

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Financial Institutions

#### Disbursement of Security Monies (LAC 10:XV.503)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953(B)(1) relating to emergency rulemaking, and in accordance with the provisions of R.S. 9:3576.16(C) contained within the Collection Agency Regulation Act, R.S. 9:3576.1 et seq., the Commissioner of the Office of Financial Institutions hereby determines that adoption of the following rule, which provides for the procedure this Office and all affected constituents are to follow upon the forfeiture or voluntary surrender of the posted security of a licensed debt collection agency and the resolution of competing claims to these monies, is necessary and that failure to do so would pose an imminent peril to the public health, safety and welfare.

The Office of Financial Institutions ("Office") is presently faced with competing claims by former clients of now-defunct collection agencies to the monies represented by surety bonds or other security posted by these companies and assigned to this Office in accordance with the provisions of R.S. 9:3576.15. This Office must now promulgate a procedure for the disbursement of the underlying funds of such posted security as required by R.S. 9:3576.16(C) to assure that such monies are fairly, equitably and expeditiously distributed among all proper claimants.

Therefore, in accordance with R.S. 49:953(B), the Office hereby adopts this rule, the effective date of which is March 10, 1998, and such rule shall be in effect for a period of 120 days or until promulgation of a final rule, whichever occurs first.

#### Title 10

### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

#### Part XV. Other Regulated Entities

#### Chapter 5. Debt Collection Agencies

#### § 501. Reserved

#### § 503. Disbursement of Security Monies

A. Purpose. The Office of Financial Institutions is presently faced with competing claims by former clients of now defunct collection agencies to the security monies represented by surety bonds or cash monies posted by these licensed companies and assigned to this office in accordance with R.S. 9:3576.15. This office must promulgate procedures for the discovery and recognition of claims against this security, and for the fair, equitable and expeditious distribution of these funds among all qualified claimants.

#### B. Definitions

*Bar Date*—the date after which no new claims may be filed.

*Claim*—any obligation of a licensed debt collection agency owed to a client for the payment of money arising out of any agreement or contract for the collection of funds owed to the client by a debtor.

*Client*—any person authorizing or employing a collection agency to collect a debt on their behalf.

*Commissioner*—the Commissioner of Financial Institutions.

*Concursus*—a proceeding similar to that which is set forth in the *Louisiana Code of Civil Procedure*, LSA-C.C.P. arts. 4651-4662.

*Defunct Agency*—a debt collection agency that has voluntarily relinquished its license or has had its license terminated, and does not have sufficient funds in its trust account(s) to pay its outstanding claims owed to its clients.

*Security Monies*—a surety bond or cash monies which are required to be posted by a debt collection agency to ensure the prompt and full payment of claims.

C. Background. R.S. 9:3576.15(A) requires entities licensed as debt collection agencies under the Collection Agency Regulation Act ("CARA") R.S. 9:3576.1, et seq., to post a surety bond in favor of the Office of Financial Institutions ("Office") in the amount of \$10,000. R.S. 9:3576.15(C) permits a licensee to deposit cash or other securities with the office in lieu of such bond. R.S. 9:3576.16 permits clients or customers to bring suit against such bond or other security when such parties allege damages through the failure of the licensee to properly remit due and owing funds in accordance with R.S. 9:3576.18. R.S. 9:3576.16(B) requires the Commissioner to maintain a record of all suits commenced under CARA upon a surety bond, cash or other security deposited in lieu thereof.

D. Bar Date. The bar date for filing claims shall be the same as provided for in Rule 3002(c) of the Federal Bankruptcy Rules of Procedure, which shall be 90 days after the post mark date on the notice form. The post mark date on the notice form shall not be included in calculating the 90-day bar date period.

E. Maintenance of Suit Records. The office will file a motion with the appropriate Clerk of Court for the Judicial District wherein the affected debt collection agency is located, requesting that the clerk provide notice of all suits commenced against the surety bond or cash monies which have been posted with the Commissioner in accordance with R.S. 9:3576.16(C), when he has knowledge that a suit may be or has been commenced.

F. Action on a Surety Bond. If the Commissioner receives notice that a client has commenced an action on a surety bond posted as security by the licensee, he may require the debt collection agency to provide notice to each client, as identified on the records of the licensee, of the commencement of said action, and include therein the name and address of the surety company that has issued the surety bond.

G. Procedure to Resolve a Defunct Agency

1. If the licensee has opted to post security in the form of cash, in accordance with the requirements established by the Commissioner, and the licensee has surrendered its license or has had its license terminated, and if the licensee does not have sufficient funds available in its trust account(s) to pay all of its outstanding client claims, the office may avail itself of the following method of resolving competing claims.

2. Such an action may be initiated in the nature of a concursus proceeding; however, the Commissioner may modify the procedures set out in La. C.C.P. Articles 4651-4662 in any manner he deems necessary to accomplish the dissolution and distribution of the cash monies in an equitable and expeditious manner.

3. The following is an illustrative listing of the steps to be followed in providing notice to claimants and to distribute securities monies to all qualified persons having competing claims. The Commissioner may modify this procedure as he deems necessary and appropriate to effectuate its purposes.

a. A written notice shall be provided to all clients advising them of the intention of the Office to distribute the cash monies held in actual or constructive possession by the Commissioner.

b. Such notice shall provide the name and address of the office where claims may be filed, and the person to whom such claims should be directed.

c. The notice shall also provide that any and all claims which are either disqualified or which are not timely filed will be barred from participating in the distribution of the cash monies.

d. Along with the notice referred to in §503.G.3, the Commissioner will provide each claimant with a proof of claim form which must be completed in every respect and filed with the Office within the bar period provided in §507. The Commissioner will be required to verify each proof of claim as being valid before accepting them for filing. If a claim cannot be verified, it will be disqualified and will not be eligible to participate in the distribution of the cash monies.

e. Upon the expiration of the bar date, and after each qualified proof of claim has been verified, the Commissioner will compile a list of all persons who are eligible to participate in the distribution of the cash monies and the amount of funds that each person has claimed they are owed.

f. All notices, proof of claim forms, and other required forms shall be as prescribed by the Commissioner.

H. Distribution of the Cash Monies

1. After the office has determined the names of all eligible claimants, the Commissioner shall petition the Nineteenth Judicial District Court for authority to have each claimant recognized as having a valid claim against the cash monies in the possession of the office.

2. To his petition the Commissioner shall attach a proposed method of distribution, setting out the amount he proposes each claimant is due, and seeking Court approval of the method of distribution.

3. The Commissioner may pray in his petition for an order of the Court authorizing payment of the competing

claims in accordance with the method of distribution set out in his petition.

4. The method of distribution of the cash money shall be accomplished in a manner which the Commissioner deems to be reasonable, and which shall assure prompt and expeditious payment to the claimants and is calculated to minimize the expenses associated with the distribution of funds.

5. After the distribution of funds has been completed, the Commissioner shall seek an order of the Court to be released from any further liability for the distribution of funds.

