

**I. EXECUTIVE ORDERS**

MJF 97-10—Child Care and Development Block Grand Advisory Council . . . . . 257

MJF 97-11—School Based Health Clinics Investigation . . . . . 257

MJF 97-12—International Trade Commission . . . . . 257

MJF 97-13—School Based Health Clinic Task Force . . . . . 258

**II. EMERGENCY RULES**

**Agriculture and Forestry**

Office of Agricultural and Environmental Sciences, Structural Pest Control Commission—Wood Destroying  
Insects (LAC 7:XXV.Chapter 141) . . . . . 260

Office of the Commissioner—Emergency Airstrip for Agricultural Purposes (LAC 7:I.107) . . . . . 262

**Economic Development**

Racing Commission—Qualifications for Jockey/Apprentice Jockey and Applicant for License  
(LAC 46:XLI.701 and 703) . . . . . 263

**Environmental Quality**

Office of Water Resources—Produced Water Discharge Extension [Adoption of Emergency Rule] (WP023E-B) . 264

Produced Water Discharge Extension [Declaration of Emergency] (LAC 33:IX.708)(WP023E-B) . . . . . 264

**Governor's Office**

Crime Victims Reparations Board—Definitions (LAC 22:XIII.103) . . . . . 268

**Health and Hospitals**

Board of Veterinary Medicine—Animal Euthanasia Technicians—Suspension of Rule (LAC 46:LXXXV.120) . . . 268

Professional Conduct—Specialty List (LAC 46:LXXXV.1063) . . . . . 269

Office of Public Health—Orleans Parish Individual Sewage . . . . . 269

Office of the Secretary, Bureau of Health Services Financing—Case Management Services

Reimbursement—Infants and Toddlers with Special Needs . . . . . 269

Disproportionate Share Hospital Payment Methodology . . . . . 270

Home Care for the Elderly Waiver . . . . . 272

Hospital Program—Outpatient Laboratory Services . . . . . 274

Targeted Case Management Services and Reimbursement . . . . . 274

**Public Safety and Corrections**

Gaming Control Board—Record Preparation Fees and Quarterly Submissions (LAC 42) . . . . . 288

Riverboat Gaming: Transfers of Interest in Licensees and Permittees; Loans and Restrictions  
(LAC 42:XIII.Chapter 25); and Repeal of Riverboat Gaming Patron Disputes (LAC 42:XIII.3501-3513) . 289

**Social Services**

Office of Family Support—Child Support Collection and Distribution (LAC 67:III.2514) . . . . . 291

Office of Rehabilitation Services—Vocational Rehabilitation Policy Manual (LAC 67:VII.101) . . . . . 292

**III. RULES**

**Agriculture and Forestry**

Office of Marketing, Market Commission—Egg Grading and Marketing (LAC 7:V.Chapter 15) . . . . . 293

**Economic Development**

Office of Commerce and Industry, Business Incentives Division—Enterprise Zone—Advance Notification;  
Timely Filing (LAC 13:I.Chapter 9) . . . . . 295

Office of Financial Institutions—Fees and Assessments (LAC 10:I.201) . . . . . 296

**Environmental Quality**

Office of the Secretary—Rulemaking Petitions (LAC 33:I.Chapter 9; V.105 and 2515; XV.112)(OS013) . . . . . 297

Office of Solid and Hazardous Waste, Hazardous Waste Division—Land Disposal Restriction Variances  
(LAC 33:V.2271)(HW051) . . . . . 299

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<b>Governor's Office</b>	
Division of Administration, Property Assistance Agency—Fleet Management (LAC 34:XI.103)	300
<b>Health and Hospitals</b>	
Office of Public Health—Genetic Diseases—Neonatal Screening (LAC 48:V.6303)	301
Sanitary Code—Reportable Diseases (Chapter II)	302
Sanitary Code—Seafood Sanitation (Chapter IX)	303
<b>Public Safety and Corrections</b>	
Gaming Control Board—Record Preparation Fees and Quarterly Submissions (LAC 42)	304
<b>Social Services</b>	
Office of Family Support—Child Support Collection and Distribution (LAC 67:III.2514)	304
<b>Treasury</b>	
Board of Trustees of the State Employees Group Benefits Program—Plan Document—Catastrophic Illness Endorsement	305
Plan Document—Continuation of Coverage	306
Plan Document—Emergency Room Facility Charges at Non-PPO Hospitals	306
<b>IV. NOTICES OF INTENT</b>	
<b>Agriculture and Forestry</b>	
Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides—Registration of Pesticides (LAC 7:XXIII.13113)	307
Structural Pest Control Commission—Adjudicatory Hearing Violations (LAC 7:XXV.14121)	308
Wood Destroying Insects (LAC 7:XXV.Chapter 141)	308
<b>Civil Service</b>	
Board of Ethics—Lobbyists Required Reporting	309
<b>Economic Development</b>	
Office of Financial Institutions—Depository Institution Records Retention (LAC 10:I.701 and LAC 10:III.111)	311
Fees and Assessments (LAC 10:I.201-205)	311
<b>Education</b>	
Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship and Grant Policy and Procedure Manual	313
Tuition Trust Authority, Office of Student Financial Assistance—Student Tuition Assistance and Revenue Trust (START Saving) Program (LAC 28.VI)	314
<b>Environmental Quality</b>	
Office of Air Quality and Radiation Protection, Air Quality Division—Control of Emission of Organic Compounds (LAC 33:III.Chapter 21) (AQ149)	322
Office of Solid and Hazardous Waste, Hazardous Waste Division—RCRA V Federal Package (LAC 33:V.Chapters 1, 15, 22, and 41) (HW055*)	329
Universal Wastes (LAC 33:V.Chapters 1, 3, 15, 22, 35, 38, 39, and 41) (HW054*)	332
Office of Water Resources, Water Pollution Control Division—Extension of Produced Water Discharges (LAC 33:IX.708) (WP023)	345
<b>Governor's Office</b>	
Office of Elderly Affairs—Long Term Care Ombudsman (LAC 4:VII.1229)	347
<b>Health and Hospitals</b>	
Office of Public Health—Orleans Parish Individual Sewage	348
Sanitary Code—Shellfish Tag Retention (Chapter XXIII)	349
Office of the Secretary—Community and Family Support System Cash Subsidy (LAC 48:I.16103-16129)	350
Bureau of Health Services Financing—Voter Registration Assistance	355
<b>Insurance</b>	
Office of the Commissioner—Regulation 46—Long-Term Care Insurance	356
<b>Public Safety and Corrections</b>	
Gaming Control Board—Riverboat Gaming: Transfers of Interest in Licensees and Permittees; Loans and Restrictions (LAC 42:XIII.Chapter 25) and Repeal of Riverboat Gaming Patron Disputes (LAC 42:XIII.3501-3513)	371
<b>Social Services</b>	
Office of the Secretary—Community and Family Support System Cash Subsidy (LAC 48:I.16103-16129)	350
<b>Treasury</b>	
Board of Trustees of the State Employees Group Benefits Program—Plan Document—Prescription Drug Exclusions and Limitations	371
<b>Wildlife and Fisheries</b>	
Wildlife and Fisheries Commission—Reef Fish Daily Take and Size Limits (LAC 76:VII.335)	372
Resident Game Hunting Season—1997-1998 (LAC 76:XIX.101 and 103)	373
Spanish Lake State Game and Fishing Preserve (LAC 76:III.329)	374

**V. POTPOURRI**

**Agriculture and Forestry**

Office of Agricultural and Environmental Sciences, Horticulture Commission—Retail Floristry Examination . . . . . 376

**Environmental Quality**

Office of Solid and Hazardous Waste, Hazardous Waste Division—Provisional Hazardous Waste  
Generator Reporting . . . . . 376

**Natural Resources**

Office of Conservation, Injection and Mining Division—Public Hearing—Oilfield Waste Facility . . . . . 376  
Public Hearing—Oilfield Waste Facility . . . . . 376

**Social Services**

Office of Community Services—Emergency Shelter Grants Program (ESGP) . . . . . 377



# Executive Orders

## EXECUTIVE ORDER MJF 97-10

### Child Care and Development Block Grant Advisory Council

WHEREAS: Executive Order MJF 96-59, signed on October 17, 1996, established the Advisory Council on the Child Care and Development Block Grant Program (hereafter "Advisory Council"); and

WHEREAS: it is necessary to expand the voting membership of that Advisory Council to include four at-large members;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 1 of Executive Order MJF 96-59, is amended to add Subsection L to the voting membership, which shall provide as follows:

L. Four at-large members.

SECTION 2: All other Sections and Subsections of Executive Order MJF 96-59 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 14th day of February, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9703#004

## EXECUTIVE ORDER MJF 97-11

### School Based Health Clinics Investigation

WHEREAS: Executive Order MJF 96-73, signed on December 16, 1996, ordered and directed that the secretary of the Department of Health and Hospitals (hereafter "secretary") head an investigation regarding allegations of violations of R.S. 40:31.3(c) by a few of the personnel employed by school based health clinics, and to issue a report on the findings of the investigation by February 15, 1997; and

WHEREAS: it is necessary to extend the period for investigation and amend the date on which the secretary shall issue his report on the findings of the investigation;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 4 of Executive Order MJF 96-73, is amended to provide as follows:

The secretary shall issue a report on the findings of the investigation to the governor, the House and Senate Committees on Health and Welfare, and the School Based Health Clinic Task Force, no later than March 31, 1997.

SECTION 2: All other Sections and Subsections of Executive Order MJF 96-73 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 14th day of February, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9703#012

## EXECUTIVE ORDER MJF 97-12

### International Trade Commission

WHEREAS: the State of Louisiana is the premier agricultural product embarkation state in the United States;

WHEREAS: the abundance of the agriculture products, natural resources, and manufactured products in the State of Louisiana makes those products and resources desirable for direct sale and value added processing in international markets; and

WHEREAS: the location of the State of Louisiana, at the mouth of the Mississippi River, is geographically advantageous for the dissemination of goods and services from the United States and Canada to the vast global markets of the world;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested through the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana International Trade Commission (hereafter "commission") is created and established within the Executive Branch, Department of Economic Development.

SECTION 2: The duties and functions of the commission shall include, but are not limited to, advising the secretary of the Department of Economic Development on policies, programs, and activities that have the following objectives:

A. stimulating growth in international trade and investment;

B. coordinating international trade and investment programs and activities;

C. insuring Louisiana products are competitive in international markets;

D. attracting foreign trade and investments;

E. creating international transportation routes between Louisiana and other states and counties; and

F. promoting mutually beneficial cultural, educational, medical, and/or environmental exchanges between Louisiana and other counties.

SECTION 3: The advice and recommendations of the commission shall be consistent with the goals and objectives of the Louisiana Economic Development Council.

SECTION 4: The commission shall be comprised of 19 members who shall be appointed by and serve at the pleasure of the governor. The membership of the commission shall be selected as follows:

A. the secretary of the Department of Economic Development, or the secretary's designee;

B. the commissioner of the Department of Agriculture and Forestry, or the commissioner's designee;

C. a member of the Louisiana Economic Development Council;

D. two at-large members; and

E. fourteen Louisiana residents who have at least seven years of experience in international trade, finance, relations, business improvement, or economics, selected from nomination lists submitted by each of the following organizations:

1. the Alexandria Chamber of Commerce;
2. the Baton Rouge Chamber of Commerce;
3. the Lake Charles Chamber of Commerce;
4. the METROVISION, the Greater New Orleans Region Chamber of Commerce;

Chamber of Commerce;

5. the Monroe Chamber of Commerce;

6. the Freight Forwarders Association;

7. the International Trade Council - Red River Region;

8. the Lafayette International Trade Development Group;

9. the Louisiana Bankers Association for international bankers employed in Louisiana;

10. the Louisiana District Export Council;

11. the Port Association of Louisiana;

12. the South Louisiana Economic Council;

13. the World Trade Center of New Orleans Board of Directors; and

14. the Southern United States Trade Association.

SECTION 5: The secretary of the Department of Economic Development, or the secretary's designee, shall chair the commission. The membership of the commission shall elect its other officers.

SECTION 6: The commission shall meet at regularly scheduled intervals, and at the call of the chair.

SECTION 7: Support staff for the commission and facilities for their meetings shall be provided by the Department of Economic Development.

SECTION 8: Commission members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, commission members who are not employed by the state may receive reimbursement for actual travel expenses, in accordance with state guidelines and procedures, upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the commission in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 21st day of February 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9703#011

#### EXECUTIVE ORDER MJF 97-13

##### School Based Health Clinic Task Force

WHEREAS: Executive Order MJF 96-74, signed on December 16, 1996, created and established within the Executive Department, Office of the Governor, the School Based Health Clinic Task Force (hereafter "Task Force"), and ordered it to submit two reports to the governor by specified dates; and

WHEREAS: it is necessary to change the dates on which the Task Force shall submit its reports to the governor on the progress and/or fulfillment of its primary and secondary objectives and duties;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 4 of Executive Order MJF 96-74, is amended to provide as follows:

The Task Force shall prepare and submit a report to the governor on the progress and/or fulfillment of its primary objectives and duties, no later than May 15, 1997, and on the progress and/or fulfillment of its secondary objectives and duties, no later than June 30, 1997.

SECTION 2: All other Sections and Subsections of Executive Order MJF 96-74 shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended,

modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 25th day of February, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9703#010

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

#### Wood Destroying Insects (LAC 7.XXV. Chapter 141)

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and R.S. 3:3203(A), the commissioner of Agriculture and Forestry is amending the following Rules for the implementation of Regulations governing wood destroying insects.

This emergency adoption is necessary in order that the department may immediately put into place more stringent Regulations governing the qualifications required for pest control licensees and their technicians making wood destroying inspections, and to implement new Regulations for inspecting structures and completing the wood destroying insect report.

The department has further deemed these Regulations necessary to help ensure the citizens of the state have a more accurate inspection for wood destroying insects used in property transfer.

The effective date of these Emergency Rules is February 19, 1997 and shall remain in effect for 120 days or until these Rules take effect through the normal promulgation process, whichever occurs first.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXV. Structural Pest Control

#### Chapter 141. Structural Pest Control Commission

#### §14101. Definitions

\* \* \*

*License*—a document issued by the commission which authorizes the practice and/or supervision of one or more phases of structural pest control work as follows:

1. *General Pest Control*—the application of remedial or preventive measures to control, prevent or eradicate household pests by use of pesticides used as sprays, dusts, aerosols, thermal fogs, barriers, traps and baits. Residential rodent control will be limited to the use of anti-coagulants rodenticide and traps.

2. *Commercial Vertebrate Control*—the application of remedial or preventive measures to control, prevent or eradicate vertebrates, including baits, chemicals, barriers, gases and traps, in nonresidential establishments, but not including tarpaulin fumigation.

3. *Termite Control*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects.

4. *Fumigation*—the use of lethal gases and/or rodenticide in a gaseous form for the control, prevention or eradication of insect pests, rodents, or other pests in a sealed enclosure with or without a tarpaulin.

5. *Wood Destroying Insect Report (WDIR) Inspector*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects and the inspection of structures for wood-destroying insects.

\* \* \*

*Registered Wood Destroying Insect Report (WDIR) Technician*—an employee qualified to conduct wood destroying insect report inspections.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 954 (November 1989), LR 17:251 (March 1991), LR 23:

**§14107. License to Engage in Structural Pest Control; Work Required: Qualifications of Applicant; Requirements for Licensure; Phases of Structural Pest Control License; Conditions of the License**

A. - G. ...

H. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §14109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. General Pest Control
2. Commercial Vertebrate Control
3. Termite Control
4. Structural Fumigation
5. Ship Fumigation
6. Commodity Fumigation
7. Wood Destroying Insect Report (WDIR) Inspector

I. - P. ...

Q. Persons licensed in Termite Control on or before September 30, 1997 shall attend a wood destroying insect report training session prior to being qualified to become a licensed WDIR inspector. Said training session must have prior approval by LDAF. Persons licensed on or after October 1, 1997 and persons licensed in Termite Control on or before September 30, 1997 that do not attend a wood destroying insect report training session, shall complete the requirements set forth in §14107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.



HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 955 (November 1989), LR 19:1009 (August 1993), LR 23:

**§14112. Registered Wood Destroying Insect Report Technician Requirements**

A. Persons, prior to registering as WDIR technicians, shall attend a wood destroying insect report training session and have conducted with licensed or registered WDIR inspector/technician, 40 WDIR inspections, approved by licensee, or shall have a wood destroying insect report training session and a minimum of one year of experience as a registered employee in the termite phase of pest control work under a termite phase licensee; and shall pass the appropriate test with a grade of 70 percent or better. Licensee shall verify in writing of technicians' work experience.

B. The fee for the examination for the WDIR technician shall be \$25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:

**§14113. Obligations of the Licensee**

A. - E. ...

F.1. The licensee must maintain his commercial applicator certification in current status by:

- a. attending a continuing educational program for recertification approved by the Louisiana Department of Agriculture and Forestry;
- b. recertification at least once every three years;
- c. a minimum of six hours of technical training which shall include but not limited to the categories of general pest control, termite control, wood destroying insect report (WDIR) inspector and commercial vertebrate control;
- d. a minimum of six hours of technical training for the category of fumigation;

2. A licensee attending an approved recertification seminar must attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar;

3. Time and location for each licensee certification can be obtained by calling or writing to the Louisiana Department of Agriculture and Forestry.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 956 (November 1989), LR 21:930 (September 1995), LR 23:

**§14116. Wood Infestation Report**

A. A wood infestation report approved by the Structural Pest Control Commission shall be issued when any inspection is made to determine the presence of wood destroying insects, specifically for acts of sale of structures, but not limited for this purpose.

B. Any wood infestation report or written instrument issued for the transfer of real property, shall be issued by a person who is licensed by the Structural Pest Control

Commission as a wood destroying insect report (WDIR) inspector or a registered wood destroying insect technician and is working under the supervision of a person who is licensed by the Structural Pest Control Commission as a WDIR inspector. This instrument shall carry a guarantee that the property will be treated without charge should live wood destroying insects with the exception, the presence of frass will be acceptable as evidence of a live infestation of Power Post Beetles; however, frass must be exuding or streaming from the holes on the outside of the wood, covered by this report, and be found within 90 days from date of inspection.

1. A contract approved by the Structural Pest Control Commission shall be issued on date of treatment.

2. This contract shall be reported to the commission and a fee paid as required by the Structural Pest Control Commission Law.

C. Regulations for completing wood destroying insect reports (LPCA-142). The following numbered sections correspond to the numbered sections on WDIR form LPCA - 142. LPCA - 142, and shall be completed as follows:

1. Enter HUD/FHA/VA Case number (if available).
2. Enter date of structure(s) inspection.
- 3A. Enter name of inspection company.
- 3B. Enter address (including street, city, state, and zip code) of inspection company.
- 3C. Enter telephone number (include area code) of inspection company.
4. Enter pest control inspector license number.
- 5A. Enter name and address of property owner/seller at the time of inspection.
- 5B. Enter address of property inspected (including street, city, state, and zip code).
- 5C. List only structures located at address in 5B that are part of this report.
- 5D. Information only. This area shall NOT be checked, circled or marked in any way.
6. If any areas of the property were obstructed or inaccessible mark box YES. If no, mark box NO.
7. Check the appropriate block as to the construction of the structure(s) inspected. More than one block can be checked.
8. This area shall NOT be checked, circled or marked in anyway.
- 9A. Check this block only when there is no visible evidence of wood destroying insects in accessible areas on the structure(s) inspected. Evidence includes but is not limited to: live or dead wood destroying insects, wood destroying insect parts, shelter tubes, shelter tube stains, frass, exit holes or damaged wood due to wood destroying insects. When this block is checked, no other block in Section 9 shall be checked.
- 9B. Check this block if evidence of wood destroying insects is observed. Evidence includes but is not limited to: live or dead wood destroying insects, wood destroying insect parts, shelter tubes, shelter tube stains, frass, exit holes or evidence of damage due to wood destroying insects. If live wood destroying insects are observed, identify and list the insect(s) observed and the location(s) in this Section.
- 9C. Check this box if visible evidence of damage due to wood destroying insects was observed. Evidence of damage is defined as obvious feeding or removal of wood by wood destroying insects including "etching" or "scabbing" marks on the wood surface(s). Identify the wood destroying insect and list the location(s) of evidence of damage caused by wood destroying insects in this Section.
- 9D. Treatment was or will be performed by inspection company? YES or Number If YES, explain as follows:
  12. Property disclosure statement provided to pest control company prior to or at the time of the inspection. Check "yes" if provided, Check "no" if not.
  13. Make no marks in this Section.
    - a. If any of the conditions listed in this Paragraph on the WDIR (LPCA-142) are present on or adjacent to the inspected structure(s), list them in Section Number 10 of this report.
  14. Signature and registration/licensee number of inspector conducting the inspection.
  15. Enter date of inspector signature.

16. Enter name of person requesting the WDIR (if available).
17. Signature of person WDIR received by (if available).
18. Title of person in Number 17 (if available).
19. Date of signature of Number 17 (if available).

**D. Minimum Specifications for conducting a Wood Destroying Insect Report**

1. No person shall conduct a WDIR inspection unless that person is properly licensed with the Louisiana Structural Pest Control Commission to conduct WDIR inspections or is working under the supervision of a licensed WDIR inspector and is properly registered to conduct WDIR inspections.

2. WDIR inspector/technician shall inspect all unobstructed or accessible areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:

Bob Odom  
Commissioner

9703#006

**DECLARATION OF EMERGENCY**

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

**Emergency Airstrip for  
Agricultural Purposes (LAC 7:I.107)**

In accordance with Administrative Procedure Act, R.S. 49:953(B) and R.S. 3:18, the commissioner of Agriculture and Forestry finds that this Emergency Rule setting forth a program to designate certain roads for use as emergency airstrips for agricultural purposes is necessary for the health, safety and welfare of the citizens of Louisiana. The department published a Notice of Intent in the February 20, 1997 edition of the *Louisiana Register* of its intent to promulgate regulations setting forth a program to designate certain roads for use as emergency airstrips pursuant to the authority of R.S. 3:18; however, the earliest the department can adopt these regulations is 90 days from the publication date in the *Louisiana Register*. Weather conditions during the past several weeks have rendered unusable the agricultural turf airstrips normally employed by agricultural interests at this time of the year in preparing the planting fields. The inability of the agricultural interests to use agricultural turf airstrips creates an extreme hardship on the agricultural interests in that the cost of planting crops rises. The rise in costs has a direct adverse impact on the agricultural economy of the state.

For the reasons set forth above, the commissioner has determined that this Emergency Rule is necessary in order to implement the emergency airstrip program during the current growing season.

The Rule is effective March 3, 1997 and will remain in effect 120 days or until the final Rule becomes effective, whichever occurs first.

**Title 7  
AGRICULTURE AND ANIMALS**

**Part I. Administration**

**Chapter 1. Administrative Procedure**

**§107. Emergency Airstrip for Agricultural Purposes Program**

A. Creation. There is hereby established within the Department of Agriculture and Forestry a program to designate certain roads as emergency airstrips to aid in the use of aircraft for agricultural purposes to be known as the "Emergency Airstrip for Agricultural Purposes Program."

**B. Declaration of Emergency**

1. The department may declare an agricultural emergency to exist which requires the use of portions of designated roads as airstrips for agricultural purposes when conditions are such that agricultural turf airstrips are rendered unavailable for safe use.

2. Each declaration of agricultural emergency shall be in writing and contain a declaration number, the date, and a list of the portions of designated roads which may be utilized as airstrips during the agricultural emergency.

3. The department shall provide a copy of the declaration to the sheriff and police jury for the parish in which each of the designated roads is located, and the Aviation Division of the State Department of Transportation and Development (hereinafter referred to as "DOTD") prior to utilization of the emergency airstrip. If the designated road is a state road, a copy of the declaration should also be provided to the communications center at State Police Headquarters and to the secretary of DOTD. If a designated road is located on the parish line, a copy of the declaration must be provided to the sheriff and police jury for both parishes.

4. The appropriate law enforcement entity as set forth in Subsection B.3 of this Section shall be responsible for implementing security and safety requirements for road traffic during periods when a road designated for use as an emergency airstrip to aid in the use of aircraft for agricultural purposes is actually utilized for that purpose. At a minimum, the appropriate law enforcement entity shall have at least one officer at the site and signs shall be placed at each end and at all approach ramps of a designated road to notify persons that the road is designated for use as an emergency airstrip to aid in the use of aircraft for agricultural purposes. The officer will insure that whenever aircraft are in the process of landing, taking off, or taxiing, there shall be no movement of vehicles on the emergency airstrip or within 500 feet of each landing threshold of the emergency airstrip. The enforcement entity providing said officer shall have the option of cost recovery for services from the party requesting use of the emergency airstrip.

**C. Designation of Roads**

1. Upon declaration by the department that an agricultural emergency exists, certain roads, including but not limited to dead-end roads and strategically placed parish roads, may be designated by the department for use as airstrips to aid in the use of aircraft for agricultural purposes.

2. Whenever possible, the department shall pre-designate a portion of a road for use as an emergency agricultural airstrip for use in the event a declaration of an agricultural emergency is made by the department. The request for pre-designation must be made by mail or facsimile to the department and include the following information:

- a. location of the road marked on a topography map;
- b. reason for designation; and
- c. a statement that the road meets all the criteria set forth in Subsection C.3 or a statement setting forth the reasons why a waiver under Subsection C.4 should be issue.

3. Predesignated emergency agricultural airstrips shall be inspected and registered by DOTD Aviation using similar criteria as utilized by DOTD in the registration of an agricultural use permanent airstrip. The registration certificate shall be issued to and held by the department. The registered and designated airstrip shall be marked and signed as such. Persons seeking predesignation must contact the Aviation Division of DOTD for specifications regarding the appropriate marking and signage required for the registered and designated emergency airstrip.

4. The department may authorize use of airstrips which have not been pre-designated and registered with the Aviation Division of DOTD, on a case by case basis, when safety and aircraft performance would not be compromised by such waiver and the use of said road as an emergency agricultural airstrip is deemed necessary by the department. Any such airstrip authorized shall, at a minimum, meet all of the following:

- a. the surface must be flat and straight for a minimum distance to 2,000 feet;
- b. the width shall be a minimum of 20 feet for the full length of the landing area. Sufficient wing tip clearance shall be provided as required for the aircraft utilizing the emergency agricultural airstrip;
- c. there shall be no potholes or depressions greater than 3 inches in depth over the entire landing surface;
- d. there shall be no vertical obstructions such as utility poles, trees, buildings, road signs, mail boxes, etc., on more than one longitudinal side of the landing surface;
- e. there shall be no overhead obstructions such as utility lines, overpasses, bridges, etc., for the full length of the landing area and within 500 feet of each landing area threshold;
- f. each landing area threshold shall be marked in such a way as to be readily identified from an aircraft in flight (e.g., white or orange cones, buckets, or painted tires); and
- g. threshold markers shall be placed on either side of the landing area at the thresholds and shall be no taller than 24 inches.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:18.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

Bob Odom  
Commissioner

9703#015

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

Qualifications for Jockey/Apprentice Jockey and  
Applicant for License (LAC 46:XLI.701 and 703)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective March 7, 1997, and it shall remain in effect for 120 days or until this Emergency Rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to amend this Rule to eliminate probationary rides/mounts. This will prevent any jockey or apprentice jockey from riding while unlicensed.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLI. Horseracing Occupations

#### Chapter 7. Jockeys and Apprentice Jockeys

#### §701. Qualifications for Jockey/Apprentice Jockey

Any person desiring to participate in this state as a jockey and has never ridden in a race may be issued a jockey or apprentice jockey license upon the recommendation of the stewards granting permission to such person for the purpose of riding in two races to establish the qualifications and ability of such person for the license, provided, however:

1. such person has the qualifications of a permittee and has at least one year of experience with racing stables;
2. a licensed trainer certifies in writing to the stewards that such person has demonstrated sufficient horsemanship to be granted a jockey or apprentice jockey license;
3. the starter has schooled such person breaking from the starting gate with other horses and approves such person as capable of starting a horse properly from the starting gate in a race;
4. the stewards in their sole discretion are satisfied such person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in the race.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:148, R.S. 4:150 and R.S. 4:169.

**HISTORICAL NOTE:** Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), LR 3:26 (January 1977), repromulgated LR 4:275 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 23:

#### §703. Applicant for a License

A. In addition to Rules applicable to permittees, an applicant for a license as a jockey or apprentice jockey:

1. must have served at least one year with racing stables;
2. must provide an annual medical affidavit certifying such person is physically and mentally capable of performing the activities and duties of a licensed jockey or exercise person.

B. The stewards may require that any jockey or exercise person provide blood or urine samples for analysis after consultation with the track physician. Should a jockey or exercise person fail to comply with this requirement this person shall be suspended and referred to the commission to show cause for refusing to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150, R.S. 4:151 and R.S. 4:169.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), LR 3:27 (January 1977), repromulgated LR 4:275 (August 1978), amended LR 10:593 (August 1984), amended by the Department of Economic Development, Racing Commission, LR 23:

Paul D. Burgess  
Executive Director

9703#039

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Water Resources

#### Produced Water Discharge Extension [Adoption of Emergency Rule] (WP023E-B)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality (department) to use emergency procedures to establish Rules, and of R.S. 30:2011 and R.S. 30:2074, which allow the department to establish standards, guidelines, and criteria, to promulgate Rules and Regulations, and to issue compliance schedules, the secretary of the department hereby finds that imminent peril to the public welfare exists. The department adopts the Emergency Rule published below (LAC 33:IX.708.C)(WP023E-B) effective February 26, 1997, for 120 days, or until promulgation of the final Rule, whichever occurs first.

This Emergency Rule replaces WP023E and WP023E-A, published in the *Louisiana Register* on January 20, 1997. Accordingly, Emergency Rules WP023E and WP023E-A are repealed by the adoption of Emergency Rule WP023E-B. Adopted this 26th day of February, 1997.

J. Dale Givens  
Secretary

9703#009

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Water Resources

#### Produced Water Discharge Extension [Declaration of Emergency] (LAC 33:IX.708) (WP023E-B)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality (department) to use emergency procedures to establish Rules, and of R.S. 30:2011 and R.S. 30:2074, which allow the department to establish standards, guidelines, and criteria, to promulgate Rules and Regulations, and to issue compliance schedules, the secretary of the department made a finding that imminent peril to the public welfare exists. The department adopted Emergency Rule WP023E-B effective February 26, 1997, for 120 days, or until promulgation of the final Rule, whichever occurs first.

Adoption of Emergency Rule WP023E-B repealed and replaced Emergency Rules WP023E and WP023E-A, published in the *Louisiana Register* on January 20, 1997.

This Declaration of Emergency provides the reasons for the secretary's finding and includes specific reasons why the failure to adopt the Rule on an emergency basis would result in imminent peril to the public welfare.

#### Regulatory History of Produced Water

The secretary hereby finds the following to be the history of produced water and its regulation in the State of Louisiana:

1. Discharges of produced water have existed since the 1940's.
2. A 1953 Rule allowed produced water discharges to any stream not used for drinking water purposes.
3. By 1968, discharge to most freshwater areas was banned.
4. Many LWDPs permits have prohibited discharges of produced water beginning in 1988.
5. In March of 1991, state regulations were promulgated concerning produced water. DEQ's 1991 regulations required a phase-out of coastal produced water discharges by 1997.
  - a. Continued produced water discharges to major deltaic passes of the Mississippi and Atchafalaya Rivers could be authorized in a valid LWDPs permit.
  - b. DEQ Regulations provided for extensions of time to discharge produced water in coastal regions up to January 1, 1997.
  - c. All discharges of produced water (except for those to Mississippi and Atchafalaya River areas) had to cease by January 1, 1997.
6. EPA Region 6 issued NPDES general permits effective February 1995.
  - a. The general permits prohibit discharge of produced water to Louisiana and Texas coastal waters.
  - b. Although the general permits absolutely prohibit any discharge of produced water of coastal origin, exceptions to that prohibition are found in an EPA administrative order, effective February 1995. That order allowed extensions of time to comply with the prohibition until January 1997.

c. The general permit effective in Louisiana did not cover discharges of produced water from the offshore subcategory to the Mississippi River and the Atchafalaya River (below Morgan City).

7. EPA guidelines and standards for coastal waters were promulgated in December 1996 and effective on January 14, 1997 (the guidelines).

a. The guidelines banned *all* discharges to the coastal area.

b. The guidelines required all remaining Mississippi and Atchafalaya River discharges to cease.

c. The federal guidelines note at page 66122-23 the following:

"EPA received numerous comments from operators in the Gulf of Mexico coastal region claiming that they would need additional time to comply with the Rule's zero discharge requirement for produced water. EPA recognizes that it may take some time for operators to determine the best and most cost effective mechanism of compliance and to implement that mechanism. EPA also recognizes that the NPDES permit issuing authority has discretion to use administrative orders to provide the requisite additional time to meet zero discharge."

d. The Department's Office of Water Resources became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996.

e. Consistent with the guidelines, EPA has recognized the need to allow additional time for facilities to come into compliance with the ban.

f. EPA issued administrative orders in the State of Texas that document continued produced water discharges after the January 14, 1997 deadline and which set forth compliance schedules for the termination of such discharges over a period of two years.

8. On December 30, 1996, the department issued Emergency Rule WP023E to prevent imminent peril to the public welfare, specifically to prevent the loss of employment, taxes, and royalties that would result if all remaining produced water discharges were eliminated on January 1, 1997.

a. The Emergency Rule allowed additional time for a limited number of facilities to cease produced water discharges.

b. Emergency Rule WP023E-A was issued on January 6, 1997, to correct an omission in the original Emergency Rule.

c. Emergency Rule WP023E-B repealed and replaced Emergency Rules WP023E and WP023E-A.

#### **Additional Findings**

The secretary also finds the following:

1. Facilities were still discharging produced water on January 1, 1997.

2. Facilities still discharging produced water after January 1, 1997 are subject to enforcement action by both DEQ and EPA.

3. Produced water is a commonly produced byproduct of oil and gas production.

4. To continue operating, an oil and gas production facility for which produced water is a natural byproduct must either discharge the produced water or inject it into an injection well approved by the Department of Natural Resources.

5. For various reasons, certain facilities would not be able to cease all discharges by January 1, 1997:

a. The Department of Natural Resources experienced a personnel shortage, which prevented it from processing before January 1, 1997, all of the applications for injection wells on file in December 1996.

b. Some Mississippi and Atchafalaya River dischargers had valid state permits allowing continued discharge (in conflict with the December 1996 federal guidelines and standards).

c. Some bay dischargers had relied on Department of Energy study results to allow continued discharge by state permit.

6. The federal guidelines at page 66087 note the reliance of bay dischargers on the DOE study:

"The United States Department of Energy (DOE) has provided the State of Louisiana with comments and analyses suggesting a change to the Louisiana state law requiring zero discharge of produced waters to open bays by January 1997. Promulgation of [these December 16, 1996 federal guidelines] would generally preclude issuance of permits allowing discharges."

7. The department accepted information that was part of the DOE study referenced in LAC 33:IX.708.C.2.b.iv.(e), as documented at 61 Federal Regulation 66087.

8. The DOE study results focus on minimal water quality impact to urge discharges be allowed.

9. The EPA guidelines use Best Available Technology (BAT) to require all discharges to cease.

#### **Findings and Considerations Regarding Environmental and Economic Costs and Benefits**

The secretary is the primary public trustee of the environment. He has a duty to provide environmental protection insofar as possible and consistent with the health, safety, and welfare of the people of the State of Louisiana. In fulfillment of that duty, the secretary finds that the adverse environmental impacts resulting from issuance of Emergency Rule WP023E-B have been minimized or avoided as much as possible consistent with the public welfare, as detailed below.

#### **Environmental Costs and Benefits**

Environmental costs and benefits were considered. During the 1953 to 1997 time frame, produced water discharges to areas of greatest environmental impact were limited or eliminated. Of the coastal area discharges which now remain, the majority of discharges are to major passes of the Mississippi River or to bay areas. These areas have less potential for environmental damage than locations such as dead end canals, due to greater water circulation.

As part of the development and consideration for the March 1991 regulations that prohibited produced water discharges, DEQ, in cooperation with the Louisiana State University Institute for Environmental Studies, performed a

# DECLARATION OF EMERGENCY

## Office of the Governor Crime Victims Reparations Board

### Definitions (LAC 22:XIII.103)

The following amendments are published in accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 46:1801 et seq., the Crime Victims Reparations Act, which allows the Crime Victims Reparations Board to promulgate Rules necessary to carry out its business or the provisions of the Chapter. The board hereby finds that an emergency exists whereby victims, or the claimants in the case of deceased victims, will suffer an immediate, detrimental financial loss in federal grants estimated at \$6,724,000 over the next year if these amendments are not immediately implemented. This Emergency Rule provides for a broader definition of a victim to include those Louisiana residents who are victims of an act of terrorism whether the terrorism occurs in the United States or in another country. Furthermore, the changes remove any restrictions that would prohibit a victim from receiving compensation solely because another state or country had a compensation program, and will ensure compliance with federal grant requirements. In order to prevent additional harm to victims and their families, the board adopts this Emergency Rule effective April 1, 1997. It shall remain in effect for 120 days or until the final Rule takes effect through the normal promulgation process, whichever comes first.

### Title 22

## CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

### Part XIII. Crime Victims Reparations Board

#### Chapter 1. Authority and Definitions

#### §103. Definitions

\* \* \*

*Victim*—

\* \* \*

b. a resident of Louisiana who is a victim of an act of terrorism(as defined in Section 2331 of Title 18, *United States Code*) occurring outside the U.S., or

c. a Louisiana resident who suffers personal injury or death as a result of a crime described in R.S. 46:1805 except that the criminal act occurred outside of this state. The resident shall have the same rights under this Chapter as if the Act had occurred in this state upon a showing that the state in which the act occurred does not have an eligible crime victims reparations program and the crime would have been compensable had it occurred in Louisiana. In this Subparagraph, *Louisiana Resident* means a person maintained a place of permanent abode in this state at the time the crime was committed for which reparations are sought.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 20:709 (August 1996), LR 23:

Lamarr Davis  
Chairman

9703#008

# DECLARATION OF EMERGENCY

## Department of Health and Hospitals Board of Veterinary Medicine

### Animal Euthanasia Technicians Suspension of Rule (LAC 46:LXXXV.1201)

The Board of Veterinary Medicine has adopted the following Emergency Rule, effective March 10, 1997, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), and it shall be in effect for 120 days.

It has come to the attention of the Board of Veterinary Medicine that persons have completed the board's approved certified animal euthanasia technician course, but, acting in good faith, did not complete the certification process. Further, these persons have been performing the functions of certified animal euthanasia technicians. Upon learning of this violation of the Rules for certification, these persons have reported themselves to the board and requested certification. Under its current Rule LAC 46:LXXXV.1201.E, the board may not accept the application for certification from these persons for a two-year period. The rejection of these applications has the great potential of leaving some animal shelters in the state without a certified animal euthanasia technician, thereby hindering these shelters' ability to control the animal population in their communities, including the ability to euthanize diseased or otherwise dangerous animals.

Therefore, to protect the public health and safety, the board has suspended LAC 46:LXXXV.1201.E for a period of 120 days, to allow persons who have already completed the board's approved course for certified animal euthanasia technicians to receive temporary certificates in accordance with LAC 46:LXXXV.1207.

### Title 46

## PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part LXXXV. Veterinarians

#### Chapter 12. Certified Animal Euthanasia Technicians

#### §1201. Applications for Certificates of Approval

A. - D. ...

E. *Suspended for 120 days, effective March 10, 1977.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 23:

Charles B. Mann  
Executive Director



**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Professional Conduct— Specialty  
List (LAC 46:LXXXV.1063)

The Board of Veterinary Medicine has adopted the following Emergency Rule, effective March 10, 1997, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), and it shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

This Emergency Rule is necessary to promote the public health, safety, and welfare by safeguarding the people of this state from veterinarians who may state or imply that they are certified or recognized specialists without appropriate board certification in such specialty, thereby protecting the public from the actions of persons who could otherwise claim to be specialists.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 10. Rules of Professional Conduct**

**§1063. Specialty List**

A. ...

B. A veterinarian may not use the term *specialist* for an area of practice for which there is not AVMA recognized certification.

C. A diplomate of the American Board of Veterinary Practitioners can claim only a specialty for the class of animals in which he specializes, not for medical specialties unless he is board-certified in those medical specialties.

D. The term *specialty* or *specialists* is not permitted to be used in the name of a veterinary hospital unless all veterinary staff are board-certified specialists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518(A)(9).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), LR 23:

Charles B. Mann  
Executive Director

9703#055

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of Public Health**

Orleans Parish Individual Sewage

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 36:258(B) and 40:5(9), the secretary of the Department of Health and Hospitals is adopting the following Emergency Rule governing installation of individual sewage systems in certain

areas of Orleans Parish. Concurrently, a Notice of Intent to establish a permanent Rule is being published in accordance with the Administrative Procedure Act, R.S. 49:953(B).

The present Rule inadvertently prohibits those individuals with failing and/or inadequate sewage treatment systems from upgrading or replacing their systems thereby exposing their families to disease and pollution of the state's waterways.

The effective date of this Emergency Rule is February 17, 1997, and shall remain in effect for 120 days or until the Rule takes effect through the normal promulgation process, whichever occurs first.

**Emergency Rule**

The Department of Health and Hospitals, Office of Public Health prohibits the installation of individual sewage systems in the following areas of Orleans Parish:

- 1) property between the Chef Pass and the Rigolets, outside the hurricane protection levee; and
- 2) property on the Lake Pontchartrain side of the LandM Railroad tracks that parallel Hayne Boulevard outside the hurricane protection levee; and
- 3) property on either side of US Highway 11 between Powers Junction and Interstate 10, commonly referred to as Irish Bayou.

This does not preclude the installation of approved individual sewage disposal systems on individually owned lots of record, i.e., those legally established and duly recorded with the parish prior to July 28, 1967, or those lots legally established and duly recorded with the parish that meet the minimum lot size prescribed in the State Sanitary Code.

Bobby P. Jindal  
Secretary

9703#013

**DECLARATION OF EMERGENCY**

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

Case Management Services Reimbursement  
Infants and Toddlers with Special Needs

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in accordance with the Administrative Procedure Act, R.S. 49:953(B) et seq., and it 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 reimbursement for optional targeted case management services to infants and toddlers who are categorized as developmentally disabled under the ChildNet Program.

An Emergency Rule was adopted on September 24, 1996, limiting case management services to those infants and toddlers who either receive services under the MR/DD waiver or who receive two or more specified Medicaid services

(*Louisiana Register*, Volume 22, Number 9). The department subsequently repealed the September 24, 1996 Emergency Rule and reduced the reimbursement rate for these services, effective December 1, 1996, in a subsequent Emergency Rule (*Louisiana Register*, Volume 22, Number 11).

After consultation with the Department of Education regarding ChildNet Services, the bureau has now determined it is necessary to increase the reimbursement for case management services for infants and toddlers. This action is necessary to maintain the health and welfare of these children by assuring continued access to case management services to assist their families in obtaining necessary medical, social and educational services.

It is anticipated that implementation of this Emergency Rule will increase expenditures by approximately \$88,400 for the remainder of fiscal year 1996-1997.

#### **Emergency Rule**

Effective for dates of service on or after March 13, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing increases reimbursement for case management services for infants and toddlers with special needs to \$115.

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 inquires regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bobby P. Jindal  
Secretary

9703#044

### **DECLARATION OF EMERGENCY**

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

#### **Disproportionate Share Hospital Payment Methodology**

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 in accordance with the Administrative Procedure Act R.S. 49:953(B) et seq. and shall be in effect for the maximum allowed under the Administrative Procedure Act or until adoption of the Rule, whichever occurs first.

Hospital disproportionate share (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) which amended Section 1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal regulation and to avoid a

budget deficit in the medical assistance programs, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under that methodology, public state-operated hospitals receive DSH payments equal to 100 percent of the hospital's net uncompensated costs, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

In order to assure continued fiscal viability of community hospitals, Act Number 17 (House Bill Number 1) of the 1996 Louisiana Legislature provides for separate treatment of disproportionate share funds for uncompensated costs in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals. To accommodate this proviso, this Emergency Rule provides that all hospitals other than public state-operated hospitals are separated into two groups: the first is composed of small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals, and the second contains all other hospitals. The latter group is composed of two pools, acute care hospitals and psychiatric hospitals. Previous provisions concerning DSH methodology for public state-operated hospitals continues unchanged. There is no increase or decrease in DSH funds as the result of this Emergency Rule, therefore there is no fiscal impact to the state or federal government.

Failure to adopt this Emergency Rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients.

#### **Emergency Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies excluding disproportionate share qualification criteria and establishes the following regulations to govern the disproportionate share hospital payment methodologies for public state-operated, private hospitals and public nonstate hospitals.

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

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

B. Disproportionate share payments cumulative for all DSH payments under all DSH payment methodologies shall not exceed the federal disproportionate share state allotment 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 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 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. Only hospitals that return DSH qualification documentation timely 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—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 payor 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.

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

## II. Reimbursement Methodologies

### A. Public State-Operated Hospitals

#### 1. Definitions:

*Public State Operated Hospital*—a hospital that is owned or operated by the State of Louisiana.

2. Payment Methodology. 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 II.A.3 below. 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 each year 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 Nonstate-Operated Local Government Hospitals and Small Private Rural Hospitals

1. Criteria for hospitals to be included in this group are as follows:

Qualifying hospitals must be 1) small and 2) either a nonstate public-owned and operated or a private rural hospital as defined below. Hospitals/beds located outside the service district area or rural area may not be included in this pool, but will be included in the all other hospitals pools. Beds located outside the service district will be used by DHH to determine

qualification, but costs associated with these beds will not be used to determine reimbursement. Freestanding psychiatric hospitals are not included.

#### 2. Definitions

*Public Local Government Acute Hospitals*—local government-owned acute care general, rehabilitation, and long term care hospitals including distinct part psychiatric units are qualified for this designation. Only uncompensated costs attributable to beds/units located within the service district area qualify for inclusion.

*Private Rural Hospitals*—privately owned acute care general, rehabilitation and long-term care hospitals designated as rural hospitals by Medicare, including distinct part psychiatric units are qualified for this designation. Only uncompensated cost attributable to beds/units located within the rural area qualify for inclusion.

*Small*—having 60 or less licensed beds as of July 1 of the state fiscal year to which the payment is applicable. The number of beds includes distinct part psychiatric beds, and excludes nursery and skilled nursing beds.

*Rural*—rural area as it applies to small private rural hospitals is considered rural areas of the parish in which the facility is domiciled.

3. Payment is based on each qualifying hospital's pro rata share of uncompensated cost for the previous state fiscal year for all hospitals meeting these criteria multiplied by the amount set for these facilities.

