

# Emergency Rules

## DECLARATION OF EMERGENCY

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

CommunityCARE Emergency Services

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

The Bureau of Health Services Financing operates the primary care case management program for Medicaid recipients known as CommunityCARE, which was originally established by Emergency Rule published in the *Louisiana Register*, Volume 18, Number 10, renewed in Volume 19, Number 2, and adopted as a final rule in Volume 19, Number 5. The Bureau is amending the procedures for emergency care provided to CommunityCARE recipients by adopting the prudent layperson criteria and emergency medical services definition contained in Section 4704 of the Balanced Budget Act of 1997 (BBA '97) in order to comply with increased protections required for Medicaid managed care enrollees.

This rule establishes a definition for emergency medical services that may be provided in a hospital emergency room for defined emergency medical conditions. These services are reimbursable by Medicaid without a referral by the primary care physician before the service is provided. Authorization for care subsequent to stabilization requires prior authorization by the CommunityCARE enrollee's primary care physician. The rule also stipulates that the provider of emergency services must be a Medicaid enrolled provider, and prohibits reimbursement for emergency room services when the condition of the CommunityCARE recipient does not meet the definition of emergency medical condition.

This action is necessary in order to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations concerning provision of emergency services and the definition of medical condition required by Section 4704 the Balanced Budget Act of 1997. The fiscal impact for implementation of this rule is estimated to be an increase of \$378,746 for state fiscal year 1998-99.

### Emergency Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4704 of the Balanced Budget Act of

1997 concerning provision of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE Program.

Reimbursement for emergency room services which meet the definition of emergency medical services below will be made by Medicaid when provided to CommunityCARE recipients whose condition meets the definition of an emergency medical condition below. The primary care physician will approve such services whether the recipient contacted the primary care physician prior to receipt of emergency services or not. Treatment at the emergency room provided to a CommunityCARE enrollee whose condition does not meet the definition of an emergency medical condition specified below will not be authorized by the primary care physician or reimbursed by Medicaid. Authorization for care subsequent to stabilization requires prior authorization by the CommunityCARE enrollee's primary care physician.

Emergency medical services with respect to a CommunityCARE enrollee must be furnished by a provider that is qualified to provide such services under Medicaid, and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

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

David W. Hood  
Secretary

9810#052

## DECLARATION OF EMERGENCY

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

### Pharmacy Program—Erectile Dysfunction Drugs

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

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for prescriptions drugs for treatment of erectile dysfunction without limitation through the Pharmacy Program under the Medicaid Program. The department has determined it is necessary to limit the number of units of these drugs that are reimbursed under the Medicaid Program to six units per month. This emergency rule is being adopted in an effort to prevent potential abuse of these prescriptions drugs. The estimated savings as a result of the implementation of this rule cannot be determined at this time.

#### **Emergency Rule**

Effective for dates of service on or after October 7, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will limit the number of units of prescription drugs for the treatment of erectile dysfunction that are reimbursable by the Medicaid Program to six units per month per patient. Units include tablets, injectable, intraurethral pellets and any other dosage form which may become available. In addition, the following provisions will govern the reimbursement for these drugs.

1. Prescriptions issued for the treatment of erectile dysfunction must be hand written and shall include a medically accepted indication.
2. An ICD-9 diagnosis code must be written on the hard copy of the prescription or attached to the prescription which is signed and dated by the prescriber.
3. Recipient specific diagnosis information from the prescriber via the facsimile is acceptable when signed and dated by the prescriber.
4. Acceptable ICD-9 diagnosis codes for these drugs include impotence of non-organic origin or impotence of organic origin.
5. No reimbursement for therapeutic duplication of drugs, early refills, or duplicate drug therapy within the therapeutic class of drugs used to treat erectile dysfunction is allowed.

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 for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

9810#046

## DECLARATION OF EMERGENCY

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

### Pharmacy Program—Maximum Allowable Overhead Cost

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1998-99 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 adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed by the Act.

The Department of Health and Hospitals, Bureau of Health Services Financing provides a pharmacy dispensing fee in the Pharmacy Program in accordance with the methodology established for the Maximum Allowable Overhead Cost which includes a \$0.10 provider fee collected on all prescriptions dispensed to Louisiana residents by pharmacists (*Louisiana Register*, Volume 18 Number 1). This dispensing fee is called the Louisiana Maximum Allowable Overhead Cost and is determined by updating the base rate through the application of certain economic indices to appropriate cost categories to assure recognition of costs which are incurred by efficiently and economically operated providers. During state fiscal years 1995-1996, 1996-97 and 1997-98, the bureau maintained the Louisiana Maximum Allowable Overhead Cost at the state fiscal year 1994-1995 level. The bureau has determined it is necessary to continue the Louisiana Maximum Allowable Overhead Cost at the state fiscal year 1994-1995 level. This action is necessary to avoid a budget deficit in the medical assistance programs. It is difficult to estimate the savings generated by this action, but a cost avoidance of approximately \$9,305,187 is anticipated for state fiscal year 1998 and 1999.

