

Emergency Rules

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Expedited Permit Processing Program
(LAC 33:1.Chapter 18)(OS073E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the expedited permit processing program.

This is a renewal of Emergency Rule OS073E1, which was effective on September 11, 2006, and published in the *Louisiana Register* on September 20, 2006.

This Emergency Rule provides a program for expedited permit processing and implementation of the associated expedited permit processing fees authorized by Acts 586 and 779 of the 2006 Regular Legislative Session. These Acts allow for expedited processing of a permit at no additional cost to the department for overtime pay. This Emergency Rule will allow the department to implement a pilot program format to gather the information needed to draft a final rule. Specifically, the department will be able to evaluate the environmental and public health benefits and the social and economic costs of expedited permit processing and the associated fees. Moreover, rapid implementation of Acts 586 and 779 will allow the expedited permit processing program to begin immediately, enhancing economic growth. Many companies consider environmental permitting timelines in determining where to locate a proposed facility. Expedited permit processing allows companies to act more quickly in response to market demands and conditions. The department is drafting a Rule to promulgate these regulations.

This Emergency Rule is effective on January 9, 2007, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS073E2 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov/portal/tabid/1699/default.aspx under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 18. Expedited Permit Processing Program §1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services. Expedited processing of a permit, modification, license, registration, or variance is an exercise of the discretion of the administrative authority and is subject to the availability of resources needed in order to process the permit, modification, license, registration, or variance.

B. Eligibility

1. An application for an initial permit or permit modification necessary for new construction as required by the Environmental Quality Act or regulation is eligible for expedited permit processing.

2. An application for permit renewal and/or reconciliation is not eligible for expedited processing pursuant to the provisions of this Chapter unless it is associated with new construction; results in new permanent jobs; includes increases in production which benefit the national, state, or local economy; or provides a direct benefit to the environment.

3. The applicant's failure to pay any outstanding fees owed to the department may be considered grounds for denial of a request for expedited permit processing.

C. To the extent practicable, requests proposing new construction or requests that will result in the creation of new permanent jobs will be given highest consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§1803. Procedures

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services, Environmental Assistance Division, Box 4313, Baton Rouge, LA 70821-4313.

B. Within 10 working days after receipt of a request for expedited processing of any permit, modification, license, registration, or variance, the administrative authority shall issue a decision to grant or deny the expedited processing request.

C. Requests for Additional Information

1. If at any time during the review process of an application the administrative authority determines that additional information is necessary, the administrative authority shall notify the applicant and require a response from the applicant within a reasonable, specified time.

2. The applicant shall respond to the request for additional information within the time specified by the administrative authority. Such a response shall contain all information required by the administrative authority.

3. The administrative authority reserves the right to cease expedited processing of the permit, modification, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information by the specified time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§1805. Fees

A. In addition to the fees charged pursuant to R.S. 30:2014, a fee shall be charged for each permit, modification, license, registration, or variance that is processed on an expedited basis in accordance with the provisions of this Chapter.

1. An appropriate fee shall be computed based on the maximum per hour overtime salary, including associated related benefits, of the civil service employee of the department who performs the work.

2. The fee shall be computed by multiplying the salary figure from Paragraph A.1 of this Section by every overtime hour or portion thereof that a department employee or contractor works on expedited processing of the permit, modification, license, registration, or variance.

3. The applicant may request that the expedited permit processing fee not exceed a maximum amount. If such a maximum amount is established, the number of overtime hours a department employee or contractor works processing the permit, modification, license, registration, or variance shall be limited accordingly. If further processing of the application is required, the department's continued review will not follow the provisions of this Chapter, and the request will no longer be handled on an expedited basis.

B. In the event that the administrative authority ceases processing a permit, modification, license, registration, or variance in accordance with LAC 33:I.1803.C.3 or Paragraph A.3 of this Section, a fee will be charged for every overtime hour or portion thereof that a department employee or contractor worked on expedited processing of the subject permit, modification, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§1807. Invoicing and Failure to Pay

A. An invoice for the expedited permit processing fee shall be transmitted to the applicant after the administrative authority has made a decision to grant or deny the permit, modification, license, registration, or variance.

B. Failure to pay the expedited permit processing fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the applicant to relevant enforcement action under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the permit, modification, license, registration, or variance.

C. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to pay the expedited permit processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§1809. Public Notice and Availability of Records

A. Requirement to Provide Public Notice. The department shall provide notice of each permit, modification, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. The notice of expedited permit processing shall be provided on the official website for the department.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

B. Contents of the Notice. The notice shall contain the name of the applicant/permittee, the agency interest number, the parish in which the facility is physically located, the environmental media involved, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

C. Availability of Records. All recorded information (completed permit application form, fact sheet or statement of basis, draft and proposed permits, or any public document) not classified as confidential information under R.S. 30:2030(A) or 30:2074(D) and designated as such in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Mike D. McDaniel, Ph.D.
Secretary

0701#005

DECLARATION OF EMERGENCY

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

PPO, EPO, and MCO Plans of Benefits
Lifetime Maximum Prescription Drug Benefit
(LAC 32:III.701, V.701, and IX.701)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that it is necessary to revise and amend provisions of the PPO, EPO, and MCO Plan Documents to increase the lifetime maximum benefit for outpatient prescription drug benefits from \$250,000 to \$500,000. Failure to adopt this Rule on an emergency basis will adversely affect availability of outpatient prescription drug benefits necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, revising and amending the PPO, EPO, and MCO Plan Documents, is effective January 1, 2007 and shall remain in effect for the maximum period allowed by law, or until the final rule is promulgated, which ever occurs first.

**Title 32
EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits
Chapter 7. Schedule of Benefits—PPO
§701. Comprehensive Medical Benefits**

A. Eligible expenses for professional medical services are reimbursed on a fee schedule of maximum allowable charges. All eligible expenses are determined in accordance with plan limitations and exclusions.