4. A pro rata decrease necessitated by conditions specified in I.B above for nonstate hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' uncompensated costs by the uncompensated costs for all qualifying nonstate 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 apportioned amount.

### C. All Other Hospitals (Private Rural Hospitals over 60 Beds, All Private Urban Hospitals, Public Nonstate Hospitals over 60 Beds, and All Free-standing Psychiatric Hospitals Exclusive of State 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 latest month at least 30 days preceding the date of payment which 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 Hospital—acute care, rehabilitation, and long-term care hospitals not described in II above (excluding distinct part psychiatric units) are qualified for this designation. Acute care, rehabilitation, and long-term care hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Acute care, rehabilitation, and long-term care hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

b. Psychiatric Hospital—Freestanding psychiatric hospitals and distinct part psychiatric units not included in II

above are qualified for this designation. Psychiatric hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Psychiatric hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

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) 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. 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.

5. A pro rata decrease necessitated by conditions specified in I.B above 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, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule.

Bobby P. Jindal  
Secretary

9703#043

## **DECLARATION OF EMERGENCY**

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

Home Care for the Elderly Waiver

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

accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) 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, Office of the Secretary, Bureau of Health Services Financing administers four Home and Community Based Services Waiver Programs. Participation in each home and community based services waiver is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. Home and community based services waiver programs are based on federal criteria which allows services to be provided in a home or community based setting for a recipient who would otherwise require institutional care. Costs for participants of the program must not exceed the costs for recipients of institutional care. Currently, daily costs in the Home Care for the Elderly waiver are exceeding the costs of comparable residents of nursing homes, thus jeopardizing the program. Therefore, in order to be able to continue this program the bureau is making changes in admissions criteria, the target population, management of services, and types of services available.

The following Emergency Rule is necessary to maintain federal financial participation for the Home Care for the Elderly waiver program and to preserve the health and welfare of individuals participating in that program. It is anticipated that implementation of this Emergency Rule will decrease expenditures by approximately \$210,000 for state fiscal year 1996-1997.

### **Emergency Rule**

Effective April 1, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the Home Care for the Elderly waiver program to:

- 1) redefine the target population served by the waiver and rename the waiver;
- 2) establish an average cost per day limit each participant of the waiver;
- 3) establish and define new services;
- 4) establish methodology for the assignment of slots; and
- 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and previously unoccupied waiver slots; admission and discharge criteria; the array of services; calculation of waiver costs; mandatory reporting requirements and reimbursement for services provided prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

### **Definition of Targeted Population for the Waiver**

This home and community based services waiver is targeted at persons who qualify for admission to a nursing facility and are over age 65 or adults, age 21 or over, who are disabled according to Medicaid standards. It shall be called the Elderly and Disabled Adult waiver.

### **Guarantee of Waiver Costs**

In order to assure the cost effectiveness of this entire home and community based services waiver each participant shall be limited to an array of services whose average cost per day shall not exceed a limit set by the bureau. This figure shall be set annually at a percentage of the average costs borne by the Medicaid program for the equivalent population receiving nursing facility services, with an allowance for temporary, brief periods of excess costs in order to maintain a participant in the community. Case managers shall complete a budget analysis form as part of each care plan which shall list the types and number of services necessary to maintain the waiver participant safely in the community, the cost of those services and the average cost per day covered by the care plan.

### **Programmatic Allocation of Waiver Slots**

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. Each waiver slot may be filled only once during each waiver year. When funding becomes available for a new waiver slot or a slot that has been vacated in the previous waiver year, staff of the Intake Offices at the local Councils on Aging shall notify the next individual in order of application on the waiting list in writing that a slot is available and that they are next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the Health Standards Section of BHSF. A case manager assists in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the Council on Aging office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified.

### **Waiver Admission Criteria**

Admission to this Waiver Program shall be determined in accordance with the following criteria.

1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
2. initial and continued eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the Health Standards Section of BHSF.

### **Waiver Discharge Criteria**

Participants shall be discharged from this Waiver Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish BHSF Office;
2. loss of eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;

3. incarceration or placement under the jurisdiction of penal authorities, or courts;

4. change of residence to another state with the intent to become a resident of that state;

5. admission to a nursing facility or any other long term care institutional setting;

6. the health and welfare of the waiver participant cannot be assured in the community through the provision of amounts of waiver services within the cost cap as determined by the Health Standards Section of BHSF, i.e., the waiver participant presents a danger to himself or others;

7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or

8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14 or more consecutive days. This does not include interruptions in services because of hospitalization.

### **Mandatory Reporting Requirements**

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility, including but not limited to those changes cited in the discharge criteria, to either the parish BHSF Office or the Health Standards Section of BHSF within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Health Standards Section of BHSF within five working days of the incident.

### **Definition of Services**

The following services will be made available to participants in this waiver by employees of Personal Attendant Provider agencies in half hour increments:

1. *Personal Care Attendant*—assistance with eating, bathing, dressing, personal hygiene, or activities of daily living.

2. *Household Supports*—services consisting of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.

3. *Personal Supervision (day)*—non-medical care, supervision and socialization, provided to a functionally impaired adult. Personal supervisors may assist or supervise the individual with such tasks as meal preparation, laundry and shopping, but do not perform these activities as discrete services as the household support worker does. The provision of this service does not entail hands-on nursing care.

4. *Personal Supervision (night)*—this type of supervision is to provide for the safety of individuals living alone who are limited in mobility or cognitive function to such an extent that they may not be able to preserve their own safety in dangerous situations.

### **Reimbursement of Waiver Services**

Reimbursement shall not be made for waiver services provided prior to the BHSF approval of the care plan.

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, 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 parish Medicaid offices for review by interested parties.

Bobby P. Jindal  
Secretary

9703#045

## DECLARATION OF EMERGENCY

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

Hospital Program—Outpatient Laboratory Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is adopting 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 and as directed by the 1996-97 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 remain in effect for the maximum period allowed.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses hospitals for outpatient laboratory services. The bureau has differentiated in the reimbursement rate for outpatient hospital laboratory services from laboratory services performed in a nonhospital setting. Effective July 7, 1995, the bureau reduced the reimbursement for laboratory services except for those services performed in an outpatient hospital setting (*Louisiana Register*, Volume 21 Number 7, page 649). The bureau adopted two Emergency Rules effective August 1, 1996 and November 20, 1996 which reduced the reimbursement for outpatient hospital laboratory services subject to the Medicare fee schedule in order to achieve a uniform reimbursement methodology for all laboratory services subject to the Medicare fee schedule regardless of the setting in which the services are performed (*Louisiana Register*, Volume 22, Numbers 7 and 11, pages 573 and 1082). The following Emergency Rule is necessary to maintain the cost savings initiated by the August 1, 1996 and November 20, 1996 Emergency Rulemaking, thereby avoiding a budget deficit in the Medical Assistance Program.

### Emergency Rule

Effective March 20, 1996, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses hospitals for outpatient laboratory services as described below:

A uniform reimbursement methodology for all laboratory services subject to the Medicare fee schedule is established regardless of the setting in which the services are performed. The reimbursement rate for outpatient hospital laboratory services subject to the Medicare fee schedule are reimbursed at the same reimbursement rate for laboratory services provided in a nonhospital setting.

Bobby P. Jindal  
Secretary

9703#046

## DECLARATION OF EMERGENCY

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

Targeted Case Management  
Services and Reimbursement

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

The Bureau of Health Services Financing currently funds case management services to the following specific population groups:

1. developmentally delayed infants and toddlers (termed infants and toddlers with special needs under this Emergency Rule);
2. pregnant women in need of extra perinatal care (termed high-risk pregnant women under this Emergency Rule) (limited to the metropolitan New Orleans area);
3. HIV disabled individuals (termed persons infected with HIV under this Emergency Rule);
4. participants in Home- and Community-Based Services Waiver Program who receive case management as a separate service;

The following groups have previously received case management services: seriously mentally ill, MR/DD persons who were not participants of the MR/DD Waiver Program; and ventilator-assisted children.

Previously, these services have been implemented and governed under specific program regulations. The department seeks to enhance all these services to the optimal level while streamlining their administration and establishes enhanced regulations governing consumer eligibility, provider enrollment, provider standards for participation and reimbursement methodology and requirements, and general provisions. The department adopted Emergency Rules to ensure uniform standards for the quality of the services delivered to these persons with special physical and/or health

needs and conditions effective July 22, 1994 and August 13, 1994 (*Louisiana Register*, Volume 20, Numbers 6 and 7). Subsequent Emergency Rules continued this initiative in force as published in the *Louisiana Register* (November 20, 1994, Volume 20, Number 11; April 20, 1995, Volume 21, Number 4; August 20, 1995, Volume 21, Number 8; November 20, 1995, Volume 21, Number 11; March 20, 1996, Volume 22, Number 3; and July 20, 1996, Volume 22, Number 7). In addition the Bureau adopted emergency rulemaking to revise the reimbursement methodology based on the 15-minute unit of service for the on-going services component to adoption of the flat rate. This revised reimbursement methodology was implemented effective October 1, 1995 (*Louisiana Register* Volume 21 Number 10) which included a monthly reimbursement rate for both components of case management services, the initial assessment/service plan development and the ongoing services. Monthly reimbursement rates were assigned for each population group based upon minimum standards for service delivery for each of these groups. Effective March 1, 1996 the department adopted an Emergency Rule (*Louisiana Register*, Volume 22, Number 3) which provided for the payment of a one-hour minimum of service delivery and additional 15-minute incremental units up to a cap of the monthly rate once the initial one-hour service minimum is met. The June 11, 1996 Emergency Rule (*Louisiana Register*, Volume 22, Number 6) continued the flat rate methodology and the subsequent modification of this methodology as cited above. These provisions were continued with the adoption of the October 9, 1996 Emergency Rule (*Louisiana Register*, Volume 22, Number 10) which also continued the program reductions implemented this state fiscal year (*Louisiana Register*, Volume 22, Number 6, pages 556 and 574). In addition the department also adopted emergency rulemaking effective September 24, 1996 (*Louisiana Register*, Volume 22, Number 9) limiting case management services to infants and toddlers who either receive services under the MR/DD waiver or who receive two or more specified Medicaid services. The department repealed the limitations on Infants and Toddler Case Management Services in the September 24, 1996 Emergency Rule and reduced the reimbursement rate for these services (*Louisiana Register*, Volume 22, Number 11). The department has now determined it is necessary to amend the December 1, 1996 Emergency Rule to remove the reimbursement rates, but maintain the reimbursement methodology as part of the Rule. In addition, we are reinstating those components of the standards for participation and payment that were inadvertently omitted from the December 1, 1996 Emergency Rule. This action is necessary to continue the provisions of this initiative in force until a final Rule is adopted.

#### **Emergency Rule**

Effective for dates of service March 31, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions to govern case management services including consumer eligibility requirements, provider enrollment, provider standards for participation and reimbursement methodology and general provisions. These provisions apply

to case management services provided either to targeted population groups or to waiver participants who receive case management services as a separate service. These include the following groups of individuals:

1. infants and toddlers with special needs;
2. high-risk pregnant women;
3. persons infected with HIV;
4. persons in Waiver Program(s) who receive case management as a separate service.

All case management providers must follow the policies and procedures included in this notice as well as in the Department of Health and Hospitals *Case Management Provider Manual*. Under this Rule the term *Case Management* has the same meaning as the term *Family Service Coordination*. Case management services must be delivered in accordance with all applicable federal and state laws and regulations.

The department amends the December 1, 1996 Emergency Rule to remove the reimbursement rates, but continues the reimbursement methodology set forth in the Emergency Rule for the Targeted Case Management Services Program. In addition, we are reinstating those components of the standards for participation and payment that were inadvertently omitted from the December 1, 1996 Emergency Rule.

#### **I. Standards of Participation**

In order to be reimbursed by the Medicaid Program, a provider of targeted or waiver case management service must comply with all of the requirements listed below. Exceptions may be granted by the secretary on a case-by-case basis as determined by an assessment of available services in the community.

A. **Provider Enrollment Requirements.** Case management agencies who wish to provide Medicaid-funded targeted or waiver case management services must contact the department to request an enrollment packet and copy of the DHH *Case Management Provider Manual*. Applicants must indicate the population(s) and the geographical areas they wish to serve. The provider must meet all applicable licensure, general standards for participation in the Medicaid Program and specific provider enrollment and participation requirements for the population(s) to be served. Each enrolling agency must also submit a separate provider agreement (Form PE-50) and Disclosure of Ownership form to DHH for each targeted or waiver population and geographical area (DHH region) the agency plans to serve. Each office site of a case management agency must be enrolled separately. Approval by DHH entitles the agency to provide services in the parishes of that DHH region only. This requirement is applicable to both new providers and existing providers already enrolled. When an agency wishes to provide case management services in a parish in another region and that parish is not contiguous to the parish in which an enrolled office site is located, the agency must establish an office in the other region, submit a separate enrollment packet, and receive DHH approval to provide services in that DHH region regardless of the number of case managers providing services in the new region. When there are less than three case managers providing services in a parish in another region and that parish is contiguous to the parish in which an enrolled office site is located, the agency is not required to establish an office in the other region.

In accordance with Section 4118(i) of the Omnibus Budget Reconciliation Act (OBRA) of 1987, Public Law 100-203, the department may restrict enrollment and service areas of agencies that are enrolled in the Medicaid Program to provide case management services to developmentally disabled consumers including infants and toddlers with special needs in order to ensure that the case management providers available to these targeted groups and any subgroups are capable of ensuring that the targeted consumers receive the full range of needed services. Case management agencies must meet the enrollment requirements listed below to be approved for enrollment.

All applicant case management agencies must meet the requirements listed in 1-16 below to participate as a case management provider in the Medicaid Program, regardless of the targeted or waiver group served:

1. have demonstrated direct experience in successfully serving the target population and demonstrated knowledge of available community services and methods for accessing them including all of the following:

a. have established linkages with the resources available in the consumer's community;

b. maintain a current resource file of medical, mental health, social, financial assistance, vocational, educational, housing and other support services available to the target population;

c. demonstrate knowledge of the eligibility requirements and application procedures of federal, state, and local government assistance programs which are applicable to consumers served;

d. employ a sufficient number of qualified case manager and supervisory staff who meet the skills, knowledge, abilities, education, training, supervision, staff coverage and maximum caseload size requirements described in this document;

2. possess a current license to provide case management/service coordination in Louisiana or written proof of application for licensure;

3. demonstrate administrative capacity to provide all core elements of case management and insure effective case management services to the target population in accordance with licensing and DHH requirements by DHH review of the following:

a. current detailed budget for case management;

b. report of annual outside audit by a certified public accountant performed in accordance with generally accepted accounting principles;

c. cost report by September 30 of each year following 12 months of operation;

d. provider policies and procedures;

e. functional organization chart depicting lines of authority; and

f. program philosophy, goals, services provided, and eligibility criteria that define the target population or waiver group to be served;

4. assure that all case manager staff is employed by the agency in accordance with Internal Revenue Service (IRS) Regulations (including submission of a W-2 Form on each case manager). Contracting case manager staff is prohibited.

Contracting of supervisors must comply with IRS Regulations. Each case manager must be employed 20 hours per week;

5. assure that all new staff satisfactorily complete an orientation and training program in the first 90 days of employment and possess adequate case management abilities, skills and knowledge before assuming sole responsibility for their caseload and each case manager and supervisor satisfactorily complete case management related training on an annual basis to meet at least minimum training requirements described below. The provision and/or arranging of such training is the responsibility of the provider;

6. have a written plan to determine the effectiveness of the program and agrees to implement a continuous quality improvement plan approved by the department;

7. document and maintain an individual record on each consumer which includes all of the elements described in licensing standards for case management and in this document;

8. agree to safeguard the confidentiality of the consumer's records in accordance with federal and state laws and regulations governing confidentiality;

9. assure a consumer's right to elect to receive case management as an optional service and the consumer's right to terminate such services;

10. assure that no restriction will be placed on the consumer's right to elect to choose a case management agency, a qualified case manager, and other service providers and change the case management agency, case manager and service providers consistent with Section 1902(a)(23) of the Social Security Act;

11. if enrolled as a Medicaid case management provider after July 20, 1994, assure that the agency and case managers will not provide case management and Medicaid reimbursed direct services to the same consumer(s);

12. have financial resources and a financial management system capable of:

a. adequately funding required qualified staff and services;

b. providing documentation of services and costs;

c. complying with state and federal financial reporting requirements; and

d. submitting reports in the manner specified by Medicaid;

13. maintain a written policy for intake screening, including referral criteria;

14. maintain a written policy for transition and closure;

15. with the consumer's permission, agree to maintain regular contact with, share relevant information and coordinate medical services with the consumer's primary care or attending physician or clinic;

16. fully comply with the *Code of Governmental Ethics*.

Applicants must meet the following additional enrollment requirements for specific target groups:

17. demonstrate the capacity to participate and agree to participate in the Case Management Information System (CAMIS) and provide up-to-date data to the Regional Office and/or Program Office on a weekly basis via electronic mail applicable to infants and toddlers with special needs. CAMIS

and electronic mail software will be provided without charge to the provider;

18. have demonstrated successful experience with delivery and/or coordination of services for pregnant women; have a working relationship with a local obstetrical provider/acute care hospital providing deliveries for 24-hour medical consultation; have a multidisciplinary team consisting, at a minimum, of: a physician; primary nurse associate or certified nurse manager; registered nurse; social worker; and nutritionist. All team members must meet DHH licensure and perinatal experience requirements (applicable to high-risk pregnant women only);

19. satisfactorily complete a one-day training as approved by the Department of Health and Hospitals HIV Program Office.

An enrolled case management provider must re-enroll requesting a separate Medicaid provider number and is subject to the above-described enrollment requirements and procedures in order to provide case management services to an additional target population. Applicants will be subject to review by DHH to determine ability and capacity to serve the target population and a site visit to verify compliance with all provider enrollment requirements prior to a decision by the Medicaid Program on enrollment as a case management provider or at any time subsequent to enrollment. Enrolled case management providers will be subject to review by the DHH and the U.S. Department of Health and Human Services to verify compliance with all provider enrollment requirements at any time subsequent to enrollment.

If the applicant agency is determined to be eligible for enrollment, the agency will be notified in writing by the Medicaid Program of the effective date of enrollment and the unique Medicaid case management provider number for each office site and targeted or waiver group. If the department determines that the applicant case management agency does not meet the general or specific enrollment requirements listed above, the applicant agency will be notified in writing of the deficiencies needing correction. The applicant agency must submit appropriate documentation of corrective action taken. If the applicant agency fails to submit the required documentation of corrective action taken within 30 days of the notice, the application will be rejected. If the case management agency does not meet all of the requirements above, the applicant agency will be ineligible to provide case management services to any targeted or waiver group.

## **II. Standards of Payment**

In order to be reimbursed by the Medicaid Program, an enrolled provider of targeted or waiver case management service must comply with all of the requirements listed below. Exceptions may be granted by the secretary on a case-by-case basis as determined by an assessment of available services in the community.

A. **Staff Coverage.** All case managers must be employed by the case management agency a minimum of 20 hours per week and work at least 50 percent of the time during normal business hours (8 a.m. to 5 p.m., Monday through Friday). Contracting of case manager staff is prohibited. Case

management supervisors must be employed a minimum of eight hours per week for each full-time case manager (four hours a week for each part-time case manager) they supervise and maintain on-site office hours at least 50 percent of the time. A supervisor must be continuously available to case managers by telephone or beeper at all other times when not on site when case management services are provided. The provider agency must ensure that case management services are available 24 hours a day, seven days a week.

B. **Staff Qualifications.** Each Medicaid-enrolled provider must ensure that all staff providing targeted case management services have the skills, qualifications, training and supervision in accordance with licensing standards and the department requirements listed below. In addition, the provider must maintain sufficient staff to serve consumers within mandated caseload sizes described below.

1. **Education and Experience for Case Managers.** All case managers hired or promoted on or after July 22, 1994, must meet all of the following minimum qualifications for education and experience:

a. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and one year of paid experience in a human-service-related field providing direct consumer services or case management; or

b. a licensed registered nurse; and one year of paid experience as a registered nurse in public health or a human-service-related field providing direct consumer services or case management in the human-service-related field; or

c. a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education.

The above general minimum qualifications for case managers are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in the human-service-related field may be substituted for the year of required paid experience.

d. additional qualifications are required for service provision to High-Risk Pregnant Women and MR/DD waiver participants:

1. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and one year of paid experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; and demonstrated knowledge about perinatal care; or

2. a licensed registered nurse; and one year of paid experience as a registered nurse in public health or a human-service-related field providing direct consumer services or case management in the human-service-related field; and demonstrated knowledge about perinatal care; or

3. a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education; and demonstrated knowledge about perinatal care; or

4. a registered dietician; and one year of paid experience in providing nutrition services to pregnant women;

5. case managers who provide services to MR/DD waiver participants must have a minimum of one-year paid post-degree experience working directly with persons with mental retardation or developmental disabilities.

2. Education and Experience for Case Management Supervisors. A case management supervisor hired or promoted on or after July 22, 1994, or any other individual supervising case managers must meet all of the education and experience requirements listed below. Staff supervising case management for high risk pregnant women must meet the same qualifications as the case managers for these populations:

a. a master's degree in social work, psychology, nursing, counseling, rehabilitation counseling, education (with special education certification), occupational therapy, speech therapy or physical therapy from an accredited institution; and two years of paid post-master's degree experience in a human-service-related field providing direct consumer services or case management. One year of this experience must be in providing direct services to the target population to be served; or

b. a bachelor's degree in social work from a social work program accredited by the Council on Social Work Education; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management. One year of this experience must be in providing direct services to the target population to be served; or

c. a licensed registered nurse and three years of paid post-licensure experience as a registered nurse in public health or a human service field providing direct consumer services or case management. Two years of this experience must be in providing direct services to the target population to be served; or

d. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; AND four years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; Two years of this experience must be in providing direct services to the target population to be served;

The above general minimum qualifications for case management supervisors are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in the human-service-related field may be substituted for one year of required paid experience. Additional qualifications for specific targeted or waiver groups are delineated below:

e. each Medicaid-enrolled provider must ensure that all case management supervisory staff for high-risk pregnant women have demonstrated knowledge about perinatal care and meet the following qualifications:

(1) a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited institution; and four years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case

management; two years of this experience must be in providing direct services to the target population to be served;

(2) a licensed registered nurse; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; two years of this experience must be in providing direct services to the target population to be served; or

(3) a bachelor's or master's degree in social work from a social work program accredited by the council on Social Work Education; and two years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; one year of this experience must be in providing direct services to the target population to be served; or

(4) a registered dietician; and three years of paid post-bachelor's degree experience in a human-service-related field providing direct consumer services or case management in the human-service-related field; two years of this experience must be in providing direct services to pregnant women.

3. Requisite Knowledge, Skills and Abilities. Each Medicaid-enrolled provider must look for the following knowledge, skills and abilities in hiring case management staff and must ensure that all staff providing targeted or waiver case management services possess the following basic knowledge, skills, and abilities prior to assuming full caseload responsibilities:

a. Knowledge

- (1) community resources;
- (2) medical terminology;
- (3) case management principles and practices;
- (4) consumer rights;
- (5) state and federal laws for public assistance.

b. Skills

- (1) time management;
- (2) assessment;
- (3) interviewing;
- (4) listening.

c. Abilities

- (1) preparing service plans;
- (2) coordinating delivery of services;
- (3) advocating for the consumer;
- (4) communicating both orally and in writing;
- (5) establishing and maintaining cooperative working relationships;
- (6) maintaining accurate and concise records;
- (7) assessing medical and social aspects of each case and formulating service plans accordingly;
- (8) problem solving;
- (9) remaining objective while accepting the consumer's lifestyle.

4. Training. Case manager and supervisor training must be provided by or arranged by the case manager's employer at the employer's expense.

a. Training for New Case Managers. Orientation of at least 16 hours must be provided to all staff, volunteers, and students within one week of employment. A minimum of



eight hours of the orientation training must cover orientation on the target population including but not limited to specific service needs and resources. Other topics covered by the orientation must include, at a minimum:

- (1) provider policies and procedures;
- (2) Medicaid/Program Office policies and procedures;
- (3) confidentiality;
- (4) documentation in case records;
- (5) consumer rights protection and reporting of violations;
- (6) consumer abuse and neglect policies and procedures;
- (7) professional ethics;
- (8) emergency and safety procedures;
- (9) data management and record keeping;
- (10) infection control and universal precautions.

b. In addition to the required 16 hours of orientation, all new employees with no documented required experience and training must receive a minimum of 16 hours of training during the first 90 calendar days of employment which is related to the target population served and specific knowledge, skills, and techniques necessary to provide case management to the target population. This training must be provided by an individual with demonstrated knowledge of the training topics and the target population. This training must include the following at a minimum:

- (1) assessment techniques;
- (2) service planning;
- (3) resource identification;
- (4) interviewing and interpersonal skills;
- (5) data management and record keeping;
- (6) communication skills.

c. Annual Training. A case manager must satisfactorily complete 40 hours of case-management related training annually which may include training updates on subjects covered in orientation and initial training. For new employees, the 16 hours of orientation training are not included in the 40-hour minimum annual training requirement. The 16 hours of training for new staff required in the first 90 days of employment may be part of this 40-hour minimum annual training requirement. Appropriate updates of topics covered in orientation and training for a new case manager must be included in the required 40 hours of annual training. The Department of Health and Hospitals *Case Management Provider Manual* contains a list of suggested additional training topics.

Each case management supervisor must complete 40 hours of training a year, at a minimum. In addition to the required and topics for case managers, the following are required topics for supervisory training:

- (1) professional identification/ethics;
- (2) process for interviewing, screening, and hiring of staff;
- (3) orientation/in-service training of staff;
- (4) evaluating staff;
- (5) approaches to supervision;
- (6) managing caseload size;

- (7) conflict resolution;
- (8) documentation;
- (9) time management.

The required orientation and training for case managers and supervisors described above must be documented in the employee's personnel record including: dates and hours of specific training, trainer or presenter's name, title, agency affiliation or qualification, other sources of training and orientation/training agenda.

d. Training—Infants and Toddlers with Special Needs

(1) A minimum of eight hours of orientation for new family service coordination staff must be ChildNet specific training as defined by the Department of Education. A minimum of 24 additional hours of training must be provided to new family service coordinators hired in the first 90 days of employment. This training must cover advanced subjects as defined by the Department of Education in addition to the subjects listed above. Initial training specific to ChildNet must be arranged and/or coordinated by the Regional Infant/Toddler Coordinator. Advanced training in specific subjects must be satisfactorily completed prior to the case manager/family service coordinator assuming those duties. Ongoing annual training is the responsibility of the family service coordination agency.

(2) Case management does not consist of the provision of other needed services, but is to be used as a vehicle to help an eligible consumer gain access to them. If there is no interaction in person, by telephone or in correspondence on behalf of the consumer, it is most likely not a billable case management activity without sufficient justification. New family service coordination supervisors must satisfactorily complete a minimum of 40 hours of family service coordination training before assuming supervisory duties for this target population. Experienced supervisors must also complete a minimum of 40 hours per calendar year on advanced ChildNet specific subjects defined by the Department of Education.

e. Mandatory Medicaid Training. Enrolled case management agencies must ensure that all case management staff satisfactorily complete DHH provider required training on case management policies and procedures when provided.

C. Supervision. Each case management agency must have and implement a written plan for supervision of all case management staff. Face-to-face supervision must occur at least one time per week per case manager for a minimum of one hour per week. Supervisors must review at least 10 percent of each case manager's case records each month for completeness, compliance with these standards, and quality of service delivery. Case managers must be evaluated at least annually by their supervisor according to written provider policy on evaluating their performance. Supervision of individual staff must include the following:

1. direct review, assessment, problem solving, and feedback regarding the delivery of case management services;
2. teaching and monitoring of the application of consumer centered principles and practices;
3. assuring quality delivery of services;
4. managing assignment of caseloads; and

5. arranging for training as appropriate.

The case manager supervisor must assess staff performance, review individual cases, provide feedback and help staff develop problem solving skills using two or more of the following methods:

- a. individual, face-to-face sessions with staff;
- b. group face-to-face sessions with all case management staff; or
- c. sessions in which the supervisor accompanies a case manager to meet with consumers.

Documentation: Each supervisor must maintain a file on each case manager supervised and document supervisory sessions on at least a weekly basis. The file on the case manager must include, at a minimum:

- (1) date and content of the supervisory sessions; and
- (2) results of the supervisory case review which shall address, at a minimum: completeness and adequacy of records; compliance with standards; and effectiveness of services.

Each case management supervisor must not supervise more than five full-time case managers or a combination of full-time case managers and other human service staff. A supervisor may carry one-fifth of a caseload for each case manager supervised less than five supervisees. If the supervisor carries a caseload, he or she must be supervised by an individual who meets the supervisor qualifications.

D. Caseload Size Standards. Each full-time case manager is subject to a maximum caseload of consumers as indicated below:

GROUP	CASES
MR/DD Waiver	4.5
Infants and toddlers with special needs	35
High-risk pregnant women	60
HIV infected	45
Fragile elderly	40

*Mixed* caseloads are those where a case manager serves at least five consumers from a second target population or five waiver participants. For caseloads containing consumers who are MR/DD waiver participants in addition to those who are infants and toddlers with special needs, the maximum caseload is 35. For other "mixed" caseloads, the number of cases must be prorated.

E. Consumer Eligibility Requirements for Targeted Populations. Case management providers must ensure that consumers of Medicaid-funded targeted case management services are Medicaid-eligible and meet the additional eligibility requirements specific to the targeted or waiver population group. The eligibility requirements for each targeted and waiver group are listed below. With respect to infants and toddlers with special needs, this determination is made through the Multidisciplinary Evaluation (MDE) process and is not the responsibility of the case management/family service coordination agency. Also, the service plan for case management services provided to mentally retarded/developmentally disabled individuals and infants and toddlers

with special needs is subject to prior authorization by the Medicaid agency or its designee. Providers are required to participate in provider training and technical assistance as required by the Medicaid agency or its designee.

1. Infants and Toddlers with Special Needs. The infant/toddler must meet the following criteria:

- a. have a medical condition established and documented by a licensed medical doctor. In the case of a hearing impairment, a licensed audiologist or licensed medical doctor must make the determination; or
- b. be developmentally delayed in one or more of the following areas:

- (1) cognitive development;
- (2) physical development, including vision and hearing; eligibility must be based on a documented diagnosis made by a licensed medical doctor (vision); or a licensed medical doctor or licensed audiologist (hearing);
- (3) communication development;
- (4) social or emotional development;
- (5) adaptive development.

The determination of a developmental delay must be made in accordance with applicable federal regulations and ChildNet policies and procedures.

2. High-Risk Pregnant Women

a. pregnancy must be verified by a licensed physician, licensed primary nurse associate, or certified nurse midwife;

b. reside in the metropolitan New Orleans area including Orleans, Jefferson, St. Charles, St. John and St. Tammany parishes;

c. be determined high risk based on a standardized medical risk assessment. A medical risk assessment (screening) must be performed by a licensed physician, a licensed primary nurse associate, or a certified nurse-midwife to determine if the patient is high risk. A pregnant woman is considered high risk if one or more risk factors are indicated on the form used for risk screening. Providers of medical risk assessment must use the standardized Risk Screening Form approved by DHH;

d. must require services from multiple health, social, informal and formal service providers and is unable to access the necessary services.

3. HIV Infected Persons

a. Written verification of HIV infection by a licensed physician or laboratory test result is required.

b. The adult consumer must have reached, as documented by a physician, a level 70 on the Karnofsky scale (or cares for self but is unable to carry on normal activity or do active work) at some time during the course of HIV infection.

c. The pediatric consumer must display symptoms of illness related to HIV infection. All consumers must require services from multiple health, social, informal and formal service providers and be unable to access the necessary services.

4. Frail Elderly. The consumer must be a participant in the Home Care for the Elderly waiver.

5. MR/DD Waiver. The consumer must be participant in the MR/DD Waiver.

F. Description of Case Management Services/Provider Responsibilities. The definition of *Case Management* adopted by the department is "services provided by qualified staff to the targeted or waiver population to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services." Targeted and waiver case management services consist of intake, assessment, service planning, linkage/service coordination, monitoring/follow-up, re-assessment, and transition/closure. The department utilizes a broker model of case management in which consumers are referred to other agencies for specific services they need. These services are determined by professional assessment of the consumer's needs and provided according to a comprehensive individualized written service plan. All case management services must be provided by qualified staff as defined in Section A above. The provider must ensure that there is no duplication of payment, that there is only one case manager for each eligible consumer and that the consumer is not receiving other targeted case management services from any other provider.

The required core elements of targeted or waiver case management services and provider responsibilities which all Medicaid enrolled case management agencies must comply with are described below.

1. Case Management Intake. *Intake* is defined as the determination of eligibility and need for targeted case management services. Intake is the entry point into case management. The purpose of intake is to gather baseline information to determine the consumer's need, appropriateness, eligibility and desire for case management. The case management provider must have written eligibility criteria for case management services provided by the agency. The required procedures of intake screening are:

- a. interview the consumer within three working days of receipt of a referral, preferably face-to-face;
- b. determine if the consumer is currently Medicaid-eligible;
- c. determine if the consumer is eligible for services by virtue of the eligibility requirements of the target population described in Section B above;
- d. determine if the consumer's needs require case management services;
- e. inform the family of procedural safeguards, rights and grievance/appeal procedure and which include the following:

(1) determine if the consumer freely accepts case management as optional;

(2) provide the consumer freedom of choice of available targeted case management providers as well as case managers. Advise the consumer of his right to change case management providers and case managers;

(3) provide the consumer freedom of choice of available service providers. The consumer must sign a standardized intake form to verify the above procedural safeguards;

f. obtain signed release form(s) from the consumer/guardian;

Intake activities performed solely to determine eligibility and need for targeted case management are not billable to Medicaid.

The above general case management intake procedures are applicable for all targeted and waiver groups. Additional or other procedures for specific targeted or waiver groups are delineated below.

g. *Intake for Infants and Toddlers with Special Needs* is defined as a comprehensive interagency multidisciplinary, ongoing process which ensures that eligible children are appropriately identified, located, referred and evaluated for early intervention services. The child search coordinator in the local education agency is the single point of entry into ChildNet. The child search coordinator is responsible for completion of the following intake procedures:

1. Upon receipt of a referral, the child search coordinator must assist the family in identifying and choosing an enrolled family service coordinator provider to assist in the MDE process. Referrals received directly by a family service coordination provider must be immediately referred to the appropriate child search coordinator;

2. The child search coordinator must provide the family freedom of choice to select an enrolled family service coordination provider, and advise the family of the right to change family service coordinator provider agencies, family service coordinators and other service providers;

3. The child search coordinator must advise the family of their procedural safeguards and provide them with a copy of their rights under ChildNet;

h. Intake for High-Risk Pregnant Women must include a standardized medical risk assessment. A medical risk assessment (screening) must be performed by a licensed physician, a licensed primary nurse associate, or a certified nurse-midwife to determine if the patient is high risk. A pregnant woman is considered high risk if one or more risk factors are indicated on the form used for risk screening. Providers of medical risk assessment must use the standardized Risk Screening Form approved by DHH.

2. Case Management Assessment. *Assessment* is defined as the process of gathering and integrating formal/professional and informal information concerning a consumer's goals, strengths, and needs to assist in the development of a comprehensive, individualized service plan. The purpose of assessment is to establish a service plan and contract between the case manager and consumer. The following areas must be addressed in the assessment when relevant:

- a. identifying information;
- b. medical/physical;
- c. psychosocial/behavioral;
- d. developmental/intellectual;
- e. socialization/recreational;
- f. financial;
- g. educational/vocational;
- h. family functioning;
- i. personal and community support systems;
- j. housing/physical environment; and

k. status of other functional areas or domains.

Providers may be required to use standardized assessment instruments for certain targeted populations. The assessment must identify the consumer's strengths, needs and priorities. The assessment must be conducted by the case manager through in-person contact, individualized observations and questions with the consumer and, where appropriate, in consultation with the consumer's family and support network, other professionals, and service providers. The assessment must identify areas where a professional evaluation is necessary to determine appropriate services or interventions. The case manager must arrange for any necessary professional/clinical evaluations needed to clearly define the consumer's specific problem areas. Authorization must be obtained from the consumer/guardian to secure appropriate services.

The assessment must be initiated as soon as possible, preferably within seven calendar days of receipt of the referral, and must be completed no later than 30 days after the referral for case management services. A face-to-face interview with the consumer is required as part of the assessment process. The initial assessment interview with the consumer must be conducted in the consumer's home to accurately assess the actual living conditions and health and mental status of the consumer unless this is not the consumer's preference or there are genuine concerns regarding safety. If the interview cannot be conducted in the consumer's home, an alternative setting in the consumer's community must be chosen jointly with the consumer and documented in the case record. All assessments must be written, signed, dated, and documented in the case record.

Assessments performed on children in the custody of the Office of Community Services (OCS) or Office of Youth Development (OYD) must actively involve the assigned foster care worker or probation officer and must be approved by the agency with legal custody of the child. Assessments performed on consumers in the custody of the Office of Developmental Disabilities (OCDD) must actively involve the assigned Regional Office OCDD staff and must be approved by OCDD.

The above general case management assessment procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

(1) Assessment for Infants and Toddlers with Special Needs. The child search coordinator is responsible for ensuring all the components of the assessment/multidisciplinary evaluation (MDE) are fulfilled within the required timeliness. In addition, the child search coordinator must coordinate with the family service coordinator to ensure the development of the initial Individualized Family Service Plan within the required 45-day time lines. The case manager/family service coordinator is responsible for assisting the family through the multidisciplinary evaluation process including the following:

(a). informing the family of the steps involved in the MDE process, explaining their rights and procedural safeguards and securing their participation;

(b). reviewing relevant medical information and prior evaluations;

(c). coordinating the performance of identified or necessary evaluations and KIDMED screenings and immunizations, and an examination by a licensed physician to ensure timely completion of the MDE and IFSP;

(d). identifying or coordinating the identification of the family's concerns, priorities and resources;

(e). the MDE must include the following:

1) a review of pertinent records related to the child's current health status and medical history;

2) results of a KIDMED screening or documented referral for KIDMED screening;

3) an evaluation of the child's level of functioning in each of the following developmental areas: cognitive development; physical development, including vision and hearing (by a licensed physician or hearing by a licensed audiologist); communication development; social or emotional development; and adaptive development;

4) an assessment of the child's strengths and needs and the identification of appropriate early intervention services to meet those needs; and

5) with family consent, the family's identification of their concerns, priorities and resources related to enhancing the development of their child;

6) be signed and dated by multidisciplinary team participants.

(2) *Assessment for High-Risk Pregnant Women*—a multidisciplinary evaluation of the high-risk patient to identify factors that may adversely affect health status. Professionals from nursing, nutrition and social work disciplines working as a team must each evaluate the consumer and family needs through interactions and interviews.

(a). Each professional assessment must reflect the identified areas for counseling, intervention and follow up services.

(b). The nursing, nutritional, and psychosocial assessments must be documented on standardized forms approved by the department.

(c). Assessments must be completed within 14 calendar days after the risk assessment is completed or receipt of the referral. There may be extenuating circumstances with certain patients that may hinder compliance with this time frame for assessment.

(d). The case manager is responsible for assisting the family through the multidisciplinary evaluation process including the following:

1) coordinating the performance of identified or necessary evaluations to ensure timely completion in preparation for the multidisciplinary team staffing;

2) identifying or coordinating the identification of the consumer's concerns, priorities and resources.

(e). A home assessment must be completed by the case manager as part of the initial assessment. If a home visit is refused by the consumer/guardian or there are genuine concerns regarding safety, an alternative setting in the consumer's community may be chosen jointly with the consumer and documented in the case record.

(3) Assessment for MR/DD Waiver Participants

(a). Comprehensive Strengths Assessment. The case manager must complete this standardized strength assessment form in a face-to-face interview with the consumer. The assessment must identify current status in identified areas of community living, the desired outcomes, as well as strategies which have worked in the past to meet the needs or desired outcomes. The strengths assessment must also include a summary paragraph of the need for case management services, identifying current needs and factors by history which emphasize the need for services;

(b). CAMIS Initial Assessment.

3. Case Management Service Planning. *Service Planning* is defined as the development of a written agreement based upon assessment data (which may be multidisciplinary), observations and other sources of information which reflect the consumer's needs, capacities and priorities, and specifies the services and resources required to meet these needs.

a. The service plan must be developed through a collaborative process involving the consumer, family, case manager, other support systems and appropriate professionals and service providers. It should be developed in the presence of the consumer and, therefore, cannot be completed prior to a meeting with the consumer. The consumer, case manager, support system and appropriate professional personnel must be directly involved and have agreed to assume specific functions and responsibilities.

b. The service plan must be completed within 45 calendar days of the referral for case management services.

(1) The consumer must be informed of his or her right to refuse a service plan after carefully reviewing it.

(2) The service plan must be signed and dated by the consumer and the case manager.

c. Although service plans may have different formats, all plans must incorporate all of the following required components:

(1) statement of prioritized long-range goals (problems or needs) which have been identified in the assessment;

(2) one or more short-term objectives or expected outcomes linked to each goal that is to be addressed in order of priority;

(3) specification of action steps, services or interventions planned, and payment mechanism, if applicable;

(4) assignment of individual responsibility for goal accomplishment; and

(5) time frames for completion or review.

d. The service plan must document frequency and/or intensity of contacts between the consumer and case manager, service providers and others, the persons to be contacted and whether the visits must be to the consumer's place of residence or to another location, such as a service delivery site. Each service plan must be kept in the consumer's record. The assessment and service plan must be completed prior to providing ongoing case management services.

The above general case management service planning procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

e. Service Planning for Infants and Toddlers with Special Needs. The family service coordinator's responsibilities in the Individual Family Service Plan (IFSP) must include all of the following;

(1) convening a meeting to develop the IFSP within 45 calendar days of referral;

(2) attending the IFSP meeting;

(3) ensuring that the IFSP meeting is conducted in settings and at times that are convenient to families; in the native language of the family or other mode of communication used by documentation to the regional office within prescribed time lines in accordance with Office of Mental Health procedures.

f. Service Planning for MR/DD Waiver Participants. A standardized service plan form must be completed with the consumer/guardian, signed by the consumer/guardian and case manager, and approved by the case manager's supervisor.

g. Service Planning/Multidisciplinary Team Staffing for High-Risk Pregnant Women

(1) Following completion of the medical risk assessment, home visit, professional and case management assessments, a multidisciplinary team staffing and completion of the service plan must take place within 30 days of the intake screening of each high-risk pregnant woman.

(2) The consumer may be restaffed one time during the pregnancy or post-partum period as necessary to maintain a viable comprehensive service plan.

4. Case Management Linkage. *Linkage* is defined as the implementation of the service plan involving the arranging for a continuum of both informal and formal services. After obtaining authorization from the consumer, the case manager must contract with the direct service providers or direct the consumer to contact the service providers, as appropriate. The case manager must contract with the consumer for formal and informal services and supports to be arranged. Attempts must be made to meet service needs with informal service providers as much as possible. The responsibilities of the case manager in service coordination are:

a. translating assessment findings into services;

b. determining which services and connections are needed;

c. being aware of community resources (Food Stamps, SSI, Medicaid, etc.);

d. exploration of both formal and informal services for consumers;

e. communicating and negotiating with service providers;

f. training and support of the consumer in the use of personal and community resources identified in the service plan;

g. linking consumers through referrals to services that meet their needs as identified in the service plan; and

h. advocacy on behalf of the consumer to assist them in accessing appropriate benefits or services.

5. *Case Management Follow-Up/Monitoring*—defined as the follow-up mechanism to assure applicability of the service plan.

a. The purpose of monitoring/follow-up contacts made by the case manager is to determine if the services are

being delivered as planned, and/or services adequately meet consumer needs and to determine effectiveness of the services and the consumer's satisfaction with them.

b. The consumer must be contacted within the first 10 working days after the initial service plan is completed to assure appropriateness and adequacy of service delivery.

c. Thereafter, face-to-face follow-up visits must be made with the consumer/guardian at least monthly as part of the linkage and monitoring follow-up process, or more frequently as dictated by the service plan or determined by the needs of the consumer/guardian. In addition, visits must be made to consumer's home on a quarterly basis, at a minimum. If the consumer refuses home visits or there are genuine concerns regarding safety, an alternative setting in the consumer's community may be chosen jointly with the consumer.

d. The case manager must communicate regularly by telephone, in writing and in face-to-face meetings and home visits with the consumer/guardian, professionals and service providers involved in the implementation of the service plan. The nature of these follow-up contacts (e.g., telephone, home visit) and the individuals contacted is determined by the status and needs of the consumer, as identified in the service plan and determined by the case manager.

Through follow-up/monitoring activity, the case manager must determine whether or not the service plan is effective in meeting the consumer's needs and identify when changes in the consumer's status occur, necessitating a revision in the service plan. Reassessment is required when a major change in status of the consumer/guardian occurs.

e. Monitoring of services provided includes the following:

(1) following up to assure that the consumer actually received the services as scheduled;

(2) assuring that consumer/consumer's family is able and willing to comply with recommendations of service providers;

(3) measuring progress of consumer in meeting service plan goals and objectives and determining whether the services adequately address the consumer's needs.

Monitoring information must be obtained by the case manager through direct observation and direct feedback. The case manager must gather information from direct service providers for monitoring purposes. The case manager must obtain verbal or written service reports from direct service providers.

The above general case management service planning procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

f. Follow-Up/Monitoring for High-Risk Pregnant Women. The case manager must maintain at least weekly face-to-face or telephone contact with the consumer/guardian, family, informal and/or formal providers to implement the service plan and follow up/monitoring service provision and the consumer's progress in accordance with the service plan.

6. Case Management Reassessment. *Reassessment* is defined as the process by which the baseline assessment is

reviewed. It provides the opportunity to gather information for evaluating and revising the overall service plan.

a. After the initial assessment is completed and initial service plan is implemented, the consumer's needs and progress toward accomplishing the goals listed in the service plan goals must be re-evaluated on a routine basis or when a significant change in status or needs occurs. If indicated, the identified needs, short-term goals or objectives, services, and/or service providers must be revised.

b. Reassessment is accomplished through interviews and periodic observations.

c. A schedule for re-assessing and modifying the initial goals and service plans must be part of the initial workup. Reassessment and review and/or updating of the service plan must be done at intervals of no less than 90 calendar days. If there is a minor change in the service plan, the case manager must revise the plan and initial and date the change. More frequent re-assessments may be required, depending upon the consumer's situation.

d. At least every six months, a complete review of the service plan must be done to assure that goals and services are appropriate to the consumer's needs identified in the assessment/re-assessment process.

(1) A home-based re-assessment must be done on at least an annual basis unless this is not the consumer's preference or there are genuine concerns regarding safety.

