.

C. Payments to Eligible Educational Institutions

1. Upon the beneficiary's enrollment and the institution's receipt of a START disbursement, the institution may credit the student's account. Should the amount received exceed the amount owed to the institution, the institution shall disburse the balance to the beneficiary, unless the beneficiary directs otherwise.

D. - G. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997). Amended LR 24:1272 (July 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 29:

§311. Termination and Refund of an Education Savings Account

A. ...

B. Account Terminations

1. The account owner who is a natural person, other than a natural person classified as an account owner under §303.A.5, may terminate an account at any time.

2. - 5. ...

6. The account owner who is a legal entity or is classified under §303.A.5, may not terminate an account, however, the account owner who is a legal entity or is classified under §303.A.5 may designate a substitute beneficiary in accordance with §313.A.4.b.

C. Refunds

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

2. ...

3. No refunds shall be made to an account owner who is a legal entity classified under §303.A.3 or 4. If an account owned by a legal entity classified as an account owner under §303.A.3 or 4 is terminated by LATTA or by the account owner in accordance with §311.E or F, the refund will be made to the beneficiary or to the beneficiary's estate if no substitute beneficiary has been designated by the account owner.

4. No refunds shall be paid to account owner classified under §303.A.5. If such an account is terminated by LATTA in accordance with §311.E, the beneficiary shall become the owner of the account, provided that, all the rights and restrictions provided in law and these rules regarding account owners classified under §303.A.5, including, but not limited to, use of the funds, refunds, terminations, designation of beneficiary, etc. shall be applicable to the beneficiary that becomes the owner of such an account. If an account owner classified under §303.A.5 dies or is dissolved and the beneficiary has died or failed to enroll in an eligible college or university by age 25, and no substitute beneficiary has been designated by the account owner, the Authority shall designate a new beneficiary who must meet the requirements of §301.A.3 and §303.A.5.

5. Refunds from investment options with variable earnings will be assigned a trade date of one business day after the business day of receipt.

D. Designation of a Refund Recipient

1. In the owner's agreement, the account owner who is a natural person, except one who is classified under §303.A.5, may designate the beneficiary to receive refunds from the account.

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

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

4. The beneficiary of an account owned by a legal entity classified as an account owner under §303.A.3 or 4 is automatically designated as the refund recipient.

5. Funds in an account classified under §303.A.5 shall not be refunded.

E. Involuntary Termination of an Account with Penalty

1. The LATTA may terminate an owner's agreement if it finds that the account owner or beneficiary provided False or Misleading Information (see §107).

2. If the LATTA terminates an owner's agreement under this Section, all interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

3. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

F. Voluntary Termination of an Account

1. Refunds shall be equal to the redemption value of the education savings account at the time of the refund, and shall be made to the person designated in the owner's agreement or by rule.

2. The person receiving the refund shall be responsible for any state or federal income tax that may be payable due to the refund.

3. Except for accounts classified in accordance with §305.A.5, accounts may be terminated and fully refunded or partially refunded at the request of the account owner for the following reasons.

a. the death of the beneficiary in which case the refund shall be equal to the redemption value of the account and shall be made to:

- i. the account owner, if the account owner is a natural person; or
- ii. the beneficiary's estate, if the account owner is a legal entity.

b. the disability of the beneficiary, in which case the refund shall be equal to the redemption value of the account and shall be made to:

- i. the account owner or the beneficiary, as designated in the owner's agreement, if the Account owner is a natural person; or
- ii. the beneficiary, if the account owner is a legal entity.

c. the beneficiary receives a scholarship, waiver of Tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary. In such case, the refund shall be equal to the scholarship, waiver of Tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary of the account, or the redemption value, whichever is less, and shall be made to:

- i. the account owner or the beneficiary, as designated in the owner's agreement, if the Account owner is a natural person; or
- ii. the beneficiary, if the account owner is a legal entity.

4. Refunds made under this §311.F.3 are currently exempt from additional federal taxes.

G. Effective Date of Account Termination. Account termination shall be effective at midnight on the business day on which the request for account termination and all supporting documents are received. Accounts will be credited with interest earned on principal deposits through the effective date of the closure of the account.

H. Refund Payments. Payment of refunds for voluntary termination under §311.F or partial refunds of accounts pursuant to §311.F.3 shall be made within 30 days of the date on which the account was terminated. The termination refund shall consist of the principal remaining in the account and interest remaining in the account accrued on the principal through the end of the last calendar year. Interest earned in excess of \$3 during the calendar year of termination will be refunded on or about the forty-fifth day after the start of the next calendar year. Interest earned of \$3 or less during the calendar year of termination will be forfeited to the Louisiana Education and Tuition Savings Fund.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 29:

§313. Substitution, Assignment, and Transfer

A. - A.3. ...

4. If the substitute beneficiary is not a member of the family of the previous beneficiary:

- a. and the account owner is a natural person classified under §303.A.1-4, the account must be refunded to the account owner and a new account must be opened;

b. and the account owner is a legal entity classified under §303.A. 3 or 4, a new account shall be opened in the name of the new beneficiary; and

i. - ii. ...

c. and the account owner is classified under §303.A. 5, a new account shall be opened in the name of the new beneficiary only if the beneficiary meets all the requirements of §303.A. 5; and

i. these transfers may be treated as refunds under federal and state tax laws in which case the account owner will be subject to any associated tax consequences; and

ii. the earnings enhancements and interest thereon will not be transferred to the new beneficiary; (Note that the deposit(s) will be eligible for earnings enhancement for the year of the deposit.)

iii. the provisions of §301.A.2 shall apply to account owners classified in accordance with §305.A.5.

B. - C.5. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), repromulgated LR 26:2266 (October 2000), amended LR 27:1883 (November 2001), LR 28:780 (April 2002), LR 29:

§315. Miscellaneous Provisions

A. - H. ...

I. No Investment Direction. No account owner or beneficiary of an education savings account may direct the investment of funds credited to an account, except to make an annual election among investment options that offer fixed earnings, variable earnings or both. Deposits will be invested on behalf of the START Savings Program by the State Treasurer.

J. - 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

0308#050

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Remediation of Sites with Contaminated Media
(LAC 33:V.109)(HW084E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish Rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary in order to

implement Rules to address the remediation of sites with contaminated environmental media.

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in", therefore slowing the remediation of the site or possibly halting it completely due to administration and disposal issues. This Rule will remove a regulatory hurdle that deters site remediation. The incentive to remediate pollution stems from the resulting substantially reduced disposal and transportation costs for contaminated environmental media that are not required to be managed in the same manner as hazardous waste. The Rule will also result in simplification of the waste handling process by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment.

This Emergency Rule is effective on August 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 HW084E you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Hazardous Waste—A solid waste, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. ...

d. it consists of environmental media (soil, sediments, surface water, or groundwater) that contain one or more hazardous wastes listed in LAC 33:V.4901 (unless excluded by one of the exclusions contained in this definition) or that exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. Environmental media no longer contain a hazardous waste when concentrations remaining in the media are below RECAP Screening Standards (LAC 33:I.Chapter 13) and the media no longer exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. However, land disposal restrictions (LAC 33:V.Chapter 22) apply to such environmental media even though the media may no longer contain a hazardous waste.

e. **Rebuttable Presumption for Used Oil.** Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant

concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b....

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), LR 29:

L. Hall Bohlinger
Secretary

0308#060

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Unauthorized Emissions Reporting Procedures
(LAC 33:I.3931)(OS052E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality ("department") to use Emergency procedures to establish Rules, and R.S. 30:2011, the secretary of the department

hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule, which shall be effective seven days after the date of adoption for 120 days, or until promulgation of the final Rule, whichever occurs first.

In the last two years, the Baton Rouge Nonattainment Area (the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) has experienced exceedances of the one-hour National Ambient Air Quality Standard (NAAQS) promulgated by the United States Environmental Protection Agency (US EPA). These exceedances did not occur during circumstances that typically result in excessive ozone formation and led to ozone readings the Baton Rouge area has not experienced in a decade. The ozone readings for two separate episodes in September 2002 and July 2003 were 164 parts per billion (ppb) and 174 ppb respectively, over 30 percent above the standard. Monitoring results from these exceedances indicate a high rate and efficiency of ozone production, which was limited spatially to the immediate Baton Rouge area. These ozone episodes correspond very well to the kind of episodes that have occurred in the Houston/Galveston areas. The Texas Air Quality Study, conducted in the Houston/Galveston areas, concluded that the reactivity of the hydrocarbons was most often dominated by low molecular weight alkenes and aromatics resulting in explosive ozone formation. Air quality sampling in the Baton Rouge area also showed substantial quantities of the mentioned ozone precursors. The ozone formation experienced in the Baton Rouge area may similarly be the result of the emissions of "highly reactive" ozone precursors.

The department needs additional information regarding the emissions of these highly reactive ozone precursors to understand, predict, and prevent further exceedances of the ozone standard. Results from computer simulations based on Houston's industrial regions suggest emissions of as little as 100 pounds of light alkenes and aromatics can lead to 50 ppb or greater enhancements of ozone concentrations. Baton Rouge's type of industry (petrochemical plants and refineries) and meteorological conditions are similar enough to Houston to warrant further investigation. This information is needed immediately to monitor the remainder of the 2003 ozone season in the hopes of achieving attainment of the standard. Facilities are to continue to follow the LAC 33:I.Chapter 39 reporting protocols and, whenever possible, to utilize the new notification procedures found at <http://www.deq.state.la.us/surveillance/irf/forms> and <http://www.deq.state.la.us/surveillance>.