#### **Emergency Rule**

Effective for dates of service October 28, 1998 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the

following provisions applicable to the Maximum Overhead Cost under the Pharmacy Program.

**Maximum Allowable Overhead Cost**

1. The Maximum Allowable Overhead Cost will remain at the level established for state fiscal year 1994-95. This Maximum Allowable Overhead Cost will remain in effect until the dispensing survey is completed and an alternate methodology is determined.

2. No inflation indices or any interim adjustments will be applied to the Maximum Allowable Overhead Costs.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding the emergency rule. A copy of this emergency rule may be obtained from the Medicaid parish office.

David W. Hood  
Secretary

9810#044

**DECLARATION OF EMERGENCY**

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

**Private Hospitals—Reimbursement Methodology**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is 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 rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1994 which established the prospective reimbursement methodology for private hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The Department has determined that it is necessary to amend the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the Department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private hospital care and services under the state plan are

available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private hospitals in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$8,482,610 for state fiscal year 1998-1999.

**Emergency Rule**

Effective for dates of service on or after October 28, 1998, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, 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

9810#042

**DECLARATION OF EMERGENCY**

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

**Private Intermediate Care Facilities for Mentally  
Retarded—Reimbursement Methodology**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is 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 rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on October 20, 1989 which established the reimbursement methodology for private intermediate care facilities for the mentally retarded (*Louisiana Register*, Volume 15, Number 10). The reimbursement methodology provides for the application of an inflationary adjustment to the current

reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department has determined that it is necessary to amend the reimbursement methodology contained in the October 20, 1989 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private intermediate care facility care and services for the mentally retarded under the state plan are available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$2,744,512 for state fiscal year 1998-1999.

#### **Emergency Rule**

Effective for dates of service on or after October 28, 1998, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology contained in the October 20, 1989 rule for private intermediate care facilities for the mentally retarded to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. Subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, 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

9810#037

## **DECLARATION OF EMERGENCY**

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

#### **Private Nursing Facilities—Reimbursement Methodology**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by LA R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is 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 rule whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1984 which established the reimbursement methodology for private nursing facilities (*Louisiana Register*, Volume 10, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department has determined that it is necessary to amend the reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private nursing facility care and services under the state plan are available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private nursing facilities in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$14,057,887 for state fiscal year 1998-1999.

#### **Emergency Rule**

Effective for dates of service on or after October 28, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the

reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

Interested persons may submit written comments to the following address: Thomas D. Collins, 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

9810#043

## DECLARATION OF EMERGENCY

### Department of Natural Resources Office of Conservation

Pollution Control—Statewide Order No. 29-B  
(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 Louisiana Administrative Procedure Act, Title 49, Sections 953(B)(1) and (2), 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 procedure for testing E&P waste after receipt 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 Number 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 warranted

the Commissioner of Conservation to issue a first Emergency Rule effective May 1, 1998 (May 1, 1998 Emergency Rule), the purpose of which was to gather technical data regarding the chemical and physical makeup of E&P waste disposed of at permitted commercial E&P waste disposal facilities within the State of Louisiana. The May 1, 1998 Emergency Rule had an effective term of 120 days. However, technical experts under contract with the Office of Conservation determined during the term of the May 1, 1998 Emergency Rule that sampling and testing should be extended for an additional 30 days for the purpose of receiving additional data in order to strengthen the validity of the inferred concentration distributions within the various E&P waste types. Therefore, a second Emergency Rule was issued on August 29, 1998, and effective through September 30, 1998.

The second Emergency Rule required continued comprehensive analytical testing of E&P waste at the site of generation together with verification testing at the commercial E&P waste disposal facility. During the terms of the first and second Emergency Rules, approximately 1,800 E&P waste testing batches were analyzed, with the raw data results being filed with the Office of Conservation. Technical experts under contract with the Office of Conservation, together with staff of the Office of Conservation, have determined that the number of raw data sets of E&P waste types, along with other published analytical results of E&P waste testing, will provide adequate numbers of validated test results of the various generic E&P waste types to reach statistically valid conclusions regarding the overall chemical and physical composition of each type of E&P waste.

Therefore, continued testing of E&P waste at the site of generation would be unnecessarily redundant, and should be discontinued. However, the Emergency Rule adopted herein requires continued testing of each E&P waste shipment at the commercial disposal facility according to procedures described in this emergency rule. Such continued testing will assure that E&P waste shipments received for disposal at commercial facilities are consistent with evolving E&P waste profiles.