(2) If the re-assessment cannot be conducted in the consumer's home, an alternative setting in the consumer's community must be chosen jointly with the consumer and documented in the case record.

The above general case management re-assessment procedures are applicable for all targeted and waiver groups. Additional procedures for specific targeted or waiver groups are delineated below.

e. Reassessment for Infants and Toddlers with Special Needs. Ongoing assessment is a component of the IFSP process.

(1) A review of the IFSP must be conducted at least every six months, or more often if conditions warrant, or if the family requests a review to determine the following:

(a). the degree to which progress is being made toward achieving the outcomes; and

(b). whether modifications or revisions of the outcomes or services are necessary.

(2) The review may be carried out by a meeting or by other means that are acceptable to the families and other participants.

(3) An annual meeting must be conducted to evaluate the IFSP and, as appropriate, revise the IFSP. The results of any ongoing assessments of the child and family, and any other pertinent information must be used in determining what early intervention services are needed and will be provided.

7. Case Management Transition/Closure. Discharge from case management must occur when the consumer no longer needs or desires the services, or becomes ineligible for them. The closure process must ease the transition to other services or care systems.

a. When closure is deemed appropriate, the consumer must be notified immediately so that appropriate arrangements can be made.

b. The case manager must complete a final re-assessment identifying any unresolved problems or needs and discussing with the consumer methods of arranging for their own services.

c. Criteria for closure include but are not limited to the following:

- (1) resolution of the consumer's service needs with low probability of recurrence;
- (2) consumer requests termination of services;
- (3) death;
- (4) permanent relocation out of the service area;
- (5) long-term admission to a hospital, institution or nursing facility;
- (6) does not meet the criteria for the case management established by the funding source (e.g., Medicaid or the Program Office);
- (7) the consumer requires a level of care beyond that which can safely be provided through case management;
- (8) the safety of the case manager is in question; or
- (9) noncompliance.

All cases which do not have an active service plan and necessary linkage or monitoring activities must be closed. Infants and toddlers eligible under ChildNet are no longer eligible for Medicaid-funded case management services if they do not require and receive two or more of the required Medicaid services.

8. Procedures for Changing Providers. A consumer may freely change case management providers or case managers or terminate services at any time. DHH maintains a listing of enrolled and approved case management providers for each target and waiver population which consumers and service providers may access for referral purposes.

a. Once the consumer has chosen a new case management provider, the new provider must complete the standardized "Provider Change Notification" form, obtain the consumer's written consent and forward the original change form to the previous case management provider. Upon receipt of the completed form, the previous provider must send copies of the following information as required by licensing standards within 10 working days:

- (1) most current service plan;
- (2) current assessments on which service plan is based;
- (3) number of services used in the calendar year;
- (4) current and previous quarter's progress notes.

b. The new provider must bear the cost of copying which cannot exceed the community's competitive copying rate. The previous provider may not provide case management services after the date the notification is received.

The above general procedures for changing case management providers are applicable for all targeted and waiver groups except as otherwise specified for particular groups delineated below.

c. Procedures for Changing Family Service Coordination Providers-Infants and Toddlers with Special

Needs. If a family chooses to change family service coordination agencies or a change is necessary for any reason, the following procedures will be followed:

(1) The family will be referred back to the child search coordinator. This referral can be made by the family, the current family service coordinator, or other service providers.

(2) The child search coordinator will provide the family with the official list of family service coordination providers and the freedom of choice form.

(3) The child search coordinator will review the family's rights under ChildNet with the family including the right to change family service coordinators or agencies.

(4) The child search coordinator or the family, if the family chooses, will notify the newly selected agency.

(5) The child search coordinator will notify the old agency at termination.

(6) After receiving written informed paternal consent, the new agency will request records from the previous agency. The previous agency will make these records available within 10 working days of receipt of the request.

### III. General Provisions

A. Components of the Case Record. The provider must keep sufficient records to document compliance with licensing and Medicaid case management requirements for the target population served and provision of case management services. Separate case management records must be maintained on each consumer which fully document services for which Medicaid payments have been made. The provider must maintain sufficient documentation to enable the Medicaid Program to verify that each charge is due and proper prior to payment. The provider must make available all records which the Medicaid Program finds necessary to determine compliance with any federal or state law, rule, or regulation promulgated by the Medicaid Program, DHH or DHHS or other applicable state agency.

The consumer's case record must consist of the following information, at a minimum:

1. Medicaid eligibility information;
2. documentation verifying that the consumer meets the requirements of the targeted population;
3. a copy of the standardized procedural safeguard form signed by the consumer;
4. copies of any professional evaluations and other reports used to formulate the service plan;
5. case management assessment;
6. progress notes;
7. service logs;
8. copies of correspondence;
9. at least six months of current pertinent information relating to services provided (Records older than six months may be kept in storage files or folders, but must be available for review.).

10. if the provider is aware that a consumer has been interdicted, a statement to this effect must be noted.

B. Service Logs. Service logs are the means for recording units of billable time. There must be case notes corresponding to each recorded time of case management activity. The notes

should not be a narrative with every detail of the circumstances. Service logs must reflect service delivered, the "paper trail" for each service billed. Logs must clearly demonstrate allowable services billed.

1. Services billed must clearly be related to the current service plan.

2. Billable activities must be of reasonable duration and must agree with the billing claim.

3. All case notes must be clear as to who was contacted and what allowable case management activity took place. Use of general terms such as "assisted consumer to" and "supported consumer" do not constitute adequate documentation.

4. Logs must be reviewed by the supervisor to insure that all billable activities are appropriate in terms of the nature and time and documentation is sufficient. Federal requirements for documenting case management claims require the following information must be entered on the service log to provide a clear audit trail:

- a. name of consumer;
- b. name of provider and person providing the service;
- c. names and telephone numbers of persons contacted;
- d. start and stop time of service contact and date of service contact;
- e. place of service contact;
- f. purpose of service contact;
- g. content and outcome of service contact.

C. *Progress Notes.* *Progress Notes* are the means of summarizing billable activities, observations and progress toward meeting service goals in the case management record. Progress notes must:

1. be clear as to who was contacted and what case management activity took place for each recorded time of case management. It must be clear why that time period was billed;

2. record activities and actions taken, by whom, and progress made; and indicate how goals in the service plan are progressing;

3. document delivery of each service identified on the service plan;

4. record any changes in the consumer's medical condition, behavior or home situation which may indicate a need for a re-assessment and service plan change;

5. be legible, as well as legibly signed, including functional title, and fully dated;

6. be complete, entered in the record preferably weekly but at least monthly and signed by the primary case manager;

7. be recorded more frequently (weekly) when there is frequent activity or significant changes occur in the consumer's service needs and progress;

8. quarterly progress notes are required in addition to the minimum monthly recording;

9. a summary must also be entered in the consumer's record when a case is transferred or closed.

D. *Case Record Organization.* The organization of individual case management records on consumers and location of documents within the record must conform with state licensing standards and be consistent among records. All

entries made by staff in consumer records must be legible, fully dated, legibly signed and include the functional title of the individual. Any error made by the staff in a consumer's record must be corrected using the legal method which is to draw a line through the erroneous information, write "error" by it and initial the correction. Correction fluid cannot be used in consumer records.

E. *Availability of Case Records.* Providers must make all necessary consumer records available to appropriate state and federal personnel at all reasonable times. Providers must always safeguard the confidentiality of consumer information. Under no circumstances should providers allow case management staff to take records home. The case management agency can release confidential information only under the following conditions:

1. by court order; or
2. by the consumer's written informed consent for release of the information. In cases where the consumer has been declared legally incompetent, the individual to whom the consumer's rights have devolved must provide informed written consent.

F. *Storage of Case Records.* Providers must provide reasonable protection of consumer records against loss, damage, destruction, and unauthorized use. Administrative, personnel and consumer records must be retained until records are audited and all audit questions are answered or three years from the date of the last payment, whichever is longer.

#### **IV. Reimbursement**

A. All reimbursement for optional targeted and waiver case management services shall be made in accordance with all applicable federal and state regulations. Providers shall not bill for failed attempts to make contact with either consumers or collateral.

B. The reimbursement rate for optional targeted and waiver case management services is a monthly rate for the provision of mandated monthly minimum services. It is not a capitated rate. Interim billing of one hour and additional 15-minute increments is permitted up the monthly rate. Interim billing for case management services for Elderly Waiver, MR/DD Waiver and Infants and Toddlers must meet the following criteria for billing and cannot occur prior to providing at least one 15-minute continuous face-to-face encounter in the 30-day cycle and:

1. completion of at least 60 minutes of case management services;

2. additional 15-minute periods of services provided in a 30-day cycle can be billed only after the first hour and the face-to-face encounter has been provided.

C. Hour- or 15-minute codes cannot be accumulated across 30-day cycles and must count anew for each cycle or authorized period if less.

D. Billed case management services shall be monitored through the use of provider record review, consumer survey for verification of services provision and quality of service, and verification with collateral of contacts made on behalf of the recipient. Any situation involving fraud and/or abuse in the provision of case management services will be referred to the SURS Unit for investigation. A subsequent referral will be made to the State Attorney General's Medicaid Fraud



Control Unit by the SURS Unit if a criminal investigation is warranted.

E. The following Minimum Program Standards are required for the reimbursement of Case Management Services.

1. Mentally Retarded/Developmentally Disabled Individuals in the MR/DD Waiver Program.

a. A minimum of three hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The three hours must include one continuous 15-minute face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submission of MRCAMIS data is required.

c. The procedure codes applicable to case management services for the MR/DD population are Z0192 (hourly code) and Z1192 (15-minute code) for waiver participants.

2. Infants and Toddlers with Special Needs

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one continuous 15-minute face-to-face contact with the recipient in addition to case management activities such as assessment/service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submissions of MRCAMIS data are required.

c. The procedure codes applicable to case management services for the infants and toddler population are Z0194 (hourly code) and Z1194 (15-minute code) for MR/DD waiver participants and Z0193 (hourly code) and Z1193 (15-minute code) for nonwaiver participants.

3. Persons Infected with HIV

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home assessment is a required component of the initial assessment for HIV case management services. A home visit must be made with the recipient on a quarterly basis.

b. The procedure code applicable to case management services for this population is Z0095.

4. High Risk Pregnant Women of the Metropolitan New Orleans Area

a. A minimum of one hour of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. This must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up monitoring. A home assessment is a required component of the initial assessment for high risk pregnant women case management services.

b. In addition, the following contacts are required:

(1) a minimum of monthly verbal contact with the recipient's obstetrician or his staff;

(2) weekly verbal contact with the recipient beginning with her 37th week of pregnancy until the delivery;

(3) quarterly home visits with the recipient;

(4) weekly contact with other service providers and/or informal supports; and

(5) a postpartal home visit to be made within 10 to 14 calendar days after delivery focusing on postpartal concerns and infant care.

c. The procedure codes continue to be X0057 for assessment and X0058 for ongoing services.

d. Only one assessment service shall be reimbursed for each pregnancy.

5. Home Care for the Elderly Waiver Program Participants

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home visit must be made with the recipient on a quarterly basis.

b. Service provider records must be monitored by the case management agency every 60 days.

c. The procedures code for this population are Z0188 (hourly code) and Z1188 (15-minute).

F. General Requirements. Payment for targeted or waiver case management services is dictated by the nature of the activity and the purpose for which the activity is performed. All case management services billed must be provided by qualified case managers and meet the definition of *Case Management*, "services provided by qualified staff to the targeted or waiver population to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services." Case management does not consist of the provision of other needed services, but is to be used as a vehicle to help an eligible consumer gain access to them. If there is no interaction in person, but telephone or in correspondence on behalf of the consumer, it is most likely not a billable case management activity without sufficient justification. This definition encompasses assisting eligible consumers in gaining access to needed services including:

1. identifying services needed;

2. linking consumer with the most appropriate providers of services; and

3. monitoring to ensure needed services are received.

Case management does not consist of the provision of other needed services, but is to be used as a vehicle to help an eligible consumer gain access to them. If there is no interaction in person, by telephone or in correspondence on behalf of the consumer, it is most likely not a billable case management activity without sufficient justification.

4. Reimbursement Requirements for Infants and Toddlers with Special Needs

a. Candidates for case management services must be Medicaid-eligible;

b. Medicaid eligibles must be certified as a member of the targeted populations by the Medicaid agency or its designee;

c. The case management service plan is subject to prior authorization by the Medicaid agency or its designee;

d. Providers of case management services are required to participate in provider training and technical assistance as required by the Medicaid agency or its designee.

G. Nonbillable Activities. Federal regulations require that the Medicaid Program ensure that payments made to providers do not duplicate payments for the same or similar services furnished by other providers or under other authority as an administrative function or as an integral part of a covered service.

A technical amendment (Public Law 100-617) in 1988 specifies that the Medicaid Program is not required to pay for case management services that are furnished to consumers without charge. This is in keeping with Medicaid's longstanding position as the payer of last resort. With the statutory exceptions of case management services included in Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs) and services furnished through Title V public health agencies, payment for case management services cannot be made when another third-party payer is liable, nor may payments be made for services for which no payment liability is incurred.

Time spent in activities which are not a direct part of a contact are not Medicaid reimbursable. Activities that, while they may be necessary, do not result in a service identified in the service plan being provided to the consumer are not reimbursed. The following examples of activities are not considered targeted case management services for Medicaid purposes and are not reimbursable by the Medicaid Program as case management:

1. outreach, case finding or marketing;
2. counseling or any form of therapeutic intervention;
3. developing general community or placement resources or a community resource directory;
4. legislative or general advocacy;
5. professional evaluations;
6. training;
7. providing transportation;
8. telephone calls to a busy number, leaving messages, faxing or mailing information;

9. travel to a consumer's home for a home visit, and the consumer is not at home so that the visit cannot be held but a note is left;

10. "housekeeping" activities in connection with record keeping (Recording a contact in the case record at the time service is provided is billable.);

11. in-service training, supervision;

12. discharge planning;

Exception: 10 days (30 days for developmentally disabled waiver participant) before discharge from an inpatient facility to assist the consumer in the transition from inpatient to outpatient status, and in arranging appropriate services and 10 days after institutionalization or hospitalization to arrange for closure of community services.

13. intake screening which takes place prior to and is separate from assessment;

14. general administrative, supervisory or clerical activities;

15. record keeping;

16. general interagency coordination;

17. program planning;

18. Medicaid billing or communications with Medicaid Program;

19. running errands for family (shopping, picking up medication, etc.);

20. accompanying family to appointments or recreational activities, waiting for appointments with family;

21. lengthy interaction to "get acquainted", "provide support", or "hand holding";

22. activities performed by agency staff other than the primary case manager;

23. accompanying another case manager for safety reasons.

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 Rule.

Bobby P. Jindal  
Secretary

9703#052

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections Gaming Control Board

#### Record Preparation Fees and Quarterly Submissions (LAC 42)

In accordance with the provisions of R.S. 49:953(B), the Gaming Control Board hereby determines that adoption of Emergency Rules relative to record preparation fees and quarterly submissions by riverboat gaming operator licensees is necessary and that for the following reasons failure to adopt Rules on an emergency basis will result in imminent peril to the public health, safety, and welfare.

Act 7 of the First Extraordinary Session of 1996, effective May 1, 1996, created the Gaming Control Board with all regulatory authority, control and jurisdiction, including investigation, licensing and enforcement, and all power incidental or necessary to such regulatory authority, control and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the Riverboat Economic Development and Gaming Control Act, the Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law.

Further, Act 7 provides that all powers, duties, functions and responsibilities of the Riverboat Gaming Commission, Video Gaming Division and Riverboat Gaming Enforcement Division of State Police, and the Economic Development and Gaming Corporation are transferred to and shall be performed and exercised by the Gaming Control Board, and that the powers, duties, functions and responsibilities and any pending or unfinished business of those regulatory entities becomes the business of and shall be completed by the Gaming Control Board with the same power and authority as the entity from which the functions are transferred.

It is essential in order to provide efficient regulation of the gaming industry that persons involved in the administrative hearing process be assessed and pay fees for the cost of preparation of the administrative record.

It is essential to the purposes of Act 7 that riverboat gaming operator licensees submit on a quarterly basis to the Gaming Control Board a statement of compliance which shall include a certification under oath that the licensee is continuing to make a good faith effort to meet all voluntary procurement and employment conditions.

For the foregoing reasons, the Gaming Control Board has determined adoption of Emergency Rules is necessary and hereby adopts these Emergency Rules, effective February 20, 1997 through March 20, 1997, in accordance with R.S. 49:953(B).

The text of this Emergency Rule is identical to the text being published in the final Rule, effective March 20, 1997, found in this issue of the *Louisiana Register*.

Hillary J. Crain  
Chairman

9703#003

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections Gaming Control Board

Riverboat Gaming: Transfers of Interest in Licensees and Permitees; Loans and Restrictions (LAC 42:XIII.Chapter 25); and Repeal of Riverboat Gaming Patron Disputes (LAC 42:XIII.3501-3513)

In accordance with the provisions of R.S. 49:953(B), the Gaming Control Board hereby determines that adoption of Emergency Rules relative to record preparation fees and

quarterly submissions by riverboat gaming operator licensees is necessary and that for the following reasons failure to adopt Rules on an emergency basis will result in imminent peril to the public health, safety, and welfare.

Act 7 of the First Extraordinary Session of 1996, effective May 1, 1996, created the Gaming Control Board with all regulatory authority, control and jurisdiction, including investigation, licensing and enforcement, and all power incidental or necessary to such regulatory authority, control and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the Riverboat Economic Development and Gaming Control Act, the Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law.

Further, Act 7 provides that all powers, duties, functions and responsibilities of the Riverboat Gaming Commission, Video Gaming Division and Riverboat Gaming Enforcement Division of State Police, and the Economic Development and Gaming Corporation are transferred to and shall be performed and exercised by the Gaming Control Board, and that the powers, duties, functions and responsibilities and any pending or unfinished business of those regulatory entities becomes the business of and shall be completed by the Gaming Control Board with the same power and authority as the entity from which the functions are transferred.

Rules relative to loans and lines of credit promulgated by the Riverboat Gaming Enforcement Division must be amended and a new Rule adopted in order to effectuate a more efficient process of investigating such transactions and related transactions involving licensees.

Rules relative to patron disputes necessitated an administrative hearing of all patron disputes when no such action was required by statutory provision. This provision is changed to require notification only.

For the foregoing reasons, the Gaming Control Board has determined adoption of Emergency Rules is necessary and hereby adopts LAC 42:XIII.2524; amends LAC 42:XIII.2523 and LAC 42:XIII.3501; and repeals LAC 42:XIII.3503, 3505, 3506, 3507, 3509, 3511, and 3513, effective February 20, 1997, in accordance with R.S. 49:953(B), to be effective for a period of 120 days or until the final Rule is promulgated, whichever occurs first.

## Title 42

### LOUISIANA GAMING

#### Part XIII. Riverboat Gaming

##### Subpart 2. State Police Riverboat Gaming Enforcement Division

#### Chapter 25. Transfers of Interest in Licensees and Permitees; Loans and Restrictions

##### §2523. Board Actions Concerning Loans and Lines of Credit

A. Whenever any licensee or person acting on behalf of a licensee ("borrower" herein), applies for, receives, accepts, or modifies the terms of any loan, line of credit, third-party financing agreement, sale with buy-back or lease-back provisions or similar financing transaction, or makes use of any cash, property, credit, loan or line of credit, or guarantees, or grants other form of security for a loan, such borrower shall notify the board in writing no less than 60 days prior to such

transaction, unless more stringent conditions are imposed by the board. Such notice shall include the following:

1. the names and addresses of all the parties to the transaction;
2. the amounts and sources of funds;
3. the property or credit received or applied;
4. the nature and the amount of security provided by or on behalf of the borrower or person required to meet the applicable qualification requirements and suitability requirements of R.S. 27:1 et seq.;
5. the specific nature and purpose of the transaction; and
6. such other information and documentation the board or division may require.

B. The report described in Subsection A of this Section shall be signed under oath by the borrower, an authorized representative of the borrower, or person required to meet the applicable qualification requirements and suitability requirements of R.S. 27:1 et seq.

C. All transactions described in Subsection A of this Section require prior written approval by the board unless:

1. the amount of the transaction does not exceed \$2,500,000 and all of the lending institutions involved therein are federally regulated financial institutions;
2. the loan amount of the transaction does not exceed \$1,000,000 and all of the lending entities are qualified parties;
3. the transaction is exempted from the prior written approval requirement pursuant to the provisions of §2524 of this Chapter;
4. the loan amount does not exceed \$500,000 and the transaction is one other than those described in Subsection C.1, 2, or 3 of this Section;
5. the transaction modifies the terms of an existing loan or line of credit which has been previously approved pursuant to this Section, and after preliminary investigation pursuant to Subsection D of this Section, the board determines that the modification does not substantially alter such terms.

D. The board, after preliminary review, shall determine whether the transaction is exempt from the requirement of prior written approval, and shall notify the borrower of the determination.

E. In the event the transaction is not determined exempt pursuant to Subsection C, the board shall render a decision approving or disapproving the transaction.

F. If the transaction is disapproved, the decision of the Board shall be in writing and shall set forth detailed reasons for such disapproval.

G. The board may require that the transaction be subject to conditions which must be accepted by all parties prior to approval. The acceptance of such conditions shall be in a manner approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended by the Gaming Control Board, LR 23:

#### **§2524. Publicly Registered Debt and Securities**

If the transaction described in §2523.A of this Chapter involves publicly registered debt and securities registered with

the Securities and Exchange Commission (SEC), and sold pursuant to a firm underwriting understanding agreement, no board approval is required; however, in addition to filing the notice required in §2523.A and B, the borrower shall:

1. file with the board, within one business day after filing with the SEC, copies of all registration statements and all final prospectus with respect to such debt securities and

will give notice to the division within one business day of the effectiveness of such registration statement; and

2. file a report with the board within 45 days after the completion of sales under such registration, setting forth the amount of securities sold and the identities of the purchasers thereof from the underwriters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

### **Chapter 35. Patron Disputes**

#### **§3501. Licensee Duty to Notify Division of Patron Dispute**

Whenever a licensee refuses to pay winnings claimed by a patron and the patron and the licensee are unable to resolve the dispute, the licensee shall notify the division in writing of the dispute within seven days of the licensee being notified of the dispute. Such notice shall identify the parties involved in the dispute, and shall state all known relevant facts regarding the dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended by the Gaming Control Board, LR 23:

#### **§3503. Division Investigation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

#### **§3505. Division's Decision**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

#### **§3506. Hearings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

#### **§3507. Division's Order**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

**§3509. Appeal to Commission**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

**§3511. Unauthorized Claims**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

**§3513. Payment of Winnings after Final Order**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), repealed by the Gaming Control Board, LR 23:

Hillary J. Crain  
Chairman

9703#007

**DECLARATION OF EMERGENCY**

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

**Child Support Collection and  
Distribution (LAC 67:III.2514)**

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 Emergency Rule in LAC 67:III.Subpart 4, Support Enforcement Services, effective March 1, 1997. It is necessary to extend emergency rulemaking since the Emergency Rule of November 1, 1996 was effective for a maximum of 120 days and expires before the final Rule takes effect on April 1, 1997.

Pursuant to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, revisions have been made to the method in which Support Enforcement Services distributes child support collections. Prior federal law totally mandated the manner of distribution. Federal law now requires that reimbursement of the federal portion of the AFDC/FITAP benefits be made first; and then the state may retain or distribute the remainder as it

chooses. Therefore, the state must now establish a procedure in order to distribute funds, and an Emergency Rule is necessary to prevent payments from being delayed to the applicant/recipient which could result in undue financial hardship.

**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 November 1, 1996, the agency will distribute child support collections in the following manner:

1. In cases in which the applicant/recipient (AR) currently receives AFDC/Family Independence Temporary Assistance Program (FITAP) benefits, collections received in a month will be retained by the state to reimburse previous and current assistance amounts, with the following exceptions:

a. In cases in which the collection amount and the court-ordered monthly obligation exceed the AFDC/FITAP amount, the AR will be refunded an amount that, added to the AFDC/FITAP amount, will bring the AR up to the court-ordered monthly obligation amount.

b. In cases in which the collection amount exceeds the amount of unreimbursed grant, the excess will be refunded to the AR up to the current arrearage amount.

2. In cases in which the AR previously received AFDC or FITAP, and there are amounts owed to the state, collections received in a month will be distributed as follows:

a. The AR will be refunded an amount equal to the court-ordered monthly obligation.

b. Any excess amount will be applied to amounts owed to the state.

c. Any remaining amounts will be paid to the AR.

3. In cases in which the AR never received assistance, or the AR previously received AFDC or FITAP and no amount is owed to the state, all collections will be refunded to the AR.

4. In IV-E Foster Care cases, all amounts collected are sent to the IV-E Agency for appropriate distribution.

B. There are general exceptions to distribution. Any collections received through intercept programs or income assignments are subject to refund to the noncustodial parent based on federal and state laws and regulations. Amounts collected through IRS and/or state tax intercepts will be applied to arrears in this order:

1. amounts owed to the state; and

2. amounts owed to the AR.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

Madlyn B. Bagneris  
Secretary

9703#016

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Rehabilitation Services

#### Vocational Rehabilitation Policy Manual (LAC 67:VII.101)

The Department of Social Services, Rehabilitation Services has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following Rule in the Vocational Rehabilitation Services Policy Manual, Sections: Eligibility and Conditions for Case Closure.

The Rule governing Louisiana Rehabilitation Services' policy relative to the timeframe for determining eligibility ensures that individuals will receive a timely decision regarding their eligibility for Vocational Rehabilitation Services.

The Rule governing Louisiana Rehabilitation Services' policy relative to closure of an individual's case record after a successful employment outcome is achieved ensures that the individual's employment is stable, compatible with the individual's abilities and capabilities, and the individual is satisfied with the job placement.

Because of federal guidelines, this Emergency Rule will become effective March 10, 1997, and it shall remain in effect for 120 days or until the final Rule takes effect through the normal promulgation process, whichever occurs first.

The LRS policy manuals are referenced in LAC 67:VII. Specific amendments to the Vocational Rehabilitation Policy Manual are as follows:

#### XI. CONDITIONS FOR CASE CLOSURE

##### A. Options for Closure

\* \* \*

B. Closure as Successfully Rehabilitated - An individual is determined to have achieved an employment outcome if the following requirements are met:

1. the provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

2. the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

3. the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

4. the individual has maintained the employment outcome for a period of at least 90 days.

5. the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

#### V. ELIGIBILITY AND INELIGIBILITY DECISIONS

\* \* \*

D. Compliance Provisions Relating to Eligibility, Extended Evaluations, and/or Ineligibility Decisions

\* \* \*

5. Timeframe for Determining Eligibility - Eligibility must be determined within a reasonable period of time, not to exceed 60 days after the individual has signed an application for vocational rehabilitation services. Exceptions to this 60 day timeframe can occur if:

(1) the determination is made that an extended evaluation is necessary to determine the individual's eligibility for vocational rehabilitation services and the nature and scope of services needed; or

(2) the client agrees to an extension of time because exceptional and unforeseen circumstances beyond the agency's control have made it impossible for the rehabilitation counselor to make an eligibility determination within this time frame.

#### Title 67

#### SOCIAL SERVICES

#### Part VII. Rehabilitation Services

#### Chapter 1. General Provisions

#### §101. Vocational Rehabilitation Policy Manual

A. LRS Vocational Rehabilitation Policy Manual provides opportunities for employment outcomes through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

B. Copies of the policy manual can be viewed at Louisiana Rehabilitation Services State Office, 8225 Florida Boulevard, Baton Rouge, LA and at each of its nine Louisiana Rehabilitation Services Regional Offices (statewide), or at the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802.

AUTHORITY NOTE: Promulgated in accordance with R.S.49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:189 (February 1995), LR 21:191 (February 1995), LR 21:473 (May 1995), LR 21:837 (August 1995), LR 22:993 (October 1996), LR 23:

Madlyn B. Bagneris  
Secretary

9703#032

# Rules

## RULE

### Department of Agriculture and Forestry Office of Marketing Market Commission

#### Egg Grading and Marketing (LAC 7:V.Chapter 15)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Market Commission, hereby amends LAC 7:V.Chapter 15, Subchapter B regarding egg grading and marketing. The Rules require all egg handlers (processors or wholesalers selling egg products) to be licensed. The Rules also clarify existing Regulations with regard to store repackaging of eggs and temperature requirements.

The department published its Notice of Intent to amend this Rule in the November 20, 1996 edition of the *Louisiana Register* (Volume 22, Page 1147). The amended Rule has an effective date of March 20, 1997.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part V. Advertising, Marketing and Processing

#### Chapter 15. Market Commission-Poultry and Eggs

#### Subchapter B. Egg Grading and Marketing

#### §1515. Definitions

For the purpose of these regulations the following words, terms and phrases shall be construed to mean:

\*\*\*

*Egg Products*—any other products made from whole eggs, egg whites, egg yolks or any combination thereof that is not included in the above definitions.

\*\*\*

*Producer*—any person engaged in the business of producing eggs in Louisiana, either as an owner or as an officer or stockholder of a business engaged in producing eggs in Louisiana, or any person deriving a profit from such business or a person who further processes boiled, frozen or other egg products derived from fresh shell eggs.

\*\*\*

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, amended and promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1121 (September 1993), amended LR 23:293 (March 1997).

#### §1516. Temperature Requirements

A. The temperature of shell eggs shall be held at an ambient temperature of 45° F or below at all times when being transported, stored, or displayed for sale except for brief periods of loading or unloading.

\*\*\*

2. Every person, firm, or corporation selling shell eggs for the purpose of resale to the consumer must store and transport shell eggs under refrigeration at an ambient temperature no greater than 45° F, and all containers of eggs must be labeled "Keep refrigerated at or below 45° F." The requirements of this Section include, but are not limited to, retailers, institutional users, restaurants, nursing homes, dealer-wholesalers, food handlers, transportation firms, or any person who delivers to the retail or consuming trade. Eggs found which do not meet refrigeration requirements, either in transit, storage, or display, can be seized and destroyed by Department of Agriculture and Forestry inspectors.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122 (September 1993), amended LR 23:293 (March 1997).

#### §1517. Sale or Offering for Sale of Eggs/Egg Products within Louisiana

A. No person, firm, or corporation shall sell, traffic in, or deliver to the retail or consuming trade, any eggs unfit for human consumption or any eggs that do not meet Grade B requirements. A store may repackage eggs located in the store as long as the following requirements are met:

1. All boxes have the necessary labeling requirements which will include:

- grade and size (repackaged eggs must be labeled as Grade B);
- date when repackaged;
- statement saying that the eggs have been repackaged by the store where the eggs are located;
- contains the phrase "Keep refrigerated at or below 45° F."

- Eggs must meet B Grade requirements.
- Eggs cannot be repackaged more than once.
- Eggs older than 10 days from the date of repackaging cannot be sold and must be destroyed on premises.
- Any store found postdating repackaged eggs will lose the right to repackage eggs.

6. Stores may lose the right to repackage eggs if the repackaged eggs do not meet Grade B standards.

B. All shell eggs and egg products offered for sale in Louisiana are subject to inspection by personnel of the Louisiana Department of Agriculture before being placed in retail outlets. If a particular lot of eggs does not meet the Louisiana grade standards the said lot may be seized or be retained for shipment back to the producer. All packer/producers and retailers must maintain records showing the disposition of all eggs retained and returned to the packer/producer.

C. This Chapter shall be applicable to all retailers of eggs, except that retailers shall be permitted to sell eggs, identified

as unclassified, when such eggs are purchased directly from producers who own less than 500 hens; however, eggs sold as unclassified must meet Grade B standards.

#### D. Invoices

1. Every person, firm, or corporation selling eggs or egg products to a retailer or manufacturer shall furnish an invoice showing the size, quality, and date of transaction of such eggs according to the standards prescribed by this Section together with the name and address of the person by whom the eggs were sold. This invoice shall be retained for two years.

2. ...

#### E. Containers

1. ...

2. Any and all shell eggs offered for sale at retail shall be prepackaged, and shall be plainly marked as to grade and size with letters not less than  $\frac{3}{8}$  inch in height.

3. Containers must contain the phrase "Keep refrigerated at or below 45° F."

#### F. Licenses

1. Every person, firm, or corporation engaged in selling shell eggs, frozen eggs, liquid eggs, or any egg product to a retailer or manufacturer shall secure a license. The license shall be issued by the commissioner, after application made to and approval granted by the Louisiana Egg Commission.

2. All packers/producers/processors are subject to yearly plant inspections by the department. Travel expenses incurred in conducting such inspections shall be reimbursed to the Department of Agriculture and Forestry by the licensee.

3. Application forms for license shall be furnished by the Department of Agriculture and Forestry. Each license application shall be accompanied by a fee of \$10 payable to the Louisiana Egg Commission. Upon approval of the application, a license will be issued to the applicant. A license will be valid for a period of one year—September 1 through August 31.

4. Any packer/producer/processor/dealer-wholesaler/broker that does not apply for a license, after being informed that such business requires a license or having received the necessary applications from the department, shall have all eggs sold by such business put off-sale until such time as the business obtains a license.

#### G. Inspection Requirements for Packing Plants and Egg Products/Boiling Plants

1. Packing plants and egg products/boiling plants shall meet minimum requirements of state health regulations, USDA regulations, and Food and Drug Administration regulations and practice good sanitation practices. If minimum sanitation requirements for food handling are not met, the department has the right to stop operation until such time as the plant is in compliance.

2. All eggs used in boiling operations must meet Grade B requirements. Boiling operations will provide the Department of Agriculture and Forestry with a schedule stating the hours of operation. Boiling operations will be checked for sanitation and egg quality on a regular basis. Eggs boiled which do not meet minimum Grade B requirements will be destroyed by the licensee upon request of and in the presence of department personnel.

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, amended and promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122 (September 1993), amended LR 23:293 (March 1997).

#### §1520. Inspections; Fees; Failure to Meet Standards

A. All eggs and egg products offered for sale in Louisiana are subject to inspection by personnel of the Louisiana Department of Agriculture and Forestry.

\* \* \*

D. Producers/brokers selling nest run eggs in Louisiana will not be responsible for the \$.02 assessment nor the \$.16 inspection fee. The assessment or fee shall be paid by the packer packaging the eggs.

E. All egg products will be inspected for condition only. All egg products plants shall be responsible for the fees and assessments due on all products entering Louisiana. Additionally, at the discretion of the department, a dealer/wholesaler selling egg products in Louisiana could be held liable for fees due in lieu of an egg product plant based on the following formula:

1. - 5. ...

F. Packers/producers, processors, and wholesalers shall be required to report and pay assessments and inspection fees on reported volume on a monthly basis. Reports are due on a monthly basis from all egg handlers regardless of who is responsible for paying the assessments and fees. The assessments and fees shall be paid/reported no later than the fifteenth of the following month. If a report is not received by the due date, a letter shall be sent to the egg handler reminding them of the past due report. If the handler does not report within 10 days from date of the past due notice, the egg handler's license may be suspended and all eggs or egg products found sold, packaged, or processed shall be put off sale and the packer/producer's eggs shall not be sold in Louisiana until such time when all assessments and fees are paid in full.

\* \* \*

H. Dealers-wholesalers shall be required to furnish evidence of origin by invoice on eggs which they handle. Dealers/wholesalers shall report volume of sales monthly on forms furnished by the department. On sale of eggs and egg products produced out-of-state, the last dealer/wholesaler/processor that handles the eggs or egg products before they enter the retail market shall be responsible for paying all fees, if the out-of-state producer/packer/processor has not paid such fees. Any fees collected from the out-of-state producer/packer that have been paid by the dealer/wholesaler shall be refunded to said dealer/wholesaler. The packer/producer/processor is ultimately responsible for paying all assessments and fees. In-state producers/packers/processors are responsible for all fees of eggs or egg products they have sold in this state. Fees shall be paid not later than the fifteenth of the following month.

I. Brokers shall be required to furnish evidence of origin by invoice on eggs and egg products which they handle and sell in Louisiana. If shell eggs are nest run, then the packer buying such eggs shall be responsible for fees. If the eggs have been graded, then the packer who graded the eggs shall



be responsible. However, if the state is not able to collect the fees from the out-of-state packer then the in-state packer shall be responsible for all fees. No fees shall be charged to place of origin on nest-run eggs; the packer buying the eggs shall be responsible for all fees.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405 and 3:412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122 (September 1993), amended LR 23:294 (March 1997).

**§1522. Destination Tolerances; Additional Inspection Fees**

A. No eggs shall be sold for resale to the consumers below U.S. Grade B, nor shall any eggs be sold as fresh eggs if the eggs are over 30 days of age. Eggs 30-45 days of age after package date may be returned to the processor or sent to a breaker. Eggs older than 45 days from date of package will be destroyed on the premises in the presence of the inspector/grader.

\* \* \*

E. Any egg handler that fails to pay the additional inspection fee shall have a stop sale placed on this product and any other egg or egg product found in the state until such time as all fees are paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405 and 3:412.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1123 (September 1993), amended LR 23:295 (March 1997).

**§1528. Audits**

A. All license holders are subject to yearly audits and must be audited at least once every two years to insure proper reporting of egg and egg product inspection fees and egg assessments to the Louisiana Egg Commission. Audits shall be performed by employees of the Louisiana Department of Agriculture and Forestry. Travel expenses and per diem incurred in conducting out-of-state audits are to be reimbursed to the Department of Agriculture and Forestry by out-of-state license holders. Failure or refusal to pay travel expenses and/or per diem will result in immediate suspension of license and all products found in the state shall have a "STOP SALE" placed on the product and no further sales will be allowed in the state until such time as all expenses are paid.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1124 (September 1993), amended LR 23:295 (March 1997).

The Rules comply with and are enabled by R.S. 3:405 et seq.

Bob Odom  
Commissioner

9703#019

**RULE**

**Department of Economic Development  
Office of Commerce and Industry  
Business Incentives Division**

**Enterprise Zone—Advance Notification;  
Timely Filing (LAC 13:I.Chapter 9)**

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., the Department of Economic Development, Office of Commerce and Industry, Business Incentives Division amends the Board of Commerce and Industry Rules.

As a result of the provisions of Act 194 of 1995, the Board of Commerce and Industry, at its October 23, 1996, meeting voted to adopt a Rule affecting all businesses which do not file timely in applying for financial incentives under the Enterprise Zone Program, under the authority of R.S. 51:1786(5).

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Commerce and Industry**

**Subpart 1. Finance**

**Chapter 9. Enterprise Zone Program**

**§905. Endorsement Resolution**

Applicants who intend to recover local sales/use taxes must submit a resolution, stating that fact, from the taxing body(s) which intends to refund sales/use taxes for the project, with their application for state benefits. If the local governmental subdivision wishes to participate by rebating their applicable sales taxes, this resolution shall be passed by the local governmental subdivision prior to the applicant receiving approval of that application from the Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:295 (March 1997).

**§918. Advance Notification, Timely Filing**

A. An advance notification received by the Office of Commerce and Industry after the beginning of the project's construction, will obligate the company to file written reason(s) for the late filing. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits will not be accepted as a valid reason for waiving the timely filing requirement and will result in the return of the filing fee. However, the board will accept reasons that fall within the following two categories in determining if it will consider waiving the late filing:

1. events beyond control of the applicant caused the late filing, or

2. there was some documented fault or error on the part of the Business Incentives Division that caused the applicant's late filing.

B. A waiver of late filing of an advanced notice will allow the applicant to proceed as if the filing was timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Incentives Division, LR 23:295 (March 1997).

### **§919. Filing of Applications**

A. - G. ...

H. Applications must be submitted to the Office of Commerce and Industry, Business Incentives Division at least 60 days prior to the Board of Commerce and Industry meeting where it is intended to be heard.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5)

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

### **§923. Application Shall be Presented to the Board of Commerce and Industry**

The Office of Commerce and Industry, Business Incentives Division shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue and Taxation and, if applicable, the endorsement resolutions outlined in §905 and shall make recommendations to the Board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

### **§935. Job Creation Requirements - Five New Jobs Must be Created**

For a business to qualify for the benefits of this Chapter, there must be an expansion in the total number of employees. A minimum of five new jobs credits must be generated within the first two years of the contract period. The "base number" from which the number of new jobs will be determined shall meet one of the following:

1. the number of employees that an applicant has on the day before the effective date of the contract. (The effective date will be either the day that the advance notice was received by the Business Incentives Division or the date that construction begins on the project shown on the advance

notice but not earlier than the date received unless a waiver of timely filing has been approved by the board); or

2. the highest number of employees that was certified under an Enterprise Zone contract that was still valid the day before the effective date on the anticipated new Enterprise Zone contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

### **§943. Appeals and Petition Procedure**

A. Applicants who wish to appeal an action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry, Business Incentives Division at least one month prior to the meeting of the Board of Commerce and Industry or any of its committees during which their appeal will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the Office of Commerce and Industry, Business Incentives Division at least one month prior to the meeting of the board or any of its committees in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

Harold Price  
Assistant Secretary

9703#053

## **RULE**

**Department of Economic Development  
Office of Financial Institutions**

**Fees and Assessments (LAC 10:1.201)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as provided under R.S. 6:126(A), the commissioner of the Office of Financial Institutions hereby amends the Rule promulgated in December 1993 and subsequently amended in October 1995, to reduce the fee charged Louisiana state-chartered banks, savings and loan associations and savings banks for the establishment of an electronic financial terminal.

**Title 10**  
**FINANCIAL INSTITUTIONS, CONSUMER CREDIT**  
**INVESTMENT SECURITIES AND UCC**  
**Part I. Financial Institutions**  
**Chapter 2. Fees and Assessments**  
**§201. Establishment of Fees and Assessments**

DESCRIPTION	FEE
A. - D. ...	
E. Notification by a state bank, savings and loan association, or savings bank for an off-site electronic financial terminal machine. Fee is nonrefundable.	\$100
F. - AE. ...	

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:126 A.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), amended LR 21:1069 (October 1995), LR 23:297 (March 1997).

Larry L. Murray  
 Commissioner

9703#027

**RULE**

**Department of Environmental Quality**  
**Office of the Secretary**

**Rulemaking Petitions**  
**(LAC 33:I.Chapter 9; V.105 and 2515; XV.112)(OS013)**

*(Editor's Note: The following Rule, proposed in a Notice of Intent and published on pages 1016-1019 of the October 20, 1996 Louisiana Register, is being renumbered to conform to the LAC codification system.)*

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Department of Environmental Quality regulations, LAC 33:I.Chapter 9, V.105 and 2515, and XV.112 (OS013).

This Rule standardizes and consolidates division-specific procedures into one regulation, which is applicable department-wide. This regulation not only clarifies the purpose of and required portions in a petition for rulemaking, but ensures opportunities for public comment in both situations wherein a petition is granted or denied.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures**  
**Chapter 9. Petition for Rulemaking**  
**§901. Scope**

In general, rulemaking to adopt, amend, or rescind any regulation may be initiated by any division as its own option, upon the recommendation of another agency of the state of Louisiana, or at the petition of any interested person. This Chapter addresses general requirements for petitions requesting rulemaking.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

**§903. Rescission**

Section 2.13 of the Rules of Procedure of the Louisiana Environmental Control Commission dated July 22, 1980, and effective August 20, 1980, is hereby rescinded.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

**§905. Definitions**

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

*Department*—the Department of Environmental Quality as created by R.S. 30:2001 et seq.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

**§907. Content of a Rulemaking Petition**

Any interested person may petition the administrative authority in writing to issue, amend, or rescind any regulation.

A. The petition shall be addressed to the assistant secretary of the specific office that oversees the regulation.

B. The petition shall be submitted by certified mail.

C. The petition shall include:

1. the petitioner's name and address;
2. the petitioner's interest in the proposed action;
3. the basis for the request;

4. the substance or specific text of any proposed regulation or amendment or a description of the regulation, the rescission, or the amendment that is desired; and

5. any other information that justifies the proposed action.

D. The petition shall address any additional requirements specific to the requests illustrated below:

1. for petitions seeking to exclude a hazardous waste produced at a particular facility, the person shall comply with LAC 33:V.105.M;

2. for petitions seeking approval of alternate equivalent hazardous waste testing or analytical methods, the person shall comply with LAC 33:V.105.I.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

### §909. Processing a Rulemaking Petition

A. Upon receipt, the petition for rulemaking shall be reviewed for completeness, as prescribed in LAC 33:I.907. If found complete, the petition shall be processed in accordance with this Section.

B. Within 90 days of receipt of the petition for rulemaking, the assistant secretary shall deny the petition in writing, stating reasons for the denial, or shall initiate rulemaking by providing the petitioner with a completed Regulatory Agenda Form as provided in DEQ Policy Number 0003-88, "Rule Development Procedure."

1. If the assistant secretary decides to proceed with rulemaking, the department procedures for processing a proposed regulation shall be followed. In addition, a notice of the initiation of rulemaking shall be published in a major newspaper of general circulation within the area affected by the petition for rulemaking or in the official journal of the state, if the impact of the proposed Rule is statewide.

2. If the assistant secretary decides not to proceed with rulemaking, the decision to deny the petition, stating reasons for the denial, shall be published in a major newspaper of general circulation within the area affected by the petition for rulemaking or in the official journal of the state, if the impact of the petition denial is statewide, and in the *Louisiana Register*.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:298 (March 1997).

## Part V. Hazardous Waste and Hazardous Materials

### Subpart 1. Department of Environmental Quality—Hazardous Waste

#### Chapter 1. General Provisions and Definitions

##### §105. Program Scope

These Rules and Regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these Rules and Regulations, including "solid waste" and "hazardous waste", appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\*\*\*

[See Prior Text in A-G]

H. General Procedures to Petition the Administrative Authority. The procedure that must be followed to petition for rulemaking can be found in LAC 33:I.Chapter 9.

I. Petitions for Equivalent Testing or Analytical Methods

1. Any person seeking approval of equivalent testing or analytical method may petition for a regulatory amendment under LAC 33:V.105.I and LAC 33:I.Chapter 9. To be

successful, the petitioner must demonstrate to the satisfaction of the administrative authority that the proposed method is equal to or superior to the corresponding method prescribed in Method 1311, in 40 CFR part 268 Appendix 1, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

2. In addition to the information required by LAC 33:I.Chapter 9, each petition must include:

a. a full description of the proposed method, including all procedural steps and equipment used in the method;

b. a description of the types of wastes or waste matrices for which the proposed method may be used;

c. comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846 as incorporated by reference at LAC 33:V.110;

d. an assessment of any factors which may interfere with or limit the use of the proposed method; and

e. a description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

3. After receiving a petition for an equivalent method, the administrative authority may request any additional information on the proposed method which it may reasonably require to evaluate the method.