Lifetime maximum for all benefits, except outpatient prescription drug benefits, per person	\$1,000,000
Lifetime maximum for outpatient prescription drug benefits, per person	\$500,000

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1843 (October 1999), amended LR 26:488 (March 2000), LR 27:719, 720, 722 (May 2001), LR 27:1887 (November 2001), LR 28:2345 (November 2002), LR 29:340, 342, 343 (March 2003), repromulgated LR 29:578 (April 2003), amended LR 30:1192 (June 2004), LR 32:1897 (October 2006), LR 33:

Part V. Exclusive Provider Organization (EPO) Plan of Benefits

**Chapter 7. Schedule of Benefits—EPO
§701. Comprehensive Medical Benefits**

A. Eligible expenses for professional medical services are reimbursed on a fee schedule of maximum allowable charges. All eligible expenses are determined in accordance with plan limitations and exclusions.

Lifetime maximum for all benefits, except outpatient prescription drug benefits, per person	\$2,000,000
Lifetime maximum for outpatient prescription drug benefits, per person	\$500,000

A.1. - E. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees' Group Benefits Program, LR 25:1823 (October 1999), amended LR 26:487 (March 2000), LR 27:717 and 719 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 28:2342, 2343 (November 2002), repromulgated LR 28:2509 (December 2002), amended LR 29:335, 337, 338 (March

2003), LR 30:1190 (June 2004), LR 32:1869 (October 2006). LR 33:

**Part IX. Managed Care Option (MCO) Plan of Benefits
§701. Comprehensive Medical Benefits**

A. Eligible expenses for professional medical services are reimbursed on a fee schedule of maximum allowable charges. All eligible expenses are determined in accordance with plan limitations and exclusions.

1. Lifetime Maximum Benefits

Lifetime maximum for all benefits, except outpatient prescription drug benefits, per person	\$1,000,000
Lifetime maximum for outpatient prescription drug benefits, per person	\$500,000

A.2. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003), amended LR 30:435 (March 2004), LR 33:

Tommy D. Teague
Chief Executive Officer

0701#010

DECLARATION OF EMERGENCY

**Office of the Governor
Manufactured Housing Commission**

Placement of Used Homes
(LAC 55:V.519)

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), which allows the Louisiana Manufactured Housing Commission (hereinafter the "Commission") to use emergency procedures to establish rules, and under the authority of R.S. 51:911.26(E), the Director of the Louisiana Manufactured Housing Commission declares that an emergency action is necessary to adopt appropriate installation standards for the citing of manufactured homes in the secondary market.

In consequence of the vast devastation and destruction sustained by property owners in the areas of the state affected by Hurricanes Katrina and Rita, many citizens of the state are utilizing or contemplating utilizing manufactured housing to address their housing needs. In order to minimize the potential of risk to public health, safety and welfare, it is imperative that manufactured homes be properly cited. Accordingly, pursuant to its permissive grant of authority to adopt appropriate installation standards for manufactured housing in the State of Louisiana, the commission now acts to adopt by rule and/or regulation an installation standard to govern the citing of manufactured housing in the secondary market as follows.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 5. Manufactured Housing (Installation)

Subchapter A. General Requirements

§519. Placement of Used Homes

A. In accordance with 24 CFR Ch. XX §3280.305 et seq., manufactured homes in the secondary market shall be cited effective January 1, 2007 in accordance with federal

wind zones standards applicable for Louisiana zone II and III as set forth in 24 CFR Ch. XX §3280.305 et seq., and thereafter amended. However, if any manufactured home is cited within Louisiana wind zone II or III as of January 1, 2007 and the citing of this home within wind zone II or III can be definitively documented through such means as an installation permit sticker issued by and/or returned to the Louisiana Manufactured Housing Commission; a title which uniquely identifies your home and references the physical location of citing or some other independent means of credible documentation, then such manufactured home will be allowed to transfer indefinitely within the wind zone where it is cited as of January 1, 2007. Additionally, such manufactured home may also transfer to a less stringent wind zone than the zone where it is cited as of January 1, 2007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 911.26(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Manufactured Housing Commission, LR 33:

Deane M. Frazier
Executive Director

0701#006

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Social Work Examiners

Temporary Credentialing during a
Declared Public Health Emergency
(LAC 46:XXV.309)

The Department of Health and Hospital, Board of Social Work Examiners (the "board") has adopted this Emergency Rule, effective December 8, 2006, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, and the Louisiana Social Work Practice Act R.S. 37:2701-2723, as well as R.S. 29:769(E), as amended in Act. No. 207 of the 2006 Regular Session of the Louisiana Legislature, which became effective upon the governor's signature on June 2, 2006. The Emergency Rule is to remain in effect for a period of 120 days or until adoption of the final Rule, whichever occurs first.

In keeping with its function as set forth by the State Legislature in R.S. 29:769(E), as amended in the 2006 Regular Session, the board has developed and adopted this Emergency Rule thereby creating the process for adopting of a future Emergency Rule implementing temporary registration in Louisiana, during a public health emergency lawfully declared as such by the governor, for out-of-state social workers whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States.

The 2006 hurricane season began June 1, 2006. The immediate implementation of this Emergency Rule is in the best interest for the protection of the public health and safety in the event a public health emergency is lawfully declared by the governor prior to the final promulgation of the Rule through regular rule-making procedure. This Emergency Rule will allow the implementation by subsequent Emergency Rule for the temporary registration in Louisiana,

during a public health emergency lawfully declared as such by the governor, for out-of-state social workers whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States. The Emergency Rule will not limit or adversely impact the practices of Louisiana social workers at the present time or during a declared state of public health emergency.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXV. Certified Social Workers

Chapter 3. General Provisions

§309. Application Procedure

A. - P.3. ...

Q. Temporary Registration During a Declared Public Health Emergency

1. In a public health emergency lawfully declared as such by the Governor of Louisiana, the requirement for a Louisiana License or credential as a social worker may be suspended by the board at that time to those out-of-state social workers, whose credentials are current and unrestricted in another North American jurisdiction, for a period of time not to exceed the duration and scope of R.S. 29:769E, as more particularly set forth in this rule.

2. The following requirements for temporary credentialing may be imposed pursuant to the declared state of emergency and shall be in accordance with rules promulgated by the board.