The third Emergency Rule adopted herein provides requirements for continued E&P waste testing of all waste shipments received for disposal at commercial E&P waste disposal facilities. Concurrent with implementation of this Emergency Rule, the Office of Conservation will begin development of the permanent rule for the management and disposal of E&P waste at commercial facilities within the State of Louisiana. Best E&P waste management practices, based on established E&P waste profiles, will be incorporated into the permanent rule. Such permanent rule will also address specific treatment and disposal options for the various categories of E&P waste.

#### Synopsis of Emergency Rule

##### E&P Waste Will Be Transported with Identification

Each load of E&P waste transported from the site of generation to a commercial facility for disposal will be accompanied by an Oilfield Waste Shipping Control Ticket (Form UIC-28) and presented to the operator before offloading. Copies of completed Form UIC-28 are required to be timely filed with the Office of Conservation.

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) 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.

**Each Load of E&P Waste Will Be Tested  
At 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 load of E&P waste 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 that is fully protective of public health and the environment and 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, Amendment to Statewide Order Number 29-B set forth hereinafter is now adopted by the Office of Conservation.

**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**

\* \* \*

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:

- a. 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;
- b. oil-base drilling mud and cuttings;
- c. water-base drilling mud and cuttings;
- d. drilling, workover and completion fluids;
- e. production pit sludges;
- f. production storage tank sludges;
- g. produced oily sands and solids;
- h. produced formation fresh water;
- i. rainwater from ring levees and pits at production and drilling facilities;
- j. washout water generated from the cleaning of containers that transport E&P waste and are not contaminated by hazardous waste or material;
- k. washout pit water and solids from oilfield related carriers that are not permitted to haul hazardous waste or material;
- l. natural gas plant processing (E&P) waste which is or may be commingled with produced formation water;
- m. waste from approved salvage oil operators who only receive oil (BS&W) from oil and gas leases;
- n. 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;
- o. wastes from permitted commercial facilities;
- p. crude oil spill clean-up waste;
- q. salvageable hydrocarbons; and
- r. other approved E&P waste.

\* \* \*

*NOW*—exploration and production waste.

\* \* \*

M.5. Criteria for the Operation of Commercial Facilities and Transfer Stations

a. - h. ...

i. Receipt, Sampling and Testing of E&P Waste

\* \* \*

ii. Testing Requirements

(a). Before offloading E&P waste at a commercial facility, including a transfer station, each load of E&P waste shall be sampled and analyzed by commercial facility personnel for the following:

- (i). color, turbidity, (clear, cloudy or muddy) and viscosity low, medium, or high); 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 color, turbidity, viscosity, the pH, electrical conductivity, chloride (Cl) content, BTEX and hydrogen sulfide

measurements on the manifest (Form UIC-28) which accompanies each load of E&P waste.

(c). Produced water, produced formation fresh water, and other E&P waste fluids are exempt from organic vapor monitoring measurement (BTEX), and the H<sub>2</sub>S measurement in §129.M.5.i.a if the following conditions are met:

(i). if transported by the generator or transporter in enclosed tanks trucks, barges, or other enclosed containers; and

(ii). if stored in an enclosed container at a commercial facility; and

(iii). if disposed by deep well injection.

(d). 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. Copies of completed Form UIC-28 shall be filed with the Office of Conservation as provided in 129.M.6.d.

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### 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 of the citizens of Louisiana, 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 Number 29-B will be developed in the immediate 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 State Register of the adoption of this Emergency Rule and reasons for adoption.

### Effective Date and Duration

1. The effective date for this emergency rule shall be October 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 Number 29-B as noted herein, whichever occurs first.

Philip N. Asprodites  
Commissioner

9810#008

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

#### Food Stamps—Alien Eligibility (LAC 67:III.1994)

The Department of Social Services, Office of Family Support, has exercised the emergency provision [R.S. 49:953(B)]of the Administrative Procedure Act, to amend LAC 67:III.1994 pertaining to the Food Stamp Program. This rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 105-185, the Agricultural Research, Extension, and Education Reform Act of 1998, changes are required regarding the eligibility of certain non-citizens for food stamp benefits. The law extended the eligibility period for certain groups of aliens from five to seven years and made additional groups of aliens eligible for food stamp benefits. Amendments to the *United States Code* mandated by the law are effective November 1, 1998; an emergency rule is necessary to avoid federal sanctions or penalties which could be imposed if implementation is delayed.

### Title 67

### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 3. Food Stamps

#### Chapter 19. Certification of Eligible Households

#### Subchapter K. Action on Households with Special Circumstances

#### §1994. Alien Eligibility

A. Effective November 1, 1998, only the following non-citizens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. - 4. ...