\*\*\*

[See Prior Text in J - L.2]

M. Petitions to Exclude a Waste Produced at a Particular Facility

1. Any person seeking to exclude a waste at a particular generating facility from the lists in LAC 33:V.4901 may petition for a regulatory amendment under this Subsection and LAC 33:I.Chapter 9. To be successful:

\*\*\*

[See Prior Text in M.1.a-4.d]

5. The procedures in LAC 33:V.105.M and LAC 33:I.Chapter 9 may also be used to petition the administrative authority for a regulatory amendment to exclude from LAC 33:V.109.Hazardous Waste.2.c or 4, a waste which is described in LAC 33:V.109.Hazardous Waste.2.c or 4 and is either a waste listed in LAC 33:V.4901, or is derived from a waste listed in LAC 33:V.4901. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by LAC 33:V.105.M.1. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole. Analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by LAC 33:V.4903.

\*\*\*

[See Prior Text in M.6]

7. Each petition must include, in addition to the information required by LAC 33:I.Chapter 9:

\* \* \*

[See Prior Text in M.7.a-10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997).

**Chapter 25. Landfills**

**§2515. Special Requirements for Bulk and Containerized Liquids**

\* \* \*

[See Prior Text in A - E.2]

F. Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in LAC 33:V.2515.F; materials that pass one of the tests in LAC 33:V.2515.F.2; or materials that are determined by the administrative authority to be nonbiodegradable through the petition process in LAC 33:I.Chapter 9.

\* \* \*

[See Prior Text in F.1-2.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:821 (September 1996), amended by the Office of the Secretary, LR 23:299 (March 1997).

**Part XV. Radiation Protection**

**Chapter 1. General Provisions**

**§112. Rulemaking**

The procedure that must be followed to petition for rulemaking can be found in LAC 33:I.Chapter 9.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of the Secretary, LR 23:299 (March 1997).

Herman Robinson  
Assistant Secretary

9703#030

**RULE**

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Hazardous Waste Division**

**Land Disposal Restriction Variances  
(LAC 33:V.2271) (HW051)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary has amended the Hazardous Waste Division regulations, LAC 33:V.2271 (HW051).

This Rule clarifies that if an exemption decision by the department is vacated and/or remanded by a court on judicial review, the emergency variance shall be automatically reinstated and shall remain in effect until final action on the remand is taken by the administrative authority and any subsequent appeal process has been completed.

This Rule is necessary because the ability of certain underground injection well operators to continue injection of wastewater during the time period necessary for the department to process their state petitions for exemption under LAC 33:V.2271 has been put into question by the court's decision in *In the Matter of Rubicon, Inc.*, No. 95-CA-0108 (1st Cir. 2/14/96), rehearing denied per curium (3/29/96), in *In the Matter of Dupont, Inc.*, No. 94-CA-2549 (1st Cir. 4/24/96) and in *In the Matter of Cytec, Inc.*, No. 94-CA-1693 (1st Cir. 2/23/96). These decisions vacated and remanded the department's decisions to grant land disposal exemptions on strictly procedural grounds, not on the merits of the department's actions. There are three other exemption decisions granted by the department pending at the Nineteenth Judicial District Court.

This action will allow affected companies to continue operation of their injection wells until final action on remand is taken by the department and any subsequent appeal process has been completed. This will preserve the status quo pending action by the department.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—  
Hazardous Waste**

**Chapter 22. Prohibitions on Land Disposal**

**§2271. Exemptions To Allow Land Disposal of a  
Prohibited Waste By Deep Well Injections**

\* \* \*

[See Prior Text in A-V.5.j]

**W. Emergency Variance**

1. During the petition review process, the applicant is required to comply with all prohibitions on land disposal under this Chapter, unless a petition for an exemption has been approved by the EPA, and the administrative authority grants an emergency variance. If EPA has approved the exemption, the land disposal of the waste may continue for up

to one year under an emergency variance issued by the administrative authority until the administrative authority makes a decision on the petition for exemption. The administrative authority may extend an emergency variance beyond one year; however, such approval is solely based on the agency's inability to review the petition during the first one-year variance. The administrative authority shall either grant or deny the petition within the extended emergency variance period, no later than June 1, 1995, for petitions submitted prior to June 1, 1992. After the administrative authority issues a decision on the exemption, the waste may be land disposed only in accordance with the provision of the exemption.

2. If the exemption decision is vacated and/or remanded by a court on judicial review, the emergency variance shall be automatically reinstated and shall remain in effect until final action on the remand is taken by the administrative authority and any subsequent appeal process has been completed.

\* \* \*

[See Prior Text in X-Z]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:22 (January 1996), amended LR 23:299 (March 1997).

Mike Strong  
Assistant Secretary

9703#056

## **RULE**

### **Office of the Governor Division of Administration Property Assistance Agency**

Fleet Management (LAC 34:XI.103)

Notice is hereby given that the Office of the Governor, Division of Administration, Property Assistance Agency, under authority of R.S. 39:321, and the Administrative Procedure Act, R. S. 49:950 et seq., has amended the existing State Fleet Management Regulations (LAC 34:XI.103) as follows:

#### **Title 34**

### **GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

#### **Part XI. Fleet Management**

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

#### **§103. Program Definition**

A.1. - 2.b.ii.(d). ...

iii. It shall be the responsibility of the agency transportation coordinator to apply to the Department of Public Safety for vehicle license plates and to notify the state fleet manager, within 45 days of receipt, of both the license number and agency property tag number assigned to a new vehicle and any subsequent number changes which may occur.

2.c. - d.i. - v. ...

vi. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Personal Assignment Agreement (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue the personal assignment into the new fiscal year beginning July 1. Any personal assignment approved by the commissioner during the year shall expire June 30 and renewal will require submission of a Personal Assignment Agreement (DOA form MV-2) as described above.

As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, social security number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

vii. ...

2.e.i. - ii. ...

iii. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Home Storage Agreement form (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue home storage into the new fiscal year beginning July 1. Any home storage approved by the commissioner during the year shall expire June 30 and renewal will require submission of a Home Storage Agreement (DOA form MV-2) as described above.

As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, Social Security Number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

2.f.i. - ii. ...

iii. All daily vehicle usage logs (DOA form MV-3) for both personally assigned and pool vehicles are approved by the appropriate supervisor and received by the agency transportation coordinator by the third working day of the month following the month to which the report pertains. The approving supervisor is responsible for auditing each respective DOA form MV-3. MV-3 data may be submitted monthly via magnetic media provided the information is formatted as required by the Division of Administration and the agency has received prior approval from the state fleet manager to submit data in this manner.

iv. preventive maintenance is performed on all fleet vehicles and recorded on the Preventive Maintenance Record (DOA form MV-4) or a maintenance form approved by the state fleet manager.

v. - vi. ...

2.g. - h. ...

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363 and R. S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:231 (April 1986), amended LR 13:15 (January 1987), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 13:742 (December 1987), LR 23:300 (March 1997).

Mike McCumsey  
Assistant Director

9703#005

## RULE

### Department of Health and Hospitals Office of Public Health

#### Genetic Diseases—Neonatal Screening (LAC 48:V.6303)

Under the authority of R.S. 40:5 and 40:1229 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health amends Subsections F and G and restates supporting references of LAC 48:V.6303 as follows:

#### Title 48

#### PUBLIC HEALTH - GENERAL

#### Part V. Public Health Services

#### Subpart 19. Genetic Diseases Services

#### Chapter 63. Neonatal Screening

#### §6303. Purpose, Scope, Methodology

\*\*\*

F. Medical/Nutritional Management. In order for a patient with PKU or other rare inborn errors of metabolism to receive the special formulas for the treatment of these disorders from the state's Genetic Diseases Program and/or Special Supplemental Nutrition Program for Infants, Women, and Children (WIC), the following guidelines must be met:

a. The patient must be a resident of the State of Louisiana.

b. The patient must receive a medical evaluation at least once annually at Tulane Human Genetics Program Clinic or from another medical center program providing specialized management of metabolic patients under the supervision of a physician who is board certified in clinical biochemical genetics or a physician with written documentation of a medical evaluation and continuing consultation with a geneticist board certified in clinical biochemical genetics. A licensed and/or registered dietitian must also be on staff and readily available for both acute and chronic dietary needs of the patient. Medical centers not meeting these criteria must consult with one of the medical geneticists of the Tulane Human Genetics Program on the diagnosis and treatment regimen.

c. The patient must provide necessary specimens as requested by the medical specialist at Tulane Human Genetics Program or a specialist at another medical center whose evaluation and treatment plan has been approved by Tulane. Laboratory test results for phenylalanine and tyrosine levels must be submitted to the Genetics Program Office by the treating medical center.

d. The patient must include dietary records with the submission of each blood specimen if the patient is receiving services through the Tulane Human Genetics Program.

e. All insurance forms relative to charges for special formula must be signed and submitted by the parent or appropriate family member.

f. The parent or guardian must inform the Genetics Program Office immediately of any changes in insurance coverage.

G. Acceptable Newborn Screening Testing Methodologies and Procedures for Medical Providers not Using the State Laboratory. Laboratories performing or intending to perform the state mandated newborn screening battery on specimens collected on Louisiana newborns must meet the conditions specified below pursuant to R.S. 40:1299.1, 2, 3:

1. The testing battery must include testing for phenylketonuria (PKU), congenital hypothyroidism and the following hemoglobinopathies: sickle cell disease, SC disease, thalassemias, E disease and C disease.

2. The laboratory must perform the newborn screening testing battery on at least 50,000 specimens a year unless the said laboratory has been routinely performing the full screening battery since January 1, 1995.

3. Only the following testing methodologies are acceptable without prior approval:

Disease	Testing Methodology
PKU	Fluorometric Guthrie Phenylalanine level cut-off: ≥4mg/dl, call Genetics Office immediately for obtaining phenylalanine/tyrosine valves  Controls: 2mg/dl, 4mg/dl, 6mg/dl, 8mg/dl
Congenital Hypothyroidism	Radioimmunoassay (RIA) or Enzyme Immunoassay (EIA) methods for T4 and/or Thyroid Stimulating Hormone (TSH) which have been calibrated for neonates

Hemoglobinopathies (sickle cell)	Hemoglobin Electrophoresis to include: cellulose acetate/citrate agar capillary electrophoresis isoelectric focusing (IEF) High Performance Liquid Chromatography (HPLC)  (Sickle Dex is NOT acceptable)  Controls must include: F, A, S, C, E Result reporting: by phenotype Positive/Negative is NOT acceptable
New Food and Drug Administration approved methodologies may be used if found to be acceptable by the Genetic Diseases Program. Approval should be requested in writing 60 days before the intended date of implementation (see Genetic Diseases Program mailing address below). Requests for approval will be based on documentation of FDA approval and an in-house validation study of said methodology.	

4. The laboratory must participate in the proficiency testing program of the Centers for Disease Control for newborn screening using dried blood spots and Health Care Financing Administration (HCFA) approved proficiency testing programs for using whole blood specimens.

5. The laboratory must submit quarterly statistical reports to the Genetic Office that indicate the number of specimens screened by method, the number of specimens unsatisfactory for testing, the number normal and positive and for screening of hemoglobinopathies, the number by phenotype (see Genetics Office address in Subsection G.6).

6. To ensure appropriate and timely follow-up, all initial positive results must be immediately reported, along with patient demographic information to the Genetic Diseases Program Office either by FAX at (504) 568-7722 or by telephone at (504) 568-5070 and followed up by the mailing of the information to the following address: Genetic Diseases Program, P. O. Box 60630 - Suite 308, New Orleans, LA 70160, telephone (504) 568-5070.

7. The laboratory must register by letter with the Genetic Diseases Program of the Office of Public Health. This letter must contain the following:

- a. assurance of compliance with the requirements described in Subsection G.1. - 7.;
- b. the type of testing methodologies used;
- c. the number of specimens projected to be tested or actually tested annually;
- d. the type of specimen(s) used, i.e., filter paper or whole blood;
- e. reporting format for positive/abnormal test results.

8. Guidelines and recommendations on quality assurance of newborn screening from nationally recognized committees and authors should be considered in the establishment and operation of a newborn screening system<sup>2</sup>.

<sup>1</sup>Reference

American Academy of Pediatrics, Committee on Genetics: New Issues in Newborn Screening for Phenylketonuria and Congenital Hypothyroidism. *Pediatrics* 1982; 60:104-6.

<sup>2</sup>References pertaining to Subsection G:

a. Committee on Genetics, American Academy of Pediatrics Issues in Newborn Screening. *Pediatrics* 1992; 89:345.

b. CORN Newborn Screening Committee, Council on Regional Networks for Genetic Services. U.S. Newborn Screening System

Guidelines: Statement of the Council of Regional Networks for Genetic Services. *Screening*, 1 (1992 pp. 135-147).

c. Andrews I Legal Liability and Quality Assurance in Newborn Screening. Chicago, American Bar Foundation (1985), pp. 82-83.

d. National Committee for Clinical Laboratory Standards (NCLS) Standards for Blood Collection on Filter Paper for Neonatal Screening. Document LA4-A2 July 1992.

e. Committee on Assessing Genetic Risks, Division of Health Sciences Policy, Institute of Medicine Assessing Genetic Risks National Academy Press, Washington DC (1994).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299, et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 17:378 (April 1991), LR 18:1131 (October 1992), LR 20:1386 (December 1994), LR 23:301 (March 1997).

Bobby Jindal  
Secretary

9703#040

**RULE**

**Department of Health and Hospitals  
Office of Public Health**

**Sanitary Code—Reportable Diseases (Chapter II)**

(*Editor's Note:* The following Rule, which appeared on pages 1223 through 1224 of the December 20, 1996 *Louisiana Register*, is being republished to correct typographical errors.)

**Sanitary Code**

**Chapter II**

**The Control of Disease**

**-2:003** The following diseases are hereby declared reportable:

- Acquired Immune Deficiency Syndrome (AIDS)
- Amebiasis
- Arthropod-borne encephalitis (Specify type)
- Blastomycosis
- Botulism\*
- Campylobacteriosis
- Chancroid\*\*
- Chlamydial infection\*\*
- Cholera\*
- Cryptosporidiosis
- Diphtheria
- Enterococcus infection; resistant to vancomycin
- Escherichia coli 0157:H7 infection
- Gonorrhea\*\*
- Haemophilus influenzae infection
- Hemolytic-Uremic Syndrome
- Hepatitis, Acute (A,B,C, Other)
- Hepatitis B carriage in pregnancy
- Herpes (neonatal)
- Human Immunodeficiency Virus (HIV) infection\*\*\*\*
- Legionellosis
- Lyme disease
- Lymphogranuloma venereum\*\*
- Malaria



\*\*\*\*\*Report to the Louisiana Genetic Diseases Program  
Office by telephone (504) 568-5070 or FAX (504) 568-7722.

Bobby P. Jindal  
Secretary

9703#001

## RULE

### Department of Health and Hospitals Office of Public Health

#### Sanitary Code—Seafood Sanitation (Chapter IX)

The Department of Health and Hospitals, Office of Public Health amends Chapter IX of the State Sanitary Code, Section 9:052-3, Paragraph (C). The Rule change is necessary to correct an error that was made during previous rulemaking. Language has been added to this Section that will exempt, under certain conditions, the requirement that trucks utilized for hauling shell stock oysters to a steam factory for thermal processing and canning be refrigerated. The refrigeration requirements that were previously adopted were intended by this agency to apply only to shellfish offered for sale in the fresh and frozen market place.

Section 9:052-3, Paragraph (C) shall be amended as follows:

#### Chapter IX. Seafood

\* \* \*

#### 9:052-3 General Provisions

\* \* \*

C. Except for deliveries made to a shellfish dealer certified by the Office of Public Health for inclusion on the U.S. Food and Drug Administration's Interstate Certified Shellfish Shippers List and located less than 30 minutes from dockside, all land-based deliveries of shell stock shall be made aboard mechanically refrigerated trucks with an internal air temperature of 45°F or less as measured 12 inches from the blower. For shipments by air, an internal meat temperature of 45°F or less shall be maintained at all times. To accomplish this it shall be necessary to pre-chill shell stock to an internal temperature of 40°F or less prior to being packed into insulated containers with frozen gel packs. Land-based deliveries of molluscan shell stock to a steam factory for thermal processing and canning shall be exempt from these refrigeration requirements during the months November through May provided that the shellfish are delivered to the cannery in accordance with the requirements cited in Paragraph (A) of this Section and the Department of Wildlife and Fisheries, Enforcement Division is notified via their toll free telephone number (1-800-442-2511) prior to making each delivery.

\* \* \*

Bobby P. Jindal  
Secretary

9703#026

Measles (rubeola)\*  
Meningitis, other bacterial or fungal  
Mumps  
Mycobacteriosis, atypical\*\*\*  
Neisseria meningitidis infection  
Pertussis  
Rabies (animal and man)  
Rocky Mountain Spotted Fever (RMSF)  
Rubella (German Measles)  
Rubella (congenital syndrome)  
Salmonellosis  
Shigellosis  
Staphylococcus aureus (infection; resistant to methicillin/  
oxacillin or vancomycin)  
Streptococcus pneumoniae (infection; resistant to  
penicillin)  
Syphilis\*\*  
Tetanus  
Tuberculosis\*\*\*  
Typhoid fever  
Varicella (chickenpox)  
Vibrio infections (excluding cholera)

Report cases on green EPI-2430 card unless indicated otherwise below.

\*Report suspected cases immediately by telephone. In addition, report all cases of rare or exotic communicable diseases and all outbreaks.

\*\*Report on STD-43 form. Report syphilis cases with active lesions by telephone.

\*\*\*Report on CDC 72.5 (f5.2431) card.

\*\*\*\*Report on EPI-2430 card. Name and address are optional but city and ZIP Code must be recorded.

All reportable diseases and conditions other than the venereal diseases, tuberculosis and those conditions followed by asterisks should be reported on an EPI-2430 card and forwarded to the local parish health unit or the Epidemiology Section, P.O. Box 60630, New Orleans, Louisiana 70160, telephone 1-800-256-2748 or FAX (504) 568-3206.

#### Other Reportable Conditions

Cancer  
Complications of abortion  
Congenital hypothyroidism\*\*\*\*\*  
Galactosemia\*\*\*\*\*  
Hemophilia\*\*\*\*\*  
Lead poisoning  
Phenylketonuria\*\*\*\*\*  
Reye Syndrome  
Severe traumatic head injury+  
Severe undernutrition (severe anemia, failure to thrive)  
Sickle cell disease (newborns)\*\*\*\*\*  
Spinal cord injury+  
Sudden infant death syndrome (SIDS)

Report cases on an EPI-2430 card unless indicated otherwise below:

+Report on DDP3 form; preliminary telephone report from emergency room encouraged (504) 568-2509.

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Record Preparation Fees and  
Quarterly Submissions (LAC 42)**

The Louisiana Gaming Control Board hereby adopts Rules in accordance with R.S. 27:1 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**§109. Record Preparation Fees**

A. Any person requesting a hearing, or to whom a hearing is being afforded, pursuant to the provisions of §§103 and 108 or otherwise pursuant to the provisions of the Louisiana Gaming Control Law, R.S. 27:1 et seq., the Louisiana Riverboat Economic Development and Gaming Control Act, R.S. 4:501 et seq., the Video Draw Poker Devices Control Law, R.S. 33:4862.1 et seq., the Louisiana Economic Development and Gaming Corporation Act, R.S. 4:601 et seq., and Rules promulgated in accordance therewith, shall be assessed and pay a fee based upon costs of preparing the administrative record and transcript for submission to the board or the 19th Judicial District Court.

B.1. No less than 10 days prior to the date scheduled for the administrative hearing, the party shall deposit with the board the sum of \$100 as prepayment of the costs of preparing the administrative record and transcript.

2. Failure to timely pay the \$100 deposit may result in dismissal of the hearing (with prejudice).

C.1. After the hearing has been conducted, the actual costs of preparing the administrative record and transcript will be determined by the board and the party will be notified of such actual costs.

2. In the event actual costs are less than \$100, a refund will be made to the party.

3. Actual costs in excess of \$100 shall be assessed against the party, who shall pay the excess costs within 10 days of the date of receipt of the notice of assessment.

4. Failure to timely pay the excess costs assessed may result in dismissal of the hearing, and shall prevent the record and transcript from being transmitted to the board or 19th Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:304 (March 1997).

**§110. Quarterly Submissions**

A. Commencing with the issuance of any riverboat gaming operator license, the licensee shall submit on a quarterly basis to the board a statement of compliance with the applicant or licensee's previously submitted application or economic development plan as to those aspects of the plant which are then underway.

B. The licensee will certify quarterly under oath that a good faith effort to meet the voluntary procurement and employment conditions is being made, and shall quarterly

demonstrate to the board that an effort was made to meet the conditions. The quarterly statement shall be forwarded to the board by certified mail no later than 20 days after the end of each quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:304 (March 1997).

Hillary J. Crain  
Chairman

9703#002

**RULE**

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

**Child Support Collection and  
Distribution (LAC 67:III.2514)**

The Department of Social Services, Office of Family Support, has amended LAC 67:III.Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, revisions have been made to the method in which Support Enforcement Services distributes child support collections. Prior federal law totally mandated the manner of distribution. Federal law now requires that reimbursement of the federal portion of benefits from the Aid to Families with Dependent Children Program (AFDC) or Family Independence Temporary Program (FITAP) be made first. The state may then retain or distribute the remainder as it chooses. Therefore, the state has established a procedure to distribute funds.

The following Rule will become effective April 1, 1997.

**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 November 1, 1996 the agency will distribute child support collections in the following manner:

1. In cases in which the applicant/recipient (AR) currently receives AFDC or Family Independence Temporary Assistance Program (FITAP) benefits, collections received in a month will be retained by the state to reimburse previous and current assistance amounts, with the following exceptions:

a. in cases in which the collection amount and the court-ordered monthly obligation exceed the AFDC/FITAP amount, the AR will be refunded an amount that, added to the AFDC/FITAP amount, will bring the AR up to the court-

ordered monthly obligation amount, or the collection amount, whichever is smaller;

b. in cases in which the collection amount exceeds the amount of unreimbursed grant, the excess will be refunded to the AR up to the current arrearage amount.

2. In cases in which the AR previously received AFDC or FITAP, and there are amounts owed to the state, collections received in a month will be distributed as follows:

a. the AR will be refunded an amount equal to the court-ordered monthly obligation;

b. any excess amount will be applied to amounts owed to the state;

c. any remaining amounts will be paid to the AR.

3. In cases in which the AR never received assistance, or the AR previously received AFDC or FITAP and no amount is owed to the state, all collections will be refunded to the AR.

4. In IV-E Foster Care cases, all amounts collected are sent to the IV-E Agency for appropriate distribution.

B. There are general exceptions to distribution. Any collections received through intercept programs or income assignments, are subject to refund to the noncustodial parent based on federal and state laws and regulations. Amounts collected through IRS and/or state tax intercepts will be applied to arrears in this order:

1. amounts owed to the state; and

2. amounts owed to the AR.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997).

Madlyn B. Bagneris  
Secretary

9703#033

## RULE

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

#### Plan Document—Catastrophic Illness Endorsement

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and 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 amends the Plan Document of Benefits.

The board finds that it is necessary to amend the Plan Document to implement changes to the Catastrophic Illness Endorsement to provide a more meaningful benefit to members who purchase the endorsement, as well as to facilitate adjudication of claims for benefits under the endorsement. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

**Amendment Number 1**—Amend the Catastrophic Illness Endorsement provision in the *Schedule of Benefits* by deleting therefrom all references to 70 percent payment for inpatient hospital expenses and 30 percent payment for outpatient and professional expenses, such that the provision will 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 -- \$10,000 Maximum

Option 2 -- \$5,000 Maximum

**Amendment Number 2**—Delete Article 3, Section VI, in its entirety, and insert a new Article 3, Section VI to read as follows:

#### VI. Catastrophic Illness Endorsement

A. Optional at the Election of the Employee. Upon enrollment and payment of an additional monthly premium, Catastrophic Illness Endorsement (CIE) benefits are available to persons, except dependent parents as defined in Article 1, Section I (1) (4), covered under the Comprehensive Medical Plan as set forth in Article 3, Section I.

A new employee may enroll together with any eligible dependents in the CIE benefit within 30 days of the employee's date of employment without a pre-existing condition exclusion or evidence of good health. The employee must elect and maintain coverage under the CIE in order for the dependent to be eligible to enroll in the CIE.

Any request for coverage after 30 days of employment will be subject to the terms of Article 1, Section II (D).

B. Diseases Included. Benefits will be payable under this provision for services rendered on or after the covered person's effective date, for treatment of one or more of the following diseases:

1. Cancer, including Leukemia
2. Poliomyelitis (polio)
3. Diphtheria
4. Smallpox
5. Scarlet fever
6. Tetanus (lockjaw)
7. Spinal Meningitis
8. Encephalitis (sleeping sickness)
9. Tularemia
10. Hydrophobia (rabies)
11. Sickle Cell Anemia

C. Lifetime Maximum Benefit. The lifetime maximum benefit payable under Article 3, Section VI for eligible expenses incurred by any one covered person with respect to all diseases listed above is indicated in the Schedule of Benefits.

D. Benefits Payable. Catastrophic illness endorsement benefits are paid prior to benefits available under all other provisions of this contract, up to the Catastrophic Illness Endorsement lifetime maximum benefit, and shall be subject to the limitations of the Fee Schedule.

In the event a covered person has received the maximum amount payable under the Catastrophic Illness Endorsement, such person shall be eligible for benefits under the

Comprehensive Medical Benefits provisions of the Plan, to the extent such benefits remain unpaid.

E. Eligible Expenses. Eligible expenses under the Catastrophic Illness Endorsement are any expenses for which benefits are payable under Article 3, including services authorized under Article 3, Section IV. The difference between the allowable expense under Article 3, Section I, and the billed charges shall be considered an eligible expense under the Catastrophic Illness Endorsement, up to the Catastrophic Illness Endorsement lifetime maximum benefit, provided that billed charges in excess of the fee schedule shall not be considered an eligible expense.

F. Ineligible Expense. Expenses not eligible for reimbursement under the Catastrophic Illness Endorsement are:

1. any expense not eligible under Article 3, Section 1, except as noted above in Article 3, Section VI (E);
2. any expense incurred for outpatient prescription drugs; and
3. any expense incurred for mental health and/or substance abuse treatment.

James R. Plaisance  
Executive Director

9703#051

#### RULE

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

**Plan Document—Continuation of Coverage**

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and 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 amends the Plan Document of Benefits.

In order to implement changes included in the Health Insurance Portability and Accountability Act of 1996 (U.S. Public Law 104-191), effective January 1, 1997, the board has amended Article 1, Section III, Subsection K, Paragraph 5 of the Plan Document of Benefits for the State Employees Group Benefits Program to read as follows:

"5. Effective January 1, 1997, if a Covered Employee or Covered Dependent is determined by Social Security, or by the State Employees Group Benefits Program staff in the case of a person who is ineligible for Social Security disability due to insufficient "quarters" of employment, to have been totally disabled on the date such person became eligible for continued coverage under this Section, or within the first 60 days thereafter, and such person elects to continue coverage pursuant to the provisions of Article 1, Section III (E) or (J), coverage under this Plan for the Covered Person who is totally disabled may be extended AT HIS OR HER OWN EXPENSE up to

a maximum of 29 months from the date coverage would have otherwise terminated in the absence of Article 1, Section III (E). To qualify under this Section III (K)(5) the Covered Person must:

\* \* \*

James R. Plaisance  
Executive Director

9703#050

#### RULE

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

**Plan Document—Emergency Room  
Facility Charges at Non-PPO Hospitals**

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and 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 amends the Plan Document of Benefits, as follows:

The board finds that it is necessary to amend the Plan Document to implement a higher benefit for those cases in which emergency treatment is received at an emergency room in a hospital which is outside the Group Benefits preferred provider network.

**Amendment Number 1** -- Amend the footnote indicated by "\*\*\*" SCHEDULE OF BENEFITS by adding a new Paragraph c to read as follows:

c. A Non-PPO Hospital will be paid, after applicable deductibles, at 80 percent of Eligible Expenses for Emergency Room Services provided at the Hospital Emergency Room and billed by that Hospital.

**Amendment Number 2** -- Amend Article 1, Section I, by adding a new Subsection OO to read as follows:

OO. The term *Emergency Room Services* as used herein shall mean Hospital services eligible for reimbursement, provided at a Hospital Emergency Room and billed by a Hospital, and provided on an expeditious basis for treatment of unforeseen medical conditions which, if not immediately diagnosed and treated, could reasonably result in physical impairment or loss of life.

**Amendment Number 3** -- Amend Article 3, Section X, Subsection B, by adding a new Paragraph 3 to read as follows:

3. A Non-PPO Hospital will be paid, after applicable deductibles, 80 percent of Eligible Expenses for Emergency Room Services provided at the Hospital Emergency Room and billed by that Hospital. The Plan Member has the responsibility for establishing that such treatment services were Emergency Room Services, as defined by the Program.

James R. Plaisance  
Executive Director

9703#049

# Notices of Intent

## NOTICE OF INTENT

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Advisory Commission on Pesticides**

**Registration of Pesticides (LAC 7:XXIII.13113)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides proposes to amend Regulations regarding standard registrations of pesticides. These Rules comply with and are enabled by R.S. 3:3203. No preamble regarding these proposed Rules is available.

### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

#### Chapter 131. Advisory Commission on Pesticides

#### Subchapter D. Registration of Pesticides

#### §13113. Standard Registrations

A. Application for registration shall consist of two types, namely initial registration and renewal registration. Initial registration application may be filed at any time of the year. Renewal registration application shall be filed by the first day of December each year. Application shall be made on forms or formats prescribed by the commissioner; or on forms or formats which have the prior, written approval of the commissioner.

1. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which the label has been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. two complete copies of the labeling of the pesticide, containing:
  - i. the specific name of each active ingredient in the pesticide;
  - ii. the percentage of the active ingredients in the pesticide;
  - iii. the percentage of the inert ingredients in the pesticide;
  - iv. the net contents of each package in which the pesticide will be sold;
  - v. a statement of claims made for the pesticide;
  - vi. directions for the use of the pesticide, including warnings or caution statements;

d. the material safety data sheet prepared in accordance with the requirements of the Environmental Protection Agency;

e. such other information as the commissioner may require.

2. Application for re-registration of a pesticide for which the label has not been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. such other information as the commissioner may require.

3. The registration requirements as described in LAC 7:XXIII.13113.A.1 shall be resubmitted for any pesticide for which the label has been changed within 60 days of the change.

B. Any registration may be denied by the commissioner if he determines that:

1. the composition of the pesticide is not sufficient to support the claims made for the pesticide;
2. the label on the pesticide does not comply with state and federal requirements;
3. use of the pesticide may produce unreasonable adverse effects on the environment;
4. information required in LAC 7:13113.A has not been furnished to the commissioner by the manufacturer.

C. Any pesticide registered in Louisiana must comply with the following:

1. Any pesticide sold or offered for sale or distribution must bear a label consistent with the label submitted in the registration application.
2. Each shipping container must bear the lot or batch number of the pesticide.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 23:192 (February 1997), LR 23:

Interested persons should submit written comments on the proposed Rules to Bobby Simoneaux through April 25, 1997, at 5825 Florida Boulevard, Baton Rouge, LA 70806.

A public hearing will be held on these proposed Rules on April 25, 1997 at 9:30 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing.

**Bob Odom  
Commissioner**

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Registration of Pesticides**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units are anticipated to result from implementation of the proposed Rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue to state or local governmental units is anticipated to result from implementation of the proposed Rule amendment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed Rule change will reduce cost to pesticide manufacturers because labels are only required to be resubmitted upon a change, not every five years and upon change as previous law required.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is anticipated.

Richard Allen  
Assistant Commissioner  
9703#021

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Agricultural Environmental Sciences  
Structural Pest Control Commission**

**Adjudicatory Hearing Violations (LAC 7:XXV.14121)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission proposes to amend Regulations regarding the violations which can be brought before the Structural Pest Control Commission at an adjudicatory hearing. These proposed Rules comply with and are enabled by R.S. 3:3366 and R.S. 3:3371. No preamble regarding these proposed Rules is available.

**Title 7**

**AGRICULTURE AND ANIMALS  
Part XXV. Structural Pest Control**

**Chapter 141. Structural Pest Control Commission  
§14121. Adjudicatory Proceedings of the Commission;  
Violations**

- A. - D.21 . . .
  - 22. operating faulty or unsafe equipment;
  - 23. operating in a faulty, careless, or negligent manner.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry,

Structural Pest Control Commission, LR 15: 957 (November 1989), LR 23:

Interested persons should submit written comments on the proposed Rules to Bobby Simoneaux through April 25, 1997 at 5825 Florida Boulevard, Baton Rouge, LA 70806.

A public hearing will be held on these proposed Rules on April 25, 1997 at 9 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Adjudicatory Hearing Violations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units are anticipated to result from implementation of the proposed Rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue to state or local governmental units is anticipated to result from implementation of the proposed Rule amendment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Structural pest control operators who are found in violation after an adjudicatory hearing for operating in a faulty, careless, or negligent manner or for operating faulty or unsafe equipment will have additional costs if subject to a penalty. No impact on receipts or income is anticipated to persons not found in violation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is anticipated.

Richard Allen  
Assistant Commissioner  
9703#020

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Structural Pest Control Commission**

**Wood Destroying Insects  
(LAC 7:XXV.Chapter 141)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, proposes to amend Regulations governing wood destroying insects. These proposed Rules comply with and are enabled by R.S. 3:3366.

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons should submit written comments on the proposed Rule to Bobby Simoneaux through April 25, 1997, at 5825 Florida Boulevard, Baton Rouge, LA 70806.

A public hearing will be held on these proposed Rules on April 25, 1997 at 9 a.m. at the above address. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble regarding these proposed Rules is available.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Wood Destroying Insects**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed Rule adopts a new Wood Destroying Insect Report (WDIR) form designated as LPCA 142. It also implements a training program for licensees and technicians and new Rules for conducting and processing the WDIR. The cost to the state for issuing licenses and printing, administering and grading approximately 1,600 tests in FY 97-98 is estimated to be \$40,000. These costs are estimated to be \$12,500 each subsequent year. The additional paperwork will consist of the application form and test forms. Operating expenses include cost of form design, printing, copies, electronic licensing and storage of applicant data.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The department (Structural Pest Control Commission) will collect approximately \$40,000 (1,600 tests at \$25 per person) in FY 97-98 and approximately \$12,500 in each of the following years (500 tests at \$25 per person).

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Each affected person will be required to attend a training course costing approximately \$15 and be tested and licensed at a cost of \$25 for a combined cost of \$40 per person. The training course will be conducted by the Louisiana Pest Control Association. It is estimated that there will be approximately 1,600 applicants in FY 97-98 (\$64,000) and approximately 500 applicants in each of the following years (\$20,000). The economic benefit will be derived from performing services for the public under the new WDIR Inspector category.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No effect on competition and employment is anticipated as a result of this Rule change.

Richard Allen  
Assistant Commissioner  
9703#059

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Civil Service  
Board of Ethics**

**Lobbyists Required Reporting**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Board of Ethics intends to adopt the following form, as required by R.S. 24:53G, which will enable lobbyists to file semi-annual expenditure reports.

**LOBBYING EXPENDITURE  
REPORT**

COVERING JANUARY 1 THROUGH JUNE 30  
DUE AUGUST 15

COVERING JULY 1 THROUGH DECEMBER 31  
DUE FEBRUARY 15

**Lobbyist's  
Registration  
Number** \_\_\_\_\_

**FOR  
OFFICE  
USE ONLY**  
Postmark  
Date: \_\_\_\_\_

**Instructions**

- Print in ink or type.
- Fill in Registration Number in spaces provided.
- Complete form, have it notarized and return to the Board of Ethics, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, LA 70809, (504) 922-1400
- This form must be delivered or postmarked by the due date.
- This form may be faxed to (504) 922-1414. The original should be forwarded on the day of fax transmittal.

1. NAME \_\_\_\_\_  
Last First MI

2. BUSINESS ADDRESS \_\_\_\_\_  
Street and Number

City State Zip

MAILING ADDRESS \_\_\_\_\_

3. BUSINESS PHONE \_\_\_\_\_  
Area Code and Telephone Number

4. Total of all expenditures made January 1 through June 30: \$ \_\_\_\_\_  
(Include expenditures from Schedules A and B)

5. Total of all expenditures made July 1 through December 31: \$ \_\_\_\_\_  
(When Applicable) (Include expenditures from Schedules A and B)

6. Total of all expenditures made during calendar year: \$ \_\_\_\_\_  
(Line 4 added with Line 5 should equal Line 6)

7. Did you make an expenditure exceeding \$50 on one occasion for any one legislator:

From January 1 through June 30?  Yes  No  
From July 1 through December 31?  Yes  No  NA

If the answer to either question in Number 7 above is YES, please complete Schedule A and attach.

8. Did you make expenditures exceeding the sum of \$250 for any one legislator:

From January 1 through June 30?  Yes  No  
 From July 1 through December 31?  Yes  No  NA

If the answer to either question in Number 8 above is YES, please complete Schedule A and attach.

9. Did you expend funds for a reception, social gathering, or other function to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof were invited during the reporting period?  
 Yes  No

If the answer to Number 9 above is YES, please complete Schedule B and attach.

State of \_\_\_\_\_

Parish of \_\_\_\_\_

Before me, the undersigned authority, personally came and appeared \_\_\_\_\_, who, after being duly sworn by me, did declare and acknowledge to me that the above statements are true and correct.

\_\_\_\_\_  
 Signature of Lobbyist

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

SCHEDULE B: EXPENDITURES FOR RECEPTIONS, ETC.			
This Schedule must be completed if you answered YES to question 9 on the Lobbying Expenditure Report. The following information must be provided for all receptions, social gatherings, or other functions to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof, was invited.			
1. NAME(S) OF GROUP(S) INVITED	2. DATE OF RECEPTION	3. LOCATION OF RECEPTION	4. TOTAL AMOUNT OF EXPENDITURES FOR ATTENDING LEGISLATORS*

\*No amount expended on persons other than attending legislators is reportable.

No preamble to the proposed form has been prepared. Interested persons may direct their comments to Patricia H. Douglas, Board of Ethics, 8401 United Plaza Boulevard, Suite 200, Baton Rouge, LA 70809-7017, (504) 922-1400, until April 10, 1997.

R. Gray Sexton  
 Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
 FOR ADMINISTRATIVE RULES  
 RULE TITLE: Lobbyists Required Reporting**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
 The only estimated costs will be \$300 of postage costs to mail the form to registered lobbyists. This cost will be absorbed by the budget of the Ethics Administration Program
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
 No effect by promulgation of this form.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
 Persons who may be affected by this proposed form are registered lobbyists. It is impossible for this agency to assign a dollar amount to each lobbyist's time required to complete the form. Timely filing of these forms will prevent automatic fines on lobbyists.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
 No effect.

R. Gray Sexton  
 Executive Secretary  
 9703#063

Richard W. England  
 Assistant to the  
 Legislative Fiscal Officer

SCHEDULE A: EXPENDITURES FOR LEGISLATORS			
This Schedule must be completed if you answered YES to either question 7 or 8 on the Lobbying Expenditure Report. If, during the period January 1 through June 30 or the period July 1 through December 31, you made either a) an expenditure for any one legislator exceeding \$50 on any one occasion or b) aggregate expenditures exceeding \$250 for any one legislator during a reporting period, then you must provide the aggregate total of expenditures made on that legislator in that reporting period.			
1. LEGISLATOR'S NAME	2. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JANUARY 1 AND JUNE 30	3. AMOUNT OF EXPENDITURES MADE ON A LEGISLATOR FOR WHOM YOU EITHER SPENT OVER \$50 ON ONE OCCASION OR MADE EXPENDITURES EXCEEDING \$250 BETWEEN JULY 1 AND DECEMBER 31	4. TOTAL OF COLUMNS 2 AND 3



## NOTICE OF INTENT

### Department of Economic Development Office of Financial Institutions

#### Depository Institution Records Retention (LAC 10:I.701 and LAC 10:III.111)

Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 6:127, the commissioner of the Office of Financial Institutions gives notice of intent to repeal the Rule promulgated in the *Louisiana Register*, Volume 9, Pages 680-683 (October 1983) regarding bank records retention schedules and adopt a Rule providing for a record retention schedule for all depository institutions subject to the supervision of the commissioner. This proposed Rule significantly streamlines the existing record retention Rule by requiring that applicable institutions maintain minimum records and retention periods as deemed necessary by the commissioner for the proper examination and supervision of the institution by this office.

#### Title 10

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

#### Part I. Financial Institutions

#### Chapter 7. Records Retention

#### §701. Records Retention Schedule

Each depository institution subject to the regulation and supervision of the Office of Financial Institutions shall retain such minimum records which are deemed necessary for the examination and supervision of such institutions by this office and for such minimum retention periods as determined by the commissioner and set forth in a "record retention schedule." This Rule does not replace the institution's responsibility to create, implement, and maintain its own comprehensive record retention program, consistent with the institution's strategic goals and objectives. Such records may be retained in various forms including but not limited to hard copies, photocopies, computer printouts or microfilm, microfiche, imaging, or other types of electronic media storage that can be readily reproduced into hard copies.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:127.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:

#### Part III. Banks

#### Chapter 1. General Provisions

#### §111. Retention of Banking Records

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 6:170.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Financial Institutions, LR 9:680 (October 1983), repealed by the Department of Economic Development, Office of Financial Institutions, LR 23:

All interested persons are invited to submit written comments on this proposed Rule no later than 5 p.m., April 20, 1997 to Joseph P. Gardner, Deputy Chief Examiner, Office of Financial Institutions, Box 94095, Baton Rouge, LA

70804-9095, or by hand delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Larry L. Murray  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Depository Institution Records Retention

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The only anticipated cost associated with the implementation of this proposed Rule is the \$160 publication cost in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There is a potential cost savings to those depository institutions affected by the revised Rule due to the new, abbreviated record retention schedule. In addition, such institutions may experience cost savings in their ability to retain records in various forms of storage, such as electronic medium, imaging, microfiche, microfilm, etc., which equates to less storage space.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition and employment.

Larry L. Murray  
Commissioner  
9703#038

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Economic Development Office of Financial Institutions

#### Fees and Assessments (LAC 10:I.201-205)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as provided under R.S. 6:126(A), the commissioner of the Office of Financial Institutions gives notice of intent to amend the Rule originally promulgated in December 1993, and subsequently amended in October 1995 and March 1997; and repromulgate the Rule in its entirety. The commissioner proposes to eliminate the following in the proposed Rule:

1. the relocation fee for a main office or a branch office;
2. the fee charged banks, savings and loan associations and savings banks for the establishment of a loan or trust production office;
3. the fee charged to obtain a replacement charter or branch certificate;
4. the fee charged to exceed the legal lending limit to finance the sale of other real estate;

5. the fee for the filing of an agreement for substitution of fiduciary between two or more financial institutions authorized to exercise fiduciary powers; and

6. the fee imposed for the late filing of a call report or thrift financial report.

Also proposed is a reduction of the fee charged for the conversion of a national bank or federal savings and loan association or savings bank to a state-chartered bank, savings and loan association or savings bank. Also proposed is a clarification of the fee for the acquisition of a Louisiana-domiciled bank by an in-state or out-of-state financial institution holding company to include Louisiana-domiciled savings and loan associations and savings banks. Additionally, an applicant may now request a reduction of the applicable fees when filing multiple, simultaneous applications.

**Title 10**

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

**Part I. Financial Institutions  
(formerly Part I. Banks)**

**Chapter 2. Fees and Assessments**

**§201. General Provisions**

The Depository Institutions Section of the Louisiana Office of Financial Institutions ("OFI") is funded entirely through assessments and fees levied on state-chartered banks, savings and loan associations, savings banks and credit unions for services rendered. All fees detailed in this Rule are nonrefundable and must be paid at the time the application is filed with this office. An applicant may request that a reduced fee be charged for the simultaneous filing of multiple applications. This privilege will not be afforded to applications that will not be expected to be consummated within 12 months of the filing date.

**AUTHORITY NOTE:** Promulgated in accordance with LSA-R.S. 6:121(B)(1) and 6:126(A).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:

**§203. Establishment of Fees and Assessments**

DESCRIPTION	FEE
A. For the reservation of a corporate name of a state bank, savings and loan association, or savings bank.	\$100
B. Application for a de novo state bank, savings and loan association or savings bank charter, or the merger or consolidation of two banks, savings and loan associations, or savings banks. The fee for a merger or consolidation may be reduced based on certain factors including, but not limited to: the date of each institution's most recent examination, the financial condition of the applicant, the structure of the institutions, the complexity of the transaction, the number of similar transactions contemplated, and any other factor(s) as determined by the Commissioner of Financial Institutions.	\$10,000; \$5,000 for each additional institution affected.
C. The conversion from a national or federally-chartered depository institution to a state-chartered depository institution.	\$1,500

D. Application for a state bank, savings and loan association or savings bank for a branch office.	standard form: \$1,000 short form: \$250
E. Processing fee for an application to acquire a failing or failed institution. If the applicant is the successful bidder, the processing fee will be applied to the application fee(s) as set forth in B. and D. above:	
1. Existing state-chartered financial institution.	\$500 per branch
2. De Novo state-chartered financial institution.	\$5,000
F. Application for a state bank, savings and loan association, or savings bank for an off-site electronic financial terminal machine.	\$100
G. Application for a conversion or merger of a state-chartered bank, savings and loan association, or savings bank into a national bank, a federal savings and loan association, or a federal savings bank.	\$1,500
H. Application for the organization and/or merger of a stock or mutual holding company for an already existing bank, savings and loan association, or savings bank (phantom).	\$2,000
I. Special examination fee for a state bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
J. Semi-annual assessment of each state-chartered bank, savings and loan association, and savings bank at a floating rate to be assessed no later than June 30 and December 31, to be based on the total consolidated average assets, for the preceding quarter. Not applicable to Trust Banks. Any amounts collected in excess of actual expenditures of the OFI shall be credited or refunded on a pro-rata basis. Any shortages in assessments to cover actual operating expenses of OFI shall be added to the next variable assessment or billed on a pro-rata basis.	Variable
K. Annual assessment of each holding company domiciled in and/or operating in Louisiana, to be assessed no later than September 30 of each year to be based upon the holding company's total consolidated assets as of the previous June 30, in accordance with the following schedule.	
1. Assets less than \$100,000,000	\$350
2. Assets of \$100,000,000 to \$149,999,999	\$500
3. Assets of \$150,000,000 or greater	\$650
L. Examination fee for holding companies of each bank, savings and loan association, or savings bank domiciled in and/or operating in Louisiana. Fee per examiner.	\$50/hour
M. Semi-annual assessment for each bank limited to the exercise of trust powers only and domiciled and operating in Louisiana to be assessed no later than June 30 and December 31.	\$500
N. Examination fee for each trust bank domiciled and operating in Louisiana. Fee per examiner.	\$50/hour

O. Examination fee for a trust department of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
P. Examination of the registered transfer agent activities of a state-chartered bank, savings and loan association, or savings bank. Fee per examiner.	\$50/hour
Q. Review of a restatement and/or amendment to the Articles of Incorporation of a state-chartered bank, savings and loan association or savings bank.	\$250
R. Application by a state-chartered bank, savings and loan association, or savings bank to exercise trust powers and/or re-institute trust powers formerly surrendered.	\$1,000
S. Application by a state-chartered bank, savings and loan association, or savings bank to establish or acquire a subsidiary or service corporation.	\$1,000
T. Application by an in-state or out-of-state holding company to acquire a Louisiana bank, savings and loan association, or savings bank, or a holding company thereof, or an out-of-state holding company with a Louisiana bank, savings and loan or savings bank subsidiary(-ies).	\$1,000; \$11,000 if de novo charter also required.
U. Corporate Credit Union Examination Fee.	\$5,000 plus \$400 per day per examiner.
V. Application by a state-chartered bank, savings and loan association, or savings bank to merge with its parent holding company.	\$1,000
W. Processing fee for a certificate of authority filed by a state-chartered savings and loan association or savings bank not domiciled in Louisiana to operate a branch in Louisiana.	\$1,000
X. Application for conversion by any state-chartered depository institution to another state charter.	\$1,500
Y. Application for the voluntary conversion of a depository institution from a mutual to a stock form (equity ownership).	\$1,500
Z. - AE. Repealed.	