3. A social worker not credentialed in Louisiana, whose credential is current and unrestricted in another jurisdiction of North America, may gratuitously provide services under the Louisiana Social Work Practice Act if:

a. the social worker has photo identification and a license to verify a current and unrestricted license in another jurisdiction of the United States, and properly registers with the board prior to providing social work services in Louisiana as follows, provided:

i. the social worker is engaged in a legitimate relief effort during the emergency period, and provides satisfactory documentation to the board of the location site(s) where gratuitous social work services will be provided;

ii. the social worker shall comply with the Louisiana Social Work Practice Act, board rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skill, training, and ability; and

ii. the social worker renders services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of services within the state of Louisiana.

4. The authority provided for in the Emergency Rule shall be applicable for a period of time not to exceed 60 days at the discretion of the board, with the potential extension of up to two additional periods not to exceed 60 days for each extension as determined appropriate and necessary by the board.

5. All interested social workers shall submit a copy of their respective current and unrestricted licenses, certifications or registrations issued in other jurisdictions of North America and photographic identification, as well as other requested information, to the Louisiana Board of Social Work Examiners for credentialing with this agency

prior to gratuitously providing social work services in Louisiana.

6. Should a qualified social worker credentialed with the board thereafter fail to comply with any requirement or condition established by this Section, the board may terminate his registration upon notice and hearing.

7. In the event a social worker fails to become credentialed with the board, but practices social work, whether gratuitously or otherwise, then such conduct will be considered the unlawful practice of social work and prosecuted accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C and R. S. 37:2701 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:302 (February 2000), amended LR 29:2383 (November 2003), LR 33:

Richard N. Burt
Administrator

0701#002

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment
Methodologies—Small Rural Hospitals
(LAC 50:V.311)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.311 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated an Emergency Rule to repeal and replace all Rules governing disproportionate share hospital (DSH) payment methodologies (*Louisiana Register*, Volume 31, Number 6). In compliance with Act 182 and Act 323 of the 2005 Regular Session of the Louisiana Legislature, the June 20, 2005 Emergency Rule was amended to establish provisions for provider fees levied on hospitals as a result of the Healthcare Affordability Act (*Louisiana Register*, Volume 31, Number 7) and to revise the definition of a small rural hospital (*Louisiana Register*, Volume 31, Number 9). The June 20, 2005 Emergency Rule was subsequently amended to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*, Volume 31, Number 10).

The October 25, 2005 Emergency Rule was amended to: 1) change the provisions governing DSH payments to other uninsured hospitals; 2) establish provisions governing payments to private community hospitals for services rendered to displaced, uninsured citizens from mandatory

evacuation parishes affected by Hurricanes Katrina and Rita; 3) change the provisions governing DSH payments to high uninsured hospitals and to establish provisions governing payments to public community hospitals (*Louisiana Register*, Volume 32, Number 7); 4) revise the provisions governing DSH payments to non-rural community hospitals as a result of the allocation of additional funds by the Legislature during the 2006 Regular Session (*Louisiana Register*, Volume 32, Number 9); and 5) incorporate the provisions of the June 28, 2006 and September 15, 2006 Emergency Rules (*Louisiana Register*, Volume 32, Number 10). The department now proposes to amend the October 23, 2006 Emergency Rule governing disproportionate share hospital payments to revise the definition of a small rural hospital. This action is being taken to avoid imminent threat to the public health and welfare and to assure that hospitals are adequately compensated for their uncompensated care. It is estimated that implementation of this proposed Emergency Rule will have no fiscal impact for state fiscal year 2006-2007.

Effective December 18, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the October 23, 2006 Emergency Rule governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment

Methodologies

§311. Small Rural Hospitals

A. Definitions

* * *

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994 and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

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

i. met the qualifications of a sole community hospital as of June 30, 2005 and subsequently converts to critical access hospital status; or

* * *

B. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0701#001

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Psychological and Behavioral Services
Reimbursement Rate Increase
(LAC 50:XV.7707)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.7707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement of psychological and behavioral services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Reimbursement for these services is based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1 (*Louisiana Register*, Volume 29, Number 2). As a result of the allocation of additional funds by the Legislature during the 2006 Regular Session, the bureau proposes to increase the reimbursement fees for psychological and behavioral services in the EPSDT program.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT psychological and behavioral services by encouraging the continued participation of psychological and behavioral services providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures for EPSDT psychological and behavioral services by approximately \$5,428 for state fiscal year 2006-2007.

Effective for dates of service on or after December 18, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology to increase the reimbursement rates for EPSDT psychological and behavioral services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening,

Diagnosis, and Treatment

Chapter 77. Psychological and Behavioral Services

§7707. Reimbursement Methodology

A. Effective for dates of services on or after December 18, 2006, reimbursement for EPSDT psychological and

behavioral services shall be based on 80 percent of the allowable rate on the 2006 Medicare Fee Schedule for Region 99.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:

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

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0701#003

DECLARATION OF EMERGENCY

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

Professional Services Program—Physician Services
Reimbursement Rate Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Current Procedural Terminology (CPT) codes and Healthcare Common Procedure Coding System (HCPCS) codes.

As a result of the allocation of additional funds by the Legislature during the 2003 Regular Session, the bureau increased reimbursement rates for selected CPT surgical and medical codes (*Louisiana Register*, Volume 31, Number 4).

Act 17 of the 2006 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to increase the Medicaid reimbursement rates paid to physicians. In compliance with the directives of Act 17, the bureau promulgated an Emergency Rule to increase the reimbursement rates paid to physicians for services provided in the following service areas: 1) outpatient office evaluation and management services; 2) outpatient office consultation services; 3) emergency department services; 4) preventive medicine services; and 5) General/Integumentary System

CPT codes. This Emergency Rule is being promulgated to continue the provisions of the October 4, 2006 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Medicaid Program and recipient access to providers of these medically necessary services.

Emergency Rule

Effective for dates of service on or after February 2, 2007, the Department of Health and Hospitals, Bureau of Health Services Financing increases the reimbursement rates paid to physicians for selected medical services provided to Medicaid recipients.