6. The Commissioner may also pray for any other relief, both legal and/or equitable, that he deems necessary and appropriate to effectuate the purposes of LAC 10:XV.503.

I. Severability. If any section, term, or provision of any of LAC 10:XV.503 is, for any reason, declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3576.16(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 24:

Larry L. Murray  
Commissioner

9803#046

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of the Secretary**

**Workforce Development and Training  
Program (LAC 13:I.5017)**

The Department of Economic Development, Office of the Secretary is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to promulgate emergency rules of the Louisiana Workforce Development and Training Program effective immediately. These rules are prescribed in accordance with LAC 13:I. Chapter 50. These emergency rules shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

The Department of Economic Development is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to publish these rules because of a recognized immediate need to assist businesses with customized workforce training programs in order to create and retain jobs statewide.

The emergency rule changes will provide clarification of issues related to the eligible costs of the program. Without these changes, businesses will be severely impacted and the state's workforce will experience a disruption due to an absence of training assistance for continued employment and job retention. Such disruption would likely result in diminished job creation and increased risk of higher unemployment.

The proposed emergency rules are intended to mitigate the disruptions described above.

**Title 13**  
**ECONOMIC DEVELOPMENT**  
**Part I. Commerce and Industry**  
**Subpart 3. Financial Incentives**  
**Chapter 50. Workforce Development and Training**  
**Program**

**§5017. General Award Provisions**

**A. Award Contract**

1. A contract will be executed between DED, the applicant [and/or company(ies)] receiving training and an appropriate monitoring entity from the same geographic area as the applicant. The contract will specify the performance objectives expected of the company(ies) and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time frames for job training and job creation.

2. The monitoring entity will monitor the progress of the training and reimburse the applicant from invoices submitted by the applicant on a form approved by DED.

3. DED will disburse funds from invoices or certificates of work completed.

4. The cost associated with this contract incurred by the monitoring entity will be considered part of the total training award, but will not exceed 5 percent of the award amount or \$10,000, whichever is less.

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

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

**B. Use of Funds**

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

2. Eligible training costs may include, inter alia, the following:

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

b. travel costs (limited to 30 percent of the total training award): travel for trainers and training coordinators (company and other) and travel for trainees. Travel expenses reimbursable under this agreement will comply with state travel regulations, PPM 49;

c. materials and supplies costs: training texts and manuals, audio/visual materials, skills assessment (documents or services to determine training needs), raw materials (for manufacturing and new employee on-the-job training), Computer Based Training (CBT) software; and

d. other costs: facility rental, wages for on-the-job trainees (limited to 25 percent of a trainee's wage, excluding benefits), and fees or service costs incurred by the monitoring entity associated with the contract to monitor the training and to disburse award funds, as limited by §5017.A.3.

3. Training costs ineligible for reimbursement include:

a. trainee fringe benefits;

b. nonconsumable tangible property (e.g., equipment,

calculators, furniture, classroom fixtures, nonComputer Based Training [CBT] software), unless owned by a public training provider;

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

d. employee handbooks;

e. scrap produced during training;

f. food/refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. basic skills: literacy, numeracy, problem solving, team participation, etc.;

b. transferable skills: skills which will enhance an employee's general knowledge, employability and flexibility in the workplace (e.g., welding, computer skills, blueprint reading, etc.);

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

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

e. pedagogical skills: skills which pertain to instructional methods and techniques to be used by trainers (these are most relevant to train-the-trainer activities).

**C. Amount of Award.** Award may include new employee training and/or workplace-based retraining not to exceed \$500,000 for total amount.

1. **New Employee Training.** The training award amount may cover up to 100 percent of the eligible training costs (listed in §5017.B.Use of Funds), not to exceed \$500,000.

2. **Workplace-Based Retraining.** The training award amount may cover up to 50 percent of the eligible training costs, with the exception of trainee wages which shall be reimbursed at 100 percent of eligible costs (listed in §5017.B.Use of Funds), not to exceed \$500,000.

**D. Conditions for Disbursement of Funds**

1. Funds will be available on a reimbursement basis following submission of approved invoices to DED. Funds will not be available for reimbursement until a training agreement between the applicant [and/or company(ies)] receiving the training and an approved training provider has been executed. Only funds spent on the project after the secretary's approval will be considered eligible for reimbursement.

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

**E. Compliance Requirements**

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

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

3. In the event a company or sponsoring entity fails to meet its performance objectives specified in its contract with

DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), amended LR 24:

Kevin P. Reilly, Sr.  
Secretary

9803#045

## DECLARATION OF EMERGENCY

### Office of the Governor Office of Elderly Affairs

State-Funded Senior Centers (LAC 4:VII.1233)

The Office of the Governor, Office of Elderly Affairs (GOEA) does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 46:1608, adopts the rule set forth below, effective February 19, 1998. This emergency rule is necessary to implement the provisions of R.S. 46:932(14) enacted by Act Number 1182 of the 1997 Regular Session of the Louisiana Legislature.

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

#### Title 4

#### ADMINISTRATION

#### Part VII. Governor's Office

#### Chapter 11. Elderly Affairs

#### §1233. State-Funded Senior Center Operation

A. - E.3. ...

F. Plan for the Distribution of State Funds for Senior Centers

1. Funds appropriated by the state legislature for the operation of senior centers will be included in the total budget of the Governor's Office of Elderly Affairs (GOEA) and allocated to the Parish Councils on Aging (PCOAs) for distribution. Those PCOAs which are under multi-parish Area Agencies on Aging (AAAs) may request GOEA to channel funds for senior centers in their parish through the AAA. Such requests must be accompanied by a resolution adopted

by the PCOA board of directors. GOEA's allocations of state funds will be based upon legislative formula.

2. Beginning in FY '98, requests for funding in a given parish must be recommended by the local PCOA and approved by GOEA prior to the creation of any new state-funded senior center in the state. Recommendations from a PCOA shall be based on need for a new facility and whether the proposed facility will meet the criteria for a senior center as defined in Subsection G of this Section.

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932, R.S. 43:1119, and R.S. 46:1608.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 24:

Larry Kinlaw  
Appointing Authority

9803#017

## DECLARATION OF EMERGENCY

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

#### Disproportionate Share Hospital Payment Methodologies

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This emergency rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

Disproportionate Share Hospital (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which amended §1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal legislation and to avoid a budget deficit in the medical assistance program, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under the methodology, public state-owned hospitals received DSH payments equal to 100 percent of the hospital's net uncompensated cost, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

Effective March 20, 1997, the department adopted an emergency rule pursuant to Act Number 17 (House Bill Number 1) of the 1996 Legislative Session that provided for separate treatment of disproportionate share funds for uncompensated cost in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals.

Effective November 3, 1997 the department adopted an emergency rule pursuant to Act Number 1485 of the 1997 Legislative Session which provides that all rural hospitals meeting the requirements of Act 1485 are to receive maximum disproportionate share funding in amounts appropriated by the legislation to the extent authorized by federal law. Therefore, the following rule continues the provisions of the November 3, 1997 emergency rule.