**AUTHORITY NOTE:** Promulgated in accordance with LSA-R.S. 6:126(A), 6:212 and 6:646(B)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:1546 (December 1993), amended LR 21:1069 (October 1995), LR 23:

**§205. Administration**

The commissioner may increase any of the above fees when a combination of two or more of the transactions described above occur, said fee not to exceed the lesser of \$50 per hour, or the combined fees as stated above.

**AUTHORITY NOTE:** Promulgated in accordance with LSA-R.S. 6:121(B)(1) and 6:126(A).

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions LR 19:1546 (December 1993), repromulgated LR 23:

All interested persons are invited to submit written comments on this proposed Rule no later than 5 p.m., April 20, 1997, to John P. Ducrest, Deputy Chief Examiner, Office

of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, or by hand-delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

Larry L. Murray  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fees and Assessments**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The only anticipated cost associated with the implementation of this Rule is the \$160 publication cost in the *Louisiana Register*.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on the revenue collections of state or local governmental units. In addition to fee income, this office charges a variable assessment on financial institutions in order to cover our costs of operation. The amount of the assessment is calculated by first estimating expenditures for the next six-month period. From this estimate, expected fee income is subtracted to yield the amount which will be assessed. Therefore, all fee income lost will be offset by a proportional increase in the variable assessment charged to banks, savings and loan associations, and savings banks.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed revision will have a neutral effect on the entities covered by this Rule with respect to any estimated costs. The proposed revision will have no effect on the economic benefits of the entities covered by this Rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

Larry L. Murray  
Commissioner  
9703#037

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

**Scholarship and Grant Policy and Procedure Manual**

The Student Financial Assistance Commission (LASFAC) hereby proposes to amend the Glossary of the Scholarship and Grant Policy and Procedure Manual, issued May 20, 1996.

"Academic Year (High School):

For purposes of the Louisiana Honors Scholarship Program, the annual academic year for high school begins with the summer session, includes the fall and winter terms and ends at the conclusion of the spring term, in that order.

For example: for a high school graduate to be considered for award of the scholarship to attend college in the 1996 fall term, he or she must have graduated from high school

during the summer term 1995 (usually June or July), mid-term 1995 (usually December), or the spring term 1996 (usually May or June).

This definition is not to be confused with the Louisiana Department of Education's definition of school year, which is found in Bulletin 741."

LASFAC supplies copies of the manual to schools participating in the scholarship and grant programs administered by the commission.

Interested persons may submit written comments on the proposed amendment until 4:30 p.m., May 20, 1997, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

##### RULE TITLE: Scholarship and Grant Policy and Procedure Manual

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No costs are anticipated to correct this error in the glossary of the Scholarship and Grant Policy and Procedure Manual. The manual text itself (V.D.1.C.i.) specifies that eligible recipients must receive a high school diploma from the institution during the academic year preceding the award year.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections are anticipated to result from this correction.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Administrators and Louisiana Honors Scholarship recipients will not be confused by the mistaken wording in the glossary definition of high school academic year in the manual.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated to result from this correction.

Jack L. Guinn  
Executive Director  
9703#025

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

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

##### Student Tuition Assistance and Revenue Trust (START Saving) Program (LAC 28.VI)

The Louisiana Student Trust Authority (LATTA) advertises its intention to adopt Rules governing the Student Tuition Assistance and Revenue Trust (START Saving) Program.

The Louisiana Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in the 1995 Regular Legislative Session as Act 547, effective June 18,

1995. The Internal Revenue Code (IRC) Section 529 provides tax incentives for those state tuition savings and prepayment programs meeting the definition of a qualified state tuition program. Amendments to Act 547 are being proposed to conform the statute with the IRC. Implementation of these START Saving Program Rules is contingent upon the enactment of conforming changes.

#### I. Program Description and Purpose

The Louisiana Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in 1995 to provide a program of savings for future college costs to help make education affordable and accessible to all citizens of Louisiana; to assist in the maintenance of state institutions of postsecondary education by helping to provide a more stable financial base to these institutions; to provide the citizens of Louisiana with financing assistance for education and protection against rising tuition costs, to encourage savings to enhance the ability of citizens to obtain access to institutions of postsecondary education; to encourage academic excellence, to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state; and to encourage recognition that financing an education is an investment in the future.

The START Saving Program establishes education savings accounts by individuals, groups, or organizations with provisions for routine deposits of funds to cover the future educational costs of a designated beneficiary or a group of beneficiaries. In addition to earning regular interest at competitive rates, certain accounts are also eligible for tuition assistance grants provided by the state to help offset the beneficiary's cost of postsecondary tuition. The grant amount is determined by the account owner's annual income and total annual deposits of principal.

#### II. Legislative Authority

Act Number 547, of the 1995 Regular Legislative Session, effective June 18, 1995, enacted the Louisiana Student Tuition Assistance and Revenue Trust (START) Saving Program as Chapter 22-A, Title 17 of the Louisiana Revised Statutes (R.S. 17:3091 - 3099.2).

#### III. Program Administration

The Louisiana Tuition Trust Authority (LATTA) is a statutory authority whose membership consists of the Louisiana Student Financial Assistance Commission (LASFAC), plus one member from the Louisiana Bankers Association, the state treasurer, and one member each from the House of Representatives and state Senate. The LATTA administers the START Saving Program through the Louisiana Office of Student Financial Assistance (LOSFA). LOSFA is the organization created to perform the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the START Saving Program under the direction of the LATTA.

#### IV. Applicable Definitions

4.1 *Beneficiary*—the person named in the education savings account depositor's agreement as the individual entitled to apply the account balance, or portions thereof,

toward payment of their postsecondary qualified higher education expenses.

**4.2 Depositor's Agreement**—the agreement for program participation executed by the account owner which incorporates, by reference, R.S. Chapter 22-A, Title 17, and the Rules promulgated by the LATTA to implement this statute and any other state or federal law applicable to the agreement.

**4.3 Education Assistance Account (EAA)**—an account which is eligible for tuition assistance grants and is established on behalf of a designated beneficiary by a parent, grandparent, legal guardian, or person claiming the beneficiary as a dependent on their federal income tax, or by an independent undergraduate on his own behalf.

**4.4 Education Savings Account**—a comprehensive term which refers to the two types of accounts that may be established under the program: an education assistance account and an education scholarship account.

**4.5 Education Scholarship Account (ESA)**—an account which is not eligible for tuition assistance grants and is established on behalf of a beneficiary or beneficiaries by a person or organization other than a parent, grandparent, legal guardian, independent student or person claiming the beneficiary or beneficiaries as dependent(s) on that person's or organization's federal income tax return.

**4.6 Eligible Educational Institution**—either a state college, university, or technical college or institute or an independent college or university located in this state that is accredited by the regional accrediting association, or its successor, approved by the U.S. Secretary of Education or a public or independent college or university located outside this state that is accredited by one of the regional accrediting associations, or its successor, approved by the U.S. Secretary of Education or a proprietary school licensed pursuant to Chapter 24-A of this Title, and any subsequent amendments thereto.

**4.7 Emergency Refund**—a refund of the redemption value of an account due to an unforeseen event which has adversely impacted the account owner, such as termination of employment, death, or permanent disability and resulted in a severe reduction in income or extraordinary expenses.

**4.8 Enrollment Period**—that period designated by the LATTA during which applications for enrollment in the START program will be accepted by the LATTA.

**4.9 False or Misleading Information**—a statement or response made by a person which is knowingly false or misleading and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

**4.10 Family Member**—in reference to the account beneficiary:

- (a) an ancestor of such individual;
- (b) the spouse of such individual;
- (c) a lineal descendant of such individual, of such individual's spouse or parent of such individual or the spouse of any lineal descendant described herein. A legally adopted child of an individual shall be treated as a lineal descendant of such individual.

**4.11 Fully Funded Account**—an account having a redemption value equal to or greater than five times the

annual tuition at the highest cost Louisiana public college or university projected to the scheduled date of the beneficiary's first enrollment in an eligible educational institution. An account which is "fully funded" is no longer eligible for accrual of tuition assistance grants. However, if subsequent cost projections result in the fully funded amount being more than the account balance, then tuition assistance grants may resume until the level of the most recent fully funded account projection has been met.

**4.12 Independent Student**—a person who is defined as an independent student by the Higher Education Act of 1965, as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an education assistance account.

**4.13 Louisiana Tuition Trust Authority (LATTA)**—the statutory body responsible for the administration of the START Saving Program.

**4.14 Louisiana Office of Student Financial Assistance (LOSFA)**—the organization responsible for administering the START Saving Program under the direction of the Louisiana Tuition Trust Authority.

**4.15 Louisiana Resident**—any person who resided in the state of Louisiana continuously during the 12 months immediately prior to the date of application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

- A. if registered to vote, is registered to vote in Louisiana;
- B. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;
- C. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;
- D. if earning an income, has complied with state income tax laws and regulations.

A member of the Armed Forces stationed outside of Louisiana, but who claims Louisiana as his "home of record" and is in compliance with Subparagraph D above, is exempt from the requirement of continuous residence in the state during the 12 months preceding the date of completion of the depositor's agreement.

A member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation.

Persons less than 21 years of age are considered Louisiana residents if they reside with and are dependent upon one or more persons who meet the above requirements.

**4.16 Maximum Allowable Account Balance**—the amount projected to equal five times the annual qualified higher education expenses, including tuition, at the eligible educational institution selected projected to the scheduled date of the beneficiary's first enrollment in that institution. In the event no specific eligible educational institution is named by the account owner, the maximum allowable account balance amount is projected to equal five times the annual qualified higher education expenses, including tuition, at the highest cost public institution in the state, projected to the scheduled date of the beneficiary's first enrollment. Once the redemption value of an education assistance account equals or

exceeds the maximum allowable account balance, principal deposits will no longer be accepted for the account. However, if subsequent projections increase the maximum allowable account balance, principal deposits may resume until the most recent maximum allowable account balance has been attained.

**4.17 Owner of Account**—the person(s), independent student, organization or group that completes a depositor's agreement on behalf of a beneficiary or beneficiaries and is the owner of record of all funds credited to the account.

**4.18 Qualified Higher Education Expenses**—tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible institution of postsecondary education.

**4.19 Rate of Expenditure**—the rate [see Section 8.3] per academic year, at which tuition assistance grants may be disbursed from an education assistance account to pay the beneficiary's cost of tuition, or portion thereof, at an eligible educational institution.

**4.20 Refund Recipient**—the person authorized by the depositor's agreement, or by operation of law, to receive refunds from the account.

**4.21 Redemption Value**—the cash value of an education savings account attributable to the sum of the principal invested, the interest earned on principal and authorized to be credited to the account by the LATTA, any tuition assistance grants appropriated by the Legislature and authorized by the LATTA to be allocated to the account and the interest earned on tuition assistance grants, less any tuition assistance grants or interest thereon restricted from expenditure and less any penalties required by *Internal Revenue Code*, Section 529.(b)(3). If the account has a redemption value after the beneficiary has completed his educational program, this excess value shall be treated as a refund.

**4.22 Scheduled Date of First-Enrollment**—for a dependent beneficiary, is the month and year in which the beneficiary turns 18 years of age. For an independent student, the scheduled date of first-enrollment is the expected date of enrollment reported by the independent student beneficiary. This date is used to determine eligibility for tuition assistance grants. See the term "*Fully Funded Account*."

**4.23 Tuition**—the mandatory educational charges required as a condition of enrollment and is limited to undergraduate enrollment. It does not include nonresidence fees, laboratory fees, room and board nor other similar fees and charges.

**4.24 Tuition Assistance Grant**—a payment allocated to an education assistance account, on behalf of the beneficiary of the account, by the state. The grant amount is calculated based upon the account owner's annual adjusted gross income and total annual deposits of principal. The grant and interest earned may only be used to pay the beneficiary's tuition, or portion thereof, at an eligible in-state institution.

## V. Establishing an Education Savings Account

Except where otherwise provided, all terms, conditions, and limitations in this Chapter shall apply to both education assistance accounts and education scholarship accounts.

**5.1 Education Assistance Accounts (EAA).** An Education Assistance Account is an Education Savings Account eligible for tuition assistance grants, which is established on behalf of a designated beneficiary by a parent, grandparent, legal

guardian or the person claiming the designated beneficiary of the account as a dependent on their federal income tax return, or by an independent student on his own behalf.

**5.1.1 Program Enrollment Period.** All eligible beneficiaries may be enrolled between July 1 and November 1 of each year. In addition to the July 1 through November 1 enrollment period, the enrollment period is open 12 months a year for those depositors' agreements completed prior to the named beneficiary's first birthday.

**5.1.2 Completing the Depositor's Agreement.** This agreement must be completed, in full, by the account owner. The owner shall designate a beneficiary. The owner may designate a limited power of attorney to another person who would be authorized to act on the owner's behalf, in the event the owner became incapacitated. The legal spouse of the owner may be listed as co-owner of the account. Transfer of account ownership is not permitted. Only the owner(s) or the beneficiary may be designated to receive refunds from the account.

**5.1.3 Agreement to Terms.** Upon executing a depositor's agreement, the account owner certifies that he understands and agrees to the following statements:

A. admission to a postsecondary educational institution; participation in the START Program does not guarantee that a beneficiary will be admitted to any institution of postsecondary education;

B. payment of full tuition; participation in the START Program does not guarantee that the full cost of the beneficiary's tuition will be paid at an institution of postsecondary education nor does it guarantee enrollment as a resident student;

C. maintenance of continuous enrollment; once admitted to an institution of postsecondary education, participation in the START Program does not guarantee that the beneficiary will be permitted to continuously enroll or receive a degree, diploma, or any other affirmation of program completion;

D. guarantee of redemption value; the LATTA guarantees payment of the redemption value of any Education Savings Account, subject to the limitations imposed by R.S.17:3098;

E. conditions for payment of education expenses; payments for qualified higher education expenses under the START Saving Program are conditional upon the beneficiary's acceptance and enrollment at an eligible educational institution;

F. fees; except for penalties that may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of an account; financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account;

**5.1.4 Acceptance of the Depositor's Agreement.** A depositor's agreement will be accepted upon evidence of the following:

A. proof of citizenship and residency as defined by Subparagraphs 5.1.5 and 5.1.6;

B. completion and submission of the depositor's agreement;

C. receipt by the LATTA of the initial deposit amount required to open an account;

D. acceptance by the LATTA of the signed depositor's agreement. Upon acceptance of the depositor's agreement, the LATTA will establish and credit the account of the named beneficiary with the amount of the initial deposit.

**5.1.5 Citizenship Requirements.** Both the account owner and beneficiary must meet the following citizenship requirements:

- A. be a United States citizen, or
- B. be a permanent resident of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and provide copies of INS documentation with the submission of the depositor's agreement.

**5.1.6 Residency Requirements.** On the date an account is opened, meaning an initial deposit has been made and accepted, either the account owner or his designated beneficiary must be a Louisiana resident, as defined in Section 4.15 of these Rules. If the owner indicates Louisiana residency, he must provide proof of same with the submission of the depositor's agreement. Proof of residency of the account owner may be indicated by supplying copies of one or more of the documents listed in this Section that show continuous residency in the state of Louisiana for the preceding 12 months:

- A. Louisiana voter's registration card;
- B. Louisiana driver's license;
- C. Louisiana motor vehicle registration;
- D. homestead exemption;
- E. utility bills at the same residence;
- F. professional or occupational license;
- G. proof of full-time Louisiana employment.

If the account owner is a member of the Armed Forces stationed in Louisiana under permanent change of station orders, he must provide a copy of such orders.

If the account owner is a nonresident of the state of Louisiana, he must provide proof that the named beneficiary is a Louisiana resident. Proof of residency for beneficiaries less than 18 years of age may be indicated by supplying copies of one or more of the following documents:

- A. under the age of 1 at the time the completed depositor's agreement is received:
  - 1. a birth certificate indicating the beneficiary was born in Louisiana;
  - 2. any item listed under Subparagraph B;
- B. between 1 year of age and kindergarten enrollment:
  - 1. a progress report form from the child's preschool or day care center indicating 12 months of residency;
  - 2. in the event there exist no records on the beneficiary, the beneficiary will be considered a Louisiana resident if the beneficiary resides with and is dependent upon one or more persons who provide documentation of residency listed in this Section;
- C. school aged children from kindergarten to twelfth grade:
  - 1. a school report card or transcript from a Louisiana public or private school;
  - 2. in the event school documents are unavailable, the beneficiary will be considered a Louisiana resident if the

beneficiary resides with and is dependent upon one or more persons who provide documentation of residency as listed in this Section.

The determination of residency shall be based upon verifiable circumstances or actions and certified true copies of relevant documentation. The LATTA may request additional documentation to clarify circumstances and formulate a decision that considers all facts relevant to residency.

**5.1.7 Providing Personal Information.** The account owner is required to disclose personal information in the depositor's agreement, including his Social Security Number; the designated beneficiary's Social Security Number; the beneficiary's date of birth; the familial relationship between the owner and the designated beneficiary; the owner's prior year's adjusted gross income amount as reported to the Internal Revenue Service and by signing the agreement provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue and Taxation. Social Security Numbers will be used for purposes of federal income tax reporting and to access individual account information for administrative purposes [see Section 11.5].

**5.1.8 First Disbursement Restriction.** A minimum of one year must lapse between the date the owner makes the first deposit opening an account and the first disbursement from the account to pay a beneficiary's qualified higher education expenses, which will normally be the beneficiary's projected scheduled date of first-enrollment in an eligible educational institution.

**5.1.9 Number of Accounts for a Beneficiary.** There is no limit on the number of education savings accounts that may be opened for one beneficiary by different account owners; however, the sum total of funds in all accounts for the same beneficiary may not exceed the maximum allowable account balance for that beneficiary and the sum of all education assistance accounts will be used to determine when these accounts are fully funded for the purpose of earning tuition assistance grants.

**5.2 Education Scholarship Accounts (ESA)**  
Reserved.

## **VI. Deposits to Education Savings Accounts**

**6.1 Application Fee and Initial Deposit Amount.** No application fee will be charged to participants applying for a START Program account directly to the LATTA. Financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account. An initial deposit of at least \$10 is required to open an education savings account and the initial and all subsequent deposits must be rendered in whole dollar amounts of at least that amount. A lump sum deposit may not exceed the maximum allowable account balance [see Section 4.16].

**6.2 Deposit Options.** The account owner shall select one of the following deposit options during the completion of the depositor's agreement; however, the owner may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

- A. occasional lump sum payment(s);
- B. monthly payments made directly to the LATTA or to a LATTA-approved financial institution;
- C. automatic account debit, direct monthly transfer from the owner's checking or savings account to the LATTA;
- D. payroll deduction, if available through the owner's employer.

Account owners are encouraged to maintain a schedule of regular monthly deposits. After acceptance of the depositor's agreement and annually thereafter, the LATTA will project the amount of the monthly deposit that will assure the account owner of sufficient savings to meet the qualified higher education expenses of the beneficiary at the scheduled date of enrollment at the selected institution, or the highest cost public institution if one was not pre-selected.

**6.3 Limitations on Deposits.** All deposits must be rendered in whole dollar amounts of at least \$10 and must be made in cash (check, money order, credit or debit card), defined as any of the deposit options listed in Section 6.2. A minimum of \$100 must be deposited annually for the account to be considered for award of state tuition assistance grants. Once the account becomes fully funded [see Section 4.11], it will no longer be considered for tuition assistance grants, regardless of the total amount of annual deposits made to the account. Once the redemption value has reached or exceeded the maximum allowable account balance [see Section 4.16], principal deposits will no longer be accepted to the account.

**VII. Allocation of Tuition Assistance Grants**

Tuition assistance grants are state-appropriated funds allocated to an education assistance account, on behalf of the beneficiary named in the account. The grants are calculated based upon the account owner's annual adjusted gross income and total annual deposits of principal. Although allocated to individual accounts, tuition assistance grants are state funds and shall be held in an escrow account maintained by the state treasurer until the beneficiary attends an eligible institution as set forth in Section 7.7.

**7.1 Providing Proof of Annual Adjusted Gross Income.** The account owner's annual adjusted gross income is used in computing the annual tuition assistance grant allocation. To be eligible in any given year for a tuition assistance grant, the account owner of an education assistance account must authorize the LATTA to access the owner's state tax return filed with the Louisiana Department of Revenue and Taxation, or provide the LATTA a copy of his federal income tax return filed for that year. In completing the depositor's agreement, the account owner of an education assistance account authorizes the LATTA to access his records with the Louisiana Department of Revenue and Taxation. In the event the account owner will not file his tax information with the Louisiana Department of Revenue and Taxation by their May 15 deadline, he must provide the LATTA with a copy of the form filed with the Internal Revenue Service (Form 1040, 1040A, 1040EZ, or 1040TEL), or a notarized statement as to why no income tax filing was required of the owner. To ensure timely allocation of tuition assistance grants to the account, the owner should provide these documents prior to

July 1 following the applicable tax year. If the account owner fails to provide the required tax documents by December 31 of the year following the taxable year, the account shall not be allocated a tuition assistance grant for the year being considered.

**7.2 Availability of Tuition Assistance Grants.** The availability of tuition assistance grants to be allocated to education assistance accounts is subject to an appropriation by the Louisiana Legislature. In the event that sufficient grants are not appropriated during any given year, the LATTA shall reduce tuition assistance grant rates, pro rata, as required to limit grants to the amount appropriated.

**7.3 Tuition Assistance Grant Rates.** The tuition assistance grant rates applicable to an education assistance are determined by the adjusted gross income of the account owner, according to the following schedule:

Reported Adjusted Gross Income	Tuition Assistance Grant Rate*
0 to \$14,999	14 percent
\$15,000 to \$29,999	12 percent
\$30,000 to \$44,999	10 percent
\$45,000 to \$59,999	8 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	0 percent

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

**7.4 Restrictions on Allocation of Tuition Assistance Grants to Education Assistance Accounts.** The allocation of tuition assistance grants is limited to education assistance accounts which:

- A. have principal deposits totaling at least \$100 annually;
- B. have an owner's reported adjusted gross income of less than \$100,000;
- C. have a redemption value that is less than that of a fully funded account [see Section 4.11].

**7.5 Frequency of Allocation of Tuition Assistance Grants to Education Assistance Accounts.** Tuition assistance grants will be allocated annually and reported on the July 1 quarterly statement, or no later than the second statement following the owner's required disclosure of his or her prior year's federal adjusted gross income.

**7.6 Rate of Interest Earned on Tuition Assistance Grants.** The rate of interest earned on tuition assistance grants shall be the rate of return earned on the Tuition Assistance Fund as reported by the state treasurer.

**7.7 Restriction on Use of Tuition Assistance Grants.** Tuition assistance grants, and any interest which may accrue thereon, may only be expended in payment of the beneficiary's tuition, or a portion thereof, at an eligible educational institution located in the state of Louisiana. Tuition assistance grants may not be used at an out-of-state



eligible educational institution, nor may they be used to pay for any qualified higher education expenses other than tuition. Tuition assistance grants, although allocated to a beneficiary's account and reported on the account owner's quarterly statements, are assets of the state of Louisiana until expended to pay a beneficiary's tuition at an eligible Louisiana institution. Tuition assistance grants are not the property of the account owner or beneficiary. The amount of tuition assistance grants which may be expended during a given term is determined by the length of the program in which the beneficiary actually enrolls [see Section 8.3].

#### **VIII. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary**

**8.1 Enrollment Notification.** The designated beneficiary of an education assistance account must notify the LATTA of the name and address of the institution at which he has enrolled using the Notice of Enrollment form. The Notice of Enrollment form should be completed and returned as soon as the beneficiary has determined which institution he will attend and must be returned at least 60 days prior to the beginning of the term for which benefits are to be utilized to ensure timely notification of available benefits to the beneficiary and the educational institution.

**8.2 Statement of Available Funds.** Upon receipt of the Notice of Enrollment, the LATTA will forward to both the beneficiary and the institution, a statement specifying the amount of tuition assistance grants which may be expended from the account for the specified academic term, and the balance of the account which may be expended for any remaining qualified higher education expenses that may be billed by the institution.

**8.3 Rate of Expenditure of Tuition Assistance Grants.** To determine the beneficiary's allowable rate of expenditure of tuition assistance grants from an education assistance account, the total of tuition assistance grants and interest earned thereon which has been allocated to the account, is divided by the number of years, or the number of remaining years, in the program in which the beneficiary enrolled or is attending, meaning the number of years to complete an undergraduate certificate, associate degree, or bachelor's degree program as defined by the institution, not to exceed four years. The amount so calculated or the actual tuition, whichever is less, is the amount of tuition assistance grants which may be expended for the academic year. If the student is attending a semester institution, the amount shall be divided by 2 to determine the amount allowable each semester; if attending a quarter institution the amount shall be divided by 3 to determine the amount allowable each quarter.

**8.4 Expenditure of Principal and Interest.** The balance of principal and earned interest in an education savings account may be expended as authorized by the beneficiary to pay his qualified higher education expenses billed by the institution.

**8.5 Payments to Eligible Educational Institutions.** After the final date for adding or dropping courses without penalty, the institution may bill the START program for the qualified higher education expenses of the beneficiary, up to the amounts specified in the Statement of Available Funds. Upon reconciliation of institutional billing statements, the LATTA

will disburse funds from the appropriate accounts, consolidate and forward payment directly to the institution. The LATTA will make all payments for qualified higher education expenses directly to the eligible educational institution. No payments for qualified higher education expenses shall be disbursed directly to the beneficiary.

**8.6 Withdrawal During the Academic Term.** If the designated beneficiary of an education savings account withdraws from the institution prior to the end of the academic term and withdrawals from the education savings account have been used to pay all or part of his qualified higher education expenses for that term, an institutional refund to the education savings account may be required. If any refund is due the beneficiary from the institution, a pro rata share of any refund of qualified higher education expenses, including tuition, equal to that portion of the qualified higher education expenses paid by disbursements from the education savings account, shall be made by the institution to the LATTA. The LATTA will credit any refunded amount to the appropriate education savings account.

**8.7 Receipt of Scholarships.** If the designated beneficiary of an education savings account is the recipient of a scholarship, waiver of tuition, or similar subvention which cannot be converted into money by the beneficiary, the owner or beneficiary may request a refund from the education savings account in the amount equal to the value of the scholarship, waiver or similar subvention up to the balance of principal and interest in the account. Upon the institution's verification that the beneficiary received a scholarship, waiver or similar subvention, the LATTA will refund, without penalty, the amount to the account owner or the beneficiary, as designated in the depositor's agreement.

**8.8 Advanced Enrollment.** A beneficiary may enroll in an eligible educational institution prior to his scheduled date of first-enrollment [see Section 4.22] and utilize education savings account funds. However, a beneficiary may not utilize funds from an education savings account prior to one year from the date the account owner made the first deposit opening the account.

**8.9 Part-Time Attendance and Nonconsecutive Enrollment.** A beneficiary may utilize funds in an education savings account for enrollments which are nonconsecutive and for part-time attendance at an eligible educational institution.

#### **IX. Termination and Refund of an Education Savings Account**

Contributions to an education savings account are voluntary. The account owner may terminate an account at any time. The LATTA may terminate an account in accordance with Section 9.2. A partial refund of an account may only be made as described in Subparagraph 9.3.C. All other requests for refund will result in the refund of the redemption value and termination of the account.

**9.1 Designation of a Refund Recipient.** In the depositor's agreement, the account owner may designate the beneficiary to receive refunds from the account; however, the beneficiary, if so designated, must be enrolled in an eligible educational institution to be eligible for receipt of any such refund, otherwise the refund will be made directly to the account

owner or his estate. Refunds of interest earnings will be reported as income to the individual receiving the refund for both federal and state tax purposes. In the event the beneficiary receives any refund of principal from the account, the tax consequence must be determined by the recipient.

**9.2 Involuntary Termination of an Account, with Penalty.** The LATTA may terminate a depositor's agreement if it finds that the account owner or beneficiary provided false or misleading information [see Section 4.9]. All interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

**9.3 Voluntary Termination of an Account, without Penalty.** No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded due to the following reasons:

A. the death of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition assistance grants and interest thereon, and shall be made to the account owner;

B. the disability of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition assistance grants and interest thereon, and shall be made to the account owner or the beneficiary, as designated in the depositor's agreement;

C. the beneficiary receives a scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary.

**9.4 Voluntary Termination of an Account, with Penalty.** Refunds for any reason other than those specified in Paragraphs 9.2 and 9.3 will be assessed a penalty of 10 percent of interest earned on principal deposits accumulated in said account at the time of termination. Reasons for voluntary account termination with penalty include, but are not limited to the following:

A. death of the account owner; upon notification of the death of the account owner, if there is no co-owner, the education assistance account will be terminated and a refund with penalty will be issued to the person designated on the depositor's agreement or the account owner's estate, whichever is applicable;

B. decision not to attend; upon notification in writing that the beneficiary has reached 18 years of age and has stated he does not intend to attend an institution of higher education;

C. upon notification in writing that the beneficiary has completed his educational program and does not plan to pursue further education.

Refunds made under the provisions of this Paragraph shall be equal to the redemption value of the education savings account at the time of the refund minus 10 percent of accumulated interest earned on principal deposits, and shall be made to the person designated in the depositor's agreement.

**9.5 Frequency of Refund Payments.** Payment of routine refunds will be restricted to the first day of each calendar quarter, or the next business day if the first day falls on a

weekend or holiday. Routine refund requests received by the close of the second month of a quarter will be paid on the first day of the following calendar quarter, or the next business day if the first day falls on a weekend or holiday. Routine refund requests received during the third month of the quarter will be paid on the first day of the second quarter following the quarter in which the request was received. Emergency refunds [see Section 4.7] will be paid within 30 days of receipt of the request by the LATTA.

## **X. Substitution, Assignment, and Transfer**

**10.1 Substitute Beneficiary.** The beneficiary of an education savings account may be changed to an eligible substitute beneficiary provided the account owner completes a Beneficiary Substitution form and the following requirements are met:

A. the substitute beneficiary meets the definition of a qualified beneficiary at the time of substitution;

B. the substitute beneficiary is a member of the family of the former beneficiary, meaning that he is a spouse, parent, child, grandchild, brother, sister, half-brother, half-sister, or parent or spouse of such, of the original beneficiary [see Section 4.10];

C. if the account owner is a nonresident of the state of Louisiana, the substitute beneficiary meets the applicable residency requirements [see Section 5.1.6];

D. if the original beneficiary is an independent student [see Section 4.12], meaning he is also the owner of the account, the substitute beneficiary must be the spouse or child of the owner.

**10.2 Assignment or Transfer of Account Ownership.** The ownership of an education savings account, and all interest, rights and benefits associated with such, are nontransferable.

**10.3 Changes to the Depositor's Agreement.** The account owner may request changes to the depositor's agreement. Changes must be requested in writing and be signed by the account owner or co-owners. Changes which are accepted will take effect as of the date the notice is received by the LATTA. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the owner. The account owner will be notified by the LATTA in writing of any changes affecting the depositor's agreement which result from changes in applicable federal and state statutes and Rules.

## **XI. Miscellaneous Provisions**

**11.1 Account Statements and Reports.** The LATTA will forward to each account owner a quarterly statement of account which itemizes the date and amount of deposits and interest earned during the prior quarter, the total principal and interest accrued to the statement date, and the total tuition assistance grants and interest allocated to the account as of the statement date. Interest earned on principal during a calendar quarter shall be credited to accounts and reported as of the first day of the following quarter. Tuition assistance grants shall be allocated annually and reported on the July 1 quarterly statement or no later than the second statement following the owner's required disclosure of his or her prior year's federal adjusted gross income.

A. Tuition Assistance Grants. Tuition assistance grants will be allocated annually and reported on the July 1

statement, or no later than the second statement following the account owner's required disclosure of annual adjusted gross income to the LATTA.

**B. Earned Interest.** Interest earned on principal deposits during a calendar quarter will be credited to accounts and reported to account owners as of the first day of the following quarter, beginning with the first full calendar quarter following the date of the first deposit. The rate of interest earned shall be the rate of return earned on the fund as reported by the state treasurer and approved by the LATTA.

**C. Refunded Amounts.** Interest earned on an education savings account which is refunded to the account owner or beneficiary will be taxable for state and federal income tax purposes. No later than January 31 of the year following the year of the refund, the LATTA will furnish the State Department of Revenue and Taxation, the Internal Revenue Service and the recipient of the refund an Internal Revenue Service Form 1099, or whatever form is appropriate according to applicable tax codes.

**D. Maximum Allowable Account Balance Report.** The account owner of an education savings account will be notified, in writing, of the maximum allowable account balance. The maximum allowable account balance is based on the cost of qualified higher education expenses for the eligible educational institution designated on the depositor's agreement, projected to the date of the beneficiary's scheduled date of first enrollment. If no eligible educational institution was designated on the depositor's agreement, the maximum allowable account balance will be projected based upon the highest cost in-state eligible public educational institution. If the account owner changes the institution designated on the depositor's agreement, a revised maximum allowable account balance will be calculated and the account owner will be notified of any change. The maximum allowable account balance is revised and reported to account owners annually, and is based upon changes in the cost projections for qualified higher education expenses.

**11.2 Rule Changes.** The LATTA reserves the right to amend the Rules regulating the START Program's policies and procedures; however, any amendments to Rules affecting participants will be published in accordance with the Administrative Procedure Act and distributed to account owners for public comment prior to the adoption of final Rules.

**11.3 Determination of Facts.** The LATTA shall have sole discretion in making a determination of fact regarding the application of these Rules.

**11.4 Individual Accounts.** The LATTA will maintain an individual account for each beneficiary, showing the redemption value of the account.

**11.5 Confidentiality of Records.** All records of the LATTA identifying account owners and designated beneficiaries of education savings accounts, amounts deposited, expended or refunded, are confidential and are not public records.

**11.6 No Investment Direction.** No account owner or beneficiary of an education savings account may direct the investment of funds credited to an account.

**11.7 No Pledging of Interest as Security.** No interest in an education savings account may be pledged as security for a loan.

**11.8 Excess Funds.** Principal deposits to an education savings account are no longer accepted once the account total reaches the maximum allowable account balance [see Section 6.3]. However, the principal and interest earned thereon may continue to earn interest and any tuition assistance grants allocated to the account may continue to accrue interest. Funds in excess of the maximum allowable account balance may remain in the account and continue to accrue interest and may be expended to an eligible educational institution in accordance with Section 8, or upon termination of the account, will be refunded in accordance with Section 9.

**11.9 Withdrawal of Funds.** Funds may not be withdrawn from an education savings account except as set forth in Sections 8 and 9.

**11.10 NSF Procedure.** A check received for deposit to an education savings account which is returned due to insufficient funds in the depositor's account on which the check is drawn, will be redeposited and processed a second time by the START Program's financial institution. If the check is returned due to insufficient funds a second time, the check will be returned to the depositor.

**11.11 Effect of a Change in Residency.** On the date an account is opened, either the account owner or beneficiary must be a resident of the state of Louisiana [see Section 5.1.6]. However, if the owner or beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the depositor's agreement. The account owner may elect to terminate the account or request a "rollover" of account funds to a qualified state tuition program in the new state of residence. Only the principal deposited, and interest earned thereon, may be "rolled over." Tuition assistance grants allocated to an education assistance account are not transferrable nor refundable.

**11.12 Effect on Other Financial Aid.** Participation in the START Program does not disqualify a student from participating in other federal, state or private student financial aid programs. However, depending upon the Regulations which govern these other programs at the time of enrollment, the beneficiary may experience reduced eligibility for aid from these programs.

**11.13 Change in Projected School of Enrollment.** The account owner may redesignate the beneficiary's projected school of enrollment, but not more than once annually. If the change in school results in a change in the account's fully funded or maximum allowable account balance, the account owner will be notified.

**11.14 Abandoned Accounts.** Abandoned accounts will be defined and treated in accordance with R.S. 9:151 et seq., as amended, the Louisiana Uniform Unclaimed Property Act.

The Office of Student Financial Assistance will conduct a series of statewide hearings on these proposed Rules to inform the public and solicit comment. The public will be notified of these hearings through advertisements in their local media.

Interested persons may submit written or verbal comments on the proposed Rules at any of the public hearings or by mail until 4:30 p.m., May 20, 1997 to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Student Tuition Assistance and  
Revenue Trust (START) Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Estimated implementation costs to administer the program are approximately \$188,559, which includes personal services for two full-time positions and allocated salary for in-house programming staff. Also included in the implementation costs are funds for operating services, minimal office furniture and equipment, and computer processing time. Costs anticipated for 1996-97 are \$188,559; for FY 1997-98, \$232,192; and for 1998-99, \$414,487.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No estimated effect on revenue collections is anticipated to result from this proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The Student Tuition Assistance and Revenue Trust Program will enable citizens to save for post-secondary educational expenses.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No estimated effect on competition and employment is anticipated to result from this proposed Rule.

Jack L. Guinn  
Executive Director  
9703#064

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

**Control of Emission of Organic Compounds  
(LAC 33:III.Chapter 21) (AQ149)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:III.Chapter 21 (AQ149).

This proposed Rule revises parts of Chapter 21 to provide clarification where current language may result in misinterpretation of the Regulation. Because of recent and anticipated changes in area designation status in some parishes

from nonattainment to attainment for ozone, clarification by parish (unless applicable statewide) of regulatory applicability is added. Compounds exempted from VOC definition are updated, as allowed by recent EPA rulemaking, to exempt HFC 43-10MEE and HCFC 225CA and CB. These compounds are solvents which could be used in electronics and precision cleaning, and are exempt on the basis that these compounds have negligible contribution to tropospheric ozone formation. Miscellaneous errors or ambiguity identified by various sources are also clarified and corrected throughout Chapter 21.

This proposed Rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 21. Control of Emission of Organic  
Compounds**

**Subchapter A. General**

**§2103. Storage of Volatile Organic Compounds**

\*\*\*

[See Prior Text in A-H.2.e]

3. Vapor Pressure. The maximum true vapor pressure is determined based upon the highest expected calendar-month average of the storage temperature. The true vapor pressure shall be determined from one of the following methods:

- a. from available data on the Reid vapor pressure;
- b. by ASTM Test Method D323 for the measurement of Reid vapor pressure, and adjusted for actual storage temperature using the nomograph contained in API Bulletin 2517;
- c. from standard reference texts;
- d. determined by ASTM Test Method D2879; or
- e. by another method approved by the administrative authority\*.

\*\*\*

[See Prior Text in I-I.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 15:1065 (December 1989), repromulgated LR 16:27 (January 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 23:

**§2107. Volatile Organic Compounds—Loading**

\*\*\*

[See Prior Text in A-E.2]

3. Vapor processing systems utilizing a combustion device to destroy the collected VOCs will be exempt from testing and must be designed and operated in accordance with 40 CFR part 60, section 60.18, as incorporated by reference at LAC 33:III.3003.

\*\*\*

[See Prior Text in F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:116 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 22:1212 (December 1996), LR 23:

### §2108. Marine Vapor Recovery

A. Applicability. An affected facility is any marine loading operation serving ships and/or barges loading crude oil, gasoline, or volatile organic compounds (VOCs) with an uncontrolled emission of 100 tons per year (TPY) or greater of volatile organic compounds. Emissions from VOCs with a true vapor pressure of less than 1.5 psia at the loading temperature of the liquid are exempt from the control requirements of this Section.

\* \* \*

[See Prior Text in B-C.1]

2. Affected facilities shall collect and process the vapors by a recovery and/or destruction system such that uncontrolled emissions are reduced by at least 90 percent by weight.

3. Unless exempted under Subsection A of this Section, affected facilities' emissions to the atmosphere caused by the loading of crude oil, gasoline, or volatile organic compounds into ships and/or barges are not to exceed the following:

\* \* \*

[See Prior Text in C.3.a-H.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 14:704 (October 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 22:1212 (December 1996), LR 23:

### §2115. Waste Gas Disposal

Any waste gas stream containing volatile organic compounds (VOC) from any emission source shall be controlled by one of the methods described in Subsections A-G of this Section. This Subchapter shall apply to all waste gas streams located at facilities that emit, or have the potential to emit, 50 TPY or more of volatile organic compounds in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY in any other parish. A facility may establish its potential to emit through a permit limiting VOC emissions below either 50 TPY or 100 TPY, as applicable. This Subchapter does not apply to waste gas streams that are subject to other subchapters in this Chapter.

A. Control Requirements for Operations that Commenced Construction Prior to January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1300°F (704°C) for 0.3 second or greater in a direct-flame afterburner or an equally effective device which achieves a removal efficiency of 95 percent or greater, as determined in accordance with Subsection J.1 of this Section, or if emissions are reduced to 50 ppm by volume, whichever is less stringent.

B. Control Requirements for Operations that Commenced Construction On or After January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1600°F (870°C) for 0.5

second or greater in a direct-flame afterburner or thermal incinerator. Other devices will be accepted provided 98 percent or greater VOC destruction or removal efficiency can be demonstrated, as determined in accordance with Subsection J.1 of this Section, or if emissions are reduced to 20 ppm by volume, whichever is less stringent.

C. Control Requirements for Existing Polypropylene Plants Using Liquid Phase Processes. All waste gas streams containing VOCs at the following sources in existing polypropylene plants using liquid phase processes shall be controlled as specified in Subsection B of this Section:

\* \* \*

[See Prior Text in C.1-C.3]

D. Control Requirements for Existing High-Density Polyethylene Plants Using Liquid Phase Slurry Processes. All waste gas streams containing VOCs at the following sources in existing high-density polyethylene plants using liquid phase slurry processes shall be controlled as specified in Subsection B of this Section:

\* \* \*

[See Prior Text in D.1-D.2]

E. Control Requirements for Polystyrene Plants Using Continuous Processes. The emissions from the material recovery section (e.g., product devolatilizer system) shall be limited to 0.12 kg VOC/1,000 kg of product.

F. Control Requirements for Halogenated Hydrocarbons. The halogenated hydrocarbons shall be combusted or controlled by other methods specified in Subsection G of this Section that achieve a removal efficiency of 95 percent or greater, as determined in accordance with Subsection J.1 of this Section. If combusted, the halogenated products of combustion shall be reduced to an emission level acceptable to the administrative authority.

G. Alternative Control Requirements. Other methods of control (such as, but not limited to, carbon adsorption, refrigeration, catalytic and/or thermal reaction, secondary steam stripping, recycling, or vapor recovery system) may be substituted for burning provided the substitute is acceptable to the administrative authority\* and it achieves the same removal efficiency as required by this Section and determined in accordance with Subsection J.1 of this Section or it achieves a degree of control not practically or safely achieved by other means.

#### H. Exemptions

1. All waste gas streams containing VOCs, except those subject to Subsections C, D, and E of this Section, are exempt from the requirements of this Section if any of the following conditions are met:

a. it can be demonstrated that the waste gas stream is not a part of a facility that emits, or has the potential to emit, 50 TPY or more of volatile organic compounds in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY in any other parish;

b. it is a waste gas stream from a low-density polyethylene plant and no more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of product are emitted from all the waste gas streams associated with the formation, handling, and storage of solidified product;

c. it is a waste gas stream having a combined weight of VOCs equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; or

d. it is a waste gas stream with a concentration of VOCs less than 0.44 psia true partial pressure (30,000 ppm) except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge in which the concentration of VOCs in the waste gas stream must be less than 0.044 psia true partial pressure (3,000 ppm).

2. Except for waste gas streams subject to Subsections C, D, and E of this Section, the administrative authority\* may waive the requirements of this Section if one of the following conditions is met:

\* \* \*

[See Prior Text in H.2.a-H.2.b]

3. Waste gas streams subject to Subsections C, D, and E of this Section are exempt from the requirements of this Section if it can be demonstrated that the waste gas stream has a concentration of VOCs no greater than 408 ppm by volume.

[NOTE: Paragraphs 4 and 5 are being deleted at this time to clarify confusion regarding the asterisks as printed in AQ68 published as a final Rule in March 1993.]

\* \* \*

[See Prior Text in I-K.4]

L. This Section does not apply to safety relief and vapor blowdown systems where control cannot be accomplished because of safety or economic considerations. However, the emissions from these systems shall be reported to the department as required under LAC 33:III.918. Emergency occurrences shall be reported under LAC 33:III.927.

#### M. Definitions

*Safety Relief* and *Vapor Blowdown Systems*—the emergency escape of gas from a process unit through a valve or other mechanical device, in order to eliminate system overpressure or in the case of an operational emergency.

*Waste Gas Stream*—any gas stream discharged from a processing facility directly to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. Process gaseous streams that are used as primary fuels are excluded. The streams that transfer such fuels to a plant fuel gas system are not considered to be waste gas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 23:

#### §2117. Exemptions

The following compounds are considered exempt from the control requirements of this Chapter: methane, ethane, 1, 1, 1 trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113), trifluoromethane (FC-23), 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123), 1,1,1,2-

tetrafluoroethane (HFC-134a), 1,1-dichloro 1-fluoroethane (HCFC-141b), 1-chloro 1,1-difluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca), 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC)-225cb), 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee), acetone, parachlorobenzotrifluoride (PCBTF), perchloroethylene (tetrachloroethylene), and cyclic, branched, or linear completely methylated siloxanes. The following classes of perfluorocarbons are also considered exempt from the control requirements of this Chapter: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:289 (March 1994), LR 21:681 (July 1995), LR 21:1330 (December 1995), repromulgated LR 22:14 (January 1996), amended LR 22:703 (August 1996), LR 23:

#### §2121. Fugitive Emission Control

\* \* \*

[See Prior Text in A-C.4.h]

i. pumps and compressors that are sealless or have a double mechanical seal;

\* \* \*

[See Prior Text in C.4.j-G.Liquid Service]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 23:

#### §2122. Fugitive Emission Control for Ozone Nonattainment Areas

\* \* \*

[See Prior Text in A-D.4.g]

h. pumps and compressors that are sealless or have a double mechanical seal;

\* \* \*

[See Prior Text in D.4.i-G.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1102 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 22:1129 (November 1996), LR 22:1212 (December 1996), LR 23:

**Subchapter B. Organic Solvents**

**§2123. Organic Solvents**

\*\*\*

[See Prior Text in A-B.1.c]

2. Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups of organic compounds, it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

C. Surface Coating Industries. No person may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by this Subsection to exceed the emission limits as specified in this Section.

Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. Per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. Per Liter of Coating as applied (minus water and exempt solvent)
1. Large Appliance Coating Industry. The following emission limits shall apply: Prime, single or topcoat application area, flashoff area and oven	2.8	0.34
2. Surface Coating of Cans. The following emission limits shall apply: Sheet Basecoat (exterior and interior) and over-varnish: Two-piece can exterior (basecoat and over-varnish)	2.8	0.34
Two and three-piece can interior body spray, two-piece can exterior end (spray or roll coat)	4.2	0.51
Three-piece can side-seam spray	5.5	0.66
End sealing compound	3.7	0.44
3. Surface Coating of Coils. The following emission limits shall apply: Prime and topcoat or single coat operation	2.6	0.31
4. Surface Coating of Paper. The following emission limits shall apply: Coating Line	2.9	0.35
5. Surface Coating of Fabrics. The following emission limits shall apply: Fabric Facility	2.9	0.35
Vinyl Coating Line (except Plasticol coatings)	3.8	0.45

6. Surface Coating of Assembly Line Automobiles and Light Duty Trucks. The following emission limits shall apply: Prime application, flashoff area and oven (determined on a monthly basis)	1.2	0.14
Primer surface application flashoff area and oven	2.8	0.34
Topcoat application, flashoff area and oven	2.8	0.34
Final repair application, flashoff area and oven	4.8	0.58
As an alternative to the emission limitation of 2.8 pounds of VOC per gallon of coating applied for the primer surfacer and/or topcoat application, compliance with these emission limitations may be demonstrated by meeting a standard of 15.1 pounds of VOC per gallon of solids deposited.		
7. Surface coating-magnet wire coating. The following emission limits shall apply: Coating Line	1.7	0.20
8. Surface Coating of Metal Furniture. Volatile organic compound emissions from metal furniture coating lines shall not exceed three pounds per gallon (0.36 kg/liter) of coating (minus water and exempt solvent).		
9. Surface Coating of Miscellaneous Metal Parts and Products. The following emission limits shall apply: Clear Coat	4.3	0.52
Air or force air dried items (not oven dried)	3.5	0.42
Frequent color change and/or large numbers of colors applied, or first coat on untreated ferrous substrate	3.0	0.36
Outdoor or harsh exposure or extreme performance characteristics	3.5	0.42
No or infrequent color change, or small number of colors applied	0.4	0.05
a. Powder Coating		
b. Other	3.0	0.36
These limits do not apply to operations covered in 1-8 or 11 herein or exterior coating of fully assembled aircraft, auto refinishing, and auto customizing topcoating (processing less than 35 vehicles per day).		
10. Factory Surface Coating of Flat Wood Paneling. The following emission items shall apply:	VOC Emission Limitation	
	Lbs/1000 sq. ft. of Coated Surface	Kgs/100 sq. meter of Coated Surface
Printed interior wall panels made of hardwood plywood and thin particleboard	6.0	2.9

Natural finish hardwood plywood panels	12.0	5.8
Class II finishes for hardboard paneling	10.0	4.8
11. Surface Coating for Marine Vessels and Oilfield Tubulars and Ancillary Oilfield Equipment.		
a. Except as otherwise provided in this Rule, a person shall not apply a marine coating with a VOC content in excess of the following limits:		
Baked Coatings	3.5	0.42
Air-Dried Single-Component Alkyd or Vinyl Flat or Semi Gloss Finish Coatings	3.5	0.42
Two Component Coatings	3.5	0.42
b. Except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, in which the VOC limitations in Subsection C.11.a of this Section may not be exceeded, specialty marine coatings and coatings on oilfield tubulars and ancillary oilfield equipment with a VOC content not in excess of the following limits may be applied:		
Heat Resistant	3.5	0.42
Metallic Heat Resistant	4.42	0.53
High Temperature (Fed. Spec. TT-P-28)	5.41	0.65
Pre-Treatment Wash Primer	6.5	0.78
Underwater Weapon	3.5	0.42
Elastomeric Adhesives With 15 percent Weight Natural or Synthetic Rubber	6.08	0.73
Solvent-Based Inorganic Zinc Primer	5.41	0.65
Pre-Construction and Interior Primer	3.5	0.42
Exterior Epoxy Primer	3.5	0.42
Navigational Aids	3.5	0.42
Sealant for Wire- Sprayed Aluminum	5.4	0.648
Special Marking	4.08	0.49
Tack Coat (Epoxies)	5.08	0.61
Low Activation Interior Coating	4.08	0.49
Repair and Maintenance Thermoplastic	5.41	0.65
Extreme High Gloss Coating	4.08	0.49
Antenna Coating	4.42	0.53
Antifoulant	3.66	0.44
High Gloss Alkyd	3.5	0.42
Anchor Chain Asphalt Varnish (Fed. Spec. TT-V-51)	5.2	0.62

Wood Spar Varnish (Fed. Spec. TT-V-119)	4.1	0.492
Dull Black Finish Coating (DOD-P-15146)	3.7	0.444
Tank Coatings (DOD-P-23236)	3.5	0.42
Potable Water Tank Coating (DOD-P-23236)	3.7	0.444
Flight Deck Markings (DOD-C-24667)	4.2	0.504
Vinyl Acrylic Top Coats	5.4	0.648
Antifoulant Applied to Aluminum Hulls	4.5	0.55

\* \* \*

[See Prior Text in D-F.4]

### G. Definitions

*Air Dried Coating*—any coating that is cured at a temperature below 90°C (194°F).

*Baked Coating*—any coating that is cured at a temperature at or above 90°C (194°F).

*Extreme High Gloss Coating*—any coating that achieves at least 95 percent reflectance on a 60° meter when tested by ASTM Method D-523.

*Heat Resistant Coating*—any coating that during normal use must withstand temperatures of at least 204°C (400°F).

*High Gloss Coating*—any coating that achieves at least 85 percent reflectance on a 60° meter when tested by ASTM Method D-523.

*High Temperature Coating*—any coating that must withstand temperatures of at least 426°C (800°F).

*Marine Coating*—any coating, except unsaturated polyester resin (fiberglass) coatings, containing volatile organic materials and applied by brush, spray, roller, or other means to ships, boats and their appurtenances, and to buoys and oil drilling rigs intended for the marine environment.

*Metallic Heat Resistant Coating*—any coating which contains more than five grams of metal particles per liter as applied and which must withstand temperatures over 80°C (175°F).

*Repair and Maintenance Thermoplastic Coating*—a resin-bearing coating in which the resin becomes pliable with the application of heat, such as vinyl, chlorinated rubber, or bituminous coatings.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2054.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:

### Subchapter F. Gasoline Handling

#### §2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities

\* \* \*

[See Prior Text in A-A. Small Business Stationary Source.5]



B. Applicability

1. The provisions of this Section shall apply to motor vehicle fuel dispensing facilities in the affected parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge.

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[See Prior Text in B.2-F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:

§2135. Bulk Gasoline Terminals

A. Areas Affected. All facilities in Ascension, Beauregard, Bossier, Caddo, Calcasieu, East Baton Rouge, Grant, Iberville, Livingston, Jefferson, Lafayette, Lafourche, Orleans, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, and West Baton Rouge parishes shall be in compliance with this Section.

\*\*\*

[See Prior Text in B-E.5.c]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:611 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 23:

Subchapter H. Graphic Arts

§2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes

A. Control Requirements. No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility having a potential to emit 50 TPY or more of VOCs in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge or having a potential to emit 100 TPY or more of VOCs in any other parish, unless volatile organic compound emissions are controlled by one of the methods in Subsection A.1-5 of this Section. Once a facility is subject to the provisions of this Section, it remains so regardless of future variations in production.

\*\*\*

[See Prior Text in A.1-5]

B. Applicability Exemption. A rotogravure or flexographic printing facility which has a potential to emit on an uncontrolled basis at full production (8760 hours per year basis) a combined weight of volatile organic compounds less than 50 TPY calculated from historical records of actual consumption of ink is exempt from the provisions of Subsection A of this Section.

\*\*\*

[See Prior Text in C-D.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division,

LR 16:964 (November 1990), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 23:

Subchapter I. Pharmaceutical Manufacturing Facilities §2145. Pharmaceutical Manufacturing Facilities

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[See Prior Text in A-F.3]

4. Test Method 25 40 CFR part 60, appendix A, (as incorporated by reference at LAC 33:III.3003) for determining total gaseous nonmethane organic emissions as carbon.

\*\*\*

[See Prior Text in G-G.4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 22:1212 (December 1996), LR 23:

Subchapter L. Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing

§2151. Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing

A. Applicability. The provisions of this Subchapter apply to stationary sources that emit, or have the potential to emit, 50 TPY or more of volatile organic compounds and conduct one or more of the affected cleaning operations in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. Once a source is subject to this Subchapter, it shall be so, ad infinitum. Affected cleaning operations are ones that use solvents in the following operations:

\*\*\*

[See Prior Text in A.1-9]

B. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Subchapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

\*\*\*

[See Prior Text]

Cleaning of Removable Parts—solvent engulfs the entire surface of the part as it is dipped into a container of solvent or the part is cleaned above the container by a cleaning activity such as spraying or wiping. Equipment or the unit operation where this might take place includes part washers, batch-loaded cold cleaners, ultrasonic cleaners, and spray gun washers.

\*\*\*

[See Prior Text]

Closed-loop Recycling (In-process Recycling)—reuse or recirculation of a chemical material within the boundaries used to develop a material balance around a unit operation system. A recovery or regeneration (R and R) unit operation may be within the boundaries selected for the primary unit operation system if it is:

- a. solely dedicated. The chemical is reused only for cleaning the primary unit operation; or
b. physically integrated. The R and R unit operation is connected to the primary unit operation by means of piping,

so that it is not possible to perform the material balance around the primary unit operation system without including it.

\*\*\*

[See Prior Text]

C. Control Requirements. Sources specified in Subsection A of this Section shall implement the following actions, per EPA publication number EPA-453/R-94-015, February 1994:

\*\*\*

[See Prior Text in C.1]

2. utilize accounting on a unit operation system; and
3. submit plans to the administrative authority, to reduce VOC emissions from solvent usage, within 12 months after promulgation of these Regulations. Any increases in VOC emissions due to the substitution of a nonhazardous air pollutant for a hazardous one shall require approval of the administrative authority\*. As an alternative to submitting reduction plans, the owner or operator of affected facilities may report the controls and/or work practices deemed to be MACT that have been adopted to reduce VOC emissions from solvent cleanup operations. These plans or submissions become enforceable upon approval.

D. Testing. ASTM Method D-4828, "Standard Test Method for Practical Washability of Organic Coatings", is a method adaptable for comparing the cleaning effectiveness of solvents and other cleaners. Minor modifications of this method may be approved by the administrative authority. Alternative methods may be approved only by the administrator.

E. Monitoring, Reporting, and Recordkeeping. Reporting and recordkeeping shall be used to monitor VOC emissions from solvent use for cleanup purposes. Affected facilities shall calculate and record the net VOC emissions from usage of solvents monthly and report the net VOC emissions from solvent usage annually. In addition, solvent reduction progress shall be reported annually, based on product output or other suitable basis approved by the administrative authority\*. Alternately, the owner or operator of affected facilities may report the controls and/or work practices deemed to be MACT that have been adopted to reduce VOC emissions from solvent cleanup operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:391 (April 1995), amended LR 23:

**Subchapter M. Limiting Volatile Organic Compound Emissions From Industrial Wastewater**  
**§2153. Limiting Volatile Organic Compound Emissions from Industrial Wastewater**

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

*Affected Source Category*—any facilities of the following source categories located in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes and having the potential to emit 50 TPY or more of VOCs:

- a. organic chemicals, plastics, and synthetic fibers manufacturing industry under Standard Industrial Classification (SIC) codes 2821, 2823, 2824, 2865, and 2869;
- b. pesticides manufacturing industry under SIC code 2879;
- c. pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836; and
- d. hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953, and 4959.

\*\*\*

[See Prior Text in A. *Affected Volatile Organic Compounds (VOC) Wastewater-I*]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:936 (September 1995), LR 22:1212 (December 1996), amended LR 23:

A public hearing will be held on April 24, 1997 at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed Regulations. Commentors should reference this proposed Regulation by AQ149. Such comments should be submitted no later than May 1, 1997 at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to FAX (504) 765-0486.

This proposed Regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, fourth floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

Gus Von Bodungen  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Control of Emission of  
Organic Compounds**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no additional implementation costs (savings) to state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Rule revisions will have no effect on revenue collection of state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Rule revisions will not result in costs to directly affected persons or nongovernmental groups. Time savings may be an economic benefit to the regulated community; however, there is no data upon which to estimate such savings nor to make assumptions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Rule revisions will have no known effect on competition or employment.

Gus Von Bodungen  
Assistant Secretary  
9703#035

Richard W England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Hazardous Waste Division**

**RCRA V Federal Package  
(LAC 33:V.Chapters 1, 15, 22, and 41)(HW055\*)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division Regulations, LAC 33:V.Chapters 1, 15, 22, and 41, (HW055\*).

This proposed Rule is identical to a federal law or regulation which is applicable in Louisiana. No fiscal or economic impact will result from the proposed Rule. Therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

The proposed Rule contains the following provisions: 1) the exclusion from the definition of solid waste of secondary materials that are recycled back into the secondary production process from which they were generated from the definition of solid waste; 2) treatment standards for certain newly identified organic toxicity wastes and for newly listed coke products, chlorotoluene production wastes, and dilution prohibitions for high total organic content ignitable and toxicity characteristic pesticides; 3) minor modifications to the land disposal restrictions; and 4) the removal of the exemption from anti-skid/de-icing uses of slags from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental  
Quality—Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These Rules and Regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose

of hazardous waste, except as specifically provided otherwise herein. The procedures of these Regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these Rules and Regulations, including "solid waste" and "hazardous waste", appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A-D.1]

2. A generator who temporarily stores hazardous wastes in an environmentally safe container or tank (see LAC 33:V.1109.E) on-site for 90 days or less is exempt from the permitting Regulations except for the requirements of LAC 33:V.Chapter 11. Generators must record the date that storage began by proper marking of the container or by other methods acceptable to the administrative authority. Such temporary storage shall be in an environmentally sound manner in compliance with the technical requirements of LAC 33:V.1505, 1509.A, 1513-1517, 1525, and as applicable, with LAC 33:V.1903.A and B, 1905-1913, 1919, 2103-2109.C, and 2111-2115.

\* \* \*

[See Prior Text in D.3-28.e]

29. In accordance with the standards and criteria below and the procedures in LAC 33:V.105.K, the administrative authority may determine on a case-by-case basis that the following recycled materials are not solid wastes. The administrative authority may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

\* \* \*

[See Prior Text in D.29.a-M.10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), LR 23:

**§109. Definitions**

For all purposes of these Rules and Regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

\* \* \*

[See Prior Text]

*Solid Waste—*

\* \* \*

[See Prior Text in 1-5.a.ii]

iii. returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on land.

\* \* \*

[See Prior Text in *Solid Waste* 5.b - Zone of Engineering Control]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), LR 23:

**Chapter 15. Treatment, Storage, and Disposal Facilities**

**§1501. Applicability**

\* \* \*

[See Prior Text in A-C.5]

6. the owner or operator of an elementary neutralization unit or wastewater treatment unit (see LAC 33:V.109) provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in LAC 33:V.Chapter 22.Table 2, Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in LAC 33:V.1517.B;

\* \* \*

[See Prior Text in C.7-10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:

**Chapter 22. Prohibitions on Land Disposal Subchapter A. Land Disposal Restrictions**

**§2225. Treatment Standards Expressed as Concentrations in Waste Extract**

A. LAC 33:V.Chapter 22.Table 7 identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents, as defined in LAC 33:V.2203, these treatment standards may not be exceeded.

Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the LAC 33:V.Chapter 22.Table 7.

B. When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

\* \* \*

[See Prior Text in C]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:

**§2230. Treatment Standards for Hazardous Debris**

\* \* \*

[See Prior Text in A-B.1]

2. the contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established under LAC 33:V.Chapter 22.Table 2; and

\* \* \*

[See Prior Text in B.3-D.5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:22 (January 1996), LR 23:

**§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

\* \* \*

[See Prior Text in A]

B. If a generator determines that he or she is managing a waste prohibited under this Chapter, and the waste does not meet the applicable treatment standards set forth in LAC 33:V.Chapter 22.Subchapter A or the waste exceeds the applicable prohibition levels set forth in LAC 33:V.2213 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing. The notice must include the following information:

\* \* \*

[See Prior Text in B.1]

2. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and in LAC 33:V.2213 or RCRA section 3004(d). Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\* \* \*

[See Prior Text in B.3-5]

6. the date the waste is subject to the prohibitions.

\* \* \*

[See Prior Text in C-C.1.a]

b. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and in LAC 33:V.2213 or RCRA section 3004(d).

Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

\*\*\*

[See Prior Text in C.1.c-d]

2. The certification must be signed by a duly authorized representative and must state the following:

"I certify under penalty of law that I have personally examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in LAC 33:V.Chapter 22.Subchapter A and all applicable prohibitions set forth in LAC 33:V.2213 or RCRA section 3004(d). I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false certification, including the possibility of fines and imprisonment."

D. If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under LAC 33:V.2239), an exemption under LAC 33:V.2241 or 2271, or a nationwide capacity variance under LAC 33:V.Chapter 22.Subchapter A, with each shipment of waste he or she must submit a notice to the facility receiving the waste, stating that the waste is not prohibited from land disposal. The notice must include the following information:

\*\*\*

[See Prior Text in D.1-E.3]

F. If a generator determines whether the waste is prohibited solely on the basis of his or her knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is prohibited on the basis of tests of this waste or an extract developed using the test method described in LAC 33:V.Chapter 49.Appendix B, all waste analysis data must be retained on-site in the generator's files.

G. If a generator determines that a prohibited waste that the generator is managing was excluded from the definition of hazardous or solid waste or exempted from regulation under LAC 33:V.Chapter 1, 39, or 41 subsequent to the point of generation, the generator must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from the Regulation under LAC 33:V.Subpart 1, and the disposition of the waste, in the facility's file.

\*\*\*

[See Prior Text in H]

I. If a generator is managing a lab pack that contains none of the wastes specified in LAC 33:V.Chapter 22.Table 6 and wishes to use the alternative treatment standards under LAC 33:V.2227.C, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with LAC 33:V.2245.B, except that underlying hazardous constituents need not be determined. The generator must also comply with the requirements in LAC 33:V.2245.F and G, and must submit the following certification, which must be signed by a duly authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the waste, and that the lab pack does not contain any wastes identified in LAC 33:V.Chapter 22.Table 6. I am aware that there are significant penalties for submitting a false certification, including the possibility of fines and imprisonment."

\*\*\*

[See Prior Text in J-K]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:

**§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping, and Notice Requirements**

\*\*\*

[See Prior Text in A-E.1]

2. the waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043 and in LAC 33:V.2261 or RCRA section 3004(d). Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as D003 reactive cyanide), if applicable;

\*\*\*

[See Prior Text in E.3-H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:

**APPENDIX**

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[See Prior Text in Tables 2-5]

**Table 6**

**Wastes Excluded from Lab Packs under the Alternative Treatment Standards of LAC 33:V.2227.C**  
Hazardous waste with the following EPA hazardous waste codes may not be placed in lab packs under the alternative lab pack treatment standards of LAC 33:V.2227.C.

D009	K062	P012
F019	K071	P076
K003	K100	P078
K004	K106	U134
K005	P010	U151
K006	P011	

\*\*\*

[See Prior Text in Table 7-footnote 3]

<sup>4</sup>Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

<sup>5</sup>Vanadium and Zinc are not "underlying hazardous constituents" in characteristic wastes, according to the definition at LAC 33:V.2203.A.  
Note: NA means not applicable

\*\*\*

[See Prior Text in Table 8 - Certification Statement G]

**Chapter 41. Recyclable Materials**  
**§4139. Recyclable Materials Used in a Manner**  
**Constituting Disposal**

\*\*\*

[See Prior Text in A-A.4]

5. Anti-skid/de-icing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in Subsection A.2-4 of this Section and remain subject to regulation.

\*\*\*

[See Prior Text in B-B.2]

3. Owners and operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 15, 19, 21, 22, 23, 25, 27, 29, 31, 33, 35, 37; Subchapters ACM of Chapter 43; and the notification requirement under section 3010 of RCRA. These requirements do not apply to products which contain these recyclable materials under the provisions of LAC 33:V.4139.A.2.

\*\*\*

[See Prior Text in B.4]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:367 (April 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 22:21 (January 1996), LR 23:

A public hearing will be held on April 24, 1997 at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed Regulations. Commentors should reference this proposed Regulation by HW055\*. Such comments should be submitted no later than April 24, 1997, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to FAX (504)765-0486. The comment period for this proposed Rule ends on the same date as the public hearing.

This proposed Regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

H. M. Strong  
Assistant Secretary

9703#061

**NOTICE OF INTENT**

**Department of Environmental Quality**  
**Office of Solid and Hazardous Waste**  
**Hazardous Waste Division**

**Universal Waste Rule**  
**(LAC 33:V.Chapters 1, 3, 15, 22,**  
**35, 38, 39, and 41)(HW054\*)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division Regulations, LAC 33:V.Chapters 1, 3, 15, 22, 35, 38, 39, and 41 (HW054\*).

This proposed Rule is identical to a federal law or Regulation which is applicable in Louisiana. No fiscal or economic impact will result from the proposed Rule. Therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule promulgates hazardous waste management Regulations governing the collection and management of certain widely used wastes known as universal wastes. The specific wastes covered by this Rule include batteries, pesticides that are either recalled or collected in waste pesticide collection programs and thermostats.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental**  
**Quality—Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These Rules and Regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these Regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these Rules and Regulations, including *Solid Waste* and *Hazardous Waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\*\*\*

[See Prior Text in A-D.47]

48. The following wastes are exempt from regulation under this Subpart, except as specified in LAC 33:V.Chapter 38, and therefore, are not fully regulated as hazardous waste. The wastes listed in this Section are subject to regulation under LAC 33:V.Chapter 38:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805; and
- c. thermostats as described in LAC 33:V.3807.

\*\*\*

[See Prior Text in E-M.10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), LR 23:

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§305. Scope of the Permit**

\* \* \*

[See Prior Text in A-C.9]

10. owners and operators of facilities granted a research development and demonstration permit under Section 3005(g) of Subtitle C of RCRA, is so specifically exempted by the administrative authority; or

11. universal waste handlers and universal waste transporters (as defined in LAC 33:V.3813) handling the wastes listed below. These handlers are subject to regulation under LAC 33:V.Chapter 38, when handling the below listed universal wastes:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805; and
- c. thermostats as described in LAC 33:V.3807.

\* \* \*

[See Prior Text in D-G.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:

### **Chapter 15. Treatment, Storage, and Disposal Facilities**

#### **§1501. Applicability**

\* \* \*

[See Prior Text in A-C.8]

9. The addition of absorbent material to waste in a container (see LAC 33:V.109), of the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container and LAC 33:V.1517.B, 2103, and 2105 are complied with;

10. a generator accumulating waste on-site in compliance with LAC 33:V.1109.E; or

11. universal waste handlers and universal waste transporters (as defined in LAC 33:V.3813) handling the wastes listed below. These handlers are subject to regulation under LAC 33:V.Chapter 38, when handling the below listed universal wastes:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805; and
- c. thermostats as described in LAC 33:V.3807.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:

### **Chapter 22. Prohibitions on Land Disposal**

#### **Subchapter A. Land Disposal Restrictions**

#### **§2201. Purpose, Scope, and Applicability**

\* \* \*

[See Prior Text in A-1.2]

3. de minimis losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012-D043), and that contain underlying hazardous constituents as defined in LAC 33:V.2203 are not considered to be prohibited wastes. De minimis is defined as losses from normal material-handling operation (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing;

4. land disposal prohibitions for hazardous characteristic wastes do not apply to laboratory wastes displaying the characteristic of ignitability (D001), corrosivity (D002), or organic toxicity (D012-D043) that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the Clean Water Act (CWA) (including wastewaters at facilities that have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headworks does not exceed 1 percent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one part per million in the facility's headworks; or

5. universal waste handlers and universal waste transporters (as defined in LAC 33:V.3813) are exempt from LAC 33:V.2205, 2245.A-I, 2246.E, and 2247 for the wastes listed below. These handlers are subject to regulation under LAC 33:V.Chapter 38, when handling the below listed universal wastes:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805; and
- c. thermostats as described in LAC 33:V.3807.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:

## Chapter 35. Closure and Post-Closure

### §3525. Post-Closure Notices

\* \* \*

[See Prior Text in A-B.1.b]

c. the survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by LAC 33:V.3517 and this Section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the administrative authority; and

\* \* \*

[See Prior Text in B.2-C.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 18:1256 (November 1992), LR 23:

## Chapter 38. Universal Wastes

### Subchapter A. General

#### §3801. Scope and Applicability

A. This Chapter establishes requirements for managing batteries, pesticides, and thermostats as described in LAC 33:V.3813. This Chapter provides an alternative set of management standards in lieu of Regulations under this Subpart.

B. Persons managing household wastes that are exempt under LAC 33:V.105.D.10 and are also of the same type as the universal wastes defined in this Chapter may, at their option, manage these wastes under the requirements of this Chapter.

C. Persons who commingle the wastes described in Subsection B of this Section together with universal waste regulated under this Chapter, must manage the commingled waste under the requirements of this Chapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### §3803. Applicability—Batteries

##### A. Batteries Covered Under this Chapter

1. The requirements of this Chapter apply to persons managing batteries, as described in LAC 33:V.3813, except those listed in Subsection B of this Section.

2. Spent lead-acid batteries which are not managed under LAC 33:V.Chapter 41 are subject to management under this Chapter.

B. Batteries Not Covered Under this Chapter. The requirements of this Chapter do not apply to persons managing the following batteries:

1. spent lead-acid batteries that are managed under LAC 33:V.Chapter 41;

2. batteries, as described in LAC 33:V.3813, that are not yet wastes under LAC 33:V.4901, including those that do not meet the criteria for waste generation in Subsection C of this Section; and

3. batteries, as described in this Chapter, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

##### C. Generation of Waste Batteries

1. A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).

2. An unused battery becomes a waste on the date the handler decides to discard it.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### §3805. Applicability—Pesticides

A. Pesticides Covered Under this Chapter. The requirements of this Section apply to persons managing pesticides, as described in LAC 33:V.3813, meeting the following conditions, except those listed in Subsection B of this Section:

1. recalled pesticides that are:

a. stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

b. stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant;

2. stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

B. Pesticides Not Covered Under this Chapter. The requirements of this Chapter do not apply to persons managing the following pesticides:

1. recalled pesticides described in Subsection A.1 of this Section, and unused pesticide products described in Subsection A.2 of this Section, that are managed by farmers in compliance with LAC 33:V.105.D.5 (LAC 33:V.105.D.5 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with the definition of empty container under LAC 33:V.109);

2. pesticides not meeting the conditions set forth in Subsection A of this Section. These pesticides must be managed in compliance with the hazardous waste Regulations in LAC 33:V.Subpart 1;

3. pesticides that are not wastes under Subsection C of this Section, including those that do not meet the criteria for waste generation in Subsection C of this Section or those that are not wastes as described in Subsection D of this Section; and

4. pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in LAC 33:V.4901 or if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

##### C. When a Pesticide Becomes a Waste

1. A recalled pesticide described in Subsection A of this Section becomes a waste on the first date on which both of the following conditions apply:

a. the generator of the recalled pesticide agrees to participate in the recall; and

b. the person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).



2. An unused pesticide product described in Subsection A.2 of this Section becomes a waste on the date the generator decides to discard it.

D. Pesticides That Are Not Wastes. The following pesticides are not wastes:

1. recalled pesticides described in Subsection A.1 of this Section, provided that the person conducting the recall:

a. has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under LAC 33:V.109; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this Chapter. This pesticide remains subject to the requirements of FIFRA; or

b. has made a decision to use a management option that, under LAC 33:V.109, does not cause the pesticide to be a solid waste (i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including this Chapter. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA;

2. unused pesticide products described in Subsection A.2 of this Section, if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### §3807. Applicability—Mercury Thermostats

A. Thermostats Covered Under this Chapter. The requirements of this Chapter apply to persons managing thermostats, as described in LAC 33:V.3813, except those listed in Subsection B of this Section.

B. Thermostats Not Covered Under this Chapter. The requirements of this Chapter do not apply to persons managing the following thermostats:

1. thermostats that are not yet wastes under LAC 33:V.Chapter 49. Subsection C of this Section describes when thermostats become wastes; and

2. thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903.

C. Generation of Waste Thermostats

1. A used thermostat becomes a waste on the date it is discarded (e.g., sent for reclamation).

2. An unused thermostat becomes a waste on the date the handler decides to discard it.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### §3813. Definitions

*Battery*—a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

*Destination Facility*—a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in LAC 33:V.3821.A and C and 3843.A and C. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

*FIFRA*—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 - 136y).

*Generator*—any person, by site, whose act or process produces hazardous waste identified or listed in LAC 33:V.Chapter 49 or whose act first causes a hazardous waste to become subject to regulation.

*Large Quantity Handler of Universal Waste*—a universal waste handler (as defined in this Section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

*On-Site*—the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

*Pesticide*—any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. is a new animal drug under FFDCA section 201(w); or

2. is an animal drug that has been determined by regulation of the secretary of Health and Human Services not to be a new animal drug; or

3. is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Paragraph 1 or 2 of this Subsection.

*Small Quantity Handler of Universal Waste*—a universal waste handler (as defined in this Section) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time.

*Thermostat*—a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing

element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of LAC 33:V.3821.C.2 or 3843.C.2.

**Universal Waste**—any of the following hazardous wastes that are subject to the universal waste requirements of this Chapter:

1. batteries as described in LAC 33:V.3803;
2. pesticides as described in LAC 33:V.3805; and
3. thermostats as described in LAC 33:V.3807.

**Universal Waste Handler**—a generator (as defined in this Section) of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. A universal waste handler does not include a person who treats (except under the provisions of LAC 33:V.3821.A or C, or 3843.A or C), disposes of, or recycles universal waste; or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**Universal Waste Transfer Facility**—any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for 10 days or less.

**Universal Waste Transporter**—a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

## **Subchapter B. Standards for Small Quantity Handlers of Universal Waste**

### **§3815. Applicability**

This Subchapter applies to small quantity handlers of universal waste (as defined in LAC 33:V.3813).

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3817. Prohibitions**

A small quantity handler of universal waste is:

1. prohibited from disposing of universal waste; and
2. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3829; or by managing specific wastes as provided in LAC 33:V.3821.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3819. Notification**

A small quantity handler of universal waste is not required to notify the department of universal waste handling activities.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

## **§3821. Waste Management**

**A. Universal Waste Batteries.** A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. a small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

2. a small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

- a. sorting batteries by type;
- b. mixing battery types in one container;
- c. discharging batteries so as to remove the electric charge;
- d. regenerating used batteries;
- e. disassembling batteries or battery packs into individual batteries or cells;
- f. removing batteries from consumer products; or
- g. removing electrolyte from batteries; and

3. a small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in LAC 33:V.4903.

- a. If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of these Regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapter 11.

- b. If the electrolyte or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

**B. Universal Waste Pesticides.** A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

1. a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

2. a container that does not meet the requirements of Subsection B.1 of this Section, provided that the unacceptable container is over packed in a container that does meet the requirements of Subsection B.1 of this Section; or

3. a tank that meets the requirements of LAC 33:V.Chapter 19 except for LAC 33:V.1915.C; or

4. a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

C. Universal Waste Thermostats. A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. a small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

2. a small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats, provided the handler:

a. removes the ampules in a manner designed to prevent breakage of the ampules;

b. removes ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1109.E;

d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1109.E;

e. ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

f. ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

g. stores removed ampules in closed, nonleaking containers that are in good condition;

h. packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

3. a small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the mercury or clean-up residues resulting from spills or leaks, and/or other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units) exhibit a characteristic of hazardous waste identified in LAC 33:V.4903.

a. If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these Regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it subject to LAC 33:V.Chapter 11.

b. If the mercury, residues, and/or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### §3823. Labeling/Marking

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. universal waste batteries (e.g., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Battery(ies)," "Waste Battery(ies)," or "Used Battery(ies);"

2. a container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in LAC 33:V.3805.A.1 are contained must be labeled or marked clearly with:

a. the label that was on or accompanied the product as sold or distributed; and

b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s);"

3. a container, tank, or transport vehicle or vessel in which unused pesticide products as described in LAC 33:V.3805.A.2 are contained must be:

a. labeled or marked clearly with:

i. the label that was on the product when purchased, if still legible;

ii. the appropriate label as required under the U.S. Department of Transportation Regulation 49 CFR part 172; or

iii. another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and

b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s)."

4. universal waste thermostats (e.g., each thermostat), or a container in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury thermostat(s)."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### §3825. Accumulation Time Limits

A. A small quantity handler of universal waste may accumulate universal waste for no longer than one year from

the date the universal waste is generated, or received from another handler, unless the requirements of Subsection B of this Section are met.

B. A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

C. A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

1. placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

2. marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

3. maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

4. maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

5. placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

6. any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3827. Employee Training**

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3829. Response to Releases**

A. A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

B. A small quantity handler of universal waste must determine whether any material resulting from the release is

hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these Regulations. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with LAC 33:V.Chapter 11.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3831. Off-Site Shipments**

A. A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

B. If a small quantity handler of universal waste self-transportes universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of Subchapter D of this Chapter while transporting the universal waste.

C. If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Parts 171-180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR parts 172-180.

D. Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

E. If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

1. receive the waste back when notified that the shipment has been rejected; or

2. agree with the receiving handler on a destination facility to which the shipment will be sent.

F. A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

1. send the shipment back to the originating handler; or

2. if agreed to by both the originating and receiving handler, send the shipment to a destination facility.

G. If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the administrative authority of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.

H. If a small quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler

may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3833. Tracking Universal Waste Shipments**

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3835. Exports**

A small quantity handler of universal waste who sends universal waste to a foreign destination must:

1. comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.1.f, G.2, and H;

2. export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in LAC 33:V.1113; and

3. provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

## **Subchapter C. Standards for Large Quantity Handlers of Universal Waste**

### **§3837. Applicability**

This Subchapter applies to large quantity handlers of universal waste (as defined in LAC 33:V.3813).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3839. Prohibitions**

A large quantity handler of universal waste is:

1. prohibited from disposing of universal waste; and  
2. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3851; or by managing specific wastes as provided in LAC 33:V.3843.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3841. Notification**

A. Except as provided in Subsection A.1 and 2 of this Section, a large quantity handler of universal waste must have sent written notification of universal waste management to the administrative authority, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

1. A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this Section.

2. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in LAC 33:V.3805.A.1 and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this Section.

B. This notification must include:

1. the universal waste handler's name and mailing address;

2. the name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

3. the address or physical location of the universal waste management activities;

4. a list of all of the types of universal waste managed by the handler (e.g, batteries, pesticides, thermostats); and

5. a statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g, batteries, pesticides, thermostats) the handler is accumulating above this quantity.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3843. Waste Management**

A. Universal Waste Batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. a large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

2. a large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

a. sorting batteries by type;  
b. mixing battery types in one container;  
c. discharging batteries so as to remove the electric charge;

d. regenerating used batteries;  
e. disassembling batteries or battery packs into individual batteries or cells;

f. removing batteries from consumer products; or  
g. removing electrolyte from batteries; and

3. a large quantity handler of universal waste who removes electrolyte from batteries, or who generates other

solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in LAC 33:V.4903.

a. If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these Regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapter 11.

b. If the electrolyte or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

**B. Universal Waste Pesticides.** A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

1. a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

2. a container that does not meet the requirements of Subsection B.1 of this Section, provided that the unacceptable container is over packed in a container that does meet the requirements of Subsection B.1 of this Section; or

3. a tank that meets the requirements of LAC 33:V.Chapter 19, except for LAC 33:V.1915.C; or

4. a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

**C. Universal Waste Thermostats.** A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

1. a large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;

2. a large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

a. removes the ampules in a manner designed to prevent breakage of the ampules;

b. removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from

spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1109;

d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1109;

e. ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

f. ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

g. stores removed ampules in closed, nonleaking containers that are in good condition;

h. packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

3. a large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the mercury or clean-up residues resulting from spills or leaks and/or other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units) exhibit a characteristic of hazardous waste identified in LAC 33:V.4903:

a. if the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these Regulations. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to LAC 33:V.Chapter 11;

b. if the mercury, residues, and/or other solid waste does not exhibit a characteristic of hazardous waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3845. Labeling/Marking**

**A.** A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (e.g., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with the any one of the following phrases: "Universal Waste—Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

2. A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in LAC 33:V.3805.A.1 are contained must be labeled or marked clearly with:

a. the label that was on or accompanied the product as sold or distributed; and

b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s);"

3. A container, tank, or transport vehicle or vessel in which unused pesticide products as described in LAC 33:V.3805.A.2 are contained must be:

- a. labeled or marked clearly with:
  - i. the label that was on the product when purchased, if still legible;
  - ii. appropriate label as required under the U.S. Department of Transportation Regulation 49 CFR part 172; or
  - iii. another label prescribed or designated by the pesticide collection program; and
- b. the words "Universal Waste—Pesticide(s)" or "Waste—Pesticide(s);"

4. Universal waste thermostats (e.g., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3847. Accumulation Time Limits**

A. A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of Subsection B of this Section are met.

B. A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

C. A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

1. placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
2. marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
3. maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;
4. maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
5. placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

6. any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3849. Employee Training**

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3851. Response to Releases**

A. A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

B. A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these Regulations. The handler is considered the generator of the material resulting from the release, and is subject to LAC 33:V.Chapter 11.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3853. Off-Site Shipments**

A. A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

B. If a large quantity handler of universal waste self-transportes universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of Subchapter D of this Chapter while transporting the universal waste.

C. If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR Parts 171-180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR parts 172-180.

D. Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

E. If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the

receiving handler or destination facility, the originating handler must either:

1. receive the waste back when notified that the shipment has been rejected; or
2. agree with the receiving handler on a destination facility to which the shipment will be sent.

F. A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

1. send the shipment back to the originating handler; or
2. if agreed to by both the originating and receiving handler, send the shipment to a destination facility.

G. If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the administrative authority of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The administrative authority will provide instructions for managing the hazardous waste.

H. If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local Solid Waste Regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3855. Tracking Universal Waste Shipments**

A. Receipt of Shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

1. the name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
2. the quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats); and
3. the date of receipt of the shipment of universal waste.

B. Shipments Off-Site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

1. the name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
2. the quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats); and
3. the date the shipment of universal waste left the facility.

### **C. Record Retention**

1. A large quantity handler of universal waste must retain the records described in Subsection A of this Section for at least three years from the date of receipt of a shipment of universal waste.

2. A large quantity handler of universal waste must retain the records described in Subsection B of this Section for at least three years from the date a shipment of universal waste left the facility.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3857. Exports**

A large quantity handler of universal waste who sends universal waste to a foreign destination must:

1. comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.1.f, G.2, and H;

2. export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in LAC 33:V.1113; and

3. provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **Subchapter D. Standards for Universal Waste Transporters**

#### **§3859. Applicability**

This Subchapter applies to universal waste transporters (as defined in LAC 33:V.3813).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3861. Prohibitions**

A universal waste transporter is:

1. prohibited from disposing of universal waste; and
2. prohibited from diluting or treating universal waste, except by responding to releases as provided in LAC 33:V.3867.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3863. Waste Management**

A. A universal waste transporter must comply with all applicable U.S. Department of Transportation Regulations in 49 CFR parts 171-180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the U.S. Department of Transportation Regulations, a material is considered a hazardous waste if it is subject to the hazardous waste manifest requirements specified in LAC 33:V.Chapter 11. Because universal waste



does not require a hazardous waste manifest, it is not considered hazardous waste under the U.S. Department of Transportation Regulations.

B. Some universal waste materials are regulated by the U.S. Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under LAC 33:V.Chapter 11, they may not be described by the U.S. Department of Transportation proper shipping name "hazardous waste, (l) or (s), n.o.s.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3865. Storage Time Limits**

A. A universal waste transporter may only store the universal waste at a universal waste transfer facility for 10 days or less.

B. If a universal waste transporter stores universal waste for more than 10 days, the transporter becomes a universal waste handler and must comply with the applicable requirements of Subchapter B or C of this Chapter while storing the universal waste.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3867. Response to Releases**

A. A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

B. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of these Regulations. If the waste is determined to be a hazardous waste, the transporter is subject to LAC 33:Chapter 11.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3869. Off-Site Shipments**

A. A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

B. If the universal waste being shipped off-site meets the U.S. Department of Transportation's definition of "hazardous materials" under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable U.S. Department of Transportation Regulations under 49 CFR part 172.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **§3871. Exports**

A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

1. a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

2. the shipment is delivered to the facility designated by the person initiating the shipment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

#### **Subchapter E. Standards for Destination Facilities**

##### **§3873. Applicability**

A. The owner or operator of a destination facility (as defined in LAC 33:V.3813) is subject to all applicable requirements of LAC 33:V.Chapters 3, 5, 9, 15, 17, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 37, 41, and 43, and the notification requirement under LAC 33:V.105.A.

B. The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with LAC 33:V.4115.B.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

##### **§3875. Off-Site Shipments**

A. The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility, or a foreign destination.

B. The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

1. send the shipment back to the original shipper; or
2. if agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

C. If the owner or operator of a destination facility receives a shipment containing hazardous waste that was shipped as a universal waste, the owner or operator of the destination facility must immediately notify the administrative authority of the illegal shipment, and provide the name, address, and phone number of the shipper. The administrative authority will provide instructions for managing the hazardous waste.

D. If the owner or operator of a destination facility receives a shipment of nonhazardous, nonuniversal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state Solid Waste Regulations.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **§3877. Tracking Universal Waste Shipments**

A. The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

1. the name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

2. the quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats); and

3. the date of receipt of the shipment of universal waste.

B. The owner or operator of a destination facility must retain the records described in Subsection A of this Section for at least three years from the date of receipt of a shipment of universal waste.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **Subchapter F. Import Requirements**

#### **§3879. Imports**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this Chapter, immediately after the waste enters the United States, as indicated below:

A. A universal waste transporter is subject to the universal waste transporter requirements of Subchapter D of this Chapter.

B. A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Subchapter B or C of this Chapter, as applicable.

C. An owner or operator of a destination facility is subject to the destination facility requirements of Subchapter E of this Chapter.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:

### **Chapter 39. Small Quantity Generators**

#### **§3915. Requirements**

The small quantity generator must:

\*\*\*

[See Prior Text in A-B.4.b]

5. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of LAC 33:V.Chapter 38.

\*\*\*

[See Prior Text in C-C.7.b]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), LR 16:220 (March 1990), repromulgated LR 18:1256 (November 1992), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 23:

### **Chapter 41. Recyclable Materials**

#### **§4105. Requirements for Recyclable Material**

Recyclable materials are subject to additional regulation as follows:

\*\*\*

[See Prior Text in A-B.1.b]

2. Reserved

\*\*\*

[See Prior Text in B.3-E]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:

#### **§4145. Spent Lead-Acid Batteries Being Reclaimed**

A. Applicability. The Regulations of this Section apply to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated) are not subject to these Regulations.

B. General Requirements. Owners or operators of facilities that store spent lead acid batteries before reclaiming (other than spent batteries that are to be regenerated) them are subject to the following requirements:

\*\*\*

[See Prior Text in B.1-3]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:

A public hearing will be held on April 24, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed Regulations. Commentors should reference this proposed Regulation by HW054\*. Such comments should be submitted no later than April 24, 1997, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to FAX number (504)765-0486. The comment period for this Rule ends on the same date as the public hearing.

This proposed Regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.:

7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

H. M. Strong  
Assistant Secretary

9703#062

## NOTICE OF INTENT

### Department of Environmental Quality Office of Water Resources Water Pollution Control Division

#### Extension of Produced Water Discharges (LAC 33:IX.708) (WP023)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Pollution Control Division Regulations, LAC 33:IX.708.C (WP023).

The provisions of this Rule are applicable to discharges of produced water associated with oil and natural gas production activities. The original Rule required termination of produced water discharges in intermediate, brackish, and saline water areas inland of the territorial seas by January 1, 1995 with possible extensions out to January 1, 1997. The original Rule also required discharges to freshwater areas to be terminated by July 1, 1992, unless the discharge was directed to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City. The freshwater area discharges which did not have a July 1, 1992 termination date would be allowed to continue discharging indefinitely.

The proposed Rule changes would allow continued produced water discharges for up to an additional two years (January 1, 1999) for operators to arrange for an alternate disposal method unless the discharge contains produced water of Outer Continental Shelf and/or territorial seas origin. The discharges of Outer Continental Shelf and/or territorial seas origin may continue for up to an additional three years (January 1, 2000). Pursuant to an approved schedule, produced water discharges shall not extend beyond the date upon which the produced water can reasonably be eliminated.

Various facilities have been unable to comply with the requirement to cease all discharges of produced water by January 1, 1997, because:

1. a number of facilities have applied to the Louisiana Department of Natural Resources (DNR) for permits to construct injection wells to receive the produced water that would otherwise be discharged. Due to personnel shortages at DNR, all of the permit applications will not be processed prior to January 1, 1997.

2. facilities that discharge to a major deltaic pass of the Mississippi River under the authority of LAC 33:IX.708.2.a.iv possess a valid LWDPS (state) permit which allows continued discharges of produced water. Upon the effective date of the federal guidelines on January 14, 1997, these dischargers still possessed a valid state permit which conflicts with the federal guidelines requiring zero discharge.

3. certain facilities (open bay areas) that had authority to discharge produced water relied upon a United States Department of Energy study to support an individual or general permit or a rule change to allow the discharge of produced water. These facilities are now required to attain zero discharge due to the federal guidelines.