This Emergency Rule is effective on August 12, 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 OS052E, you may contact the Regulation Development Section at (225) 219-3550.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of Secretary
Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges
Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. - A.2. ...

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants.

Pollutant	CAS No. ¹	RCRA ² Waste Number	Pounds
Acetaldehyde	75070	U001	100 ⁺
* * *			
2-Butanone	78933	U159	5000/1000 [@]
Butenes (all isomers except 1,3 butadiene)	25167673		100 ⁺
* * *			
Ethylene	74851		5000/(100) ⁺
* * *			
Propionaldehyde	123386		1000/100 [@]
Propylene	115071		100 ⁺
* * *			
Thiomethanol	74931	U153	100/25 [@]
Toluene	108883	U220	100 ⁺
* * *			
Volatile Organic Compounds not otherwise listed ⁴			5000
Highly reactive volatile organic compounds listed below: acetaldehyde; butenes (all isomers); ethylene; propylene toluene; xylene (all isomers); and/or isoprene ⁵			100

Note* - Note⁴ ...

⁵The combined emission of these highly reactive VOC shall be totaled to determine if a RQ has been exceeded.

Note[@] ...

⁴For facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation

Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 29:

L. Hall Bohlinger
Secretary

0308#061

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waivers New Opportunities Waiver (LAC 50:XXI.Chapters 137-141)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends LAC 50:XXI.Subpart 11 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 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.

Act 1147 of the 2001 Regular Session of the Louisiana Legislature created the Disability Services and Supports System Planning Group composed of representatives from groups including, but not limited to, individuals with disabilities, developmental disabilities and mental illness. The mission of the planning group is to consider and propose provisions for comprehensive efforts to enhance Louisiana's long term care system which include informed choice and quality supports for individuals of all ages with disabilities. Based on recommendations made by the planning group and a stakeholder task force, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgated an Emergency Rule to implement a new home and community based services waiver designed to enhance the support services available to individuals with developmental disabilities. This new home and community based services waiver is titled the New Opportunities Waiver (*Louisiana Register, Volume 29, Number 6*). The bureau now proposes to promulgate an Emergency Rule to amend the July 1, 2003 Emergency Rule in order to add discharge criteria and clarify other provisions contained in the Rule.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities or mental retardation who are in need of such services and are on a request for services registry. It is estimated that implementation of this Emergency Rule will increase program expenditures by approximately \$54,357,522 for state fiscal year 2003-2004.

Effective for dates of service on and after August 20, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends provisions of the July 1, 2003 Emergency Rule governing the establishment of the New Opportunities

Waiver in accordance with Section 1915(c) of the Social Security Act and the approved waiver application document and attachments.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13701. Introduction

A. The New Opportunities Waiver (NOW), hereafter referred to as NOW, is designed to enhance the long term services and supports available to individuals with developmental disabilities or mental retardation, who would otherwise require an intermediate care facility for the mentally retarded (ICF-MR) level of care. The mission of NOW is to utilize the principle of self determination and supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, NOW includes a self-direction option. This allows for greater flexibility in hiring, training, and general service delivery issues. NOW replaces the current Mentally Retarded/Developmentally Disabled (MR/DD) waiver after recipients of that waiver have been transitioned into NOW.

B. All NOW services are accessed through the case management agency of the recipient's choice. All services must be prior authorized and delivered in accordance with the Bureau of Community Supports and Services (BCSS) approved comprehensive plan of care (CPOC). The CPOC shall be developed using a person-centered process coordinated by the individual's case manager.

C. Providers must maintain adequate documentation to support service delivery and compliance with the approved plan of care and will provide said documentation at the request of BCSS.

D. In order for the NOW provider to bill for services, the individual and the direct service provider, professional or other practitioner rendering service must be present at the time the service is rendered. The service must be documented in service notes describing the service rendered and progress towards the recipient's personal outcomes and CPOC.

E. Only the following NOW services shall be provided for or billed for the same hours on the same day as any other NOW service:

1. substitute family care;
2. residential habilitation; and
3. skilled nursing services;
 - a. skilled nursing services may be provided with:
 - i. substitute family care;
 - ii. residential habilitation;
 - iii. day habilitation;
 - iv. supported employment (all three modules); and/or
 - v. employment related training.

F. The average recipient expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF-MR services.

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 Community Supports and Services, LR 29:

§13703. Recipient Qualifications for NOW Eligibility

A. In order to qualify for NOW, an individual must be three years of age or older, offered a waiver opportunity (slot) and meet all of the following criteria:

1. meet the definitions for mental retardation or developmentally disability as specified in R.S. 28:380;
2. be on the Mentally Retarded/Developmentally Disabled (MR/DD) Request for Services Registry (RFSR);
3. meet the financial eligibility requirements for the Medicaid Program;
4. meet the medical requirements;
5. meet the requirements for an ICF-MR level of care;
6. meet the health and welfare assurance requirements;
7. be a resident of Louisiana; and
8. be a citizen of the United States or a qualified alien.

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 Community Supports and Services, LR 29:

§13705. NOW Discharge Criteria

A. Recipients shall be discharged from the NOW Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish Medicaid Office;
2. loss of eligibility for an ICF-MR level of care as determined by the Regional BCSS office;
3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. change of residence to another state with the intent to become a resident of that state;
5. admission to an ICF-MR facility or nursing facility with the intent not to return to waiver services;
6. the health and welfare of the waiver recipient cannot be assured in the community through the provision of reasonable amounts of waiver services as determined by the Regional BCSS Office, i.e., the waiver recipient presents a danger to himself or others;
7. failure to cooperate in either the eligibility determination process, or the initial or annual implementation of the approved Comprehensive Plan of Care (CPOC) or the responsibilities of the NOW recipient; or
8. continuity of services is interrupted as a result of the recipient not receiving NOW services during a period of 30 or more consecutive days. This does not include interruptions in NOW services because of hospitalization, institutionalization (such as ICFs-MR or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. This interruption can not exceed 90 days and there is a documented expectation that the individual will return to the NOW services. During this 90-day period, BCSS will not authorize payment for NOW services.

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 Community Supports and Services, LR 29:

Chapter 139. Covered Services

§13901. Individualized and Family Support Services

A. Individualized and Family Support (IFS) are direct support and assistance services provided in the home or the community that allow the recipient to achieve and/or maintain increased independence, productivity, enhanced family functioning and inclusion in the community or for the relief of the primary caregiver. Transportation is included in the reimbursement for these services. Reimbursement for these services includes the development of a service plan for the provision of these services, based on the BCSS-approved CPOC.

1. IFS-Day (IFS-D) services will be authorized during waking hours for up to 16 hours when natural supports are unavailable in order to provide continuity of services to the recipient. Waking hours are the period of time when the recipient is awake and not limited to traditional daytime hours.

2. IFS-Night (IFS-N) services are direct support and assistance provided to individuals during sleeping hours for a minimum of eight hours. The IFS-N worker must be immediately available in the same residence and able to respond. Night hours is the period of time when the recipient is asleep and there is a reduced frequency and intensity of required assistance and is not limited to traditional nighttime hours. Documentation must support this level of assistance.

B. IFS services may be shared by related waiver recipients who live together or up to three unrelated waiver recipients who live together. Waiver recipients may share IFS services staff when agreed to by the recipients and health and welfare can be assured for each individual. Shared IFS services, hereafter referred to as shared support services, may be either day or night services.

C. IFS (day or night) services include:

1. assisting and prompting with the following activities of daily living (ADL):

- a. personal hygiene;
- b. dressing;
- c. bathing;
- d. grooming;
- e. eating;
- f. toileting;
- g. ambulation or transfers;
- h. other personal care and behavioral support needs;

and

i. any medical task which can be delegated;

2. assisting and/or training in the performance of tasks related to maintaining a safe, healthy and stable home, such as:

- a. housekeeping;
- b. laundry;
- c. cooking;
- d. evacuating the home in emergency situations;
- e. shopping; and
- f. money management;

3. personal support and assistance in participating in community, health, and leisure activities;

4. support and assistance in developing relationships with neighbors and others in the community and in strengthening existing informal social networks and natural supports;

5. enabling and promoting individualized community supports targeted toward inclusion into meaningful integrated experiences; and

6. providing orientation and information to acute hospital nursing staff concerning the recipient's specific Activities of Daily Living (ADL's), communication, positioning and behavioral needs. All medical decisions will be made by appropriate medical staff.

D. Exclusions. The following exclusions apply to IFS services.

1. Reimbursement shall not be paid for services furnished by a legally responsible relative. A legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian, or the recipient's spouse.

2. In compliance with licensing regulations, IFS-D and IFS-N services shall not include services provided in the IFS-D or IFS-N worker's residence, regardless of the relationship, unless the worker's residence is a certified foster care home.

E. Staffing Criteria and Limitations

1. IFS-D or IFS-N services may be provided by a member of the recipient's family, provided that the recipient does not live in the family member's residence and the family member is not the legally responsible relative as defined in §13901.D.1.

2. Family members who provide IFS services must meet the same standards as providers or direct care staff who are unrelated to the individual.

3. An IFS-D or N worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the BCSS-approved CPOC. An IFS-D or N shared supports worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the BCSS-approved CPOC.

F. Place of Service

1. IFS services shall be provided in the State of Louisiana. Consideration shall be given to requests for the provision of IFS services outside the state on a case-by-case basis for time-limited periods or emergencies. Exceptions to this requirement may be granted for a documented emergency or a time-limited non-routine need documented in the BCSS-approved CPOC.