Outpatient Office Evaluation and Management Services

A. The reimbursement rate for outpatient office evaluation and management services shall be increased to 70 percent of the 2006 Medicare Region 99 allowable where the current Medicaid reimbursement rate is less than that amount.

B. The reimbursement rate for outpatient office evaluation and management services, when provided by a primary care physician (PCP) and the recipient is enrolled in the CommunityCARE Program, shall be increased to 80 percent of the 2006 Medicare Region 99 allowable where the current Medicaid reimbursement rate is less than that amount.

Outpatient Office Consultation Services

A. The reimbursement rate for outpatient office consultation services provided by physicians shall be increased to 70 percent of the 2006 Medicare Region 99 allowable where the current Medicaid reimbursement rate is less than that amount.

Emergency Department Services

A. The reimbursement rate for emergency department services shall be increased to 70 percent of the 2006 Medicare Region 99 allowable where the current Medicaid reimbursement rate is less than that amount.

B. The reimbursement rate for emergency department services, when provided by a PCP and the recipient is enrolled in the CommunityCARE Program, shall be increased to 80 percent of the 2006 Medicare Region 99 allowable where the current Medicaid reimbursement rate is less than that amount.

Preventive Medicine Services

A. The reimbursement rate for preventive medicine services for recipients, age 0 through 20, shall be increased by 10 percent of the current Medicaid rate in effect on September 30, 2006.

B. The reimbursement rate for preventive medicine services for recipients, age 0 through 20, provided by the PCP or the recipient's KidMed provider, shall be increased by 15 percent of the current Medicaid rate in effect on October 3, 2006.

General/Integumentary System Codes

A. The reimbursement rate paid for CPT codes in the General/Integumentary System section (CPT codes 10021-19499) shall be increased to 70 percent of the 2006 Medicare Region 99 allowable where the current reimbursement rate is less than that amount.

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

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0701#072

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage (LAC 37:XI.Chapter 41)

The Department of Insurance (department) hereby states that the following circumstances continue to constitute an immediate danger to the public health, safety, or welfare. The 2005 hurricane season was particularly destructive for Louisiana. Hurricane Katrina caused catastrophic damage in southeast and central Louisiana; particularly hard were Plaquemines, St. Bernard and Orleans Parishes. Katrina caused widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

On September 24, 2005, Hurricane Rita hit the Cameron Parish area of Louisiana's southwest coast causing extensive and wide spread damage. The Governor of Louisiana declared a state of emergency (Proclamation No. 48 KKB 2005 and Proclamation No. 53 KKB 2005) due to the effects of Hurricanes Katrina and Rita, respectively. The President of the United States declared designated parishes of Louisiana a federal disaster area by issuing FEMA-1603-DR and FEMA-1607-DR for Katrina and Rita, respectively.

The total cost of property losses resulting from the combination of storms has been estimated to be in the tens of billions of dollars. The initial issuance of this Emergency Rule, in January 2006 (*Louisiana Register*, January 2006, Volume 32, page 60) complied with Code Title XIX—Alternative Dispute Resolution, particularly Chapter 1, The Louisiana Mediation Act, R.S. 9:4101 et seq., and implemented a non-adversarial alternative dispute resolution procedure. The facilitated claim resolution conference was prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damage to residential property caused by these two hurricanes.

Since the program's inception more than 9,700 Louisiana homeowners have requested to have their property claim mediated, with an overall settlement rate in excess of 75 percent. Despite this success, now almost 16 months after the hurricanes it is estimated that many thousands of residential property claims remain unresolved and repairs to damaged property has not been completed. Many of these claims remain unresolved as a result of disputes regarding costs of labor and materials needed to effectuate repairs. Due to the unprecedented extent of damage, in many instances materials and labor necessary to effectuate repairs have not

been readily available and there have been disparities between the estimates of insurers and repair contractors.

Insureds with unresolved claims and un-repaired residences continue to be exposed to emotional, physical and economic hardship and remain at risk. Insureds are at risk of receiving sub-quality work, or being faced with a substantial disparity between repair estimates and customary costs in the area. This condition erodes the ability of insureds to realize the benefit of their insurance coverage. This Rule establishes a procedure to determine a construction pricing guideline to be used in mediation proceedings to determine reasonable payments for repair and replacement costs arising from damage caused by hurricanes Katrina and Rita.

Due to decisive action by the Louisiana Legislature this past session, the apparent one year prescriptive period for claims of these types (R.S. 22:691) is being extended to two years. Continuation of the program at this time will provide homeowners the opportunity and a forum to resolve their claims without having to file suit.

Based upon the forgoing, the department has determined that an emergency continues to exist and continuation of the claims mediation program and the availability of guidelines for construction pricing are essential to the resolution of insurance claims and the effectuation of repairs of damage covered by insurance policies.

Summary of the Rule: this Emergency Rule establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Katrina and Rita. The rule creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, conduct of mediation, and guidelines for the quality repair of residential property damage.

The person to be contacted regarding the Emergency Rule is Barry E. Ward, Senior Attorney, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9412; 225-219-4750.

Title 37

INSURANCE

Part XI. Rules

Chapter 41. Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage: Specific Reasons for Finding an Immediate Danger to the Public Health, Safety or Welfare

§4101. Authority

A. This Emergency Rule is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22; R.S. 22:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4103. Purpose and Scope

A. This Emergency Rule in compliance with the Louisiana Mediation Act, R.S. 9:4101 et seq., sets forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by Hurricanes Katrina and Rita.

B. This Emergency Rule also addresses guidelines for the quality repair of residential property damaged by Hurricanes Katrina and Rita at reasonable and fair prices.

C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

D. The procedure established by this Emergency Rule is available to all first party claimants who have personal lines claims resulting from damage to residential property occurring in the state of Louisiana. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4105. Definitions

A. The following definitions apply to the terms of this rule as used herein.

Administrator—the department or its designee (American Arbitration Association) and the term is used interchangeably with regard to the department's duties under this rule.