### **Emergency Rule**

Effective March 3, 1998, the Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies and establishes the following regulations to govern the disproportionate share hospital payment methodologies:

#### **I. General Provisions**

A. Reimbursement will no longer be provided for indigent care as a separate payment to hospitals qualifying for disproportionate share payments.

B. Total cumulative disproportionate share payments under any and all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment or the state disproportionate share appropriated amount.

C. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital other than a small rural or state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during the previous state fiscal year ending. DSH payments to a small rural hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during April 1 through March 31 of the previous year. DSH payments to a state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest year-end cost report for the year ended during the period July 1 through June 30 of the previous year except that a small rural hospital's qualification is based on the hospital's year-end cost report for the year ending during the period April 1 through March 31 of the previous year. Only hospitals that return timely DSH qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. Hospitals/units which close or withdraw from the Medicaid program shall become ineligible for further DSH

pool payments for the remainder of the current DSH pool payment cycle and thereafter.

G. *Net Uncompensated Cost* is defined as the cost of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third-party payments including Medicare, Medicaid and other third-party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments.

H. No additional payments shall be made if an increase in days is determined after audit. Recoupment of overpayment from reductions in pool days originally reported shall be redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the state plan of any hospitals in the state for the year in which the recoupment is applicable.

I. Disapproval of any payment methodology(ies) by the Health Care Financing Administration does not invalidate the remaining methodology(ies).

#### **II. Qualifying Criteria for a Disproportionate Share Hospital**

A. A hospital must have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligibles. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures; or

B. A hospital treats inpatients who are predominantly individuals under 18 years of age; or

C. A hospital did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

D. A hospital has a utilization rate in excess of either of the below specified minimum utilization rates:

1. *Medicaid Utilization Rate*—a fraction (expressed as a percentage), the numerator of which is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator of which is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

2. *Low-Income Utilization Rate*—the sum of:

a. the fraction (expressed as a percentage), the numerator of which is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

b. the fraction (expressed as a percentage), the numerator of which is the total amount of the hospital's charges

for inpatient services which are attributable to charity (free care in a period, less the portion of any cash subsidies as described in Section II.D.2.a in the period which are reasonably attributable to inpatient hospital services; and the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. The above numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations; or

3. effective November 3, 1997, be a small rural hospital as defined in Section III.B.

E. In addition to the qualification criteria outlined in Section II.A.-D, effective July 1, 1994, the qualifying disproportionate share hospital must also have a Medicaid inpatient utilization rate of at least 1 percent.

### III. Reimbursement Methodologies

#### A. Public State-Operated Hospitals

1. A *public state-operated hospital* is a hospital that is owned or operated by the State of Louisiana.

2. DSH payments to individual public state-owned or operated hospitals are equal to 100 percent of the hospital's net uncompensated costs subject to the adjustment provision in Section III.A.3. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

3. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH appropriated amount, the department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH appropriated amount.

#### B. Small Rural Hospitals

1. A *small rural hospital* is a hospital (other than a long-term care hospital, rehabilitation hospital, or free-standing psychiatric hospital but including distinct part psychiatric units) meeting the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and:

(1) is located in a parish with a population of less than 50,000; or

(2) is located in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a).

2. Payment is based on uncompensated cost for qualifying small rural hospitals in the following two pools:

a. public (nonstate) *small rural hospitals* are small rural hospitals as defined above which are owned by a local government;

b. *private small rural hospitals* are small rural hospitals as defined above that are privately owned.

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the period April 1 through March 31 of the preceding year multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

4. A pro rata decrease necessitated by conditions specified in Section I.B for rural hospitals described in Section III will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

C. All Other Hospitals (Private and Public Nonstate Rural Hospitals over 60 Beds, All Private Urban Hospitals, Free-Standing Psychiatric Hospitals, Exclusive of State Hospitals, Rehabilitation Hospitals, and Long-Term Care Hospitals)

1. Annualization of days for the purposes of the Medicaid days pools is not permitted. Payment is based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Amount will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment is based on Medicaid days provided by hospitals in the following two pools:

a. *acute care hospitals* are acute care, rehabilitation, and long-term care hospitals not described in Section III.B (excluding distinct part psychiatric units);

b. *psychiatric hospitals* are free-standing psychiatric hospitals and distinct part psychiatric units not included in Section III.B.

3. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals in the pool, and multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

4. A pro rata decrease necessitated by conditions specified in Section I.B for hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section, then multiplying by the

amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

David W. Hood  
Secretary

9711#007

## DECLARATION OF EMERGENCY

### Department of Natural Resources Office of Conservation

Pollution Control (LAC 43:XIX.129)

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) and (2), and 954(B)(2), as amended, the following emergency rule and reasons therefor are now adopted and promulgated by the commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by establishing a revised procedure for testing of Exploration and Production (E&P) waste prior to shipment to and acceptance by a commercial facility in the state of Louisiana and verification testing after receipt of such E&P waste at a commercial facility.

#### Need and Purpose

Certain oil and gas Exploration and Production waste (E&P waste) is exempt from the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This exemption is based on findings from a 1987-1988 Environmental Protection Agency (EPA) study and other studies that determined this type of waste does not pose a significant health or environmental threat when properly managed. The EPA, in its regulatory determination, found that these wastes are adequately regulated under existing federal and state programs.

Existing Louisiana state regulations governing the operations of commercial E&P waste disposal facilities (Statewide Order No. 29-B) require only very limited testing of the waste received for treatment and disposal at each commercial facility. Such limited testing finds its basis in the above-mentioned national exemption for E&P waste recognized by the EPA. However, public concern as to the possible toxicity of such waste and the possible health effects on the public and the environment warrants a new look at E&P waste generation, transportation and disposal in the state of Louisiana.

Working with the Louisiana Department of Environmental Quality (DEQ) and the Louisiana Department of Health and

Hospitals (DHH), a two-phased testing program for all types of E&P waste disposed of at commercial E&P waste disposal facilities within the state of Louisiana has been designed and will be implemented by the Office of Conservation. Exploration and production waste will be tested both for toxicity characterization and for E&P source verification. The new testing program will be known as Statewide Order No. 29-B Emergency Rule.

The emergency rule was drafted during the time interval of October 3, 1997 through February 27, 1998 by staff of the Office of Conservation, with technical input from the Office of Conservation's contract laboratory and contract toxicologist, DEQ Staff and DHH Staff. Baseline information was obtained from a statewide sampling and testing program for all types of E&P waste from 89 sites of generation throughout Louisiana, including offshore (Phase-one).