2. Provision of IFS services shall not be authorized outside of the United States or the Territories of the United States.

G. Provider Requirements. Providers must possess a current, valid license as a Personal Care Attendant agency.

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 Community Supports and Services, LR 29:

§13903. Center-Based Respite Care

A. Center-Based Respite (CBR) Care is temporary, short-term care provided to a recipient with mentally retarded or developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based respite care, the recipient's routine is maintained in order to attend school, work or other community activities/outings.

The respite center is responsible for providing transportation for community outings, as that is included as part of their reimbursement.

B. Exclusions. The cost of room and board is not included in the reimbursement paid to the respite center.

C. Service Limits. CBR services shall not to exceed 720 hours per recipient, per CPOC year.

D. Provider Requirements. The provider shall possess a current, valid license as a Respite Care Center.

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 Community Supports and Services, LR 29:

§13905. Community Integration Development

A. Community Integration Development (CID) facilitates the development of opportunities to assist recipients who are 18 years and older in becoming involved in their community through the creation of natural supports. The purpose of CID is to encourage and foster the development of meaningful relationships in the community reflecting the recipient's choices and values. Objectives outlined in the Comprehensive Plan of Care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. Reimbursement for this service includes the development of a service plan. The recipient must be present in order to receive this service. The recipient may share CID services with one other NOW recipient.

B. Transportation costs are included in the reimbursement for CID services.

C. Service Limitations. Services shall not exceed 60 hours per recipient per CPOC year.

D. Provider Qualifications. The provider must possess a current, valid license as a Supervised Independent Living agency or Personal Care Attendant agency.

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 Community Supports and Services, LR 29:

§13907. Residential Habilitation-Supported Independent Living

A. Residential Habilitation-Supported Independent Living (SIL) assists the recipient to acquire, improve or maintain those social and adaptive skills necessary to enable an individual to reside in the community and to participate as independently as possible. SIL services include assistance and/or training in the performance of tasks such as personal grooming, housekeeping and money management. Payment for this service includes oversight and administration and the development of service plans for the enhancement of socialization with age-appropriate activities that provide enrichment and may promote wellness. These services also assist the individual in obtaining financial aid, housing, advocacy and self-advocacy training as appropriate, emergency support, trained staff and assisting the recipient in accessing other programs for which he/she qualifies. SIL recipients must be 18 years or older.

B. Place of Service. Services are provided in the recipient's residence and/or in the community. The recipient's residence includes his/her apartment or house,

provided that he/she does not live in the residence of any legally responsible relative. An exception will be considered when the recipient lives in the residence of a spouse or disabled parent, or a parent age 70 or older. Family members who are not legally responsible relatives as defined in §13901.D.1, can be SIL workers provided they meet the same qualifications as any other SIL worker.

C. Exclusions

1. Legally responsible relatives may not be SIL providers.

2. SIL shall not include the cost of:

- a. meals or the supplies needed for preparation;
- b. room and board;
- c. home maintenance, or upkeep and improvement;
- d. direct or indirect payment to members of the recipient's legally responsible relative;
- e. routine care and supervision which could be expected to be provided by a family; or
- f. activities or supervision for which a payment is made by a source other than Medicaid e.g., Office for Citizens with Developmental Disabilities (OCDD), etc.

D. Service Limit. SIL services are limited to one service per day, per CPOC year.

E. Provider Qualifications. The provider must possess a current, valid license for the Supervised Independent Living module issued by the Department of Social Services, Bureau of Licensing.

F. Provider Responsibilities

1. Minimum direct services by the SIL agency include three documented contacts per week, by the SIL provider agency, with at least one contact being face-to-face in addition to the approved direct support hours.

2. The provider must furnish back up staff that is available on a 24-hour basis.

3. Residential habilitation services shall be coordinated with any services listed in the BCSS-approved CPOC, and may serve to reinforce skills or lessons taught in school, therapy or other settings.

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 Community Supports and Services, LR 29:

§13909. Substitute Family Care

A. Substitute Family Care (SFC) provides for day programming, transportation, independent living training, community integration, homemaker, chore, attendant care and companion services, and medication oversight (to the extent permitted under state law) to recipients residing in a licensed substitute family care home. The service is a stand-alone family living arrangement for individuals age 18 and older. The SFC house parents assume the direct responsibility for the individual's physical, social, and emotional well-being and growth, including family ties. Immediate family members (mother, father, brother and/or sister) cannot be substitute family care parents. Reimbursement for this service includes the development of a service plan based on the approved CPOC.

B. Service Limits. SFC services are limited to one service per day.

C. Provider Qualifications. The provider must possess a current, valid license as a Substitute Family Care agency.

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 Community Supports and Services, LR 29:

§13911. Day Habilitation

A.1. Day habilitation is assistance with social and adaptive skills necessary to enable the recipient to reside in a community setting and to participate as independently as possible in the community. These services focus on socialization with meaningful age-appropriate activities which provide enrichment and promote wellness, as indicated in the person-centered plan. Day habilitation services must be directed by a service plan and provide assistance and/or training in the performance of tasks related to acquiring, maintaining or improving skills including, but not limited to:

- a. personal grooming;
- b. housekeeping;
- c. laundry;
- d. cooking;
- e. shopping; and
- f. money management.

2. Day Habilitation services shall be coordinated with any therapy, employment-related training, or supported employment models that the recipient may be receiving. The recipient does not receive payment for the activities in which they are engaged. The recipient must be 18 years of age or older in order to receive day habilitation services.

B. Service Limits. Services can be provided one or more hours per day but not to exceed six hours per day or 6,240 1/4 hour units of service per Comprehensive Plan of Care (CPOC) year.

C. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

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 Community Supports and Services, LR 29:

§13913. Supported Employment

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting in which the individuals are working toward competitive work that is consistent with the strengths, resources, priorities, interests, and informed choice of individuals for whom competitive employment has not traditionally occurred. The recipient must be 18 years of age or older in order to receive supported employment services.

B. These are services provided to individuals who are not served by Louisiana Rehabilitation Services, need more intense, long-term follow along and usually cannot be competitively employed because supports cannot be successfully phased out.

C. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Supported employment includes activities needed by waiver recipients to sustain paid work,

including supervision and training and is based on an individualized service plan. Supported employment includes assistance and prompting with:

1. personal hygiene;
2. dressing;
3. grooming;
4. eating;
5. toileting;
6. ambulation or transfers;
7. other personal care and behavioral support needs;

and

8. any medical task which can be delegated.

D. Supported Employment Models. Reimbursement for supported employment includes an individualized service plan for each model.

1. A one-to-one model of supported employment is a placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the work site. This service is time limited to six to eight weeks in duration.

2. Follow along services are designed for individuals who are in supported employment and have been placed in a work site and only require the oversight of a minimum of two visits per month for follow along at the job site.

3. Mobile Work Crew/Enclave is an employment setting in which a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor). Typically this service is up to six hours per day, five days per week.

E. Service Exclusions

1. Services shall not be used in conjunction or simultaneously with any other waiver service, except substitute family care, residential habilitation supported independent living, and skilled nursing services.

2. When supported employment services are provided at a work site in which persons without disabilities are employees, payment will be made only for the adaptations, supervision and training required by individuals receiving waiver services as a result of their disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

3. Services are not available to individuals who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

F. Service Limits

1. One-to-One intensive services shall not exceed 1,280 1/4 hour units per CPOC year. Services shall be limited to eight hours a day, five days a week, for six to eight weeks.

2. Follow along services shall not exceed 24 days per CPOC year.

3. Mobile Crew/Enclave services shall not exceed 8,320 1/4 hour units of service per CPOC year, without additional documentation. This is eight hours per day, five days per week.

G. Licensing Requirements. The provider must possess a current valid license as an Adult Day Care Center.

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 Community Supports and Services, LR 29:

§13915. Transportation for Day Habilitation and Supported Employment Models

A. Transportation provided between the recipient's residence and the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the recipient receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement will be a daily rate for a round trip fare. A round trip is defined as transportation from the recipient's place of residence and return to the recipient's place of residence. The round trip shall be documented in the provider's transportation log.

B. Licensing Requirements. Transportation providers must possess a current valid license as an Adult Day Care Center. The licensed provider must carry \$1,000,000 liability insurance on the vehicles used in transporting the recipients.

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 Community Supports and Services, LR 29:

§13917. Employment-Related Training

A. Employment-related training consists of paid employment for recipients for whom competitive employment at or above the minimum wage is unlikely, and who need intensive ongoing support to perform in a work setting because of their disabilities. Services are aimed at providing recipients with opportunities for employment and related training in work environments one to eight hours a day, one to five days a week at a commensurate wage in accordance with United States Department of Labor regulations and guidelines. The recipient must be 18 years or older in order to receive employment-related training services. Reimbursement for these services includes transportation and requires an individualized service plan.

B. Employment-related training services include, but are not limited to:

1. assistance and prompting in the development of employment related skills. This may include:

- a. assistance with personal hygiene;
- b. dressing;
- c. grooming;
- d. eating;
- e. toileting;
- f. ambulation or transfers;
- g. behavioral support needs; and
- h. any medical task which can be delegated;

2. employment at a commensurate wage at a provider facility for a set or variable number of hours;

3. observation of an employee of an area business in order to obtain information to make an informed choice regarding vocational interest;

4. instruction on how to use equipment;

5. instruction on how to observe basic personal safety skills;

6. assistance in planning appropriate meals for lunch while at work;

7. instruction on basic personal finance skills;
8. information and counseling to a recipient and, as appropriate, his/her family on benefits planning and assistance in the process.