Claim—any matter on which there is a dispute or for which the insurer has denied payment pursuant to claims arising from Hurricanes Katrina and Rita only. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the department's Division of Insurance Fraud.

Department—the Department of Insurance or its designee. Reporting to the department shall be directed to: Department of Insurance, Mediation Section, P.O. Box 94214, Baton Rouge, LA, 70804-9214; or by facsimile to (225) 342-1632.

Mediator—an individual approved by the administrator to mediate disputes pursuant to this rule. In order to be approved, mediators must appear on the "approved register" of mediators maintained by the Alternative Dispute Resolution (ADR) section of the Louisiana State Bar Association pursuant to R.S. 9:4105, or provide sufficient evidence of having completed the mandatory qualifications set forth in R.S. 9:4106.

Party or Parties—the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4107. Notification of Right to Mediate

A. Insurers shall notify each of their insureds in this state, who has claimed damage to their residential property as a result of either Hurricane Katrina or Hurricane Rita, of their right to mediate the claim settlement. This requirement applies to all claims including any and all instances where checks have been issued by the insurer to the homeowner.

B. The insurer shall mail a notice of the right to mediate disputed claims to the insured within five days of the time the policyholder or the administrator notifies an insurer of a dispute regarding the policyholder's claim. The following shall apply.

1. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial.

2. The insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because the amount of the claim is less than the policyholder's deductible.

3. The mailing that contains the notice of the right to mediate may include the department's consumer brochure on mediation.

4. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.

5. The first paragraph of the notice shall contain the following statement: "James J. Donelon, Commissioner of Insurance for the State of Louisiana, has adopted an Emergency Rule to facilitate fair and timely handling of residential property insurance claims arising out of Hurricanes Katrina and Rita that recently devastated so many homes in Louisiana. The Emergency Rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process by calling the mediation administrator, the American Arbitration Association (AAA), at 1-800-426-8792. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

C. The notice shall also:

1. include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the administrator;

2. include the insurer's address and phone number for requesting additional information; and

3. state that the administrator will select the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4109. Request for Mediation

A. An insured may request mediation by contacting the insurer or by writing to the American Arbitration Association, Mediation Section, 1100 Poydras Street, Suite 2725, New Orleans, LA 70163; by calling the administrator at 1-800-426-8792; or by faxing a request to the administrator at (504) 561-8041.

B. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the administrator of the existence of the dispute prior to the administrator processing the insured's request for mediation.

C. If an insurer receives a request for mediation, the insurer shall fax the request to the mediation administrator within three business days of receipt of the request. Should the department receive any requests, it will forward those requests to the administrator within three business days

following the receipt. The administrator shall notify the insurer within 48 hours of receipt of requests filed with the department. The insured should provide the following information if known:

1. name, address, and daytime telephone number of the insured and location of the property if different from the address given;

2. the claim and policy number for the insured;

3. a brief description of the nature of the dispute;

4. the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation;

5. information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4111. Mediation Costs

A. All mediation costs shall be borne by the insurer shall be \$350 regardless of where the property is located.

B. Within five days of receipt of the request for mediation from the insured or receipt of notice of the request from the department or immediately after receipt of notice from the administrator pursuant to §4109 that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee, not to exceed \$100 as determined by the department, to the administrator to defer the expenses of the administrator and the department.

1. The insurer shall pay \$250 to the administrator for the mediator's fee not later than five days prior to the date scheduled for the mediation conference.

2. If the mediation is cancelled for any reason more than 72 hours prior to the scheduled mediation time and date, the insurer shall pay \$75 to the administrator for the mediator's fee instead of \$250.

3. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 72 hours of the scheduled time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4113. Scheduling of Mediation

A. The administrator will select a mediator and schedule the mediation conference. The administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4115. Conduct of the Mediation Conference

A. R.S. 9:4101.C.(4) provides *mediation* is a procedure in which a mediator facilitates communication between the

parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement. As such, it is not necessary to involve a private attorney and participation by private attorneys is discouraged by the department. However:

1. if the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the administrator at least six days before the date of the conference;

2. parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule;

3. parties and their representatives must refrain from turning the conference into an adversarial process;

4. both parties must negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party will be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator;

5. the mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties;

6. the party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

B. Upon request of the insured or the mediator, an attorney will be available to help insureds prepare for the mediation conferences. A representative of the department will be present at and participate in the conference if requested at least five days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. The department will attempt to have a representative at the conference if the request is received less than five days prior to the scheduled mediation. Representatives of the department that participate in the conference will not be there to represent the insured. They shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

C. The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference.

1. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

2. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

D. The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Per R.S. 9:4107, mediators shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

1. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize

any relevant documents and may bring any individuals with knowledge of the issues, such as adjusters, appraisers, or contractors, to address the mediator.

2. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement.

3. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of R.S. 9:4112 apply.

E. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

F. If the insured fails to appear, without good cause as determined by the administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists.

1. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear.

2. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

3. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating R.S. 22:1214(14)(b), (c), (f), et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4117. Guidelines for the Quality Repair of Residential Property at a Reasonable and Fair Price

A. The provisions of insurance policies and applicable statutes require claims payments made by insurers to be sufficient to effectuate required repairs at the property site. Further, misrepresentation by any person regarding the cost of repairs is prohibited.

B. Based upon information provided by the construction industry, the insurance industry and nationally recognized sources, companies such as Simsol, Inc. and Xactware, Inc., compile construction pricing guidelines used in adjusting property losses. These guidelines reflect data from both the construction and insurance industries and the ranges take into consideration price differentials between geographic areas of the state. The parties shall use the current construction pricing guidelines compiled by these or similar reputable sources as the starting point in the dispute resolution process.

C. The guidelines referred to herein do not apply to any portion of repairs necessary to fulfill the insurer's contractual obligation to restore the insured residence to pre-hurricane condition where, as of the effective date of this rule, there is an executed repair contract to effectuate such repairs for an agreed price and the insurer has tendered full payment for the repair contract amount for those repairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4119. Post Mediation

A. Within five days of the conclusion of the conference the mediator shall file with the administrator a mediator's status report on Form DOI-HM-1 which is entitled *Disposition of Property Insurance Mediation Conference*, indicating whether or not the parties reached a settlement. Form DOI-HM-1 will be available from the administrator and is hereby incorporated in this rule by reference.