Analytes chosen for the baseline testing program were selected from recommendations by the Office of Conservation's contract toxicologist, with concurrence from both DEQ and DHH. The Environmental Protection Agency's Toxicity Characteristic Leaching Procedure (TCLP) was conducted during the testing program to provide estimates of:

- 1) the extent to which chemicals in each E&P waste material are leachable/soluble;
- 2) the extent to which E&P waste material presents a threat to groundwater; and
- 3) the extent to which the inorganic chemicals in each waste material are bioavailable for absorption into the body.

Emphasis was placed on correct laboratory procedural methodology and quality control throughout the sampling and testing period. In addition to the Office of Conservation test results, analytical data available from the EPA, the American Petroleum Institute and the Gas Research Institute provided the rationale for determining the technical basis for the new testing requirements.

Statewide Order No. 29-B Emergency Rule (Phase-two) will provide requirements for continued E&P waste characterization and verification testing. After implementation of the emergency rule, the Office of Conservation will initiate rulemaking to promulgate new permanent regulations which will recognize and encourage new and innovative ways to manage E&P waste. Best management practices will be the measure of acceptability for both existing and emerging technologies. Analytical data generated during the effective term of the emergency rule, along with best management practices, will be used to determine the limits for waste constituents received at commercial E&P waste disposal facilities.

#### Synopsis

1. Exploration and production waste will be tested for characterization.

As a key provision of the emergency rule, a waste profile must be developed for each specific testing batch of E&P waste proposed for storage, treatment or disposal at a commercial facility in the state. Based on the results of the Office of Conservation sampling and testing program, as well as staff expertise, four different groups of analytical procedures have been established. Depending on the chemical complexity of a specific testing batch, applicable testing

procedures are required to establish the waste profile for each testing batch.

In order to not unnecessarily delay drilling operations utilizing closed mud systems with limited on-site storage systems, or in emergency situations, provisions have been made to allow documentation of testing procedures to be submitted to the receiving commercial facility within 30 days after setting of the surface casing. Such provision is reasonable because only native water-base drilling muds are commonly used at the startup of drilling operations and prior to setting of surface casing. Additionally, alternate sampling and testing protocols consistent with emergency rule standards may be authorized by the Office of Conservation upon written request. For example, the taking of waste characterization samples at a commercial facility may be proposed as an alternative to taking such samples at the site of generation.

Produced water, produced formation fresh water and other E&P waste fluids are exempt from certain provisions of the testing requirements provided they are:

- 1) stored and transported in enclosed tank trucks, barges, or other enclosed containers;
- 2) stored in enclosed tanks at a commercial facility; and
- 3) disposed by deepwell injection.

Such provision is reasonable because, provided the above conditions are met, exposure to the public and to the environment would be minimal.

2. Exploration and production waste will be transported with identification.

The rule primarily requires that each E&P waste shipping unit transported from the site of generation to a commercial facility will be accompanied by a copy of the waste profile (Form UIC-35) and an Oilfield Waste Shipping Control Ticket (UIC-28, Manifest) and presented to the facility operator before offloading. Timely filings of required laboratory reports will be made to the Office of Conservation.

3. Each load of E&P waste will be tested at a commercial facility.

Before offloading at a commercial E&P waste disposal facility and in order to verify that the waste qualifies for the E&P category, each E&P waste shipping unit shall be sampled for required parameters. Additionally, the presence and concentration of BTEX (benzene, toluene, ethyl benzene and xylene) compounds and hydrogen sulfide must be determined. Appropriate records of tests shall be kept at each commercial facility for review by the Office of Conservation.

#### **Reasons**

Recognizing the potential advantages of a testing program for the characterization of Exploration and Production (E&P) waste that is fully protective of public health and the environment, and recognizing the potential advantages of a testing program that adequately characterizes such waste as to its potentially toxic constituents, it has been determined that failure to establish such procedures in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally.

Protection of the public and our environment therefore requires the commissioner of Conservation to take immediate steps to assure that adequate testing is performed before E&P

waste is treated or otherwise disposed of in a commercial facility. The emergency rule set forth hereinafter is now adopted by the Office of Conservation.

Notwithstanding the above, it is necessary to allow the affected industry adequate time to prepare for implementation and compliance with the emergency rule. Time must be allowed for establishing test equipment and qualified personnel, contracting with laboratories, training of personnel, and possible modification of exploration and production schedules and procedures. For the above reasons, the effective date of this emergency rule will be set approximately 60 days after the date of signing.

#### **Effective Date and Duration**

1. The effective date for this emergency rule shall be May 1, 1998.

2. The emergency rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an amendment to Statewide Order No. 29-B as noted herein, whichever occurs first.

#### **Title 43**

#### **NATURAL RESOURCES**

#### **Part XIX. Office of Conservation—General Operations**

#### **Subpart 1. Statewide Order No. 29-B**

#### **Chapter 1. General Provisions**

#### **§129. Pollution Control**

A. - B. ...

##### 1. Definitions

\* \* \*

*Container*—a pit, storage tank, process vessel, truck, barge or other receptacle used to store or transport E&P waste.

\* \* \*

*Drilling Waste*—water-base mud, oil-base mud or other drilling fluids and cuttings generated during the drilling of wells. These wastes are a subset of E&P waste.

\* \* \*

*Exploration and Production (E&P) Waste*—as defined in §129.M.1.

\* \* \*

*NOW*—Exploration and Production (E&P) waste.

\* \* \*

*Shipping Unit*—an individual shipment of a portion or the entirety of an identified E&P waste testing batch to a commercial facility.

\* \* \*

*Testing Batch*—an accumulation of an E&P waste type generated in association with exploration and production operations, or a mixture of such waste types, which is initially collected or temporarily retained at the site of generation in a container, quantified as follows.

i. Except for drilling waste, a testing batch is defined as E&P waste that is ready to be shipped offsite to a commercial facility. After the testing batch has been established and a sample has been taken, no additional waste may be added to the container(s) until all of its contents have been shipped to a commercial facility. If additional waste is added to the container(s) before all of its contents have been shipped, this shall constitute a new testing batch. Multiple containers may be used to store or ship a single testing batch

from a single generation source (e.g., pit, tank, etc.) to a commercial facility.

ii. In the case of drilling waste, each type of mud system (water-base, oil-base or other) together with cuttings and fluids associated with such system, shall constitute a separate testing batch. During drilling operations at a depth below the surface casing, the drilling waste generated for each mud system shall be sampled as a separate testing batch. Shipments of a portion of a drilling waste testing batch will not constitute formation of a separate testing batch.

iii. For production tank sludge and other process vessel waste, the container (tank, vessel, etc.) need not be taken out of service during sampling and analysis of the testing batch.