C. Exclusions. The following service exclusions apply to employment-related training.

1. Services are not available to recipients who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

D. Service Limits. Services shall not exceed eight hours a day, five days a week, and cannot exceed 6,240 1/4 hour units of service per CPOC year.

E. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

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 Community Supports and Services, LR 29:

§13919. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the home or a vehicle that are necessary to ensure the health, welfare, and safety of the recipient or that enable him/her to function with greater independence in the home and/or community. Without these services, the recipient would require additional supports or institutionalization.

B. Such adaptations may include:

1. installation of non-portable ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies for the welfare of the individual.

C. Requirements for Authorization. Items reimbursed through NOW funds shall be supplemental to any adaptations furnished under the Medicaid State Plan.

1. Any service covered under the Medicaid State Plan shall not be authorized by NOW. The environmental accessibility adaptation(s) must be delivered, installed, operational, and reimbursed in the CPOC year in which it was approved. Three written itemized detailed bids, including drawings with the dimensions of the existing and proposed floor plans relating to the modification, must be obtained and submitted for prior authorization. Modifications may be applied to rental or leased property with the written approval of the landlord. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the recipient.

2. Three bids may not be required if the environmental accessibility adaptations are available from a single source supplier due to the distance of the recipient's home from other environmental accessibility adaptations providers. The justification and agreement by the service planning/support team for not providing three bids must be included with any request for prior approval.

3. Excluded are those adaptations or improvements to the residence that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual, including, but not limited to:

- a. air conditioning or heating;
- b. flooring;
- c. roofing, installation or repairs;
- d. smoke and carbon monoxide detectors, sprinklers, fire extinguishers, or hose; or
- e. furniture or appliances.

4. Adaptations which add to the total square footage or add to the total living area under the roof of the residence are excluded from this benefit.

5. Home modification is not intended to cover basic construction cost.

6. Excluded are those vehicle adaptations which are of general utility or for maintenance of the vehicle or repairs to adaptations.

D. Service Limits. There is a cap of \$4,000 per recipient for environmental accessibility adaptations. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$4,000. Any additional environmental accessibility expenditures during the dormant period reset the three-year time frame.

E. Provider Qualifications. The provider must be an enrolled Medicaid provider and comply with applicable state and local laws governing licensure and/or certification. All persons performing the services (building contractors, plumbers, electricians, engineers, etc.) must meet all state or local requirements for licensure or certification. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

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 Community Supports and Services, LR 29:

§13921. Specialized Medical Equipment and Supplies

A. Specialized Medical Equipment and Supplies (SMES) are devices, controls, or appliances which enable the recipient to:

1. increase his/her ability to perform the activities of daily living;
2. ensure safety; or
3. perceive and control the environment in which he/she lives.

B. The service includes medically necessary durable and nondurable medical equipment not covered under the Medicaid State Plan. NOW will not cover non-medically necessary items. All items shall meet applicable standards of manufacture, design and installation.

C. All alternate funding sources that are available to the recipient shall be pursued before a request for the purchase or lease of specialized equipment and supplies will be considered.

D. Exclusion. Excluded are specialized equipment and supplies that are of general utility or maintenance, but are not of direct medical or remedial benefit to the individual. Refer to the New Opportunities Waiver Provider Manual for a list of examples.

E. Service Limitations. There is a cap of \$4,000 per individual for specialized equipment and supplies. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$4,000. Any additional specialized equipment

and supplies expenditures during the dormant period reset the three-year time frame.

F. Provider Qualifications. Providers must be enrolled in the Medicaid Program as a durable medical equipment provider.

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 Community Supports and Services, LR 29:

§13923. Personal Emergency Response Systems

A. Personal Emergency Response Systems (PERS) is a rented electronic device connected to the person's phone and programmed to signal a response center which enables an individual to secure help in an emergency.

B. Recipient Qualifications. Personal emergency response systems (PERS) services are available to those persons who:

1. live alone without the benefit of a natural emergency back-up system;
2. live alone and would otherwise require extensive IFS services or other NOW services;
3. need support due to cognitive limitations until they are educated on the use of PERS;
4. have a demonstrated need for quick emergency back-up;
5. live with older or disabled care; or
6. are unable to use other communications systems as they are not adequate to summon emergency assistance.

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the recipient to use the equipment.

D. Provider Qualifications. The provider must be an enrolled Medicaid provider of the Personal Emergency Response System.

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 Community Supports and Services, LR 29:

§13925. Professional Consultation

A. Professional consultation are services designed to evaluate, develop programs, and train natural and formal care givers to implement training or therapy programs, which will increase the individual's independence, participation, and productivity in his/her home, work, and community. These services are not meant to be long-term on-going services. They are normally meant to be short-term or intermittent services to develop critical skills which may be self-managed by the individual or maintained by natural and formal care givers. The recipient must be present in all aspects of the consultation in order for the professional to receive payment for these services. Service intensity, frequency and duration will be determined by individual need. These services may include assessments or periodic reassessments, and may be direct or indirect. Documentation of services provided must be available on-site. The professional consultation services are to be used only when the services are not covered under the Medicaid State Plan. The recipients must be 21 years or older in order to receive professional consultation services.

B. Professional consultation shall include the following services:

1. consultation provided by a licensed registered nurse regarding those medically necessary nursing services ordered by a physician that exceed the service limits for home health services that do not meet the skilled nursing criteria under the Medicaid State Plan. Services must comply with the Louisiana Nurse Practice Act. Consultations may address health care needs related to prevention and primary care activities;

2. evaluation and education performed by a licensed psychologist as specified by state law and licensure. These services are for the treatment of behavioral or mental conditions that address personal outcomes and goals desired by the recipient and his/her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Consultation provides the recipient, family, care givers, or team with information necessary to plan and implement plans for the recipient;

3. highly specialized consultation services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personal outcomes and goals listed in the BCSS approved CPOC.

C. Service Limits. Professional consultation services are limited to a \$750 cap per individual per CPOC year for the combined range of professional consultations.

D. Provider Qualifications. The provider of professional consultation services must possess a current valid license as a personal care attendant (PCA), supervised independent living (SIL) or home health (HH) agency. Each professional rendering service must:

1. possess a current valid Louisiana license to practice in his/her field;
2. have at least one year experience in his/her field of expertise, post licensure; and
3. be contracted or employed with an enrolled PCA, SIL or HH agency.

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 Community Supports and Services, LR 29:

§13927. Professional Services

A. Professional services are services designed to increase the individual's independence, participation and productivity in the home, work, and community. The recipient must be 21 years of age or older in order to receive these services. Professional services are to be used only when the services are not covered under the Medicaid State Plan. Professional services must be delivered with the recipient present and be provided based on the approved CPOC and an individualized service plan. Professional services are limited to the following services.

1. Psychological services are direct services performed by a licensed psychologist, as specified by state law and licensure. These services are for the treatment of a behavioral or mental condition that addresses personal outcomes and goals desired by the recipient and his or her

team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Service intensity, frequency, and duration will be determined by individual need.

2. Social work services are highly specialized direct counseling services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personnel outcomes and goals listed in the BCSS approved CPOC.

3. Nursing services are medically necessary direct services provided by a licensed registered nurse or licensed practical nurse. Services must be ordered by a physician and comply with the Louisiana Nurse Practice Act. Direct services may address health care needs related to prevention and primary care activities, treatment and diet. Reimbursement is only available for the direct service performed by a nurse, and not for the supervision of a nurse performing the hands-on direct service.

B. Service Limits. There shall be a \$1,500 cap per recipient per CPOC year for the combined range of professional services.

C. Provider Qualifications. The provider of professional services must possess a current valid license as a personal care attendant, supervised independent living or home health agency. Each professional rendering service must possess a current valid Louisiana license to practice in his/her field and have at least one year of experience post licensure in their area of expertise and be contracted or employed with an enrolled PCA, SIL, or HH agency.

D. Nonreimbursable Activities. The following activities are not reimbursable:

1. friendly visiting, attending meetings;
2. time spent on paperwork or travel;
3. time spent writing reports and progress notes;
4. time spent on staff training;
5. time spent on the billing of services; and
6. other nonMedicaid reimbursable activities.

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 Community Supports and Services, LR 29:

§13929. Skilled Nursing Services

A. Skilled Nursing services are medically necessary nursing services ordered by a physician and provided to a medically fragile recipient in or outside of his/her home. Skilled nursing services shall be provided by a licensed, enrolled home health agency using licensed nurses. All Medicaid State Plan services must be utilized before accessing this service.

B. Recipient Criteria. The recipient must be 21 years of age or older and have a diagnosis of a chronic disease which requires the vigilance of a licensed nurse to provide evaluation and management of a disease, thereby limiting the need for frequent acute or emergency services. Skilled nursing services require a physician's order documenting medical necessity and individual nursing service plan. These services must be included in the individual's BCSS-approved CPOC. Skilled nursing services shall be available to

individuals who are medically fragile with chronic conditions who meet one of the following criteria:

1. have unstable or uncontrolled diabetes and are insulin dependent;
2. have insufficient respiratory capacity requiring use of oxygen therapy, a ventilator, and/or tracheotomy;
3. require hydration, nutrition, and/or medication via a gastro-tube;
4. have severe musculo-skeletal conditions/non-ambulatory status that requires increased monitoring and/or the treatment of decubitus;
5. have kidney failure requiring dialysis;
6. have cancer requiring radiation/chemotherapy;
7. require end-of-life care not covered by hospice services;
8. require the use of life-sustaining equipment to ensure sufficient body function (a ventilator, a suction machine, pulse oximeters, apnea monitors, or nebulizers); or
9. require the administration of medications which by law must be administered by a licensed nurse via mediports, central lines, or intravenous therapy.