1. Mediation is non-binding unless all the parties specifically agree otherwise in writing.

2. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

3. However, if a settlement is reached, the insured shall have three business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference.

B. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented a separate claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4121. Non-Participation in Mediation Program

A. If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4123. Departmental Authority to Designate

A. The department is authorized to designate an entity or person as its administrator to carry out any of the department's duties under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4125. Severability

A. If a court holds any section or portion of a section of this Emergency Rule or the applicability thereof to any person or circumstance invalid, the remainder of the Emergency Rule shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§4127. Applicable Provisions

A. The applicable provisions of Title 49, Louisiana Administrative Procedure Act, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this Emergency Rule shall govern in the event of any conflict with the provisions of Title 49, Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

James J. Donelon
Commissioner

0701#009

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Inmate Mail and Publications
(LAC 22:I.313)

In accordance with the provisions of the Administrative Procedure Act (APA), R.S. 49:950 et seq., the Department of Public Safety and Corrections hereby determines that it is necessary to adopt the following by Emergency Rule, amending in its entirety LAC 22:I.313, entitled Correspondence and Packages: Adult Inmates, to be titled Inmate Mail and Publications, and that for the subsequent reasons failure to adopt the Emergency Rule amendments will result in imminent peril to the public health, safety and welfare.

The APA requires, unless a Rule is promulgated as an emergency rule, a period of approximately 100 days between the filing of the initial Notice of Intent and the effective date of the Rule. Unless the department is able to proceed immediately, it is uncertain that the department's goals for guaranteeing the public safety will be met. R.S. 15:821 states: "The functions of the department shall comprise administrative functions of the state now or hereafter authorized by law to be exercised in relation to the administration, management and operation of all state institutions for the care, custody and correction of persons sentenced for felonies or misdemeanors." As statutorily mandated for the care of persons incarcerated within the department, it is bestowed upon me as secretary to defend the stability of the department when there is an imminent threat, which impacts the public health, safety and welfare of all citizens.

Correspondence and Packages: Adult Inmates was adopted by the department and published in the *Louisiana Register*. It became effective March 2003. (LAC 29:360) The regulation was enacted to establish the secretary's policy regarding the receipt of mail and packages at all adult institutions of the department. For the foregoing reasons, the department has determined that the adoption of an Emergency Rule for implementation of the amendment of "Inmate Mail and Publications", formally entitled

"Correspondence and Packages: Adult Inmates", is necessary and hereby provides notice of its declaration of emergency.

In the Criminal Justice Newsletter dated October 1, 2006, the Justice Department's Office of the Inspector General (OIG) found that the Federal Bureau of Prisons had not adequately monitored the mail of inmates. The OIG report states that "the threat remains that terrorist and other high-risk inmates can use mail and verbal communications to conduct terrorist or criminal activities while incarcerated." In March 2005, NBC News reported that three convicted terrorists, incarcerated for their roles in the 1993 World Trade Center bombing, had communicated with extremists by sending approximately 90 letters from within prison walls. This included letters to the alleged leaders of groups linked to the March 2004 attacks on commuter trains in Madrid.

Other articles recently published regarding the new Black Panther Party demonstrate their propensity towards violence. On October 4, 2006, the Daily Iberian published a report regarding a rally held by the New Black Panther Party in New Iberia. The rally was in response to the use of tear gas by Sheriff's deputies to break up a crowd of approximately 500 people gathered on the street following the Louisiana Sugar Cane Festival. In the article, the Reverend Raymond Brown, state chairman of the New Black Panther Party, was quoted saying "If I get a call that they gas some more people, we're coming here. We're going to take over these streets." Brown then explained how the Black Panthers would retaliate, "If you really want a confrontation, call the Black Panther Party. We study paramilitary maneuvers. We know how to use weapons of warfare." Domestic terrorist ideology cannot be allowed to infiltrate our prison system or emanate from our prison system.

The aforementioned examples are just a few of the imminent perils to the public health, safety and welfare that exist in today's criminal justice system. This proposed regulation amends the department's policy that inmates may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives, (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), to prevent the commission of a crime, or to protect the interest of crime victims.

For the foregoing reasons, the department has determined that adoption of the Emergency Rule "Inmate Mail and Publications" is necessary and failure to adopt the rule on an emergency basis will impact the public's health, safety and welfare. In addition, the department hereby adopts this Emergency Rule effective January 5, 2007, in accordance with R.S. 49:953B, to be effective for a period of 120 days or until the final Rule change is promulgated, whichever occurs first.

Interested parties may submit written comments to Melinda L. Long, Attorney for the Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804-9304. A copy of this emergency rule is available for review by interested parties at Department of Corrections Headquarters Office, 504 Mayflower Street, Baton Rouge, LA.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

§313. Inmate Mail and Publications

A. Purpose. To establish the secretary's policy regarding inmate mail privileges, including publications, at all adult institutions.

B. Applicability. Chief of operations, assistant secretary, regional wardens, and wardens. It is each warden's responsibility to implement this regulation and convey its contents to the inmate population and affected employees.

C. Notice. Staff at each reception and diagnostic center or unit handling initial reception and diagnostic functions shall inform each inmate in writing promptly after arrival of the department's policy for handling of inmate mail, utilizing the Notification of Mail Handling Form (Attachment A.) This form will be filed in the inmate's record.

1. The current inmate population in DPS&C facilities is required to complete Attachment A upon the issuance of this revision to department regulations.

2. Pending full implementation of the canteen/package initiative, institutions are authorized to follow the existing regulation concerning packages.

D. Definitions

DPS&C Facility—includes, for the purpose of this regulation, state operated prison facilities, Winn Correctional Center and Allen Correctional Center.

Farm Mail Correspondence—inmate to inmate mail when housed at the same institution.

Indigent Inmates—those who do not have sufficient funds in the appropriate account(s) at the time of their request for indigent services and/or supplies to fully cover the cost of the requested services or supplies.