This proposed Rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S. 49:953 (G) (3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality Regulations

#### Chapter 7. Effluent Standards

#### §708. Exploration for and Production of Oil and Natural Gas

\* \* \*

[See Prior Text in A-C.2.a.iii]

iv. There shall be no discharge of produced water to freshwater swamp or freshwater marsh areas or to natural or manmade water bodies bounded by freshwater swamp or freshwater marsh vegetation unless the discharge has been specifically identified in an approved schedule for discharge termination, and the discharge complies with all applicable portions of Subsection C.2.e of this Section.

\* \* \*

[See Prior Text in C.2.a.v]

b. Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas

i. All produced water discharges must be specifically identified in a valid individual or general permit or order and must comply with all applicable portions of Subsection C.2.f of this Section.

\* \* \*

[See Prior Text in C.2.b.ii-d]

e. Discharge of Produced Water Into Freshwater Areas After January 1, 1997

i. In light of LPDES general permit LAG290000 and the "Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," published December 16, 1996, and effective January 14, 1997 (the federal guidelines), facilities that discharge produced water as authorized in a valid LWDPS permit as of July 1, 1996, shall cease the discharge of produced water by July 1, 1997, unless the continued discharge is specifically identified in an order.

ii. Each facility desiring to continue to discharge produced water after July 1, 1997, shall submit to the department, no later than May 1, 1997, a schedule to:

(a). accomplish reinjection of the produced water as expeditiously as possible; or

(b). return their produced water which originated seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section to those areas of origin.

iii. In addition to the schedule required in Subsection C.2.e.ii of this Section, the submittal shall include, at a minimum, a certification by the facility operator of all of the following:

(a). surface discharge of produced water is the only immediately available alternative;

(b). the produced water discharge elimination schedule is limited in term to the period necessary to provide an alternate waste-handling method;

(c). the discharge of produced water has not been eliminated pending the installation of injection systems or returning it to its area of origin (seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section);

(d). the discharge will not cause a violation of water quality standards in the receiving waters; and

(e). the discharge was previously permitted.

iv. Discharges of produced water pursuant to this Rule shall not extend beyond the date upon which the produced water discharge can reasonably be eliminated. In no event shall a discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, continue:

(a). beyond January 1, 1999, for produced water generated in coastal areas as defined in 40 CFR part 435.41(e);

(b). beyond January 1, 2000, for produced water generated seaward of coastal areas identified in Subsection C.2.e.iv.(a) of this Section; or

(c). beyond January 1, 2000, for facilities that discharge produced water generated in any combination of areas described in Subsection C.2.e.iv.(a) and (b) of this Section.

v. There shall be no discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, after January 1, 2000.

f. Discharge of Produced Water Into Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas After January 1, 1997

i. Notwithstanding the absolute deadline of Subsection C.2.b.v.(b) of this Section and in light of the federal guidelines, facilities previously authorized by valid LWDPS permits as of July 1, 1996, to discharge produced water under Subsection C.2.b.iv of this Section, pursuant to an approved compliance schedule shall:

(a). cease the discharge of produced water by February 14, 1997; or

(b). submit a revised schedule to accomplish injection of the produced water as expeditiously as possible. This schedule shall be received by the department on or before February 14, 1997. Submission of a schedule is not a defense to an enforcement action for a facility's failure to adhere to the terms and conditions of its permit or prior compliance schedule. In addition to the schedule submission, a certification must be submitted by the facility operator which includes the requirements of Subsection C.2.e.iii of this

Section. No compliance schedules in an enforcement order shall extend beyond the minimum time demonstrated necessary for elimination of the discharge and in no case beyond January 1, 1999.

ii. All terms, conditions, limitations, and requirements of the most recent LPDES permit or compliance schedule or order identifying a produced water discharge shall continue in full force and effect unless the department provides otherwise in writing. A schedule to discharge produced water after July 1, 1997, is solely within the department's enforcement discretion and shall be granted only through a compliance order.

iii. There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1999.

[See Prior Text in C.3-5.f]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR 23:

A public hearing will be held on April 24, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed Regulations. Commentors should reference this proposed Regulation by WP023. Such comments should be submitted no later than May 1, 1997, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70810 or to FAX (504) 765-0486.

This proposed Regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

Linda Korn Levy  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Extension of Produced Water Discharges**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units is anticipated due to implementation of this Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No change in revenue is expected due to finalization of the proposed Rule. However, the potential yearly tax loss to the state prior to revenue sharing if the proposed Rule is not

finalized is \$2,600,000. Most of this loss and any potential losses to local governments and school boards should be avoided by allowing operators an additional two to three years to comply with the no discharge requirements. The additional time would minimize the shut-in of oil and gas production. The potential yearly tax loss for local governments and school boards prior to revenue sharing is \$159,616 if the Rule is not finalized. Without the Rule, the total potential tax loss, for the three year compliance period, prior to revenue sharing, would be \$7,700,000 to the state and \$478,850 to local governments and school boards.

The above estimate represents the potential revenue loss if this Rule is not promulgated, and includes loss of tax revenue from job losses which might occur as a direct result of potential shut-in of oil and gas production. To the extent that those people who lose jobs associated with the direct production of oil and gas are able to obtain new jobs in the industry, related industries or other employment, these tax revenue losses would be reduced. Some loss of employment may also be offset by employment resulting from construction, operation, and maintenance of injection wells.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No additional operating and capital costs are expected to be incurred by operators which discharge produced water originating from any location. This is due to previous requirements to terminate these discharges prior to the effective date of this Rule. However, these dischargers will benefit by spreading their operating and capital costs of \$114,985,000 out over an additional two to three year time frame. No additional production losses are expected. However, due to the previous requirements to terminate the discharges prior to the effective date of this Rule, companies which cannot meet the cost of injection systems may elect to shut-in minimally producing and, therefore, unprofitable wells. Lifetime production losses for the Outer Continental Shelf Dischargers are expected to be 3.4 million barrels of oil equivalent, which is 0.6 percent of the estimated lifetime production from these facilities. Production losses are the result of shortened economic lifetime of wells. The EPA estimates that production losses for open bay dischargers to be approximately 12,000,000 BOE, which represents less than 1 percent of all Gulf coastal production. Additional production losses are expected from other non-OCS producers. Production losses will be minimized by allowing additional time to terminate discharges. Additional costs may be incurred due to compliance orders and penalties.

No significant costs are expected to be incurred by other industries which might be affected by continued discharges. This is due to the finding that there is no acute or imminent threat to the environment, and more specifically that there was no acute or imminent threat to water quality, from the continuation of produced water discharges for a limited period of time.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No change in effects on competition and employment is expected for the public and private sectors. This is due to requirements to terminate the produced water discharges prior to the effective date of this Rule. The effects on competition due to the previous termination requirements will be minimized by allowing operators an additional two to three year time frame to comply with the no discharge requirements. Some loss of employment may result as unprofitable operations are terminated. This may be offset by employment resulting from construction, operation, and maintenance of injection wells. The

allowance of additional time to comply with the no discharge requirements will minimize the potential 189 job losses possible without the proposed Rule. Minimal effects on competition may result from allowing discharges for some operators to continue, while other operators have previously terminated their discharges.

Linda Korn Levy  
Assistant Secretary  
9703#028

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Office of the Governor Office of Elderly Affairs

#### Long Term Care Ombudsman (LAC 4:VII.1229)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend Section 1229 of the GOEA Policy Manual, effective June 20, 1997. The purposes of this amendment are to update definitions to conform to current related statutory language; to modify the provisions for dedesignation of local ombudsman entities; to create separate visitation standards for adult residential care facilities and skilled nursing facilities in hospitals and rehabilitation centers; and to modify the on-going training requirements for ombudsmen. This proposed Rule complies with Section 701 of the Older Americans Act.

#### Title 4

#### ADMINISTRATION

#### Part VII. Governor's Office

#### Chapter 11. Elderly Affairs

#### §1229. Office of the State Long Term Care Ombudsman

A. ...

B. Definitions. For purposes of this Section, *Long-Term Care Facility* means:

1. ...

2. a nursing facility as defined in Section 1919 (a) of the Social Security Act;

3. a nursing home as defined in Section 1098(3) of the Social Security Act;

4. any nursing home or adult residential care home licensed by the state or required to be licensed by the state under the terms of R.S. 40:2009.12, and R.S. 40:2151-2163.

C - D.2.a.vi. ...

vii. The State Long-Term Care Ombudsman may dedesignate a local ombudsman entity for cause or as needed to enhance the effectiveness and efficiency of the statewide program.

D.2.b - c.i. ...

ii. submit for approval by the State Long-Term Care Ombudsman a written plan of visitation which provides for regular visitation to each facility in the service area by program personnel. Every facility must be visited by a

certified ombudsman at least once per month, except that skilled nursing facilities located in hospitals and rehabilitations centers not otherwise licensed as long-term care facilities must be visited a minimum of once every six months and adult residential care homes must be visited at least quarterly unless conditions warrant more frequent visitation. The plan of visitation shall be incorporated into the contract with GOEA.

D.2.c.iii - F.3.b.xii. ...

(c). Certification must be renewed annually. Renewal is based on successful completion of at least 15 contact hours of in-service training each year and on adherence to ombudsman policies and procedures. At least six hours of this training must be sponsored by the office. The remainder may be earned by attending any relevant training, subject to the conditions described below. If requirements for the current year have been met, hours earned during the final quarter of a calendar year may be carried over to the following year.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:2010.4 and OAA Sec. 712(a)(5)(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:35 (January 1985), LR 11:1078 (November 1985), LR 13:742 (December 1987), LR 15:379 (May 1989), LR 17:600 (June 1991), LR 18:267 (March 1992), LR 23:

Linda Sadden, State Long Term Care Ombudsman, is responsible for responding to inquiries concerning the proposed Rule. Interested parties may submit written comments to the Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70806. Written comments will be accepted until 5 p.m. April 29, 1997.

A public hearing on this proposed Rule will be held on Tuesday, April 29, 1997 at the Louisiana State Archives Building Auditorium, 3851 Essen Lane, Baton Rouge, LA 70809 at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at this hearing.

Richard W. Collins  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: GOEA Policy Manual**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed Rule changes will not result in costs or savings to state or local governmental units. The proposed Rule would primarily allow the State Long Term Care Ombudsman to dedesignate a local ombudsman entity in the interest of efficiency and program effectiveness, rather than only being able to dedesignate for reasons of cause.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed Rule will not effect revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The estimated costs to directly affected persons or nongovernmental groups will be the amount of a contract that will be lost by a local designated entity (local area agency on aging or other nonprofit agency) if such entity is dedesignated by the Office of Elderly Affairs. There is the potential of economic benefits to a local designated entity which may receive a larger contract through the shifting of funds from another entity which is dedesignated by the Office of Elderly Affairs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The entities which presently receive these contracts are local area agencies on aging or other nonprofit agencies, and they are not in competition with each other. However, there is potential for competition for funding between local area agency on aging offices and other nonprofit agencies if the Office of Elderly Affairs moves to a competitive bid process for the contract within each service area.

Under the current Rule, the 25 contracted agencies are required to employ an ombudsman coordinator on at least a part-time basis. The estimated effect on employment by the proposed Rule will be a reduction in ombudsman coordinator positions coinciding with a reduction in the number of local designated entities.

Richard W. Collins  
Executive Director  
9703#036

Richard W. England  
Assistant to the  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Orleans Parish Individual Sewage**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Health and Hospitals proposes to amend the following Rule governing the installation of individual sewage systems in certain areas of Orleans Parish.

The present Rule inadvertently prohibits those individuals with failing and/or inadequate sewage treatment systems from upgrading or replacing their systems, thereby exposing their families to disease and pollution of the state's waterways.

**Proposed Rule**

The Department of Health and Hospitals, Office of Public Health prohibits the installation of individual sewage systems in the following areas of Orleans Parish:

- 1) property between the Chef Pass and the Rigolets, outside the hurricane protection levee; and
- 2) property on the Lake Pontchartrain side of the LandM Railroad tracks that parallels Hayne Boulevard outside the hurricane protection levee; and
- 3) property on either side of US Highway 11 between Powers Junction and Interstate 10, commonly referred to as Irish Bayou.

This does not preclude the installation of approved individual sewage disposal systems on individually owned

lots of record, i.e., those legally established and duly recorded with the parish prior to July 28, 1967, or those lots legally established and duly recorded with the parish that meet the minimum lot size prescribed in the State Sanitary Code.

Interested persons may submit questions or written comments to Frank L. Deffes, Jr., Chief, Sanitarian Services, Box 60630, New Orleans, LA 70160. He is the person responding to inquiries regarding this proposed Rule change. All questions or comments must be received by April 20, 1997.

A public hearing on the proposed changes will be held on March 27, 1997 at the DOTD Building, 4th Floor Conference Room, 1201 Capitol Access Road, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Orleans Parish Individual Sewage**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated implementation costs or savings to state or local units. There will be approximately a \$40 charge for printing costs associated with publication of this Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This action will allow those individuals with the proper lot size and recording dates to install approved individual sewage systems in these areas of Orleans Parish.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on competition and employment.

Bobby P. Jindal  
Secretary  
9703#060

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Sanitary Code—Shellfish Tag Retention  
(Chapter XXIII)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of the Department of Health and Hospitals proposes to amend Chapter XXIII, Section 23:006

Special Requirements, of the State Sanitary Code to clarify the shell-stock tag retention time at food service establishments.

**Proposed Rule**

**Chapter XXIII**

**Eating and Drinking Establishments**

**23:006-2** Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell-stock processor, shucker-packer, or repacker, and the interstate certification number issued in accordance with Chapter IX of this Code and by law. Shell-stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell-stock (oysters, clams, or mussels) shall be identified by an attached tag in accordance with Chapter IX of this Code, and this tag shall be kept on file for 90 days from the date the container is emptied, or until picked up by a representative of the state health officer, whichever comes first.

\* \* \*

Interested persons may submit written comments to Barry L. Blue, Sanitarian Program Administrator, Retail Food Program, Box 60630, New Orleans, LA 70160 by the close of business on Friday, April 25, 1997. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed changes will be held on March 27, 1997 at 10 a.m. in the Fourth Floor Conference Room of the office located at 1201 Capitol Access Road, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Sanitary Code—Shellfish Tag Retention**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no additional state or local costs associated with this proposed Rule. There will be approximately a \$40 charge associated with publication of this Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competition and employment.

Bobby P. Jindal  
Secretary  
9703#041

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

Department of Health and Hospitals  
Office of the Secretary  
and  
Department of Social Services  
Office of the Secretary

Community and Family Support System  
Cash Subsidy (LAC 48:I.16103-16129)

The Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary propose to amend the Rule to implement Act 378 of the 1989 Regular Session of the Louisiana Legislature and Act 1011 of the 1991 Regular Session of the Louisiana Legislature which created the Community and Family Support System. The original Rule was promulgated in order to implement the Community and Family Support Cash Subsidy which provides a cash stipend to families of eligible children with severe and profound disabilities.

The existing Rule primarily addresses procedural safeguards surrounding the initial, mass application of families with children with severe or profound disabilities and the allocation of "slots", or numbers of recipients, to each region of the state, and the creation of a waiting list of applicants when there were insufficient "slots" allocated and/or funded for a particular region. These procedures are no longer necessary and are confusing when applied to the current situation in which "slots" are filled from existing and continuing waiting lists of applicants. The proposed amendments clarify current procedures for determination of program eligibility and management of existing waiting lists; it also deletes references to departments and offices which have been legislatively dissolved.

The proposed amendments reflect the discontinuation of participation of the Office of Public Health and the assumption of its former responsibilities in the program by the Office for Citizens with Developmental Disabilities. The proposed amendments also reflect a change in the diagnostic criteria for young children to allow presumptive eligibility for infants and toddlers with severe disabilities and adds a new category of diagnosis as eligible for the cash stipend which was not included in the original Rule, "Traumatic Brain Injury."

The proposed amendments clarify procedural processes in defining out-of-home placements and assist. The proposed amendments allow for a telephone and/or mail contact by program administrators to ensure program compliance by participants, the addition of an approved home study plan to qualify as a written educational plan in eligibility determination and recognizes the status of persons caring for children by defining the role of "responsible caregiver" in contrast to the more limiting language of "parent/guardian." gns responsibilities for annual eligibility determination and ongoing monitoring of individual agreements with families of children with severe or profound disabilities.

## Title 48

### PUBLIC HEALTH GENERAL

#### Part I. General Administration

##### Subpart 11. Community and Family Support System Chapter 161. Community and Family Support System Cash Subsidy

###### §16103. Definitions

*Agency*—the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities or the Office of Mental Health, which will administer the cash subsidy program for the population it is designated to serve.

*Cash Subsidy*—a monetary payment to eligible families of children with developmental disabilities to offset the costs of keeping their child at home.

*Child*—an individual under the age of 18.

*Department of Education 1508 Evaluation*—the evaluation completed on a child for the purpose of determining eligibility for special educational services and classifying the child by disability. For infants and toddlers this may be called a Multi-Disciplinary Evaluation for Part H Services.

*Developmental Disability for a Person Aged Five and Older*—a severe, chronic disability which:

1. is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. is manifested before the person attains age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, and capacity for independent living; and
5. reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated.

*Developmental Disability for an Individual from Birth Through Age 5*—a substantial developmental delay or specific congenital or acquired condition which has a high probability of resulting in developmental disabilities if services are not provided.

*Individual Family Service Plan (IFSP)*—a written plan for each child with a disability providing early intervention services for ChildNet eligible children and their families.

*Individualized Education Program (IEP)*—a written educational plan for each child with a disability which is developed in a meeting by a representative of the local educational agency, the teacher, the parents or responsible caregiver of a child, or an approved home study plan. The plan must include the child's present level of educational performance; annual goals including short-term instructional objectives; specific special educational and related services to be provided to the child and the extent to which the child will be able to participate in regular educational programs; projected dates for initiation and anticipated duration of services; and objective criteria and evaluation procedures and schedules for determining, on an at-least-annual basis, whether the short-term instructional objectives are being met.



*Interagency Service Coordination Process (ISCP)*—the interagency process which involves children and their families in a multi-disciplinary case review to generate a Family Service Plan to provide appropriate and coordinated care for those children with severe emotional and behavioral impairments who are not adequately served by the routine services of a single agency and therefore require extensive interagency collaboration.

*Licensed Mental Health Professional*—a person credentialed to provide mental health services by a professional board, established and approved by the State of Louisiana, including those boards which examine physicians (psychiatrists), psychologists, social workers, counselors, nurse practitioners, etc.

*Out-of-Home Placement*—a placement out of the home that exceeds 30 days, or, in the case of psychiatric hospitalizations, that exceeds 90 days.

*Parent/Responsible Caregiver*—a child's natural or adoptive mother or father or the person who is responsible for the primary care and management of the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:

#### **§16105. Application Process**

A. Applications for cash subsidy are available from the regional offices of the Office for Citizens with Developmental Disabilities and the Office of Mental Health and may be requested by phone; requested applications must be mailed by the next working day.

B. The parent/responsible caregiver shall be responsible for completing the application and for submission of appropriate documentation. If available to the parent/responsible caregiver, a licensed case management agency may assist in the process.

C. The application shall be mailed to the appropriate regional program office to be logged in according to the post-mark date. If multiple applications are received on the same date, a random process will be used to assign the order in which applications are processed.

D. The regional program office will review the application for completeness and supporting documentation; it will be logged-in for review only when complete and signed by the parent/responsible caregiver.

1. If complete, the parent/responsible caregiver will be notified that the application has been entered onto the waiting list for eligibility determination for the cash stipend.

2. If an application is received that is incomplete, the parent/responsible caregiver will be notified by telephone of the reasons the application cannot be entered onto the waiting list and requested to correct the problem. Appropriate documentation will be made in the case activity record.

3. If a parent/responsible caregiver cannot be reached by telephone, the regional program office will send a registered letter requesting contact within 30 days and informing the parent/responsible caregiver that the application cannot be placed on the waiting list until documentation is completed.

4. If an application is received by an agency that cannot serve the child because of the nature of the disability, the agency will forward the original application, with the original envelope attached, to the proper agency, no later than the next working day. The original post-mark date shall be used by the receiving agency.

E. The parent or responsible caregiver may be required to complete a new application annually and/or at the time that new funding becomes available if the original application is more than 1 year old.

F. There shall be no closing date for accepting applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:

#### **§16107. Supporting Documentation for Applications**

A. To be deemed complete, the following supporting documents must accompany the application for children:

1. Program/Services page of the child's Individualized Education Program (IEP) in current use by the school system which states the child's primary and/or secondary exceptionalities; or

2. the Department of Education 1508 Evaluation, if an IEP has not yet been completed on the child; or

3. documentation from a licensed medical or mental health professional that a child meets the 1508 eligibility criteria for Autism, even in the absence of a 1508 Evaluation identifying Autism as an exceptionality.

B. To be deemed complete, the following supporting documents must accompany the application for infants and toddlers:

1. Program/Services page of the child's Individualized Education Program (IEP); or

2. the Individualized Family Services Plan (IFSP) for infants and toddlers, which states the child's exceptionality; or

3. the child's Department of Education 1508 Evaluation; or

4. the Multi-Disciplinary Evaluation for Part H Services if an IEP or IFSP has not yet been completed on the child; or

5. documentation from a licensed medical or mental health professional that an infant or toddler meets Part H eligibility criteria; or

6. documentation from a licensed medical or mental health professional that a child meets the 1508 eligibility criteria for Autism, even in the absence of a 1508 Evaluation identifying Autism as an exceptionality.

C. To be deemed complete, the following supporting documents must accompany the application for children with emotional/behavioral disorder:

1. treatment plan from a licensed community mental health center; or

2. evidence of present participation of child/family in an Interagency Service Coordination (ISC) process; or

3. an evaluation report from a private licensed mental health professional which indicates that the criteria for emotional/behavioral disorder in Department of Education

Bulletin 1508 have been met, even in the absence of a 1508 evaluation identifying this as an exceptionality.

D. If there is a question whether the IEP and or 1508 Evaluation accurately reflects the child's disability, the parent/responsible caregiver should be encouraged to request a new evaluation. The child's status on the waiting list shall be maintained throughout the evaluation process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:

#### **§16109. Waiting Lists**

A. Once applications are found to be complete, applications will be placed on a waiting list for eligibility determination.

B. Families will be notified, in writing, within 30 days of receipt of the completed application, of their position on the waiting list for eligibility determination; they shall be notified annually thereafter of their updated position.

C. As cash stipends become available, the next applicant from the list will undergo an eligibility determination.

D. If a child on the waiting list for the cash subsidy moves into another region, the child's name shall remain on the waiting list in the original region. The child's name may also be entered onto the waiting list in the receiving region. As a slot becomes available for the child in either region, the eligibility determination shall be made in that region.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:187 (February 1992), amended LR 23:

#### **§16111. Eligibility for Cash Subsidy**

A. Children must meet the criteria herein established for developmental disability and severity of disability to be eligible for the cash subsidy, except that children under the age of 5 who meet the severity criteria will be considered to be developmentally disabled.

B. Children who are classified with the following primary or secondary exceptionalities are automatically eligible for the cash subsidy: Autism, deaf-blind, profoundly mentally handicapped, severely mentally handicapped, and multi-handicapped. Children with these exceptionalities will be considered to be developmentally disabled and eligible to receive the cash stipend.

C. Children who are classified with the following primary or secondary exceptionalities shall be screened to determine whether they met the developmental disabilities definition and severity criteria for their disability: emotional/behavioral disorder, orthopedically handicapped, health impaired, handicapped infant and toddler, traumatic brain injury, and noncategorical preschool handicapped.

1. The Developmental Disability Key Screening Checklist must be completed on all children age 5 and older prior to screening for severity.

2. The severity screening instrument particular to each of the disabling conditions referenced above, which indicates

the minimum number of criteria that must be met to establish eligibility in that category, must be completed in its entirety.

3. Children who meet both the developmental disabilities definition and the severity criteria are eligible for the cash subsidy.

D. There shall be no financial criteria for eligibility for cash subsidy.

E. The family must be residing in the state of Louisiana to remain eligible for the cash subsidy and the child must be residing, or expected to reside with his or her parent/responsible caregiver. Proof of guardianship will not be required unless the status of the responsible caregiver is questioned.

F. Out-of-home placement disqualifies a child from participation in the cash subsidy program; residence in the Louisiana School for the Deaf and the Louisiana School for the visually impaired is considered an out-of-home placement.

1. Any removal of the cash subsidy recipient from the home of the parent/responsible caregiver that exceeds 30 days may be considered an out-of-home placement.

2. Psychiatric hospitalizations of up to 90 days are not automatically considered out-of-home placements; the regional office may grant exceptions for psychiatric hospitalization with proper documentation.

3. Acute care hospitalization does not disqualify a child from receiving the cash subsidy.

4. The regional office shall make an individual assessment of the continuation of the cash subsidy in light of the family situation and circumstances, if the child is removed from the home by a child welfare agency for more than 30 days.

G. Children who are adopted are eligible for the cash subsidy, including families who are receiving a specialized adoption subsidy. Children in foster care or specialized foster care are not eligible.

H. Families who have more than one child who meets the eligibility criteria will be eligible for the cash subsidy amount for each child.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:187 (February 1992), amended LR 23:

#### **§16113. Eligibility Determination**

A. Regional offices of the Office for Citizens with Developmental Disabilities and the Office of Mental Health shall be responsible for determination of eligibility of all applicants for the cash subsidy for which they have responsibility.

B. Eligibility determinations for the family support/cash stipend shall be made at the time that a slot becomes available.

C. Regional office personnel will contact the family to schedule an appointment to complete the eligibility determination, including completion of the Developmental Disability Key Screening Checklist and/or screening instrument particular to the primary or secondary exceptionality.

1. If a family cannot be reached by telephone, written notice will be given, return receipt requested, stating that

contact must be made within 30 days from the date of the notice to retain the child's status on the waiting list.

2. If no response is received within that 30 days, the child's name is removed from the waiting list with appropriate documentation to the case record.

D. Parents or responsible caregivers will be requested to provide the complete, current 1508 Evaluation and/or other supporting documentation by the time of the appointment as a reference for completing the Developmental Disabilities Checklist and/or screening instrument. With adequate documentation, the screening may be completed by telephone.

E. The Developmental Disabilities Checklist and/or screening instrument must be completed in its entirety and the documents are made a part of the case record. The date, method of completion and name of the person completing the form should be documented.

F. Once the eligibility decision is made, the applicant is notified in writing of the decision.

1. If found to be eligible for the cash stipend, the regional office shall complete an individual agreement and forward it to the eligible applicant for signature and return at the time funding for the cash subsidy becomes available.

2. The regional office shall complete a timely annual review of the child's eligibility for the cash subsidy so that established payments are not interrupted.

3. If ineligible, the regional office shall notify the family and inform them of their right to appeal the decision. If an appeal is requested, the available slot is held vacant until the final decision has been rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16115. Central Registry**

A. A central registry of all cash subsidy recipients will be maintained by the OCDD Central Office to avoid duplicate payments to families.

B. Each regional office will submit the name of children found to be eligible for the cash subsidy to the OCDD Central Office prior to completing the individual agreement for the cash stipend.

C. If a duplication is found, OCDD Central Office will notify the originating office within five working days. That office must contact the family to inform them that they cannot receive the subsidy from more than one agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16117. Participant Records**

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B. Each agency shall maintain a record on each application which shall contain: the original application and envelope; the annual parent/responsible caregiver report; supporting documentation for the eligibility decision, the Developmental Disabilities Checklist and/or severity

screening instrument (if applicable); the Cash Subsidy individual agreement; a case activity sheet; release of information/confidentiality form (if applicable); and appeals procedure.

C. Each agency shall maintain additional information as required by their program office.

D. A review of each cash subsidy record shall be completed annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16119. Payment Guidelines**

A. The amount of the cash subsidy shall be \$258 monthly. Payments shall be automatic and should be received around the fifteenth of the month; no billing is required.

B. Payments will be issued directly to the family; families will not be required to document how the subsidy is used.

C. The child's payee must be identified before the first subsidy check is issued.

D. If a check is lost, stolen or not received by the twenty-third of the month, the payee should notify the regional office of the agency that authorizes payment. If the check is not located and has not been cashed by 10 working days after notification of loss, the agency may either issue a replacement check or defer further action until more information can be obtained.

E. The termination date for a child attaining age 18 shall be the first of the month following that birthday.

F. The agency shall enter into no third-party agreement and shall not make advance payments.

G. If a family receiving the cash subsidy moves from one region to another, the subsidy payment will be mailed to the new region with no interruption in receipt of the subsidy.

H. If for any reason a recipient receives excess payment, repayment of that amount will be requested. Failure to cooperate with repayment will be referred to DHH for recoupment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16121. Terminations**

A. When a client terminates from the program for any reason, the regional office must provide the family and their program office and/or the OCDD Central Office with notification of the termination as soon as possible.

B. Notification of termination shall include: the name of the client; the name and address of the parent/responsible caregiver; DHH and DOA individual agreement numbers; and the reason for and effective date of termination.

C. Reasons for termination shall include the following: family moves out of state; family requests termination of cash subsidy payment; child is placed out of the home; death of the child; judicial removal of the child from the home; fraud; termination or limitation of funding of the program; failure to

comply with the provisions of the individual agreement; child's disability no longer meets eligibility criteria; child attains age 18; and parent/responsible caregiver fails to maintain the child in an approved educational program whether on-site or in-home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16123. Annual Review Process**

A. Three months prior to the termination date of the individual agreement, the regional office which originated and administers the individual agreement will mail an Annual Parent Report to the family for completion and return to the office, with a copy of their child's current IEP Program/Services page or the current 1508 Evaluation.

B. If a family fails to provide this requested information by the termination date of the individual agreement, the subsidy payment must be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:

#### **§16125. Ongoing Monitoring**

A. Regional staff in the area in which the family resides must contact families at least every 90 days to verify that the child is in the home and the conditions of the individual agreement are being met. This quarterly contact can be accomplished by telephone, a mailing, or a face-to-face meeting.

B. The regional program office in which the family resides shall monitor the individual agreement as long as the family resides in that region whether the individual agreement was originated and/or continued by that region.

C. If the child is enrolled in a licensed case management program, the agency shall be responsible for this quarterly contact and for reporting any changes to the regional office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 23:

#### **§16127. Appeals**

A. All persons receiving an eligibility determination and/or cash subsidy shall have access to the Department of Health and Hospital's appeal process.

B. All persons receiving an eligibility determination and/or cash subsidy shall be informed of their right of appeal and of the process to make an appeal at the point of initial eligibility determination and at termination of a cash subsidy for any reason.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 23:

#### **§16129. Program Evaluation**

An annual external evaluation based on consumer satisfaction with the program and performance indicators will be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 23:

Interested persons may submit written comments to Bruce C. Blaney, Assistant Secretary, Office for Citizens with Developmental Disabilities, Box 3117, Baton Rouge, LA 70821-3117. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing will be held in the Fourth Floor Conference Room of the office located at 1201 Capital Access Road, Baton Rouge, LA on Thursday, April 24, 1997 at 10 a.m. At that time all interested parties will be afforded an opportunity to submit data, views or arguments orally or in writing. The deadline for receipt of all comments is 4 p.m., on the day following the public hearing.

Bobby P. Jindal, Secretary  
Health and Hospitals

Madlyn B. Bagneris, Secretary  
Social Services

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Community and Family Support System Cash Subsidy**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that implementation costs will be restricted to a single charge by the *Louisiana Register*, of approximately \$422.50, to amend the existing Rule. The existing Rule implements an existing program whose level of funding is determined annually by the Legislature. The program is "capped" and will not increase or decrease as a result of the adoption of the proposed amendment to the existing Rule.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Adoption of the proposed amendment to the existing Rule will have no effect on revenue collections of state or local government units.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Adoption of the proposed amendment to the existing Rule will continue the current status of families who receive the cash stipend provided to them to offset the extraordinary costs associated with the care of their child with severe or profound disabilities. Adoption of the proposed amendment to the existing Rule will not increase the amount of the cash stipend paid to eligible individuals, nor will it increase the number of eligible individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment, as the funds are provided to families for the financial support of children with severe disabilities; there would be no change introduced by adoption of the proposed amendment to the existing Rule. Adoption of the proposed amendment to the existing Rule neither increases nor decreases the number of employees utilized to administer the existing program.

Bruce Blaney  
Assistant Secretary  
9703#047

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Voter Registration Assistance**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following Rule under the Administrative Procedure Act R.S. 49:950 et seq. and as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

The Department of Health and Hospitals, Office of the Secretary, adopted Regulations designating certain public agencies as voter registration sites and requiring these public agencies to provide assistance to applicants and eligible recipients in registering to vote pursuant to Public Law 103-31 of the 103rd Congress and Act 10 of the 1994 Third Extraordinary Session of the Louisiana Legislature, June 20, 1995 (*Louisiana Register*, Volume 21, Number 6). Designated voter registration sites include the parish offices for Medicaid and the Women, Infants and Children Program, the Office of Alcohol and Drug Abuse clinics, and the Office for Citizens with Developmental Disabilities regional community services offices. The Health Care Financing Administration (HCFA) has now interpreted the voter registration requirement for public agencies to be applicable to Medicaid Application Centers. Therefore, the bureau proposes to adopt the following Rule to include Medicaid Application Centers as sites required to provide voter registration assistance and to establish participation in voter registration by Medicaid Application Centers as a condition for application center certification.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing designates Medicaid Application Centers as voter assistance agencies and establishes participation in voter registration by such centers as a condition for application center certification which shall provide the following services:

1) distribute voter registration application form to any applicant or recipient who is qualified to register;

2) assist any applicant or recipient in completing voter registration application form, unless the person refuses such assistance;

3) accept completed voter registration application form for submission to the registrar of voters within the parish where the voter registration agency is located;

4) accept any change of address or name submitted by a registrant which shall serve as a notification of change of address or name for voter registration, unless the registrant states at the time of submission that the change is not for voter registration purposes. The transmittal procedure shall be handled in the same manner as voter registration applications.

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 this proposed Rule.

A public hearing on this proposed Rule is scheduled for April 29, 1997, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bobby P. Jindal  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Voters Registration Assistance**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed Rule will increase state expenditures by approximately \$3,240 for SFY 1997-1998; \$3,210 for SFY 1998-1999; and \$3,435 for SFY 1999-2000. A promulgation cost of \$240 is included in the above expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed Rule will increase federal revenue collections by approximately \$2,461 for SFY 1997-1998; \$2,504 for SFY 1998-1999; and \$2,680 for SFY 1999-2000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs or economic benefits to persons or groups as a result of this Rule. Medicaid applicants will benefit by receiving voter registration assistance when applying for or redetermining their Medicaid eligibility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9703#042

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Regulation 46—Long-Term Care Insurance

Under the authority of R.S. Title 22, Sections 3, 1736(A), 1736(E) and 1737 and Title 49 Section 950 et seq., the Department of Insurance gives notice that the following proposed Regulation is to become effective July 1, 1997. This intended action complies with the statutory law administered by the Department of Insurance.

Existing Regulation 46 of the Department of Insurance is to be repealed as of effective date of this proposed Regulation.

#### Proposed Regulation 46 Long-Term Care Insurance

##### Section 1. Purpose

The purpose of this Regulation is to implement R.S. 22:1731-1737, Long-Term Care Insurance Act, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for qualified and nonqualified long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

##### Section 2. Authority

This Regulation is issued pursuant to the authority vested in the commissioner under R.S. 22:1736A; R.S. 22:1736E; R.S. 22:1737; and R.S. 49:950 et seq.

##### Section 3. Applicability and Scope

Except as otherwise specifically provided, this Regulation applies to all long-term care insurance policies [or certificate issued pursuant to such group policy] delivered or issued for delivery in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

##### Section 4. Definitions

For the purpose of this Regulation, the terms *Long-Term Care Insurance*, *Group Long-Term Care Insurance*, *Qualified Long-Term Care Insurance Contract*, *Qualified Long-Term Care Services Commissioner*, *Applicant*, *Policy* and *Certificate* shall have the following meaning:

A.(1) *Long-term Care Insurance*—any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital.

(2) Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Such term shall also include qualified

long-term care insurance contracts. Long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporation; prepaid health plans; health maintenance organizations or any similar organization to the extent they are otherwise authorized to issue life or health insurance.

(3) Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(4) With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(5) Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions set forth in Section 28 of this Regulation.

##### B. *Applicant*—

(1) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits, and

(2) in the case of a group long-term care insurance policy, the proposed certificate holder.

C. *Certificate*—for the purposes of this Act, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

D. *Commissioner*—the Insurance commissioner of this state.

E. *Group Long-Term Care Insurance*—a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(1) one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof, or for members or former members or a combination thereof, of the labor organizations; or

(2) any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(a) is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(b) has been maintained in good faith for purposes other than obtaining insurance; or

(3) an association or a trust or the trustee(s) of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or

associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that:

(a) the association or associations hold regular meetings not less than annually to further purposes of the members;

(b) except for credit unions, the association or associations collect dues or solicit contributions from members; and

(c) the members have voting privileges and representation on the governing board and committees;

Thirty days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association or associations does not satisfy those organizational requirements.

(4) a group other than as described in Subsections E.(1), E.(2) and E.(3), subject to a finding by the commissioner that:

(a) the issuance of the group policy is not contrary to the best interest of the public;

(b) the issuance of the group policy would result in economies of acquisition or administration; and

(c) the benefits are reasonable in relation to the premiums charged.

F. *Policy*—for the purposes of this Act, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; health maintenance organization or any similar organization.

G. *Qualified Long-Term Care Insurance Contract*—any individual or group insurance contract if it meets the requirements of Section 7702(B) of the *Internal Revenue Code*, as amended, and if:

(1) the only insurance protection provided under the contract is coverage of qualified long-term care services;

(2) the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount;

(3) the contract is guaranteed renewable;

(4) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums, and all policyholder dividends, or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract; and

(5) the contract contains the consumer protection provisions set forth in Section 7702B(g) of the *Internal Revenue Code*.

H. *Qualified Long-Term Care Services*—necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance for personal care services to which an insured is eligible for under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

#### Section 5. Policy Definitions

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. *Activities of Daily Living*—at least bathing, continence, dressing, eating, toileting and transferring.

B. *Acute Condition*—the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

C. *Adult Day Care*—a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

D. *Bathing*—washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

E. *Cognitive Impairment*—a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

F. *Continence*—the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

G. *Dressing*—putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

H. *Eating*—feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by feeding tube or intravenously.

I. *Hands-On Assistance*—physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

J. *Home Health Care Services*—medical and nonmedical services, provided to ill, disabled or infirmed persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

K. *Medicare*—shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

L. *Mental or Nervous Disorder*—shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

M. *Personal Care*—the provision of hands-on services to assist an individual with activities of daily living.

N. *Skilled Nursing Care, Intermediate Care, Personal Care, Home Care* and other services—shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

O. *Toileting*—getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

P. *Transferring*—moving into or out of a bed, chair or wheelchair.

Q. All providers of services, including but not limited to *Skilled Nursing Facility, Extended Care Facility, Intermediate Care Facility, Convalescent Nursing Home, Personal Care Facility, and Home Care Agency* shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

### Section 6. Policy Practices and Provisions

Unless otherwise noted, all provisions of this Section shall also apply to qualified long-term care insurance contracts.

A. *Renewability*. The terms *guaranteed renewable* and *noncancellable* shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 9 of this Regulation.

(1) No such policy issued to an individual shall contain renewal provisions other than *guaranteed renewable* or *noncancellable*.

(2) The term *guaranteed renewable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term *noncancellable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(4) A qualified long-term insurance contract must be guaranteed renewable.

B. *Limitations and Exclusions*. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

- (1) pre-existing conditions or diseases;
- (2) mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
- (3) alcoholism and drug addiction;
- (4) illness, treatment or medical condition arising out of:
  - (a) war or act of war (whether declared or undeclared);
  - (b) participation in a felony, riot or insurrection;

(c) service in the armed forces or units auxiliary thereto;

(d) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(e) aviation (this exclusion applies only to non-fare-paying passengers);

(5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(6) This Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. *Extension of Benefits*. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

### D. Continuation or Conversion

(1) Group long-term care insurance issued in this state on or after the effective date of this Section shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this Section, *a basis for continuation of coverage* means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this Section, *a basis for conversion of coverage* means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.



(4) For the purposes of this Section, *converted policy* means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this Section.

(8) Notwithstanding any other provision of this Section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits

payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this Section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this Section: a *Managed-Care Plan* is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

E. Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

(2) shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

#### F. Premium Rate Restrictions

(1) The initial premium charged an insured covered by a long-term care policy shall not increase during the initial four years in which the policy is in force.

(2) Except as provided in Paragraph (4) of this Subsection, any premium rate which increases after the initial four-year period are subject to the following restrictions:

(a) for insureds age 80 and over, the premium charged may not increase more than 10 percent in the aggregate during any five-year period;

(b) for insureds age 65 to age 80, the premium charged may not increase more than 15 percent in the aggregate during any five-year period; and

(c) for insureds under the age of 65, the premium charged may not increase more than 25 percent in the aggregate during any four-year period.

(d) the premium charged to an insured shall not increase due to either:

(i) the increasing age of the insured at ages beyond 65; or

(ii) the duration the insured has been covered under the policy.

(3) Policies that provide for inflation protection shall be subject to the restrictions in Paragraphs (1) and (2) of this Subsection; however, the purchase of additional coverage shall not be considered a premium rate increase for purposes of determining compliance with Paragraph (2) at the time additional coverage is purchased. The premium charged for the purchase of additional coverage shall be subject to Paragraph (2) for any subsequent premium rate increases where no additional purchases of coverage are made.

(4) The commissioner may amend, for universal application, the premium rate restrictions imposed by this Subsection, in appropriate circumstances, including but not limited to the following:

(a) state or federal law is amended, materially affecting the insured risk;

(b) unforeseen changes occur in long-term care delivery, insured morbidity or insured mortality; or

(c) judicial interpretations or rulings are rendered regarding policy benefits or benefit triggers resulting in unforeseen claim liabilities.

(5) Nothing in Paragraph (4) shall limit the commissioner's authority pursuant to other Sections of the Insurance Code of this state.

(6) Except as provided in Paragraph (7), the provisions of this Subsection F shall apply to any long-term care policy or certificate issued in this state on or after the effective date of this Regulation.

(7) For certificates issued on or after the effective date of this Subsection F, under a group long-term care insurance policy as defined in Section 4.E.(1) and R.S. 22:1734(4)(a), which policy was in force at the time this Regulation became effective, the provisions of this revised Subsection F shall not apply.

#### **Section 7. Unintentional Lapse**

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

A.(1) Notice Before Lapse or Termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state:

"Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

The insurer shall notify the insured of the right to change this written designation. No less often than once every two years.

(2) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection A.(1) need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such

policies or certificates shall clearly indicate the payment plan selected by the applicant.

(3) Lapse or Termination for Nonpayment of Premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection A.(1), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

B. Reinstatement. In addition to the requirement in Subsection A, a long-term care insurance policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof of cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

#### **Section 8. Required Disclosure Provisions**

Unless otherwise noted, all Subsections of Section 8 shall apply to qualified long-term care insurance contracts.

A. Renewability. Individual long-term care insurance policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

C. Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a

definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. **Limitations.** If a long-term care insurance policy or certificate contains any limitations with respect to pre-existing conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Pre-existing Condition Limitations."

E. **Other Limitations or Conditions on Eligibility for Benefits.** A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in R.S. 22:1736D(2) shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

F. **Disclosure of Tax Consequences.** With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

G. **Benefit Triggers.** Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this Section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

H. A qualified long-term care insurance contract must include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract.

[Policies that are not intended to be a qualified long-term care insurance contract must include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract. The disclosure shall be prominently displayed, and shall read as follows:

This long-term care insurance policy (certificate) is not intended to be a qualified long-term care insurance contract. You need to be aware that benefits received under this policy may create unintended, adverse income tax consequences to you. You may want to consult with a knowledgeable individual about these potential income tax consequences.]

#### **Section 9. Prohibition Against Post-Claim Underwriting**

A. All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B.(1) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(2) If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

**CAUTION:** If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

**CAUTION:** The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

(3) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

- (a) a report of a physical examination;
- (b) an assessment of functional capacity;
- (c) an attending physician's statement; or
- (d) copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Insurance commissioner in the format prescribed by the National Association of Insurance Commissioners in Appendix A.

#### **Section 10. Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies**

A. A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

(1) by requiring that the insured/claimant would need care in a skilled nursing facility if home health care services were not provided;

(2) by requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home, community or institutional setting before home health care services are covered;

(3) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(4) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(5) by excluding coverage for personal care services provided by a home health aide;

(6) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(7) by requiring that the insured/claimant have an acute condition before home health care services are covered;

(8) by limiting benefits to services provided by Medicare-certified agencies or providers;

(9) by excluding coverage for adult day care services.

B. A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

C. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate. The Subsection is not intended to restrict home health care to a period of time which would make the benefit illusory. It is suggested that fewer than 365 benefit days and less than a \$25 daily maximum benefit constitute illusory home health care benefits.

#### **Section 11. Requirements to Offer Inflation Protection**

A. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5 percent;

(2) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5 percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(3) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

B. Where the policy is issued to a group, the required offer in Subsection A above shall be made to the group

policyholder; except, if the policy is issued to a group defined in Section 4.E.(4) and R.S. 22:1734(4)(d), other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

C. The offer in Subsection A above shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

D. Insurers shall include the following information in or with the outline of coverage:

(1) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period;

(2) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

E. Inflation protection benefit increases under a policy which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

F. An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

G.(1) Inflation protection as provided in Subsection A.(1) of this Section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this Subsection. In the case of a qualified long-term care insurance contract, the rejection may be either in the application or on a separate form.

(2) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection.

#### **Section 12. Requirements for Application Forms and Replacement Coverage**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group defined by Section 4.E.(1) and R.S. 22:1734(4)(a) the following questions may be modified only to the extent necessary to elicit information health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate-holder has been notified of the replacement.

(1) Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(2) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(a) If so, with which company?

(b) If that policy lapsed, when did it lapse?

(3) Are you covered by Medicaid?

(4) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past 5 years which are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT  
REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR  
LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:  
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (pre-existing conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Signature of Agent, Broker or Other Representative)

[Typed Name and Address of Agent or Broker]

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND  
SICKNESS OR LONG-TERM CARE INSURANCE  
[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (pre-existing conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. Your insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

\_\_\_\_\_  
(Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

F. In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall

make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

### **Section 13. Reporting Requirements**

A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Each insurer shall report annually, by June 30, the 10 percent of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above.

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually, by June 30, the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

E. Every insurer shall report annually, by June 30, the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

F. Every insurer shall report annually, by June 30, for qualified long-term care insurance contracts the number of claims denied for each class of business, expressed as a percentage of claims denied, other than claims denied for failure to meet the waiting period or because of any applicable pre-existing condition.