C. When there is more than one recipient in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each recipient's BCSS approved CPOC.

D. Provider Qualifications. The provider must possess a current valid license as a home health agency.

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 Community Supports and Services, LR 29:

§13931. One Time Transitional Expenses

A. One time transitional expenses are those allowable expenses incurred by recipients who are being transitioned from an ICF-MR to their own home or apartment in the community of their choice. Own home shall mean the recipient's own place of residence and does not include any family members home or substitute family care homes. The recipient must be 18 years or older in order to receive this service.

B. Allowable transitional expenses include:

1. the purchase of essential furnishings such as:
 - a. bedroom and living room furniture;
 - b. table and chairs;
 - c. window blinds;
 - d. eating utensils; and
 - e. food preparation items;
2. moving expenses required to occupy and use a community domicile;
3. health and safety assurances, such as pest eradication, allergen control, or one-time cleaning prior to occupancy;
4. non-refundable security deposits.

C. Service Limits. Set-up expenses are capped at \$3,000 over a recipient's lifetime.

D. Service Exclusion. Transitional expenses shall not constitute payment for housing, rent, or refundable security deposits.

E. Provider Qualifications. This service shall only be provided by the Department of Health and Hospitals, Office

for Citizens with Developmental Disabilities (OCDD) with coordination of appropriate entities.

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 Community Supports and Services, LR 29:

§13933. Transitional Professional Support Services

A. Transitional Professional Support Services is a system using specialized staff and resources to intervene and stabilize in a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. These services are limited to recipients who have transitioned out of a public developmental center and have reached the cap for professional services and professional consultation for the recipient's CPOC year. The recipient must be present for all services provided.

B. Recipient Criteria

1. These services are available for recipients who meet all of the following criteria:

a. have a developmental disability and one or more concurrent mental health diagnoses of autism or other pervasive developmental disorders;

b. have a history of recurrent challenging behaviors that risks injury to the individual or others, or results in significant property damage; and

c. have a need for professional services and/or professional consultation that exceeds the service limits for these services available under the Medicaid State Plan and NOW, as documented by a statement of necessity from the treating psychiatrist or psychologist; or

2. the recipient has an acute illness or injury which requires the added vigilance of a licensed nurse to provide treatment of disease symptoms that may avert and/or delay the consequence of advanced complications, thereby reducing the likelihood of further deterioration. Supporting documentation from the recipient's physician must be provided to demonstrate need.

C. Exclusion. All Medicaid State Plan services must be utilized before accessing this service.

D. Provider Qualifications. Providers of transitional professional support services must possess a current, valid license as a PCA, SIL, or HH agency. Each professional rendering service must possess a valid Louisiana license to practice in his/her field and one year of experience in their field of expertise post licensure.

E. Provider Responsibility. An agency that fulfills this role must possess specialized staff and resources to intervene in and stabilize a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. The provider must develop and maintain a current service plan that details the program goals, plans, and expected outcomes from all individuals providing these services.

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 Community Supports and Services, LR 29:

§13935. Consumer Directed Service

A. The consumer directed initiative is a payment mechanism and a self-determination option for NOW recipients in the Department of Health and Hospitals Regions 1, 2, and 9. This is a voluntary option where the waiver recipient or his or her authorized representative may choose what services and/or supports best fit their individual needs through the person-centered planning process, and as documented on the BCSS-approved CPOC. The waiver recipient selecting this option will be required to use a contracted fiscal agent to provide designated functions on his/her behalf.

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 Community Supports and Services, LR 29:

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both service provision and administrative costs.

1. Center-Based Respite
2. Community Integration Development
3. Day Habilitation
4. Employment Related Training
5. Individualized and Family Support-Day and Night
6. Professional Consultation
7. Professional Services
8. Skilled Nursing Services
9. Supported Employment, One-to-One Intensive and Mobile Crew/Enclave
10. Transitional Professional Support Services
11. Shared Supports (IFS-D and -N, Skilled Nursing, CID)

a. Services furnished to two recipients will be reimbursed at 75 percent of the full rate for each recipient; and

b. services furnished to three recipients will be reimbursed at 66 percent of the full rate for each recipient.

B. The following services are to be paid at cost, based on the need of the individual and when the service has been prior authorized and on the CPOC:

1. environmental accessibility adaptations;
 2. specialized medical equipment and supplies; and
 3. transitional expenses.
- C. The following services are paid through a per diem:
1. substitute family care;
 2. residential habitation-supported independent living; and
 3. supported employment-follow along.

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 Community Supports and Services, LR 29:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

0308#070

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Motorized Wheelchairs
(LAC 50:XVII.14821-14825)

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, provides coverage and reimbursement for manual and motorized wheelchairs under the Durable Medical Equipment Program. The Bureau promulgated an Emergency Rule to adopt new policy governing recipient qualifications for motorized wheelchairs (*Louisiana Register, Volume 28, Number 9*). This Emergency Rule is being promulgated to continue the provisions contained in the September 21, 2002 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to medically necessary motorized wheelchairs and thereby avoiding further deterioration of their physical functioning.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XVII. Durable Medical Equipment

Subpart 1. Prosthetics

Chapter 148. Wheelchairs/Wheelchair Accessories and Strollers

Subchapter A. (Reserved)

Subchapter B. Wheelchairs, Motorized and/or Custom Motorized

§14821. Recipient Criteria

A. Motorized Wheelchairs

1. For purposes of this Rule, the term "motorized" shall have the same meaning as "power," "electric" or any means of propulsion other than manual. Effective for dates of service on or after September 19, 2003, the recipient must meet all of the following criteria in order to be considered for a motorized wheelchair:

a. the recipient must be non-ambulatory and have severe weakness of the upper extremities due to a neurological or muscular disease/condition;

b. the recipient's condition is such that without the use of a wheelchair he/she would otherwise be bed or chair confined;

c. the recipient's condition is such that a wheelchair is medically necessary and he/she is unable to operate a wheelchair manually; and

d. the recipient is capable of safely operating the controls for a motorized wheelchair.

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:

§14823. Prior Authorization

A. All wheelchairs and modifications required to meet the needs of a particular recipient are subject to prior authorization. In addition, all requests must include the following documentation:

1. a completed PA-01 form;

2. a physician's prescription for the wheelchair. The physician must specifically state whether the prescription is for a motorized wheelchair or a custom motorized wheelchair. Medical documentation from a physician is required to support the modifications for wheelchairs with specialized seating or individualized features;

3. a seating evaluation performed in cooperation with a physical therapist or occupational therapist. The seating evaluation must include the following documentation:

a. the appropriateness of the specific wheelchair requested and all modifications and/or attachments to the specific wheelchair and its ability to meet the recipient's long-term medical needs. Options that are primarily beneficial in allowing the recipient to perform leisure or recreational activities are not covered;

b. documentation that the recipient does not have the upper extremity function necessary to operate a manual wheelchair; and

c. the dated signature of the physician who prescribed the motorized wheelchair and the dated signature of the physical or occupational therapist that participated in the seating evaluation;

4. documentation that the recipient can safely operate the controls for a motorized wheelchair:

a. the ability to safely operate the controls of a motorized wheelchair shall be verified by the notes and recommendation of the recipient's physician, physical therapist, or occupational therapist;

b. such documentation shall be dated and include the name and signature of the physician, physical therapist or occupational therapist who has determined that the recipient can safely operate the controls of the motorized wheelchair;

c. it is not sufficient for a Medicaid provider of motorized wheelchairs to indicate that a recipient can safely operate the controls for a motorized wheelchair.

B. A motorized wheelchair is covered if the recipient's condition is such that the requirement for a motorized wheelchair is long term (at least six months). Approval will

be made for only one wheelchair at a time. Backup chairs, either motorized or manual, will be denied as not medically necessary.

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:

§14825. Repairs

A. Repairs to motorized wheelchairs will be considered if the request is for basic repairs only, not for major modifications or reconstruction of the chair.

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:

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, 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

0308#071

DECLARATION OF EMERGENCY

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

Durable Medical Equipment Program
Nebulizers **C** 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 currently provides reimbursement for nebulizers through the Durable Medical Equipment Program, based on authorization of medical necessity. A nebulizer is a device used to change

liquid medication into an aerosol, so that it can be inhaled and quickly absorbed. Reimbursement for nebulizers was established at the lower of \$95 or the provider's usual and customary charge. As a result of a budgetary shortfall, the Bureau reduced the reimbursement for nebulizers to the lower of \$60 or the provider's usual and customary charge. This Emergency Rule is being promulgated to continue the provisions contained in the May 1, 2003 Rule (*Louisiana Register, Volume 29, Number 4*). This action is being taken in order to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Durable Medical Equipment Program by approximately \$11,223 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service August 30, 2003 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces reimbursement for nebulizers to the lower of \$60 or the provider's usual and customary charge.

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 Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 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

0308#072

DECLARATION OF EMERGENCY

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

Medicaid Eligibility **C** Medically Needy
Program **C** Incurred Deductions

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 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 promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). The department provides Medicaid coverage under the Medically Needy Program that is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart D Section 435.300. The Medically Needy Program includes those individuals or families who meet all AFDC or SSI related categorical requirements and whose income is within the Medically Needy Income Eligibility Standard. It also includes those individuals or families whose resources fall within the categorical limits, but whose income is above the Medically Needy Income Eligibility Standard. These individuals or families having income in excess of the Medically Needy Income Eligibility Standard can reduce excess income by incurring medical and/or remedial care expenses. This method used for determining eligibility is referred to as spend-down. A state may choose to exclude from incurred expenses those bills for services furnished more than three months before the Medicaid application is filed for initial eligibility or in the case of a renewal more than three months before the first month of the new budget period or quarter of coverage. A state is required to deduct any current payment on such excluded expenses.