5. Amerasian immigrants admitted pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as contained in §101(e) of P.L. 100-202 and amended by the 9th proviso under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended);

B. 1. - 3. ...

4. effective November 1, 1998, individuals who were lawfully residing in the United States on August 22, 1996 and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

5. effective November 1, 1998, individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;

6. effective November 1, 1998, individuals who were lawfully residing in the United States on August 22, 1996 and are under 18 years of age;

C. 1. - 4. ...

D. effective November 1, 1998, individuals who are lawfully residing in the United States and were members of a Hmong or Highland Laotians tribe at the time the tribe rendered assistance to the United States personnel by taking part in a military rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975 (as defined in §101 of Title 38, United States Code); the spouse or an unmarried, dependent child of such an individual; or the unremarried surviving spouse of such an individual who is deceased;

E. effective November 1, 1998, individuals who are American Indian born in Canada to whom the provisions of §289 of the Immigration and Nationality Act apply or who is a member of an Indian tribe as defined in §4(e) of the Indian Self-Determination and Education Assistance Act.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P.L. 104-208, P. L. 105-33 and P. L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 24:354 (February 1998), LR 25:

Madlyn B. Bagneris  
Secretary

9810#029

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Family Support**

**Individual Family Grant (IFG) Program  
(LAC 67:III.4704)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule in the *Louisiana Administrative Code*, Title 67, Part III, Subpart 10, Individual and Family Grant (IFG) Program.

The Federal Emergency Management Agency (FEMA), which governs the IFG Program, promulgated a rule that specifies the eligibility of non-citizens for IFG pursuant to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by Public Law 104-208, the Illegal Immigration Reform and Immigration Responsibility Act of 1996. A Notice of Intent was published in July 1998; however, in anticipation of an impending federal disaster declaration, an earlier effective date is required. In order to effect these regulations and avoid federal penalties or sanctions, this emergency rule is necessary to immediately establish the policy for IFG applicants. This rule shall remain in effect until the final rule is published.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 10. Individual and Family Grant Program**

**Chapter 47. Application, Eligibility, and Furnishing Assistance**

**Subchapter A. Need and Amount of Assistance**

**§4704. Special Condition of Eligibility**

A. Only U.S. citizens, U.S. non-citizen nationals and qualified aliens are eligible for IFG assistance. A qualified alien is defined as:

1. an alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. an alien granted asylum under §208 of the INA;
3. a refugee admitted to the U.S. under §207 of the INA;
4. an alien paroled into the U.S. under §212(d)(5) of the INA for at least one year;
5. an alien whose deportation is being withheld under §243(h) of the INA as in effect prior to April 1, 1997 or whose removal is being withheld under §241(b)(3) of the INA;
6. an alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect prior to April 1, 1980;
7. an alien who is a Cuban or Haitian entrant as defined in §501(e) of the Refugee Education Assistance Act of 1980; or

8. an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of §431(c) of the Act.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 104-208.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:

Madlyn B. Bagneris  
Secretary

9810#007

**DECLARATION OF EMERGENCY**

**Department of Social Services  
Office of Family Support**

**Support Enforcement—Child Support Distribution  
(LAC 67:III.2514)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision [R.S. 49:953(B)] of the Administrative Procedure Act, to amend LAC 67:III.2514 pertaining to Support Enforcement Services, the child support enforcement program. This rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 104-193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), Public Law 105-33 (the Balanced Budget Act of 1997) and Office of Child Support Enforcement Action Transmittal

98-24, Support Enforcement Services will change the order in which collection of past-due support is distributed beginning October 2, 1998. Former recipients of Aid to Families with Dependent Children and/or Family Independence Temporary Assistance Program benefits will receive arrearages owed to the family before reimbursements to the state and federal governments are made. These reimbursements are for the cash assistance received by the recipients.

An emergency rule is necessary to avoid federal sanctions or penalties which could be imposed if implementation is delayed since the agency chose the October 1, 1998 distribution option provided by P.L. 105-33.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 4. Support Enforcement Services**

**Chapter 25. Support Enforcement**

**Subchapter D. Collection and Distribution of Support Payments**

**§2514. Distribution of Child Support Collections**

A. Effective October 2, 1998 the agency will distribute child support collections in the following manner:

1. ...
2. In cases in which the AR previously received AFDC or FITAP, and there are amounts owed to the state, collections

received through any means other than IRS intercepts will be distributed as follows:

- a. the AR shall receive an amount equal to the court-ordered monthly obligation and any arrears owed to the AR that accrued in a non-assistance period;
- b. amounts owed to the state;
- c. any arrears that accrued during assistance that exceed the unreimbursed grant will be paid to the AR.

3. - 4. ...

5. In cases in which the AR previously received AFDC or FITAP, and there are amounts owed to the state, collections received through IRS intercepts will be distributed as follows:

- a. amounts owed to the state; and
- b. amounts owed to the AR.

B. Any collections received through income assignments are subject to refund to the noncustodial parent based on federal and state laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, and OCSE-AT-98-24.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997), amended LR 24:703 (April 1998), LR 25:

Madlyn B. Bagneris  
Secretary

9810#017