G. For purposes of this Section, *policy* shall mean only long-term care insurance and *report* means on a statewide basis.

### **Section 14. Licensing**

No agent is authorized to market, sell, solicit or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses.

### **Section 15. Discretionary Powers of Commissioner**

The commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this Regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

A. the modification or suspension would be in the best interest of the insureds; and

B. the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

C.(1) the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(2) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

(3) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

### **Section 16. Reserve Standards**

When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with R.S. 22:162 and 162.1. Claim reserves shall also be established in the case when the policy or rider is in claim status.

### **Section 17. Loss Ratio**

Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60 percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

A. statistical credibility of incurred claims experience and earned premiums;

B. the period for which rates are computed to provide coverage;

C. experienced and projected trends;

D. concentration of experience within early policy duration;

E. expected claim fluctuation;

F. experience refunds, adjustments or dividends;

G. renewability features;

H. all appropriate expense factors;

I. interest;

J. experimental nature of the coverage;

K. policy reserves;

L. mix of business by risk classification; and

M. product features such as long elimination periods, high deductibles and high maximum limits.

### **Section 18. Filing Requirement**

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state, pursuant to R.S. 22:1735, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

### **Section 19. Filing Requirements for Advertising**

A. Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium to the commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

B. The commissioner may exempt from these requirements any advertising form or material when in the commissioner's opinion, this requirement may not be reasonably applied.

## Section 20. Standards for Marketing

A. Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued;

(3) display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

NOTICE TO BUYER: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.;

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance;

(5) every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this Subsection A;

(6) if the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a program is available and the name, address and telephone number of the program.

(7) For long-term care health insurance policies and certificates, use the terms "noncancelable" or "level premium" only when the policy or certificate conforms to Section 6.A.(3) of this Regulation.

B. In addition to the practices prohibited in R.S. 22:1211 et seq., the following acts and practices are prohibited:

(1) **Twisting.** Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) **High Pressure Tactics.** Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) **Cold Lead Advertising.** Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(4) **Material Misrepresentation.** Making, directly or indirectly, a representation which is false, upon which the insured substantially relies in deciding to purchase a policy.

C.(1) With respect to the obligations set forth in this Subsection, the primary responsibility of an association, as

defined in Section 4.(E).(2) and R.S. 22:1734(4)(b), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold. Subsection C.(1) does not apply to qualified long-term care insurance contracts.

(2) The insurer shall file with the Insurance Department the following material:

(a) the policy and certificate;

(b) a corresponding outline of coverage; and

(c) all advertisements requested by the Insurance Department.

(3) The association shall disclose in any long-term care insurance solicitation:

(a) the specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(b) a brief description of the process under which the policies and the insurer issuing the policies were selected.

(4) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(5) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(6) The association shall also:

(a) at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(b) actively monitor the marketing efforts of the insurer and its agents; and

(c) review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

NOTE: Subsection C.(6)(a)-(c) shall not apply to qualified long-term care insurance contracts.

(7) No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state Insurance Department the information required in this Subsection.

(8) The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this Subsection.

(9) Failure to comply with the filing and certificate requirements of this Section constitutes an unfair trade practice in violation of R.S. 22:1211 et seq.

## Section 21. Suitability

A. This Section shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer, health care service plan or other entity marketing long-term care insurance (the "issuer") shall:

(1) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(2) train its agents in the use of its suitability standards; and

(3) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

C.(1) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

(a) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(b) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(c) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(2) The issuer and, where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Paragraph (1) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

(3) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(4) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

D. The issuer shall use the suitability standards it has developed pursuant to this Section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Agents shall use the suitability standards developed by the issuer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C, in not less than 12-point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the

application. In the alternative, the issuer shall send the applicant a letter similar to Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually to the commissioner the total number of applications received from residents of this state; the number of those who declined to provide information on the personal worksheet; the number of applicants who did not meet the suitability standards; and the number of those who chose to confirm after receiving a suitability letter.

## Section 22. Prohibition Against Pre-existing Conditions and Probationary Periods in Replacement Policies or Certificates

If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

## Section 23. Nonforfeiture Benefit Requirement

A. No policy or certificate may be delivered or issued for delivery in this state unless the policy or certificate provides for nonforfeiture benefits to the defaulting or lapsing policyholder or certificate holder. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(1) For purposes of this Section, *Attained Age Rating* is defined as a schedule of premiums starting from the issue date which increases with increasing age at least 1 percent per year prior to age 50, and at least 3 percent per year beyond age 50.

(2) For purposes of this Section, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (3).

(3) The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection B.

(4) No policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(a) the end of the 10th year following the policy or certificate issue date; or



(b) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

B. Nonforfeiture benefits in a qualified long-term care insurance contract shall:

(1) be appropriately captioned;

(2) provide for a benefit available in the event of a default in the payment of any premiums and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the secretary of the Treasury for the same contract form; and

(3) shall include at least one of the following:

(a) reduced paid-up insurance;

(b) extended term insurance;

(c) shortened benefit period; or

(d) other similar offerings approved by the secretary of the Treasury.

C. All benefits paid by the insurer while the policy or certificate is in premium paying status and the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

D. There shall be no difference in the minimum nonforfeiture benefits as required under this Section for group and individual policies.

E. The requirements set forth in this Section shall become effective 12 months after adoption of this provision and shall apply as follows:

(1) Except as provided in Paragraph (2), the provisions of this Section apply to any long-term care policy issued in this state on or after the effective date of this Regulation.

(2) For certificates issued on or after the effective date of this Section, under a group long-term care insurance policy as defined in Section 4.E.(1) and R.S. 22:1734(4)(a) which policy was in force at the time this amended Regulation became effective, the provisions of this Section shall not apply.

(3) For qualified long-term care insurance contracts, the nonforfeiture provisions shall be effective on the date of adoption of Regulation amendment.

F. Premiums charged for policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of Section 17 treating the policy as a whole.

#### **Section 24. Standards for Benefit Triggers**

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

B.(1) Activities of daily living shall include at least the following as defined in Section 5 and in the policy:

(a) bathing;

(b) continence;

(c) dressing;

(d) eating;

(e) toileting; and

(f) transferring.

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Paragraph (1) as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections A and B.

D. For purposes of this Section the determination of a deficiency shall not be more restrictive than:

(1) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(2) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

F. Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

G. The requirements set forth in this Section shall be effective [12 months after adoption of this provision] and shall apply as follows:

(1) Except as provided in Paragraph (2), the provisions of this Section apply to a long-term care policy issued in this state on or after the effective date of the Regulation.

(2) For certificates issued on or after the effective date of this Section, under a group long-term care insurance policy as defined in Section 4.E.(d) and R.S. 22:1734(4) that was in force at the time this Regulation became effective, the provisions of this Section shall not apply.

#### **Section 25. Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts**

A. A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living for an expectation of at least 90 days due to a loss of functional capacity, as described in D.(1) below; having a level of disability similar, as described under Regulations developed by the secretary of the Treasury, to the insured's ability to perform activities of daily living; or severe cognitive impairment, as described in D.(2) below. An insured will be considered to have met a condition of payment if within the preceding 12-month period a licensed health care practitioner has certified that the insured has met such requirements and such practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care. Eligibility for the payment of benefits shall not be more restrictive than requiring a deficiency in the ability to perform not more than three of the activities of daily living.

B.(1) Activities of daily living shall include the following as defined in Section 5 and in the qualified long-term care insurance contract:

- (a) bathing;
- (b) continence;
- (c) dressing;
- (d) eating;
- (e) toileting; and
- (f) transferring.

(2) An issuer of qualified long-term care contracts is limited to considering only the activities of daily living listed in Paragraph (1) above.

C. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

D. For the purposes of this Section, determinations of functional capacity and severe cognitive impairment shall be based on the following standards:

(1) for loss of functional capacity, requiring the substantial assistance of another person to perform the prescribed activities of daily living; or

(2) for severe cognitive impairment, requiring substantial supervision, including but not limited to verbal cueing, by another person to protect the insured from harming him or herself [or others, or from threats to such individual's health or safety].

E. Qualified long-term care contracts shall include a clear description of the process for appealing and resolving benefit determinations.

**Section 26. Standard Format Outline of Coverage**

This Section of the Regulation implements, interprets and makes specific, the provisions of R.S. 22:1736(G) in prescribing a standard format and the content of an outline of coverage.

A. The outline of coverage shall be a free-standing document, using no smaller than 10 point type.

B. The outline of coverage shall contain no material of an advertising nature.

C. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.

D. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

E. Format for outline of coverage:

[COMPANY NAME]  
 [ADDRESS—CITY AND STATE]  
 [TELEPHONE NUMBER]  
 LONG-TERM CARE INSURANCE  
 OUTLINE OF COVERAGE  
 [Policy Number or Group Master  
 Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

CAUTION: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance]([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you

READ YOUR POLICY (OR CERTIFICATE)  
 CAREFULLY!

3.(A) THIS PLAN IS INTENDED TO BE A QUALIFIED LONG-TERM CARE INSURANCE CONTRACT. (For qualified long-term care insurance contracts, a disclosure statement must be included stating that it is the intention of this contract to be considered as such.)

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancelable shall contain the following state:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions;]

(d) [State whether or not the company has a right to change premium, and if such right exists, describe clearly and concisely each circumstance under which premium may change.]

5. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return—"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

6. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

7. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

8. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

**9. LIMITATIONS AND EXCLUSIONS.**

[Describe:

- (a) pre-existing conditions;
- (b) noneligible facilities/provider;
- (c) noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) exclusions/exceptions;
- (e) limitations.]

[This Section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.] THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

**10. RELATIONSHIP OF COST OF CARE AND BENEFITS.** Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) that the benefit level will not increase over time;
- (b) any automatic benefit adjustment provisions;
- (c) whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) if there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) and finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

**11. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.**

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

**12. PREMIUM.**

[(a) State the total annual premium for the policy;  
 (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

**13. ADDITIONAL FEATURES.**

- [(a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

**Section 27. Requirement to Deliver Shopper's Guide**

A. A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(1) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(2) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under R.S. 22:1736(J).

**Section 28. Penalties**

In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any

commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

**Appendix A**

RESCISSION REPORTING FORM FOR  
 LONG-TERM CARE POLICIES  
 FOR THE STATE OF LOUISIANA  
 FOR THE REPORTING YEAR 19[ ]

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1 annually

**Instructions:**

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title (please type) \_\_\_\_\_

Date \_\_\_\_\_

James H. "Jim" Brown  
 Commissioner of Insurance

**Appendix B**

LONG TERM CARE INSURANCE  
 PERSONAL WORKSHEET

People buy long-term care insurance for a variety of reasons. These reasons include to avoid spending assets for long-term care, to make sure there are choices regarding the type of care received, to protect family members from having to pay for care, or to decrease the chances of going on Medicaid. However, long-term care insurance can be expensive, and is not appropriate for everyone. State law requires the insurance company to ask you to complete this worksheet to help you and the insurance company determine whether you should buy this policy.

**Premium**

The premium for the coverage you are considering will be [\$ per month, or \$ per year.] [a one-time single premium of \$ .] [The company cannot raise your rates on this policy.] [The company as a right to increase premiums in the future.] The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The last rate increase for this policy in this state was in [year], when premiums went up by an average of percent]. [The company has not raised its rates for this policy.]

[ ] Have you considered whether you could afford to keep this policy if the premiums were raised, for example, by 20 percent?]

**Income**

Where will you get the money to pay each year's premiums?

- Income
- Savings
- Family members

What is your annual income? (check one)

- Under \$10,000
- \$10-20,000
- \$20-30,000
- \$30-50,000
- Over \$50,000

How do you expect your income to change over the next 10 years? (check one)

- No change
- Increase
- Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7 percent of your income.

### Savings and Investments

Not counting your home, what is the approximate value of all of your assets (savings and investments)? (check one)

- Under \$20,000       \$20,000-\$30,000
- \$30,000-\$50,000       Over \$50,000

How do you expect your assets to change over the next 10 years? (check one)

- Stay about the same       Increase       Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

### Disclosure Statement

<input type="checkbox"/> The information provided above accurately describes my financial situation.	<input type="checkbox"/> I choose not to complete this information.
--	---

Signed: \_\_\_\_\_  
(Applicant) (Date)

I explained to the applicant the importance of completing this information.

Signed: \_\_\_\_\_  
(Agent) (Date)

Agent's Printed Name: \_\_\_\_\_

[Note: In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not appear to be suitable for me. However, I still want the company to consider my application.]

Signed: \_\_\_\_\_  
(Applicant) (Date)

The company may contact you to verify your answers.

### Appendix C

#### THINGS YOU SHOULD KNOW BEFORE YOU BUY LONG-TERM CARE INSURANCE

- Long-Term Care Insurance**
  - A long-term care insurance policy may pay most of the costs for your care in nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
  - [You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]
  - The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.
- Medicare**
  - Medicare does not pay for most long-term care.
- Medicaid**
  - Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.
  - Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term services.
  - When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

- Shopper's
- Make sure the insurance company or agent gives you a copy of Guide a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

- Counseling
- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state Insurance Department on aging for more information about the senior health insurance counseling program counseling program in your state.

### Appendix D

#### LONG-TERM CARE INSURANCE SUITABILITY LETTER

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state Insurance Department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

- Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.
- Number I have decided not buy a policy at this time.

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

Please return to [issuer] at [address] by [date].

A public hearing on this proposed Regulation will be held on April 28, 1997 in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, LA at 9 a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may submit oral or written comments to Yolanda M. Edwards, Staff Attorney, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214,

telephone (504)342-2493. Comments will be accepted through the close of business at 4:30 p.m., April 28, 1997.

James H. "Jim" Brown  
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Long-Term Care Insurance**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this proposed revision. Any new duties imposed upon the department by this proposed revision would be handled by existing personnel.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that adoption of this proposed revision would have any effect on revenue collections by the state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The purpose of this revised Regulation is to implement mandatory federal provisions adopted by the *Internal Revenue Code*, 26 U.S.C.A. 7702 et seq., regarding long-term care services and contracts. Effective January 1, 1997, long-term care insurance will be treated as health insurance.

The adoption of this revised Regulation could possibly cause an economic benefit for insureds since benefits received under a qualified plan will be excluded from taxable income (in an amount up to \$175 per day) and paid premiums will qualify as a tax deductible medical expense.

Long-term care insurance could possibly become more affordable to insurers and/or their employers who may want to provide this insurance coverage as an employee benefit. This could create a broader market for long-term care insurance which could cause an economic benefit to the insurers.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is not anticipated that this proposed revision would not have any effect on employment or competition.

Brenda St. Romain  
Assistant Commissioner  
9703#031

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Riverboat Gaming: Transfers of Interest in Licensees and Permittees; Loans and Restrictions (LAC 42:XIII.Chapter 25) and Repeal of Riverboat Gaming Patron Disputes (LAC 42:XIII.3501-3513)**

The Gaming Control Board hereby gives notice that it intends to adopt LAC 42:XIII.2524; to amend LAC 42:XIII.2523 and LAC 42:XIII.3501; and to repeal LAC 42:XIII.3503, 3505, 3506, 3507, 3509, 3511, and 3513.

The text of the proposed Rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

All interested persons may contact Tom Warner, Deputy Director, Attorney General's Gaming Division, telephone (504) 342-2465; and may submit written comments relative to these proposed Rules through April 9, 1997, to 339 Florida Boulevard, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Transfers of Interest in Licensees and Permittees; Loans and Restrictions; Repeal of Riverboat Gaming Patron Disputes**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no implementation costs to state or local government units estimated.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collections of state or local government units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No costs and/or economic benefits to directly affected persons or nongovernmental groups is estimated.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No effect on competition or employment is estimated.

Hillary J. Crain  
Chairman  
9703#018

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Plan Document—Prescription  
Drug Exclusions and Limitations**

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and 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 gives notice of its intent to amend the Plan Document of Benefits.

The board finds that it is necessary to amend the Plan Document to restrict benefits for Serostim, a new recombinant

human growth hormone, to treatment of AIDS wasting. The board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend Article 3, Section VIII, Subsection W to read as follows:

**VIII. Exceptions and Exclusions for all Medical Benefits**

No benefits are provided under this contract for:

\*\*\*

W. The following drugs, medicines, and related services:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for covered persons over age 26;
5. amphetamines dispensed for diagnoses other than Attention Deficit Disorder or Narcolepsy;
6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;
7. nutritional or parenteral therapy;
8. vitamins and minerals;
9. drugs available over the counter; and
10. Serostim dispensed for any diagnoses or therapeutic purposes other than AIDS wasting;

\*\*\*

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, April 25, 1997.

James R. Plaisance  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Plan Document—Prescription  
Drug Exclusions and Limitations**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS)  
TO STATE OR LOCAL GOVERNMENTAL UNITS  
(Summary)**

There will be no implementation costs to state or local governmental units as the State Employees Group Benefits Program currently has exclusions and limitations to current prescription drug charges. This is a new drug and is being added to that listing.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF  
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Revenue collections of state or local governmental units will not be affected.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS  
TO DIRECTLY AFFECTED PERSONS OR  
NONGOVERNMENTAL GROUPS (Summary)**

This Rule change is being made at the direction of the Board of Trustees to exclude payment for the drug Serostim for any diagnoses or therapeutic purposes other than AIDS wasting.

**IV. ESTIMATED EFFECT ON COMPETITION AND  
EMPLOYMENT (Summary)**

Competition and employment will not be affected.

James R. Plaisance  
Executive Director  
9703#048

Richard W. England  
Assistant to the  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Reef Fish Daily Take and Size Limits  
(LAC 76:VII.335)**

The Wildlife and Fisheries Commission hereby proposes to amend LAC 76:VII.335 modifying recreational creel limits for reef fish, which is part of the existing Rule for daily take, possession, and size limits for reef fishes set by the commission. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), 56:326.1 and 56:326.3.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§335. Daily Take, Possession and Size Limits Set by  
Commission, Reef Fish**

A. The Louisiana Wildlife and Fisheries Commission does hereby adopt the following Rules and Regulations regarding the harvest of triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies within and without Louisiana's territorial waters:

SPECIES	RECREATIONAL BAG LIMITS
---------	-------------------------

\*\*\*

- |  |   |
|--|---|
| 4. Greater amberjack   | 1 fish per person per day                 |
| 5. Gray triggerfish, queen triggerfish, lesser amberjack, almaco jack, banded rudderfish, tomtate, white grunt, hogfish, lane snapper, vermilion snapper, goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, tilefish, bank sea bass, rock sea bass, black sea bass, dwarf sand perch, sand perch, grass porgy, jolthead porgy, knobbed porgy, littlehead porgy, red porgy | 20 fish per person per day (in aggregate) |

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 23:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Harry Blanchet, Marine Fisheries Division,

Daniel J. Babin  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Reef Fish Daily Take and Size Limits**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no state or local governmental implementation costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenues to any state or local governmental units from the proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Rule is intended to provide consistent Regulations for recreational fishers harvesting reef fishes in state waters and in adjacent federal waters. The proposed Regulation would establish an aggregate recreational creel limit of 20 fish/person/day on most species of reef fish that presently do not have creel limits. Present data suggests that these species are seldom the target of trips from Louisiana ports, but may be harvested by anglers targeting red snapper, grouper, or other offshore species.

The Rule also provides for a reduction in the existing creel limit for greater amberjack, presently three fish, to one fish per person. This change will reduce the number of greater amberjack harvested by recreational anglers by about 25 percent, and affect about 0.07 percent of the saltwater recreational trips taken from Louisiana ports.

Reduction of harvest of any or all of these fish may slightly reduce benefits to anglers from their trip. Long-term benefits may also accrue to fishermen in both recreational and commercial sectors as a result of possible increases in the greater amberjack stocks protected by the proposed creel limits. No additional costs, permits, fees, workload or paperwork will occur from the proposed Rule change.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on employment in the public or private sector. Some anglers may redirect their fishing efforts to other species, geographic areas, or into nonfishing-related activities.

James H. Jenkins, Jr.  
Secretary  
9703#023

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Resident Game Hunting Season—1997-1998  
(LAC 76:XIX.101 and 103)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend Rules and Regulations governing the hunting of resident game birds and game quadrupeds.

**Title 76  
WILDLIFE AND FISHERIES  
Part XIX. Hunting**

**Chapter 1. Resident Game Hunting Season  
§101. General**

The Resident Game Hunting Season, 1997-98 Regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the Regulation pamphlet may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:

**§103. Resident Game Birds and Animals 1997-98**

A. Shooting Hours. One-half hour before sunrise to one-half hour after sunset.

B. Consult Regulation pamphlet for seasons or specific Regulations on wildlife management areas or specific localities.

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	Nov.27-Feb. 28	10	20
Rabbit	Oct. 4-Feb. 28	8	16
Squirrel	Oct. 4-Feb. 8	8	16
Deer	See Schedule	1 Antlered and 1 Antlerless (When Legal)	6

**C. Deer Hunting Schedule**

Area	Archery	Muzzleloader	Still Hunt	With or Without Dogs
1	Oct. 1 - Jan. 31	Nov.15-Nov.21 Jan.26-Feb. 1	Nov.22- Dec. 5 Jan.10- Jan.25	Dec. 6- Dec.14 Dec.20- Jan. 9
2	Oct. 1 - Jan. 31	Oct.18-Oct.24 Jan. 5-Jan.11	Oct.25- Dec. 5	Dec. 6- Jan. 4
3	Sept.20- Jan. 20	Oct. 4-Oct.10 Dec.13-Dec.19	Oct.11- Dec. 7 Dec.20- Jan. 4	
4	Oct. 1 - Jan. 31	Nov.15-Nov.21 Jan. 5-Jan.11	Nov.22- Jan. 4	
5	Oct. 1 - Jan. 31	Nov.15-Nov.21 Jan. 5-Jan.11	Nov.22- Nov.30	
6	Oct. 1 - Jan. 31	Nov.15-Nov.21 Jan.26-Feb. 1	Nov.22- Dec. 5	Dec. 6- Dec.14 Dec.20- Jan.25
7	Oct. 1 - Jan. 31	Oct. 4-Oct.10 Jan.19-Jan.25	Oct.11- Oct.26 Nov.22- Dec. 7	Dec.13- Jan.18

**D. Modern Firearm Schedule (Either Sex Seasons)**

Area	Basic Season Dates	Total Days	Exceptions (Those Portions of the Following Parishes)
1	Nov.22-23, 28-30 Dec.6-7, 13-14	9	Nov.22-23, 28-30 (Franklin, Catahoula, LaSalle, Caldwell) Nov.22-23, 28-30, Dec.6-7 (Avoyelles, Grant)
2	Oct.25-26, Nov.1-2, 8-9, 28-30, Dec.6-7	11	Oct.25-26, Nov.28-30 (Caldwell, LaSalle) Oct.25-26, Nov.28-30, Dec.6-7 (Avoyelles, Rapides, Grant)
3	Oct.11-12, 25-26, Nov.1-2, 8-9, 28-30	11	Oct.11-12, 25-26, Nov.28-30 (Rapides) Oct.11-12, Nov.28-30, Dec.6-7 (St. Landry)
4	Nov.22-23, 28-30	5	Nov.22-23, 28-30, Dec.6-7, 13-14 (East Carroll)
5	None		
6	Nov.22-23, 28-30, Dec.6-7, 13-14	9	Nov.22-23, 28-30, Dec.6-7 (Avoyelles, Rapides, St. Landry)
7	Oct.11-12, Nov.22-23, 28-30, Dec.13-14	9	

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:115.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:

Public hearings will be held at regularly scheduled Louisiana Wildlife and Fisheries Commission meetings from April through July. Additionally, interested persons may submit written comments relative to the proposed Rule until May 23, 1997 to Hugh A. Bateman, Administrator, Wildlife Division, Box 98000, Baton Rouge, LA 70898.

Daniel J. Babin  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Resident Game Hunting Season  
1997—1998**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Establishment of hunting Regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production of the Regulation pamphlet. Cost of printing the 1996-97 pamphlet was \$14,850 and no major increase in expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Projected hunting license fee collections for FY 96-97 will be approximately \$4.5-5.0 million. Additionally, hunting and related activities generates approximately \$13 million in state sales tax and \$3.5 million in state income tax (Southwick and Associates, 1991). Failure to amend these Rules would result

in no hunting season being established and a potential loss of these revenues.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Hunting in Louisiana generates in excess of \$629,166,000 annually through the sale of outdoor related equipment, associated items and other economic benefits. Figures are based on the National surveys by Southwick and Associates for the IAFWA.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Hunting in Louisiana provides 9,370 jobs (Southwick and Associates, 1991). Not establishing hunting seasons might have a negative and direct impact on these positions.

James H. Jenkins, Jr.  
Secretary  
9703#024

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

Spanish Lake State Game and  
Fishing Preserve (LAC 76:III.329)

The Wildlife and Fisheries Commission hereby advertises its intent to adopt a Rule establishing visitor Regulations for Spanish Lake State Game and Fishing Preserve.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

**Title 76  
WILDLIFE AND FISHERIES  
Part III. State Game and Fish Preserves  
and Sanctuaries**

**Chapter 3. Particular Game and Fish Preserves and Commissions**

**§329. Spanish Lake State Game and Fishing Preserve  
General**

1. The preserve will open one-half hour before official sunrise and close one-half hour after official sunset. It will be closed to all nighttime activities.
2. Existing gates will remain in place. Parking is restricted to designated parking areas.
3. The levee road will have one-way traffic with the entrance at the boat ramp and the exit on Bernard Drive.
4. ATVs (three wheelers and four wheelers) and motorbikes are prohibited on the levee.



5. Discharge of any firearms on the levees is prohibited.
6. Overnight camping is prohibited, except by special permit issued by Spanish Lake Game and Fishing Preserve Commission for supervised groups only.
7. The possession or use of commercial nets, including hoop nets, trammel nets, gill nets and fish seines, is prohibited, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.
8. No trapping of furbearing animals, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:721 et seq., R.S. 56: 801 and R.S. 36:610.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 23:

Interested persons may comment on the proposed Rule in writing to Bennie Fontenot, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 until 4:30 p.m., Thursday, May 1, 1997.

Daniel J. Babin  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Spanish Lake State Game  
and Fishing Preserve**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed Rule will have no implementation costs. Enforcement of the proposed Rule will be carried out using existing staff.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed Rule will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed Rule will not cost nor provide economic benefits to persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed Rule will have no effect on competition and employment.

Ronald G. Couvillion  
Undersecretary  
9703#022

Richard W. England  
Assistant to the  
Legislative Fiscal Officer

# Potpourri

## POTPOURRI

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Horticulture Commission**

### Retail Floristry Examination

The next retail floristry examination will be given April 7-11, 1997, at 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is March 10, 1997. No applications will be accepted after March 10, 1997.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the office prior to March 10, 1997. Please refer questions to (504) 925-7772.

Bob Odom  
Commissioner

9703#065

## POTPOURRI

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Hazardous Waste Division**

### Provisional Hazardous Waste Generator Reporting

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice to facilities that are issued a provisional (one-time) EPA Identification number, that such facilities are not required to comply with the annual reporting requirements of LAC 33:V.1111.B.

For further information or to comment on this notice, please write to: Hazardous Waste Division, Program Management Support Section, Box 82178, Baton Rouge, LA 70884-2178.

A copy of this notice may be viewed at the Hazardous Waste Division from 8 a.m. to 4:30 p.m., Monday through Friday, at DEQ headquarters, Hazardous Waste Division, 7290 Bluebonnet Boulevard, Fifth Floor, Baton Rouge, LA.

H. M. Strong  
Assistant Secretary

9703#029

## POTPOURRI

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

### Public Hearing—Oilfield Waste Facility

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950 as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Monday, April 28, 1997, at the Houma Municipal Auditorium, 800 Verrett Street, Houma, LA.

At such hearing, the commissioner or his designated representative will hear testimony relative to the application of Growth Resources, Inc., 200 A. Burgess Drive, Broussard, LA 70518. The applicant requests to operate a commercial nonhazardous oilfield waste (NOW) storage, treatment, reclamation and disposal facility in parts of Sections 50 and 51, Township 16S, Range 14E, approximately 2 miles southwest of Gibson, LA off Geraldine Road.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Terrebonne Parish Council Office, in Houma, LA or the Parish Library in Gibson, LA. Verbal information may be received by calling Pierre Catrou at (504)342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., May 5, 1997, at the Baton Rouge Office. Comments should be directed to Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804 Re: Docket Number IMD 97-04, Commercial Facility, Terrebonne Parish.

George L. Carmouche  
Commissioner

9703#057

## POTPOURRI

**Department of Natural Resources  
Office of Conservation  
Injection and Mining Division**

### Public Hearing—Oilfield Waste Facility

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised

Statutes of 1950, as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Monday, April 21, 1997, in the PJ Room of the Calcasieu Parish Government Building, 1015 Pithon Street, Lake Charles, LA.

At such hearing, the commissioner or his designated representative will hear testimony relative to the application of Chemical Waste Management, 7170 John Brannon Road, Lake Charles, LA 70663. The applicant requests to accept and manage nonhazardous oilfield wastes (NOW) at their LaDEQ permitted hazardous waste treatment, storage and disposal facility in Sections 8 and 9, Township 11S, Range 10W, Carlyss, LA.

The application is available for inspection by contacting Pierre Catrou, Office of Conservation, Injection and Mining Division, Room 257 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Calcasieu Parish Police Jury Office or the Parish Library in Lake Charles, LA. Verbal information may be received by calling Pierre Catrou at (504)342-5567.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., April 28, 1997 at the Baton Rouge Office. Comments should be directed to the Office of Conservation, Injection and Mining Division, Box 94275, Baton Rouge, LA 70804, Re: Docket Number IMD 97-03, Commercial Facility, Calcasieu Parish.

George L. Carmouche  
Commissioner

9703#058

**POTPOURRI**

**Department of Social Services  
Office of Community Services**

**Emergency Shelter Grants Program (ESGP)**

The Department of Social Services (DSS) anticipates the availability of \$1,220,000 in grant funds for distribution to applicant units of local government under the 1997 State Emergency Shelter Grants Program (ESGP). Program funds are allocated to the state by the U.S. Department of Housing and Urban Development (HUD) through authorization by the Stewart B. McKinney Homeless Assistance Act, as amended. Funding available under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation or conversion of buildings for use as emergency shelters for the homeless, and for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless. The program also allows use of funding in homeless prevention activities as an adjunct to other eligible activities. As specified under current state ESGP policies, eligible applicants are limited to units of general local government for all parish jurisdictions and those municipal or

city governmental units for jurisdictions with a minimum population of 10,000 according to recent census figures. Recipient units of local government may make all or part of grant amounts available to private nonprofit organizations for use in eligible activities.

Application packages for the state ESG program shall be issued by mail to the chief elected official of each qualifying unit of general local government. In order to be considered for funding, applications must be received by DSS/Office of Community Services by 4 p.m., Friday, May 16, 1997.

Nonprofit organizations in qualifying jurisdictions which are interested in developing a project proposal for inclusion in an ESGP funding application should contact their respective unit of local government to apprise of their interest. To be eligible for funding participation, a private nonprofit organization as defined by ESGP regulations must be one which is exempt from taxation under subtitle A of the *Internal Revenue Code*; has an accounting system and a voluntary board; and practices nondiscrimination in the provision of assistance.

The State DSS will continue use of a geographic allocation formula in the distribution of the State's ESG funding to ensure that each region of the state is allotted a specified minimum of State ESG grant assistance for eligible ESGP projects. Regional allocations for the State's 1997 ESG program have been formulated based on factors for low income populations in the parishes of each region according to U.S. Census Bureau data. Within each region, grant distribution shall be conducted through a competitive grant award process.

The following table lists the allocation factors and amounts for each region:

Region	Factor	Allocation
Region I New Orleans	.1572303	191,821
Region II Baton Rouge	.1120504	136,701
Region III Thibodaux	.0698830	85,257
Region IV Lafayette	.1522065	185,692
Region V Lake Charles	.0531706	64,869
Region VI Alexandria	.0764176	93,229
Region VII Shreveport	.1248105	152,269
Region VIII Monroe	.0985996	120,292
Region IX Northshore	.0746534	91,077
Region X Jefferson	.0809781	95,230

Regional funding amounts for which applications are not received shall be subject to statewide competitive award to applicants from other regions and/or shall be reallocated among other regions in accordance with formulations consistent with the above factors.

Grant awards shall be for a minimum of \$15,000. Applicable grant maximums are as follows:

1. Individual grant awards to applicant jurisdictions of less than 49,000 population shall not exceed \$70,000.

2. For a jurisdiction of over 49,000 population, the maximum grant award shall not exceed the ESGP allocation for that jurisdiction's respective region.

Grant specifications, minimum and maximum awards may be revised at DSS's discretion in consideration of individual applicant's needs, total program funding requests, and available funding. DSS reserves the right to negotiate the final grant amounts, component projects, and local match with all applicants to ensure judicious use of program funds.

Program applications must meet state ESGP requirements and must demonstrate the means to assure compliance if the proposal is selected for funding. If, in the determination of DSS, an application fails to meet program purposes and standards, even if such application is the only eligible proposal submitted from a region or subregion, such application may be rejected *in toto*, or the proposed project(s) may be subject to alterations as deemed necessary by DSS to meet appropriate program standards.

Proposals accepted for review will be rated on a comparative basis based on information provided in grant applications. Award of grant amounts between competing applicants and/or proposed projects will be based upon the following selection criteria:

1. Nature and extent of unmet need for emergency shelter, transitional housing and supportive services in the applicant's jurisdiction ..... 40 points
2. The extent to which proposed activities will address needs for shelter and assistance and/or complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living ..... 30 points
3. The ability of the applicant to carry out the proposed activities promptly ..... 15 points

4. Coordination of the proposed project(s) with available community resources, so as to be able to match the needs of homeless persons with appropriate supportive services and assistance ..... 15 points

ESGP recipients are required to provide matching funds (including in-kind contributions) in an amount at least equal to its ESG program funding unless a jurisdiction has been granted an exemption in accordance with program provisions. The value of donated materials and buildings, voluntary activities and other in-kind contributions may be included with "hard cash" amounts in the calculation of matching funds. A local government grantee may comply with this requirement by providing the matching funds itself, or through provision by nonprofit recipients.

A recipient local government may at its option elect to use up to 2.5082 percent of grant funding for costs directly related to administering grant assistance, or may allocate all grant amounts for eligible program activities. Program rules do not allow the use of ESGP funds for administrative costs of nonprofit subgrantees.

Availability of ESGP funding is subject to HUD's approval of the State's FY 97 Consolidated Annual Action Plan for Housing and Community Development Programs. No expenditure authority or funding obligations shall be implied based on the information in this notice of funds availability.

Inquiries and comments regarding the 1997 Louisiana Emergency Shelter Grants Program may be submitted in writing to the Office of Community Services, Grants Management Division, Box 3318, Baton Rouge, LA 70821, or telephone (504) 342-2277.

Madlyn B. Bagneris  
Secretary

9703#034

**CUMULATIVE INDEX**  
(Volume 23, Number 3)

1997		
<i>Pages</i>		<i>Issue</i>
1 — 128	.....	January
129 — 256	.....	February
257 — 381	.....	March

<b>CR—Committee Report</b>	<b>EO—Executive Order</b>
<b>ER—Emergency Rule</b>	<b>L—Legislation</b>
<b>N—Notice of Intent</b>	<b>P—Potpourri</b>
<b>PPM—Policy and Procedure Memorandum</b>	<b>R—Rule</b>

**ADMINISTRATIVE CODE UPDATE**

**Cumulative**

January 1996 - December 1996, 110

**AGRICULTURE AND FORESTRY**

**Agricultural and Environmental Sciences, Office of**

Adjudicatory hearing, 308N  
Boll Weevil, 137ER, 195R, 251P  
Commercial applicator, 134ER, 192R  
Landscape architecture, 87N, 113P  
Pesticide, 134ER, 192R, 307N  
Retail floristry exam, 87N, 376P  
School pesticide application, 134ER, 192R  
Wood destroying insect, 260ER, 308N

**Agro-Consumer Services, Office of**

Bar code scan, 211N  
Fee, 196R

**Animal Health Services, Office of**

Contagious disease, 196R  
Equine Infectious Anemia, 138ER  
Poultry, 142ER  
Rendering plant, 196R

**Commissioner, Office of**

Emergency airstrip, 213N, 262ER

**Forestry, Office of**

Timber stumpage, 86N

**Marketing, Office of**

Eggs, 293R

**CIVIL SERVICE**

**Ethics, Board of**

Lobbyist report, 309N

**CULTURE, RECREATION AND TOURISM**

**Secretary, Office of the**

Byways, 35R

**ECONOMIC DEVELOPMENT**

**Architectural Examiners, Board of**

Continuing education, 87N  
Prepared documents, 90N

**Commerce and Industry, Office of**

Enterprise Zone, 295R

**Economic Development Corporation**

Award program, 36R  
Small business loan, 40R  
Workforce development, 43R

**Financial Institutions, Office of**

Fees/assessments, 296R, 311N  
Insurance, 47R  
Records retention, 311N

**Racing Commission**

Electric battery, 14ER, 215N  
Expense deposit, 13ER, 215N  
Interstate wager, 216N  
Jockey, 263ER  
License, 263ER  
Pari-Mutuel, 14ER, 217N  
Payment method, 217N  
**Secretary, Office of**  
Economically disadvantaged, 49R

**EDUCATION**

**Elementary and Secondary Education, Board of**

Bulletin 741  
Alternate school/program, 92N  
Elective, 91N  
Math requirement, 218N  
Bulletin 746  
Health/physical education, 95N  
K-12 certification, 219N  
Principal, 93N  
Bulletin 1134  
Library media, 96N  
Bulletin 1706  
Exceptional children, 143ER  
Bulletin 1868  
Personnel Manual, 183ER  
Minimum Foundation Program, 55R

**Student Financial Assistance Commission**

Scholarship and Grant Manual, 313N

**Tuition Trust Authority**

START Saving, 314N

**ENVIRONMENTAL QUALITY**

**Air Quality and Radiation Protection, Office of**

AQ144 NESHAP source categories, 56R  
AQ145 Ozone nonattainment areas, 197R  
AQ146 Nonattainment new source review, 197R  
AQ147 Permit application/information submittal, 96N  
AQ148 Particulate matter, 220N  
AQ149 Organic compound emission, 322N  
Fugitive emission, 113P

**Secretary, Office of the**

HW051 Land disposal, 15ER  
HW057 Marathon Oil delisting, 221N  
OS013 Rulemaking petition, 297R

**Solid and Hazardous Waste, Office of**

SW023 Waste tire, 184ER, 224N  
HW051 Land disposal, 299R  
HW054 Universal waste, 332N  
HW055 RCRA V federal package, 329N  
Hazardous waste generator, 376P

**Water Resources, Office of**

WP020 Louisiana Pollutant Discharge Elimination System (LPDES), 225N  
WP021 Best management practices, 199R  
WP022 Adoption by reference, 199R  
WP023 Produced water discharge, 16ER, 18ER, 184ER, 264ER, 345N

**EXECUTIVE ORDERS**

**MJF 96-69** JTPA Program Merger, 1  
**MJF 96-70** Occupational Information Coordinating Committee, 1  
**MJF 96-71** Postsecondary Review Commission, 2  
**MJF 96-72** French Heritage—Joint Committees, 3  
**MJF 96-73** School Based Health Center Investigation, 3  
**MJF 96-74** School Based Health Clinic Task Force, 4  
**MJF 96-75** Forest Products Industry Development Task Force, 5  
**MJF 96-76** Tangipahoa River Task Force, 6  
**MJF 96-77** Statewide Intermodal Transportation Plan Steering Committee, 7  
**MJF 96-78** Bond Allocation—Calcasieu Parish Authority, 7  
**MJF 96-79** Unclassified State Employee Leave, 8  
**MJF 97-1** Scenic By-Way Program, 129

**MJF 97-2** Bond Allocation—Housing Finance Agency, 129  
**MJF 97-3** Calcasieu Parish Public Trust Authority, 130  
**MJF 97-4** Automobile Insurance Rate Deduction Task Force 130  
**MJF 97-5** Office of the First Lady, 131  
**MJF 97-6** Bond Allocation—Parish of Ouachita, 131  
**MJF 97-7** Removal of Abandoned Barges and Vessels, 132  
**MJF 97-8** DWI/Vehicular Homicide Task Force, 133  
**MJF 97-9** Individual Wastewater Treatment Systems Task Force, 133  
**MJF 97-10** Child Care and Development Block Grand Advisory Council, 257  
**MJF 97-11** School Based Health Clinics Investigation, 257  
**MJF 97-12** International Trade Commission, 257  
**MJF 97-13** School Based Health Clinic Task Force, 258

**GAMING (also see Public Safety)**

**Louisiana Lottery Corporation**  
 On-line lottery, 63R

**GOVERNOR'S OFFICE**

**Administration, Division of**  
 Commissioner, Office of  
 Hearing conduct, 67R  
 Community Development, Office of  
 Consolidated Annual Action Plan, 114P  
 Property Assistance Agency  
 Fleet management, 300R  
**Crime Victims Reparations Board**  
 Definitions, 268ER  
**Elderly Affairs, Office of**  
 Long term care, 347N  
**Patient's Compensation Fund Oversight Board**  
 Coverage scope, 67R  
 Enrollment, 67R  
 General provisions, 67R  
 Surcharges, 67R  
**Rural Development, Office of**  
 Funding, 19ER, 97N  
 Projects, 19ER, 97N

**HEALTH AND HOSPITALS**

**Alcohol and Drug Abuse, Office of**  
 Urine drug screen, 200R  
**Dentistry, Board of**  
 Advertising, 199R  
 Prescription, 199R  
**Embalmers and Funeral Directors, Board of**  
 Exam, 114P  
**Public Health, Office of**  
 Informed consent, 74R  
 Neonatal screening, 301R  
 Sanitary Code  
 Immunization, 20ER, 230N  
 Permit, 98N  
 Reportable disease, 302R  
 Seafood, 303R  
 Shellfish, 349N  
 Toledo Bend/Sabine River, 99N  
 Sewage, 269ER, 348N  
**Radiologic Technology Examiners, Board of**  
 Definitions, 71R  
 Education, 71R  
**Secretary, Office of the**  
 Alien, 24ER, 231N  
 Ambulatory surgical center, 99N  
 Case management  
 Infants/toddlers, 269ER  
 Targeted service, 274ER  
 Community/family support, 350N  
 Developmentally disabled, 26ER  
 Direct reimbursement, 21ER, 201R  
 Disproportionate share, 22ER, 270ER  
 Early Periodic Screening Diagnosis and Treatment (EPSDT), 186ER  
 Elderly home care, 272ER

Laboratory service, 274ER  
 Long-term acute hospital, 28ER, 202R  
 Low income family, 29ER, 232N  
 Medicaid, 100N, 201R  
 Medically needy, 30ER, 188ER, 203R  
 Medicare, 203R  
 Mentally retarded, 26ER  
 Nursing facility, 114P  
 Physician management, 201R  
 Professional Services Program, 187ER, 203R  
 Rehabilitation hospital, 28ER, 202R  
 Rehabilitation services, 188ER  
 Temporary Assistance for Needy Families (TANF), 31ER, 233N  
 Voter registration, 355N  
 Wheelchair, 185ER  
**Veterinary Medicine, Board of**  
 Euthanasia, 268ER  
 Professional conduct, 269ER

**INSURANCE**

**Commissioner, Office of**  
 Reg 33—Medicare supplement, 101N  
 Reg 46—Long-Term Care, 356N  
 Reg 61—Actuarial Opinion Statement, 110CR

**LABOR**

**Employment Security, Office of**  
 Continuance/postponement, 75R  
 Reopening/rehearing, 75R  
**Workers' Compensation, Office of**  
 Hearing officer, 77R

**LOUISIANA LEGISLATURE**

**House of Representatives**  
 Insurance Committee  
 Oversight and Accreditation Subcommittee  
 Regulation 61—Actuarial Opinion Statement, 110CR

**NATURAL RESOURCES**

**Capital Area Ground Water Conservation Commission**  
 Water well permits, 34R  
**Conservation, Office of**  
 Custody transfer, 234N  
 Gas/oil ratio, 235N  
 Multiple completion, 238N  
 Natural gas, 235N  
 Oil/gas commingling, 240N  
 Oilfield waste facility, 376P, 376P  
 Orphaned oilfield, 114P, 252P  
**Secretary, Office of**  
 State lands, 189ER

**PUBLIC SAFETY AND CORRECTIONS**

**Gaming Control Board**  
 Board hearing, 31ER, 77R  
 Record preparation/submission, 288ER, 304R  
 Riverboat gaming  
 License, 31ER, 77R  
 Licensee, 289ER, 371N  
 Loan, 289ER, 371N  
 Patron, 289ER, 371N  
 Permit, 31ER  
 Permittee, 289ER, 371N  
 Video Draw Poker  
 Hearing, 31ER, 77R  
 Sanction, 31ER, 77R  
**Liquefied Petroleum Gas Commission**  
 Permit, 32ER

**REVENUE AND TAXATION**

**Secretary, Office of the**  
 Electronic Funds Transfer (EFT), 102N  
**Severance Tax Division**  
 Oilfield site, 78R

**Tax Commission**

Ad Valorem tax, 204R  
Commercial improvement, 252P  
Timber stumpage, 86N

**SOCIAL SERVICES**

**Community Services, Office of**

Child abuse/neglect, 243N  
Emergency Shelter Grants Program (ESGP), 377P  
Weatherization, 254P

**Family Support, Office of**

Aid to Families with Dependent Children (AFDC), 78R, 103N,  
104N

Arrearage, 209R

Child support, 291ER, 304R

Food stamps, 32ER, 79R, 243N

Individual and Family Grant, 244N

Project Independence, 106N

Support authority/enforcement, 245N

Welfare reform, 116P

**Rehabilitation Services, Office of**

Vocational Rehabilitation Policy Manual, 292ER

**Secretary, Office of**

Child care, 247N

Community/family support, 350N

**TRANSPORTATION OF DEVELOPMENT**

**Engineering, Office of**

Utility relocation, 210R

**Secretary, Office of the**

Crescent City Connection, 84R, 85R

**TREASURY**

**Housing Finance Agency**

HOME Affordable Rental Housing, 250N

**State Employees Group Benefits Program, Board of Trustees of the**

Catastrophic illness, 305R

Coverage continuation, 306R

Emergency room, 306R

Infertility, 33ER, 248N

Prescription drug, 33ER, 191ER, 249N, 371N

**Teachers' Retirement System, Board of Trustees of the**

Deferred Retirement Option Program (DROP), 85R

**WILDLIFE AND FISHERIES**

**Wildlife and Fisheries Commission**

Bait dealer, 86R

Black Drum, 211R

Dove, 109N

Flounder, 211R

Game hunting, 373N

Oyster, 34ER, 192ER

Reef fish, 372N

Sheepshead, 211R

Spanish Lake, 374N





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