In compliance with Executive Order MJF 02-29, the Department amended the policy governing the consideration of incurred expenses in the eligibility determination process for the Medically Needy Program (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Emergency Rule

Effective for applications filed on or after August 31, 2003, and those cases in which the eligibility renewal is due on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing deductions for incurred medical expenses in the eligibility determination process for the Medically Needy Program. Those bills for necessary medical and remedial services furnished more than three months before the Medicaid application is filed or for renewals more than three months before the first month of a new budget period or quarter of coverage will be excluded as an incurred expense. Current payments on excluded expenses will be allowed as an incurred expense.

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 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

0308#074

DECLARATION OF EMERGENCY

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

Medicaid Eligibility Treatment of Annuities

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 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 adopted a rule promulgating the *Medicaid Eligibility Manual* in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section I of the *Medicaid Eligibility Manual* addresses the eligibility factors considered in the determination of eligibility.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917(c) of the Social Security Act and established Section 1917(d) to set forth rules wherein transfers of assets and trusts must be considered in determining eligibility for Medicaid. Current Medicaid eligibility rules are not clear relative to the consideration of annuities in the eligibility determination process. The policy does not clearly state that an annuity is considered a legal instrument or device similar to a trust.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 and curb abuse in the transfer of assets, the Bureau amended Section I of the *Medicaid Eligibility Manual* in order to clarify current policy regarding annuities (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to avoid a budget deficit that will occur if applicants are allowed to continue to hide assets by not having annuities considered as an available resource.

Emergency Rule

Effective August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process.

An annuity is considered a legal instrument or device similar to a trust. An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will not be classified as an annuity for Medicaid eligibility purposes, but rather will be considered an available resource. A commercial (non-employment related) annuity purchased by or for an individual using that individual's assets will be

considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the State of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime; and
4. is issued by an insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

This policy change shall be applicable to all pending applications, renewals of eligibility or changes in situations (as defined in Section L of the Medicaid Eligibility Manual) where the applicant/recipient has an annuity. Existing annuities which do not meet all of the above criteria must be amended to comply with these requirements within 90 days of the first renewal or first change in their situation (as defined in Section L of the Medicaid Eligibility Manual) occurring after enactment of this Rule.

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 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

0308#073

DECLARATION OF EMERGENCY

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

Nursing Facilities **Adult Day Health Care
Standards for Payment
(LAC 50:II.10939)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:II.Chapter 109 under 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 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 Human Resources, Office of Family Security adopted a Rule establishing the Standards for Payment for the Adult Day Health Care Program (*Louisiana Register, Volume 11, Number 6*). The Department of Health and Hospitals, Office of the Secretary, Bureau of

Health Services Financing subsequently promulgated a Rule that amended the reimbursement methodology for Adult Day Health Care services from a facility specific rate based on historical cost to a statewide rate based on set percentages over the median by cost category (*Louisiana Register, Volume 28, Number 11*). The bureau now proposes to amend the prospective payment system reimbursement methodology for adult day health care services.

This action is being taken to enhance federal revenue. It is estimated that the implementation of this proposed Rule will increase revenues by approximately \$1,065,098 in federal funds only for state fiscal year 2003-04.

Title 50

PUBLIC HEALTH **MEDICAL ASSISTANCE**

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 109. Standards for Payment **Adult Day Health Care**

§10939. Prospective Payment System

A. General Provisions

1. Development. Effective August 1, 2003 and thereafter, Adult Day Health Care (ADHC) providers shall be reimbursed a per diem rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all adult day health care recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

2. The prospective payment methodology establishes blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs.

3. - 3.d. ...

4. Rate Setting. Adult day health care providers shall be reimbursed blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus a direct care incentive.

a. The PPS rate is based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports.

i. Direct Care Costs. A statewide base rate for direct care is computed at 115 percent of the median facility per diem direct care costs submitted on all full year cost reports except those for which an audit disclaimer has been issued. Direct care costs are trended forward using the Consumer Price Index (CPI) **Medical Services**.

ii. Care Related Costs. A statewide base rate for care related costs is computed at 105 percent of the median facility per diem care related costs submitted on all acceptable full year cost reports except those for which an audit disclaimer has been issued. Care related costs are trended forward using the CPI **All Items**.

iii. Administrative and Operating Costs (AOC). A statewide base rate for administrative and operating costs is computed at 105 percent of the median facility per diem

administrative and operating costs submitted on all acceptable full year cost reports except for those for which an audit disclaimer has been issued and are trended forward using the CPI^CAll Items.

iv. Property. The property rate is computed at the median of property costs submitted on all acceptable full year cost reports. Inflation will not be added to property costs.

b. The facility specific prospectively determined rate is based on facility specific reasonable allowable costs. The facility specific prospectively determined rate shall be limited to 80 percent of the nursing facility intermediate care II rate in effect on July 1, 2002 exclusive of the provider fee.

i. Direct Care Costs. Facility specific direct care is based on the facility specific per diem reasonable allowable direct care costs submitted on the acceptable FY 2001 full year cost report. Direct care costs are trended forward using the Consumer Price Index (CPI)^CMedical Services.

ii. Care Related Costs. Facility specific care related cost is based on the facility specific per diem reasonable allowable care related costs submitted on the acceptable FY 2001 full year cost report. Care related costs are trended forward using the CPI^CAll Items.

iii. Administrative and Operating Costs (AOC). Facility specific AOC is based on the facility specific per diem reasonable allowable AOC submitted on the acceptable FY 2001 full year cost report. AOC are trended forward using the CPI^CAll Items.

iv. Property. Facility specific property cost is based on the facility specific per diem reasonable allowable property costs submitted on the acceptable FY 2001 full year cost report. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 who have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for August 1, 2003 through June 30, 2004 based on budgeted data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003.

vi. For rates effective July 1, 2004 and thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this Rule.

c. All trending shall be from the mid-point of the year preceding the cost report year to the midpoint of the year preceding the rate year.

d. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the legislature allocates funds for this purpose.

e. A direct care incentive based on legislative appropriation shall be added to the per diem rate effective August 1, 2003.

5. Total Per Diem Rate. The per diem rate for providers filing acceptable full year cost reports is the sum of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus the direct care incentive.

6. New providers enrolled in the Medicaid program effective August 1, 2003 and thereafter shall receive the PPS

rate based on the base year median reported cost for all ADHC providers filing acceptable cost reports trended forward in accordance with this Rule plus the direct care incentive.

7. Minimum Rate. The minimum adult day health care rate shall be the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus the direct care incentive.

8. Cost Settlement. The direct care cost component and the direct care incentive shall be subject to cost settlement. Should an ADHC facility's cost report reveal that the provider did not expend an amount equal to 90 percent of the median direct care rate component trended forward for direct care services plus 90 percent of the direct care incentive, the Medicaid program will recover the difference between 90 percent of the median direct care rate component trended forward for direct care services plus 90 percent of the direct care incentive and the actual direct care amount expended.

B. Cost Reporting

1. Providers of ADHC services are required to file annual acceptable cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this section and the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the facility for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted at year end are required in the cost reporting preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

B.2 - C.1.e.iv. ...

2. Rate Determination

a.i. Calculation of Base Rate. Rates for both the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and the facility specific prospectively determined rate based on facility specific reasonable allowable costs are calculated from cost report data. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs. These general cost principles include:

(a). determining whether the cost is ordinary, necessary, and related to the delivery of care;

(b). the cost is what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and

(c). the cost is for goods or services actually provided to the center.

ii. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. "HIM-15", the Medicare Provider Reimbursement Manual, is the final authority for allowable

costs unless the Louisiana Department of Health and Hospitals has set a more restrictive policy.

C.2.b. - C.2.c. ...

d. The inflated median shall be increased to establish the base rate median component as follows.

i. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

ii. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

iii. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

e. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

f. Formulae. Each median cost component shall be calculated as follows.

i. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

ii. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

iii. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI^CAll Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

iv. Property Cost Component^CProperty. The property per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

g. Formulae. Each facility specific prospectively determined cost component shall be calculated as follows.

i. Direct Care Cost Component. The direct care per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this Rule.

ii. Care Related Cost Component. The care related per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this Rule.

iii. Administrative and Operating Cost Component. The administrative and operating per diem cost from each facility's acceptable full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this Rule.

iv. Property Cost Component^CProperty. The property per diem costs from each facility's acceptable full year cost reports shall be the property cost component. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 who have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for August 1, 2003 through June 30, 2004 based on budgeted data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003;

vi. for rates effective July 1, 2004; and

vii. thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this Rule. No facility specific cost component will be included in the per diem of facilities receiving audit disclaimers.

C.2.h. - C.2.h.ii. ...

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 28:2356 (November 2002), LR 29:

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 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

0308#003

DECLARATION OF EMERGENCY

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

Physicians Services^CCardiology, Maternal Fetal
Medicine and Inpatient Services^CReimbursement Increase

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior 7 percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register, Volume 27, Number 5*). After consultations with cardiologists, maternal fetal medicine specialists and other physicians around the state, the bureau increased the reimbursement rate for designated CPT procedure codes for services rendered to Medicaid recipients (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to services and encouraging continued physician participation in the Medicaid Program.