Nudity—pictorial depiction of buttocks, genitalia or female breasts (with the nipple or areola exposed).

Privileged Correspondence—mail to or from:

- a. identifiable courts;
- b. identifiable prosecuting attorneys;
- c. identifiable probation and parole officers, Parole Board and Pardon Board;
- d. state and local executive officers;
- e. identifiable attorneys;
- f. secretary, deputy secretary, chief of staff, undersecretary, assistant secretary, other officials and administrators of grievance systems of the department;
- g. local, state, or federal law enforcement agencies and officials.

Publication—book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/ newspaper clipping, article printed from the internet, plus other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

Sexually Explicit Features—the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such

depictions in the case of individual one-time issues. A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose.

Sexually Explicit Material—any book, pamphlet, magazine, or printed matter however reproduced, which contains any picture, photograph, drawing or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, bestiality and homosexuality. Explicit sexual material also includes that which contains detailed verbal descriptions or narrative accounts of deviant sexual behavior. (A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose).

E. Policy. It is the secretary's policy that inmates may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives, (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), to prevent the commission of a crime, or to protect the interests of crime victims.

F. Inmate Correspondence. Inmates may write and receive letters subject to the following provisions.

1. Frequency. There shall be no limit placed on the number of letters an inmate may write or receive at personal expense and no limit placed on the length, language, or content except when there is reasonable belief that limitation is necessary to protect public safety, or institutional order, including restrictions relative to what may be reasonably stored in space provided and security. Inmates in segregation can write and receive letters on the same basis as inmates in general population.

2. Timely Handling. All mail, incoming and outgoing, shall be handled without unjustified delay. Letters should generally not be held more than 48 hours. This does not prohibit the holding of mail for inmates who are temporarily absent from the institution and does not include weekends and holidays or emergency situations. When mail is received for an inmate who has been transferred to another institution or released, the institution where the mail is received should attempt to forward the mail to him. The collection and distribution of mail is never to be delegated to an inmate. Mail will be given directly to the receiving inmate by an employee.

3. Correspondence. An inmate may write to anyone except:

a. victim of any criminal offense for which the inmate has been convicted or for which disposition is pending, except in accordance with specific procedures established by the warden in conjunction with the Crime Victims Services Bureau;

b. any person under the age of 18 when the person's parent or guardian objects verbally or in writing to such correspondence;

c. any person whom the inmate is restrained from writing to by court order;

d. any person who has provided a verbal or written request to not receive correspondence from an inmate;

e. any other person, when prohibiting such correspondence is generally necessary to further the substantial interests of security, order, or rehabilitation.

4. Costs of Correspondence. Each inmate shall pay personal mailing expenses, except an indigent inmate. An indigent inmate shall have access to postage necessary to send two personal letters per week, postage necessary to send out approved legal mail on a reasonable basis and basic supplies necessary to prepare legal documents. A record of such access shall be kept and the indigent inmate's account shall reflect the cost of the postage and supplies as a debt owed in accordance with department regulations. Stationary, envelopes and stamps shall be available for purchase in the canteen.

5. Outgoing General Correspondence and Farm Mail

a. Review, Inspection and Rejection. Outgoing general correspondence and farm mail shall not be sealed by the inmate and may be read and inspected by staff. The objectives to be accomplished in reading outgoing mail differ from the objectives of inspection. In the case of inspection, the objective is primarily to detect contraband. The reading of mail is intended to reveal, for example, escape plots, plans to commit illegal acts, or plans to violate institution rules or other security concerns. Outgoing general correspondence and farm mail may be restricted, confiscated, returned to the inmate, retained for further investigation, referred for disciplinary proceeding or forwarded to law enforcement officials, if review discloses correspondence or materials which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

v. letters or materials written in code or a foreign language when the inmate understands English, (unless the warden or designee determines that the recipient is not fluent in English);

vi. mail which attempts to forward unauthorized correspondence to a third party;

vii. threats to the safety and security of staff, other inmates or the public, facility order or discipline or rehabilitation, (including racially inflammatory material);

viii. sexually explicit material;

ix. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Notice of Rejection. The inmate sender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Incoming/Outgoing General Correspondence and Farm Mail Notice of Rejection form (Attachment B). Any further delay in notification will be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the Administrative Remedy Procedure.

c. Limitations on Restrictions. Any restrictions imposed on outgoing general correspondence and farm mail shall be unrelated to the suppression of expression and may

not be restricted solely based on unwelcome or unflattering opinions. Communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or inmate will be rejected. This shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.

d. Procedures for Mailing. Outgoing general correspondence and farm mail shall be inserted into the envelope and left unsealed by the inmate. All outgoing correspondence shall include:

- i. a complete legible name and address of the party the correspondence is being sent to;
- ii. the inmate's name, DOC number, housing unit, and the address of the institution which shall be written or typed on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing general correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution.

6. Incoming General Correspondence

a. Review, Inspection, and Rejection. All incoming general correspondence must contain the return address of the sender and the name and DOC number of the inmate. All mail to inmates must indicate that the sender is aware that the intended recipient is an inmate. All incoming general correspondence shall be opened and inspected for contraband, cash, checks, and money orders and is subject to being read. Any stick on label or stamp may be removed if it appears to contain contraband. All incoming general correspondence may be rejected if such review discloses correspondence or material(s) which would reasonably jeopardize legitimate penological interests, including, but not limited to, material(s) which contain or concern:

- i. the transport of contraband in or out of the facility;
- ii. plans to escape;
- iii. plans for activities in violation of facility or department rules;
- iv. plans for criminal activity;
- v. violations of this regulation or unit rules;
- vi. letters or materials written in code;
- vii. threats to the safety and security of staff, other inmates, or the public, facility order, or discipline, or rehabilitation, (including racially inflammatory material);
- viii. sexually explicit material;
- ix. greeting cards larger than 8" x 10" and greeting cards containing electronic or other non-paper parts, cards constructed in such a way as to permit concealment of contraband;
- x. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

(a). Incoming general correspondence containing any of the foregoing may be restricted, confiscated, returned to the sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

b. Notice of Rejection. The inmate shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Incoming/Outgoing

General Correspondence and Farm Mail Notice of Rejection form (Attachment B). Any further delay in notification will be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the Administrative Remedy Procedure.