\* \* \*

2. General Requirements

a. - m.iii. ...

n. Exploration and Production Waste Characterization Procedures

i. All E&P waste generated within or without the state of Louisiana including offshore Louisiana (both state and federal waters) and proposed to be transported to a commercial facility in the state of Louisiana must be sampled and analyzed in accordance with EPA protocols or Office of Conservation's approved procedures. For procedures B, C and D, E&P waste shall be tested by a laboratory not owned or operated by the generator of the waste.

ii. The following procedures are to be utilized as applicable (see table in §129.B.2.n.iii) to characterize each E&P testing batch:

- Procedure A:** color  
specific gravity  
turbidity - clear, cloudy, or muddy  
viscosity - low, medium or high
- Procedure B:** oil and grease (% by weight)  
reactive sulfide (ppm)
- Procedure C:** Toxicity Characteristic Leaching Procedure (TCLP) for the following volatile organics:  
Benzene  
Ethyl benzene  
Toluene  
Xylene
- Procedure D:** Toxicity Characteristic Leaching Procedure (TCLP) for the following metals:  
Arsenic  
Barium  
Cadmium  
Chromium  
Lead  
Mercury  
Selenium  
Silver

iii. The following table indicates which testing procedures in §129.B.2.n.ii above are to be utilized to characterize E&P waste:

Waste Type/Description	Required Testing Procedures*
01 - Salt Water ( produced brine or produced water)	A, B, C, and D
02 - Oil-base mud / cuttings	A, B, C and D
03 - Water-base mud / cuttings	A, B and C
04 - Workover / completion fluids	A, B and C
05 - Production pit sludge	A, B, C and D
06 - Production tank sludge	A, B, C and D
07 - Produced sand / solids	A, B, C and D
08 - Produced formation fresh water	A, B, C and D
09 - Rainwater - ring levees/pits	A and B
10 - Washout water	A and B
11 - Washout pit water	A, B and C
12 - Gas plant processing waste	A, B, C and D
13 - BS&W waste from approved commercial salvage oil operators	A, B, C and D
14 - Pipeline test water and pipeline pig water	A, B, C and D
15 - E&P waste generated by permitted commercial facilities	A, B, C and D
16 - Crude oil spill clean-up waste	A, B and C
99 - Other approved E&P waste	A, B, C and D

\* See testing exemptions for E&P wastes as provided in §129.B.2.n.v, vi, vii, viii and ix below.

iv. If a testing batch is composed of more than one type of E&P waste, the testing procedures applicable to all types of waste in the testing batch shall be utilized to characterize the waste.

v. An E&P waste testing batch containing no more than five barrels total volume is exempt from the testing requirements of §129.B.2.n.ii, Procedures B, C and D.

vi. Drilling fluids and cuttings generated during the drilling of surface casing hole are exempt from the testing requirements of §129.B.2.n.ii, Procedures A, B, C and D.

vii. Wash water and solids (E&P waste type 10) generated at a commercial facility by the cleaning of a container holding a residual amount (of no more than one barrel) of E&P waste is exempt from the testing requirements of §129.B.2.n.ii, Procedures A, B, C and D.

viii. E&P waste stored and transported in a barge from a transfer station to a commercial treatment facility is exempt from the testing requirements of §129.B.2.n.ii, Procedures A, B, C and D.

ix. Produced water, produced formation fresh water, and other E&P waste fluids are exempt from the testing requirements of §129.B.2.n.ii, Procedures A, B, C and D under the following conditions:

- (a). if stored and transported by the generator or transporter in enclosed tank trucks, barges, or other enclosed containers; and
- (b). if stored in an enclosed container at a commercial facility; and
- (c). if disposed by deep well injection.

x. Except for the provisions of §129.B.2.n.v, vi, vii, viii and ix, E&P waste generated out-of-state, except offshore Louisiana (both state and federal waters), and transported to a Louisiana commercial facility for storage, treatment or disposal must be tested for the parameters required in Procedures A, B, C, and D above.

xi. Testing batch samples shall be taken at the site of generation, tested, and the testing results reported in the following manner.

(a). Upon identifying a testing batch, the E&P waste generator shall send a sample to the testing laboratory and initiate an E&P Waste Profile (Form UIC-35). For each new testing batch the generator must complete the top portion of the form (general information), indicate the waste type/description, and sign the form in the appropriate location.

(b). The generator shall perform test Procedure A for each testing batch and the results reported in the appropriate location on Form UIC-35.

(c). Data Submission

(i). Test Procedures B, C, and D shall be performed on each testing batch sample by the testing laboratory and a laboratory report provided to the generator and to the commercial facility operator within 30 days of the date of the first shipment of each testing batch. Upon receipt of the laboratory test data, the commercial facility shall enter such data on Form UIC-35.

(ii). The generator, commercial facility operator, or testing laboratory shall electronically submit the laboratory data for required E&P waste analyses to the Office of Conservation within 30 days of the first shipment of each testing batch. Such report shall be submitted to the Office of Conservation in ASCII comma delimited format either by electronic mail (E-mail via Internet) or on 3½-inch floppy disk. Generators of E&P waste must contact the Office of Conservation, Injection and Mining Division, if, for some reason, such electronic reporting cannot be made.

(d). The original completed or partially completed Form UIC-35 must accompany the first E&P waste shipping unit transported to a commercial facility and must be presented to the facility operator with the Exploration and Production (Oilfield) Waste Shipping Control Ticket (Form UIC-28) before offloading. Form UIC-35 does not need to accompany subsequent waste shipping units for the same testing batch.

xii. The generator or commercial facility operator shall identify each E&P waste testing batch and each E&P waste shipping unit as follows.

(a). Each testing batch shall be separately identified by using the manifest number (Manifest No.) of the first shipping unit transported to a commercial facility. This testing batch number shall be placed on the E&P Waste Profile in the appropriate location.

(b). The testing batch number shall also be placed on the Exploration and Production (Oilfield) Waste Shipping Control Ticket (Form UIC-28) in the top left corner (under the form number) on the manifest for each shipping unit.

(c). Each E&P waste shipping unit (of each testing batch) shall be identified on the Exploration and Production

(Oilfield) Waste Shipping Control Ticket (Form UIC-28) in the top left corner under the testing batch number by a sequential numbering system (e.g., 1, 2, 3, etc.). When the last E&P waste shipping unit of a specific testing batch is sent to the commercial facility, the word END shall be placed next to the load number (e.g., 5 END).

xiii. Alternate sampling and testing protocols consistent with the above standards may be authorized by the Office of Conservation upon written request by an operator or commercial facility. Written authorization must be received prior to initiating alternate sampling and testing protocols.

3. - 6.d.iii. ...

iv. For reactive sulfides, samples shall be analyzed according to SW 846, Chapter 7, Section 7.3.4 or latest revision by EPA.

v. TCLP samples shall be analyzed according to EPA document *Test Methods for Evaluating Solid Waste, S.W. 846*, Third Edition, Revised 12/96 or latest revision by EPA.

(a). For TCLP metals, samples are to be extracted according to SW 846 Method 1311, then digested according to SW 846 series 3000 or latest revision by EPA.

(b). Upon completion of the extraction and digestion phases, metals are to be analyzed according to SW 846 methodology series 6000 and/or 7000 or latest revision by EPA.