Emergency Rule

Effective for dates of service on or after August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for selected cardiology, maternal fetal medicine and hospital care services provided to Medicaid recipients. The following Physicians' Current Procedural Terminology (CPT) procedures shall be reimbursed at 84 percent of the Medicare Region 99 allowable for 2002.

Procedure Description
Transfusion, intrauterine, fetal
Amniocentesis, diagnostic
Chronic villus sampling, any method
Echocardiography, fetal, cardiovascular system, real time
Doppler echocardiography, fetal,...; follow-up or repeat study
Combined right heart catheterization and retrograde left heart catheterization, for congenital cardiac anomalies
Combined right heart catheterization and transseptal left heart catheterization through existing septal opening, with or without retrograde left heart catheterization, for congenital cardiac anomalies
Subsequent hospital care, per day (low complexity)
Subsequent hospital care, per day (moderate complexity)

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 Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, Louisiana 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

0308#076

DECLARATION OF EMERGENCY

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

**Professional Services Program Antibiotic
Injections Reimbursement Increase**

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior 7 percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register, Volume 27, Number 5*). After consultations with providers around the state, the bureau increased the reimbursement rate for antibiotic injections rendered to Medicaid recipients within a specific age range (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to protect the health and welfare of Medicaid recipients within the specified age range by ensuring continued access to services and encouraging continued provider participation in the Medicaid Program.

Emergency Rule

Effective for dates of service on or after August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for antibiotic injections administered to Medicaid recipients up to the age of 21. Antibiotic IM injections shall be reimbursed at a flat rate of \$22.

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 Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 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

0308#075

DECLARATION OF EMERGENCY

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

Professional Services Program Orthopedic Services Reimbursement Increase

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 final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the Bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior 7 percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register, Volume 27, Number 5*). After consultations with orthopedic physicians around the state, the bureau increased the reimbursement rate for designated CPT orthopedic procedure codes for services rendered to Medicaid recipients (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Emergency Rule. This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to orthopedic services and encouraging continued physician participation in the Medicaid Program.

Emergency Rule

Effective for dates of service on or after August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement paid to physicians for orthopedic services provided to Medicaid recipients. Physicians' Current Procedural Terminology (CPT) orthopedic procedure codes (20000-29898) shall be reimbursed at 80 percent of the Medicare Region 99 allowable for 2002, except for those procedure codes on file that are in non-pay status.

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 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

0308#077

DECLARATION OF EMERGENCY

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

Professional Services Program Physician Services Reimbursement Increase

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 Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

The bureau promulgated an Emergency Rule in February 2000, reducing the reimbursement paid to physicians by 7 percent for specific procedure codes, including surgery procedure codes, as a result of a budgetary shortfall (*Louisiana Register, Volume 26, Number 2*). As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the Bureau subsequently promulgated a rule restoring the 7 percent

reduction to the fees paid to physicians for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register, Volume 27, Number 5*).

After consultations with pediatric surgeons around the state, the bureau increased the reimbursement rate for designated CPT surgical procedure codes for services rendered to recipients within a specific age range (*Louisiana Register, Volume 28, Number 12*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to protect the health and welfare of Medicaid recipients within the specified age range by ensuring continued access to surgery services and encouraging continued physician participation in the Medicaid Program.

Emergency Rule

Effective for dates of service on or after August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for selected surgery services provided by the primary servicing physician to Medicaid recipients from birth through 10 years of age. Physicians' Current Procedural Terminology (CPT) surgical procedure codes (10021-69990) shall be reimbursed at 100 percent of the Medicare Region 99 allowable for 2002, except for procedure codes on file that are in non-pay status and procedure codes for newborn circumcisions (54150) and (54160).

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 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

0308#078

DECLARATION OF EMERGENCY

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

Public Hospitals Inpatient Reimbursement
Methodology Target Rate per Discharge

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 final rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a

Rule in July of 1983 which established a reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register, Volume 9, Number 7*). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a rule adopted in October of 1984 (*Louisiana Register, Volume 10, Number 10*), separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation. A rule was adopted in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services. The reimbursement methodology was subsequently amended in a rule adopted in June of 1994 which discontinued this reimbursement methodology for all nonstate hospitals and established a prospective payment methodology for nonstate hospitals (*Louisiana Register, Volume 20, Number 6*). The Department rebased the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002 (*Louisiana Register, Volume 29, Number 1*). This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule. This action is being taken to enhance federal revenues in the Medicaid Program.

Emergency Rule

Effective August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing rebases the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002. Allowable malpractice costs shall be included in the target rate per discharge and per diem limitations. Data from the 12 month cost reporting period of the base year shall be extracted to determine each hospital's cost per discharge or per day. Inpatient hospital services provided to children under one year of age in state owned or operated hospitals shall continue to be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services.

Implementation of the provisions 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 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

0308#080

DECLARATION OF EMERGENCY

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

Public Nursing Facilities Reimbursement Methodology (LAC 50:VII.1309)

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.

Act 694 of the 2001 Regular Session of the Louisiana Legislature mandated that the Department of Health and Hospitals establish a case-mix reimbursement methodology for nursing homes. In accordance with Act 694, the Bureau repealed the June 20, 1984 Rule and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register, Volume 28, Number 8*). The Department subsequently promulgated an Emergency Rule revising the reimbursement methodology for state-operated nursing facilities in order to reimburse these facilities in accordance with the Medicare upper payment limit (*Louisiana Register, Volume 28, Number 11*). The bureau amended the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities. In addition the bureau repealed the October 14, 2002 Emergency Rule (*Louisiana Register, Volume 29, Number 1*).

This action is being taken to enhance federal revenue. This Emergency Rule is being promulgated to continue the provisions contained in the January 1, 2003 Rule.

Effective for dates of services on or after August 31, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the October 14, 2002 Emergency Rule and amends the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1309. State-Owned or Operated and Nonstate

Government-Owned or Operated Facilities

A. Nonstate government-owned or operated nursing facilities will be paid a prospective reimbursement rate. Each facility will receive a Medicaid base rate calculated in accordance with other sections of this rule. Nonstate government-owned or operated nursing facilities may also receive a supplemental Medicaid payment on a quarterly basis. The aggregate supplemental payments for these facilities, calculated on a quarterly basis, will be the state's best estimate of what nonstate government-owned or

operated facilities would be paid under Medicare's prospective payment system for skilled nursing facilities less the aggregate Medicaid base payments for these facilities. The acuity measurements used in the supplemental Medicaid payment calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to the aggregate supplemental Medicaid payments will be made to account for differences in coverage between the Medicare and Medicaid programs.

B. State-owned or operated nursing facilities will be paid a prospective reimbursement rate. The payment rate for each of these facilities will be calculated on a quarterly basis and shall be the greater of the state's best estimate of what the facility would be paid under Medicare prospective payment system for skilled nursing facilities or the nursing facility's allowable cost from the most recent filed Medicaid cost report trended forward to the midpoint of the rate year using the index factor. The acuity measurements used in the quarterly rate calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to these gross Medicare prospective payment rates will be made to account for differences in coverage between the Medicare and Medicaid programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, 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 28:1475 (June 2002), repromulgated LR 28:1793 (August 2002), amended LR 29:

Implementation of the provisions of this Emergency Rule shall be delayed until January 31, 2003 and will 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 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

0308#079

DECLARATION OF EMERGENCY

LSU Health Sciences Center Health Care Services Division

Minimum Fee in Outpatient Clinics and Emergency Rooms (LAC 48:XI.1309)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that as a result of Act 906, R.S. 46:6(A) of the 2003 Regular Session, LAC 48:XI.1309 is hereby repealed. The effective date of the repeal of Section 1309 is August 3, 2003.

Title 48
PUBLIC HEALTH~~C~~**GENERAL**
Part XI. Hospitals
Subpart 3. General Hospitals
Chapter 13. Admissions, Eligibility, Fees
§1309. Minimum Fee in Outpatient Clinics and
Emergency Room

Repealed.

AUTHORITY NOTE: Promulgated 46.6(A) as a result of Act 893 of 1991. Repealed in accordance with amended R.S. 46:6(A) (Act 906 of the 2003 Regular Session.)

HISTORICAL NOTE: Promulgated by the Louisiana Health Care Authority, LR 20:667 (June 1994), repealed by the LSU Health Science Center, Health Care Services Division, LR 29:

James Brexler, MPA, F.A.C.H.E.
Vice Chancellor
and
Chief Executive Officer

0308#100

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2003 Fall Inshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2003 Fall Shrimp Season in Louisiana waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana's inside waters from the Mississippi-Louisiana State line to the eastern shore of South Pass of the Mississippi River, to open at official sunrise August 18, 2003, and

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at official sunrise August 11, 2003, and

Shrimp Management Zone 3, that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at official sunrise August 11, 2003.

The Commission also hereby sets the closing date for the 2003 Fall Inshore Shrimp Season in Zone 2 and Zone 3 at official sunset December 16, 2003, and Zone 1 at official sunset December 31, 2003 except in the open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307D) which shall remain open until 6 a.m., March 31, 2004. The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of

state outside waters if significant numbers of small white shrimp are found in these waters.

Terry D. Denmon
Chairman

0308#036

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2003 Spring Shrimp Season~~C~~Remainder of Zone 1 Closure

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 1, 2003 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2003 Spring Shrimp Season in any portion of the state's inside waters to protect small white shrimp if biological and technical data indicates the need to do so or if enforcement problems develop, the Secretary hereby declares:

The 2003 spring shrimp season in inside waters will close in the remainder of Shrimp Management Zone 1 on July 25, at 6 a.m. except for the open waters of Breton and Chandeleur Sounds as described in the Menhaden Rule (LAC 76:VII.307D). Zone 1 comprises state inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River.