(c). TCLP organics identified in Procedure C are to be extracted according to SW 846 Method 1311 or latest revision by EPA. Analytes are to be analyzed according to SW 846 Method 8260 or latest revision by EPA.

vi. Except as herein provided otherwise, sampling and testing procedures should comply with Office of Conservation manual *Laboratory Procedures for Analysis of Nonhazardous Oilfield Waste* (latest revision).

6.e. - f.ii. ...

7. - 9.c. ...

C. - L. ...

M. Off-Site Storage, Treatment and/or Disposal of E&P Waste Generated from Drilling and Production of Oil and Gas Wells

1. Definitions

\*\*\*

*Commercial Facility*—a legally permitted waste storage, treatment and/or disposal facility which receives, treats, reclaims, stores, or disposes of exploration and production waste for a fee or other consideration, and shall include the term "transfer station."

\*\*\*

*Exploration and Production (E&P) Waste*—drilling fluids, produced water, and other waste associated with the exploration, development, or production of crude oil or natural gas and which is not regulated by the provisions of the Louisiana Hazardous Waste Regulations and the Louisiana Solid Waste Regulations. Such wastes include, but are not limited to, the following:

i. salt water (produced brine or produced water), except for salt water whose intended and actual use is in drilling, workover or completion fluids or in enhanced mineral recovery operations;

ii. oil-base drilling mud and cuttings;

iii. water-base drilling mud and cuttings;

- iv. drilling, workover and completion fluids;
- v. production pit sludges;
- vi. production storage tank sludges;
- vii. produced oily sands and solids;
- viii. produced formation fresh water;
- ix. rainwater from ring levees and pits at production and drilling facilities;
- x. washout water generated from the cleaning of containers that transport E&P waste and are not contaminated by hazardous waste or material;
- xi. washout pit water and solids from oilfield related carriers that are not permitted to haul hazardous waste or material;
- xii. natural gas plant processing (E&P) waste which is or may be commingled with produced formation water;
- xiii. waste from approved salvage oil operators who only receive oil (BS&W) from oil and gas leases;
- xiv. pipeline test water which does not meet discharge limitations established by the appropriate state agency, or pipeline pig water, i.e., waste fluids generated from the cleaning of a pipeline;
- xv. wastes from permitted commercial facilities;
- xvi. crude oil spill clean-up waste;
- xvii. salvageable crude oil;
- xviii. other approved E&P waste.

\* \* \*

*Shipping Unit*—as defined in §129.B.1.

*Testing Batch*—as defined in §129.B.1.

\* \* \*

2. Offsite Storage, Treatment, and/or Disposal of Nonhazardous Oilfield Waste at Commercial Facilities (Note: Onsite disposal requirements are listed in §129.B).

a. - e.ii.(d). ...

3. - 5.i. ...

i. ...

ii. Verification Testing Requirements

(a). Before offloading E&P waste at a commercial facility, each E&P waste shipping unit shall be sampled and analyzed by commercial facility personnel for the following:

(i). Procedure A in §129.B.2.n.ii above; and

(ii). pH, electrical conductivity (EC—mmhos/cm) and chloride (Cl) content; and

(iii). the presence and concentration of BTEX (benzene, toluene, ethyl benzene, and xylene) compounds using an organic vapor monitor or other procedures sufficient to identify and quantify BTEX; and

(iv). the presence and concentration of hydrogen sulfide (H<sub>2</sub>S) using a portable gas monitor.

(b). The commercial facility operator shall enter the pH, electrical conductivity, chloride (Cl) content, BTEX and hydrogen sulfide measurements on the manifest (Form UIC-28) which accompanies each waste shipping unit.

(c). When the commercial facility operator receives an E&P Waste Profile (Form UIC-35) from the generator, he shall enter the results of test Procedure A (first shipping unit values for each testing batch) in the appropriate location.

(d). When the last shipping unit for an E&P waste testing batch has been received, the commercial facility

operator shall enter the maximum BTEX and hydrogen sulfide measurements (for all shipping units in the testing batch) on the E&P Waste Profile (Form UIC-35).

(e). The commercial facility operator shall submit each completed Form UIC-35 to the Office of Conservation within seven days of receipt of the last waste shipping unit of each testing batch. The Conservation copy of the manifest for each shipping unit that compose a complete testing batch must be attached to the Form UIC-35.

(f). Produced water, produced formation fresh water, and other E&P waste fluids are exempt from verification testing Procedure A, the organic vapor monitor measurement, and the H<sub>2</sub>S measurement in §129.M.5.ii.(a) if the conditions of §129.B.2.n.ix are met.

(g). Records of these tests shall be kept on file at each commercial facility for a period of three years and be available for review by the commissioner or his designated representative.

5.iii. ...

j. - l. ...

6. - 9.b.iv. ...

N. - S. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30.4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), promulgated by the Department of Natural Resources, Office of Conservation, LR 6:307 (July 1980), amended LR 8:79 (February 1982), LR 9:337 (May 1983), LR 10:210 (March 1984), LR 12:26 (January 1986), LR 16:855 (October 1990), LR 17:382 (April 1991), LR 24:

**Summary**

The emergency rule herein above adopted evidences the finding of the commissioner of Conservation that failure to adopt the above rules may lead to an imminent risk to public health, safety and welfare, and that there is not time to provide adequate notice to interested parties. However, the commissioner of Conservation notes again that a copy of the permanent Amendment to Statewide Order No. 29-B will be developed in the near future, with a public hearing to be held as per the requirements of the Administrative Procedure Act.

The commissioner of Conservation concludes that the above emergency rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above emergency rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above emergency rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided for in this emergency rule.

Within five days from date hereof, notice of the adoption of this emergency rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this emergency rule with reasons therefor to all such parties. This emergency rule with reasons therefor shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the governor of the state of Louisiana, the attorney general of the state of Louisiana, the speaker of the House of Representatives,

the president of the Senate and the Office of the State Register of the adoption of this emergency rule and reasons for adoption.

Warren A. Fleet  
Commissioner

9803#005

**DECLARATION OF EMERGENCY**

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

Expiration Dates on  
Permits (LAC 55:VII.321)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 26:794, the Department of Revenue, Office of Alcohol and Tobacco Control hereby finds that emergency action is deemed necessary to stagger the expiration dates of new retail permits and readjust the expiration dates of existing retail permits at the time of their renewal. The Office of Alcohol and Tobacco Control finds that this action is necessary in order to protect the public from the imminent threat to public health and safety associated with the sale of beverage alcohol from unlicensed retail outlets. The previous system utilized the first initial of the owner name to alphabetically stagger the expiration date of the permits. This system was confusing to implement and cost prohibitive to enforce. The new system allows for the year-round equal distribution of expiring permits based upon the location of the licensed establishment. This rule will allow this office to concentrate its limited resources to the particular region in which all of the retail permits are set to expire and thereby ensuring full compliance with the licensing requirements of this state.

For the foregoing reasons, the Office of Alcohol and Tobacco Control hereby amends LAC 55:VII.321 relative to the staggering of expiration dates of permits authorizing the retail sale of beverage alcohol for on premise consumption and package; and provide for the related fees and penalties.

The effective date of this emergency rule is February 18, 1998, and it shall remain in effect for 120 days or until the final rule takes effect through normal promulgation process, whichever occurs first.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 1. Beer and Liquor**

**Chapter 3. Liquor Credit Regulations**

**§321. Staggering of Expiration Dates**

A. In accordance with the authority of R.S. 26:794(B), the expiration dates of retail permits issued by the Office of Alcohol and Tobacco Control shall be staggered in accordance with the provisions of this Section.

1. - 8. Repealed.

B. Purpose. The purpose of this staggering process is to provide for the even distribution of expiration dates of new and existing permits based upon the parish in which the licensed

establishment is located. This will allow the Office of Alcohol and Tobacco Control to concentrate its limited resource to the particular region of the state in which all retail permits are scheduled to expire. The expiration date of retail permits will be easy to determine and thereby assist both state and local enforcement agents, retail and wholesaler dealers in the enforcement of the licensing requirements contained in Title 26. This in turn will reduce the ever-increasing number of delinquent renewal applications filed with this office and eliminate the purchase and resale of alcoholic beverages by unlicensed establishments.

**C. New Business Application and Related Fees**

1. Beginning February 18, 1998, the expiration date of all retail permits issued pursuant to new-business applications shall have an expiration date to be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for all such new business permits shall be as set forth in Sections 71 and 271 of Title 26.

**D. Renewal of Existing Permits and Related Fees**

1. The renewal of an existing permit during this staggering process shall be for a period of not less than seven months nor more than 18 months, which period shall be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for such a permit shall be determined by a proration of the annual fee as established by Title 26 over the appropriate number of months.

**E. Renewal Deadline: Penalties**

1. Applications for the renewal of permits issued pursuant to this regulation shall be due in the Office of Alcohol and Tobacco Control not later than 30 days prior to the date of expiration on current permit.

2. The monetary penalties established in Sections 88 and 285 of Title 26 for those permittees who fail to timely file their renewal application shall remain in effect. The permittee shall be charged the delinquency penalty over and above the prorated fee.

F. Gross Sales. The payment of an additional permit fee by retailers based on the amount of their gross liquor sales as provided in Section 71 of Title 26 shall continue and shall be assessed on the gross sales made during the preceding calendar year. In renewal permits issued pursuant to this regulation, the additional fee shall be prorated over the appropriate number of months.

G. Expiration Date of Retail Permit. All retail permits issued after February 18, 1998, by the Office of Alcohol and Tobacco Control shall expire in accordance with the following schedule:

Parish Code	Parish Name	Expire Month
1	Acadia	October
2	Allen	March
3	Ascension	January
4	Assumption	November
5	Avoyelles	July
6	Beauregard	March

7	Bienville	September
8	Bossier	September
9	Caddo	September
10	Calcasieu	March
11	Caldwell	December
12	Cameron	March
13	Catahoula	December
14	Claiborne	September
15	Concordia	December
16	DeSoto	September
17	East Baton Rouge	January
18	East Carroll	December
19	East Feliciana	August
20	Evangeline	July
21	Franklin	December
22	Grant	December
23	Iberia	October
24	Iberville	July
25	Jackson	December
26	Jefferson	February
27	Jefferson Davis	March
28	Lafayette	October
29	Lafourche	November
30	Lasalle	December
31	Lincoln	September
32	Livingston	August
33	Madison	December
34	Morehouse	December
35	Natchitoches	December
36	Orleans	May
37	Ouachita	December
38	Plaquemines	April
39	Point Coupee	July
40	Rapides	July
41	Red River	September
42	Richland	December
43	Sabine	September
44	St. Bernard	April

45	St. Charles	April
46	St. Helena	August
47	St. James	April
48	St. John	April
49	St. Landry	July
50	St. Martin	October
51	St. Mary	November
52	St. Tammany	August
53	Tangipahoa	August
54	Tensas	December
55	Terrebonne	November
56	Union	December
57	Vermillion	March
58	Vernon	March
59	Washington	August
60	Webster	September
61	West Baton Rouge	July
62	West Carroll	December
63	West Feliciana	August
64	Winn	December

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:794.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 12:247 (April 1986), amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

Murphy Painter  
Commissioner

9803#015

## DECLARATION OF EMERGENCY

### Department of the Treasury Board of Trustees of the State Employees Group Benefits Program

#### Administrative Policy—Retirees with Medicare

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend its administrative policy relative to premiums for retirees with Medicare.

This emergency rule shall become effective on February 26, 1998, and shall remain effective for a maximum

of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend its administrative policy to provide that, for those employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only to those who are enrolled for Medicare Parts A and B. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the administrative policy of the State Employees Group Benefits Program is hereby amended to provide as follows:

Administrative Policy—Reduced Premium Rates for Retirees with Medicare. For all employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only with respect to those persons who are enrolled for Medicare Parts A and B.

James R. Plaisance  
Executive Director

9803#004

**DECLARATION OF EMERGENCY**

**Department of the Treasury  
Board of Trustees of the State  
Employees Group Benefits Program**

Plan Document—Catastrophic Illness

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.

This emergency rule shall become effective on February 26, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document relative to the Catastrophic Illness Endorsement to provide for annual restoration of benefits. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend the Catastrophic Illness Endorsement provision in the Schedule of Benefits on page 6 of the Plan Document, to read as follows:

**Catastrophic Illness Endorsement (Optional)**

All eligible expenses are payable at 100 percent following diagnosis of any covered disease.

Maximums for any one disease or combination thereof per lifetime:

Option 1	Option 2
\$10,000 Maximum	\$5,000 Maximum
Automatic Annual Restoration, up to \$1,000	Automatic Annual Restoration, up to \$500

Amend Article 3, Section VI, by adding a new Subsection, designated as Subsection G, to read as follows:

G. Restoration of Catastrophic Illness Endorsement Benefits. On and after January 1, 1997, Catastrophic Illness Endorsement benefits shall be restored by the plan each January 1, up to the maximum amount of the annual restoration as stated in the Schedule of Benefits, provided that such restoration will not increase the lifetime maximum Catastrophic Illness Endorsement benefits above that provided in the Schedule of Benefits.

James R. Plaisance  
Executive Director

9803#003

**DECLARATION OF EMERGENCY**

**Department of the Treasury  
Board of Trustees of the State  
Employees Group Benefits Program**

Plan Document—Point of Service PPO Regions

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.