The relative number, percentage and distribution of small white shrimp immigrating into the area to be closed has increased substantially in the last week and the region is being closed to protect these developing shrimp.

With this closure, all state inside waters from the Mississippi-Louisiana state line west to the Louisiana-Texas state line except for Breton and Chandeleur Sounds, are closed to the harvest of shrimp.

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

James H. Jenkins Jr.
Secretary

0308#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2003-2004 Fur Harvest

In accordance with the provisions of R.S. 56:259(A) which authorizes the Wildlife and Fisheries Commission to set the open season for the taking of non-game quadrupeds

and allows the Commission to extend, curtail or prohibit trapping in any area of the state each year and in accordance with emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency provisions to set seasons, the Wildlife and Fisheries Commission does hereby set the 2003-2004 fur harvest season, statewide from November 20, 2003 through March 31, 2004. The Wildlife and Fisheries Commission does hereby also authorize the Secretary of the Department of Wildlife and Fisheries to extend or shorten the adopted season.

Terry D. Denmon
Chairman

0308#033

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003-2004 Migratory Bird Hunting Season

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

The hunting seasons for early migratory birds during the 2003-2004 hunting season shall be as follows.

Migratory Birds Other than Waterfowl 2003-2004 Hunting Seasons

Mourning Dove: Split Season, Statewide, 70 days

September 6-September 14

October 11-November 23

December 20-January 5

Mourning Dove and fully dressed Eurasian Collared-Doves and Ringed Turtle-Doves: Daily bag limit 12 in aggregate, Possession 24 but note: Eurasian Collared-Doves and Ringed Turtle-Doves and Eurasian collared-doves and ringed turtle-doves may only be hunted or taken during the open mourning dove season. There is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed turtle-doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the daily bag limit for mourning doves.

Teal: September 13-September 28

Daily bag limit 4, Possession limit 8, Blue-winged, Green-winged and Cinnamon teal only. Federal and State waterfowl stamps required.

Rails: Split Season

September 13-September 28

Remainder of season to be set in August with duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate, Possession 30.

Sora and Virginia: Daily bag and possession 25 in the aggregate.

Gallinules: Split Season

September 13-September 28

Remainder of season to be set in August with duck regulations.

Daily bag limit 15, Possession limit 30

Woodcock: December 18-January 31

Daily bag limit 3, Possession 6

Snipe: November 14-February 28

Daily bag limit 8, Possession 16

Shooting Hours:

Teal, Rail, Woodcock, Snipe and Gallinule: One-half hour before sunrise to sunset.

Mourning Dove: One-half hour before sunrise to sunset except on September 6-7, October 11-12, and December 20-21 when shooting hours will be 12 noon to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2003 and extend through sunset on February 28, 2004.

James H. Jenkins, Jr.
Secretary

0308#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003-2004 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967(D), and under the authority of R.S. 56:433 and R.S. 56:435.1 notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declares:

The oyster season in the following areas will open one-half hour before sunrise on September 3, 2003 and will close one-half hour after sunset on April 1, 2004: the Louisiana Public Oyster Seed Grounds not currently under lease located in the Bay Gardene Oyster Seed Reservation and the designated temporary natural reef in Little Lake and vicinity.

The oyster season in the following areas will open one-half hour before sunrise on September 10, 2003 and close one-half hour after sunset on April 1, 2004: the primary public seed grounds east of the Mississippi River bordered on the north by the Louisiana/Mississippi state line and on the south by the Mississippi River and North Pass including that portion of Lake Borgne as described in LAC 76:VII.513, the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and the Hackberry Bay Oyster Seed Reservation.

The oyster season in the Bay Junop Public Oyster Seed Reservation will open one-half hour before sunrise on September 3, 2003 and will close one-half hour after sunset on September 9, 2003 in the northern portion of the bay only as determined by the traditional November/February

Department of Health and Hospital seasonal classification line which begins on the eastern shoreline of Bay Junop at latitude 29° 14' 03" N, longitude 91° 02' 37" W and follows a westerly line to the western shoreline at latitude 29° 13' 40" N, longitude 91° 03' 31" W.

The oyster season in the Sister (Caillou) Lake Public Oyster Seed Reservation will open for harvest of seed and sack oysters one-half hour before sunrise on September 10, 2003 and close one-half hour after sunset on November 18, 2003.

The season for the Calcasieu Lake public tonging area will open one-half hour before sunrise on October 15, 2003 and will remain open until one-half hour after sunset on April 30, 2004. However, these conservation actions will not supercede public health closures.

The following areas will remain closed for the 2003/2004 oyster season: the Public Oyster Seed Grounds located in portions of Lake Mechant, Lake Tambour, Lake Chien, Lake Felicity, Deep Lake, and Barataria Bay (as described in LAC 76:VII.517), the Atchafalaya-Vermilion Bay Public Oyster Seed Grounds as described in LAC 76:VII.507 and 509, and the Sabine Lake Public Tonging Area.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads, or if enforcement problems are encountered.

The Secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Terry D. Denmon
Chairman

0308#034

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Bobcat Hunting Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, and under the authority of R.S. 56:115 and Act 1248 of the 2003 Regular Legislative Session, the Wildlife and Fisheries Commission hereby adopt the following Emergency Rule.

Properly licensed big game hunters may take a bobcat during the open deer hunting season. The season limit on bobcats taken by recreational deer hunters shall be one.

Legal shooting hours and methods of take shall be the same as those for deer in each area of the state.

This Rule shall take effect on September 13, 2003 which coincides with the opening of the 2003 archery season.

Terry D. Denmon
Chairman

0308#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Red Snapper Spring Commercial Season Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its resolution of January 2, 2003 to close the 2003 spring commercial red snapper season in Louisiana state waters when he is informed that the designated portion of the commercial red snapper quota for the Gulf of Mexico has been filled, or is projected to be filled, the Secretary hereby declares:

Effective 12 noon, August 7, 2003, the commercial fishery for red snapper in Louisiana waters will close and remain closed until 12 noon October 1, 2003. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen once the recreational season opens. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with closure, no person shall possess red snapper in excess of a daily bag limit, which may only be in possession during the open recreational season as described above. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The Secretary has been notified by National Marine Fisheries Service that the commercial red snapper season in Federal waters of the Gulf of Mexico will close at 12 noon August 7, 2003. Closing the season in State waters is necessary to provide effective Rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

James H. Jenkins, Jr.
Secretary

0308#037

DECLARATION OF EMERGENCY

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

Tangipahoa Parish School Board WMA

In accordance with the emergency provisions 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 adopts the following Emergency Rule.

2003-2004 Hunting Regulations

Tangipahoa Parish School Board Wildlife Management Area (Region 7): (Loranger Tract: 346.89 acres) and (Husser Tract: 647.12 acres)

Self-Clearing Permits Required.

Deer: Same as outside except still hunt only.

Small Game: Same as outside except beagles permitted January 26-February 29; squirrel dogs permitted January 26-February 8

Raccoon (Nighttime): January 26-February 29

No ATVs. Walk-in only.

Horseback Riding: Organized trail rides prohibited. Riding allowed only on designated roads and trails. Horses and mules are specifically prohibited during turkey and gun seasons for deer.

Contact Wildlife Division, Region 7 for maps and specific information.

A Declaration of Emergency is necessary to establish the hunting season for Tangipahoa Parish School Board Wildlife Management Area. A lease agreement was recently completed on the tracts and as such was not included with the original Notice of Intent.

Terry D. Denmon
Chairman

0308#038

DECLARATION OF EMERGENCY

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

Temporary Natural Reef

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and in accordance with R.S. 56:6(12) and R.S. 56:433, the Wildlife

and Fisheries Commission and the Department of Wildlife and Fisheries declare and designate those waterbottoms of Little Lake and vicinity in Jefferson and Lafourche Parishes more specifically described below to be a designated temporary natural reef.

The oyster resource located on this designated reef may be irretrievably lost due to the anticipated operation of the Davis Pond Freshwater Diversion structure, which poses imminent peril to the welfare of the people of the state as a result of the permanent and irreplaceable loss of this natural resource and the resulting loss of economic benefit to the oyster industry. Inasmuch as the Davis Pond Freshwater Diversion is anticipated to resume normal operations within 12 months, standard rulemaking procedures and timeframes would leave little, if any, time for an orderly and efficient harvest of this resource. Therefore, the Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries do hereby declare the waterbottoms of Little Lake and vicinity in Jefferson and Lafourche parishes as described below a designated temporary natural reef:

Beginning at the point on the western bank of the Barataria Waterway, latitude of 29° 34' 40" North, longitude 90° 03' 35.070" West; thence southerly along the western bank of the Barataria Waterway to a point, latitude 29° 30' 27.226" North, longitude 90° 01' 25.438" West; thence southwesterly to a point, latitude 29° 26' 37.361" North, longitude 90° 07' 26.119" West; thence northwesterly to a point, latitude 29° 28' 50.000" North, longitude 90° 11' 40.000" West; thence North to a point, latitude 29° 34' 40.000" North, longitude 90° 11' 40.000" West; thence East to the point of beginning.

All statutes, regulations, and policies pertaining to the use of public oyster grounds will be in force in this temporary natural reef with the exception of any additional mitigation requirements levied from time to time for construction, oil and gas exploration, or pipeline construction activities.

This Declaration of Emergency will become effective on September 3, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until revocation by the Commission and the Department.

Terry D. Denmon
Chairman

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