This emergency rule shall become effective on February 26, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document relative to point of service regions for Preferred Provider Organizations (PPOs) to coincide with Health Maintenance Organization (HMO) service areas. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section X, Subsection A, Paragraph 1, to read as follows:

**B. Point of Service PPO Regions (Areas)**

1. The following regions, designated by United States Postal Service ZIP codes, are used to determine whether there

is a PPO provider in the same area as the point of service:

- Region 1 Zip Codes 70000 through 70199
- Region 2 Zip Codes 70300 through 70399
- Region 3 Zip Codes 70400 through 70499
- Region 4 Zip Codes 70500 through 70599
- Region 5 Zip Codes 70600 through 70699
- Region 6 Zip Codes 70700 through 70899
- Region 7 Zip Codes 71300 through 71499
- Region 8 Zip Codes 71000 through 71199
- Region 9 Zip Codes 71200 through 71299

James R. Plaisance  
Executive Director

9803#002

**DECLARATION OF EMERGENCY**

**Department of the Treasury  
Board of Trustees of the State  
Employees Group Benefits Program**

Plan Document—Pre-Existing Condition for  
Overdue Application; and Special Enrollment

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

The board finds that it is necessary to amend the Plan Document relative to the pre-existing condition exclusion for overdue applicants and to provide for special enrollments in order to implement changes included in the Health Insurance Portability and Accountability Act of 1996 (U.S. Public Law 104-191), effective July 1, 1997, and the rules and regulations promulgated pursuant thereto, in order to avoid sanctions or penalties from the United States.

These amendments are effective February 26, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

**Amendment Number 1**

Amend the introduction to the Plan Document on page 3, after "Group Coverage: Self-insured and self-funded comprehensive medical benefits plan" by inserting the following on the next line:

Plan Year: July 1 - June 30

**Amendment Number 2**

Amend Article 1, Section I, by adding two new Subsections, designated as Subsections OO and PP, to read as follows:

OO. Group Health Plan—a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

PP. *Health Insurance Coverage*—benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described in Section 54.9804-1(b)(2) of the rules promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, are not treated as benefits consisting of medical care.

**Amendment Number 3**

Amend Article 1, Section II, Subsection B, Paragraph 2, to read as follows:

2. Effective Date of Coverage. Retiree coverage will be effective on the first of the month following the date of retirement, provided the employee and employer have agreed to make and are making the required contributions. Retirees shall not be eligible for coverage as overdue applicants or as special enrollees.

**Amendment Number 4**

Amend Article 1, Section II, Subsection D to read as follows:

D. Pre-Existing Condition - Overdue Application. The terms of the following paragraphs shall apply to all eligible employees who apply for coverage after 30 days from the date the employee became eligible for coverage and to all eligible dependents of employees and retirees for whom the application for coverage was not completed within 30 days from the date acquired.

- 1. ...
- 2. ...

3. Medical expenses incurred during the first 12 months that coverage for the employee and/or dependent is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six-month period immediately prior to the effective date of such coverage. In no event will the provisions of this Paragraph apply to pregnancy.

4. If the covered person was previously covered under a group health plan, health insurance coverage, Part A or B of Title XVII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid) other than coverage consisting solely of benefits under Section 1928 thereof, or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the rules and regulations promulgated pursuant thereto, the duration of the prior coverage will be credited against the initial 12-month period used by the program to exclude benefits for a pre-existing condition provided, however, that termination under the prior coverage

occurred within 63 days of the date of enrollment for coverage under the program.

**Amendment Number 5**

Amend Article 1, Section II, by inserting a new Subsection E to read as follows, and redesignating current Subsections E, F, and G as Subsections F, H, and I, respectively:

E. Special Enrollments. In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated pursuant thereto, certain eligible persons for whom coverage was previously declined, and who would otherwise be considered overdue applicants, may enroll under the following circumstances, terms, and conditions for special enrollments:

1. Loss of Other Coverage. Special enrollment will be permitted for employees or dependents for whom coverage was previously declined because such employees or dependents had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the plan participant; or

b. cessation of employer contributions for the other coverage, unless such employer contributions were ceased for cause or for failure of the individual participant; or

c. the employee or dependent having had COBRA continuation coverage under another plan, and the COBRA continuation coverage has been exhausted, as provided in HIPAA.

2. After Acquired Dependents. Special enrollment will be permitted for employees or dependents for whom coverage was previously declined when the employee acquires a new dependent by marriage, birth, adoption, or placement for adoption.

3. Special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new dependent is acquired. Persons eligible for special enrollment for whom application is made more than 30 days after eligibility will be considered overdue applicants, subject to the provisions of Article 1, Section II, Subsection D above.

4. The effective date of coverage shall be the first of the month following the date of the receipt by the State Employees Group Benefits Program of all required forms for enrollment.

5. The program will require that all special enrollment applicants complete a statement of physical condition form and sign an acknowledgment of pre-existing condition form.

6. Medical expenses incurred during the first 12 months that coverage for the employee and/or dependent added through special enrollment is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six-month period immediately prior to the effective date of such coverage. In no event will the provisions of this Paragraph apply to pregnancy.

7. If the employee and/or dependent added through special enrollment was previously covered under a group health plan, health insurance coverage, Part A or B of Title XVII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid) other than coverage consisting solely of benefits under Section 1928 thereof, or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the rules and regulations promulgated pursuant thereto, the duration of the prior coverage will be credited against the initial 12-month period used by the program to exclude benefits for a pre-existing condition provided, however, that termination under the prior coverage occurred within 63 days of the date of coverage under the program.

James R. Plaisance  
Executive Director

9803#006

**DECLARATION OF EMERGENCY**

**Department of the Treasury  
Board of Trustees of the State  
Employees Group Benefits Program**

Plan Document—Prescription Drug

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to amend the Plan Document of Benefits.

This emergency rule shall become effective on February 26, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document relative to prescription drug benefits to provide a minimum copayment of \$12 for brand name drugs. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend the Prescription Drug provision under "Percentage Payable after Satisfaction of Applicable Deductibles" in the Schedule of Benefits on page 5 of the Plan Document, to read as follows:

Prescription Drugs (subject to a minimum copayment of \$3 per prescription for generic drugs, and \$12 per prescription for brand name drugs, not to exceed the maximum allowable

charges): 90 percent Network;  
50 percent nonNetwork, in state;  
80 percent nonNetwork, out of state.

\* \* \*

Amend Article 3, Section XI, Subsections A and D to read as follows:

XI. Prescription Drug Benefits

\* \* \*

A. Upon presentation of the Group Benefits Program Identification card at a network pharmacy, the Plan Member shall be responsible for payment of 10 percent of eligible charges for the drug, with a minimum copayment of \$3 per prescription when a generic drug is dispensed and \$12 per prescription when a brand name drug is dispensed, provided,

however, that in no event will a combination of payments made by the prescription benefits management firm and the Plan Member exceed the actual charge by the pharmacy for the drug.

\* \* \*

D. Regardless of where the prescription drug is obtained, eligible expenses for brand name drugs shall be limited to the prescription benefits management firm's maximum allowable charge and eligible expenses for generic drugs shall be limited to the prescription benefits management firm's generic maximum allowable charge.

\* \* \*

James R. Plaisance  
Executive Director

9803#001