7. Monetary Remittances

a. Incoming. Funds cannot be sent to inmates from other inmates or the families of other inmates. Funds cannot be sent to inmates from ex-inmates or their families, or employees and their families, except to purchase hobbycraft items properly supported by a hobbycraft agreement. Funds cannot be sent to inmates from unidentifiable sources. Exceptions to the above are only allowed with prior approval of the warden.

i. Money from permissible sources may be accepted in the following forms:

- (a). postal, bank, or commercially issued money orders;
- (b). government checks;
- (c). bank cashier checks;
- (d). checks drawn on federal, state, and local governments, political subdivisions, or public officials;
- (e). checks drawn on reputable commercial accounts;
- (f). Automated Clearing House (ACH) transfers generated by authorized vendors approved by the secretary, such as Western Union.

ii. Money will not be accepted in the following forms:

- (a). cash received in the mail will be returned to the sender via regular or certified mail or agency check (type dependent on the amount of cash to be mailed);
- (b). personal checks received in the mail will be returned to the sender via regular mail;
- (c). checks payable to multiple parties will be returned to the sender via regular mail. (If approved by the warden or designee, the inmate may endorse the check prior to its return).

b. Upon discovery of cash, personal or multiple party checks in the mail, the inmate will be sent a Monetary Remittances Notice of Rejection form (Attachment C) within three working days describing the contents of the mail, the date of its receipt and advising that he has seven working days to provide return postage. If return postage is not provided within seven working days, the postage will be provided by the unit. The inmate's banking account will be charged if funds are available. If funds are not available, a debt owed will be established pursuant to department regulations.

8. Identification of Privileged Correspondence. It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, "identifiable" means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the inmate's intent in addressing the envelope as privileged mail.

9. All outgoing privileged correspondence shall include:

- a. a complete legible name and address of the party the correspondence is being sent to;

b. the inmate's name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution.

i. Outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Paragraph F.11.

10. Incoming Privileged Correspondence. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the inmate. All incoming privileged correspondence shall be opened in the presence of the inmate to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. It may be opened and inspected outside the inmate's presence in the circumstances outlined in Paragraph F.11 of this Section.

a. Inspection and Rejection. When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and forwarded to the business office who will verify the legitimacy of the transaction in accordance with department regulations.

b. If material is found that does not appear to be entitled to the privilege or if any of the circumstances outlined in Paragraph F.11 exist, the mail may be restricted, confiscated, returned to sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

c. Notice of Rejection. The inmate shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the Privileged Correspondence Notice of Rejection form (Attachment D) describing the reason for the rejection and advising that he has seven working days to determine the disposition of the correspondence. Rejections are appealable through the Administrative Remedy Procedure.

d. Accidental Opening. If privileged correspondence is opened accidentally, outside the presence of the inmate, the envelope shall be immediately stapled or taped closed and the envelope marked "Accidentally Opened" along with the date and employee's initials. An unusual occurrence report will be completed.

11. Mail Precautions. The wardens and deputy wardens are authorized to open and inspect incoming and outgoing privileged mail outside the inmate's presence in the following circumstances:

a. letters that are unusual in appearance or appear different from mail normally received or sent by the individual or public entity;

b. letters that are of a size or shape not customarily received or sent by the individual or public entity;

c. letters that have a city and/or state postmark that is different from the return address;

d. letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue;

e. when reasonable suspicion of illicit activity has resulted in a formal investigation and such inspection has been authorized by the secretary or designee.

12. Inmate Organizations. Inmate organizations must pay the postage costs for all of their outgoing mail. All outgoing mail must be approved by the inmate organization sponsor.

G. Procedures for Publications

1. Publications (see definition in Subsection D.) may be read and inspected to discover contraband and unacceptable depictions and literature. Unless otherwise provided by the rules of the institution, all printed matter must be received directly from the publisher. Multiple copies of publications for any one individual inmate are not allowed. Samples inserted in publications will be removed prior to delivery. Upon the effective date of the canteen/package initiative, books must be purchased through the canteen and will no longer be allowed to be sent through the mailroom.

2. Newspaper and magazine clippings (xerox copies allowed) as well as articles printed from the internet are considered publications for the purpose of review pursuant to this regulation. However, they are not required to originate from the publisher. A limit of five clippings/articles may be received within a piece of regular correspondence and the quantity received may be further limited by what can be reasonably reviewed for security reasons in a timely manner. Multiple copies of the same clippings/articles for any one individual inmate are not allowed. Inclusion of clippings/articles in regular correspondence may delay the delivery.

3. Refusal of Publications. Printed material shall only be refused if it interferes with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), or if the refusal is necessary to prevent the commission of a crime or to protect the interests of crime victims. This would include but not be limited to the following described categories:

a. Security issues:

i. maps, road atlas, etc. that depict a geographic region that could reasonably be construed to be a threat to security;

ii. writings that advocate, assist or are evidence of criminal activity or facility misconduct;

iii. instructions regarding the ingredients or manufacturing of intoxicating beverages or drugs;

iv. information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of weapons, explosives, incendiaries, escape devices or other contraband;

v. instructs in the use of martial arts;

vi. racially inflammatory material or material that could cause a threat to the inmate population, staff, and security of the facility;

vii. writings which advocate violence or which create a danger within the context of a correctional facility.

b. Sexually Explicit Material. It is well established in corrections that sexually explicit material causes

operational concerns. It poses a threat to the security, good order and discipline of the institution and can facilitate criminal activity. Examples of the types of behavior that result from sexually explicit material include non-consensual sex, sexual molestation of other inmates or staff, masturbation or exposing themselves in front of staff and inappropriate touching or writing to staff or other forms of sexual harassment of staff and/or inmates.

i. Sexually explicit material can portray women (or men) in dehumanizing, demeaning and submissive roles, which, within an institutional setting, can lead to disrespect and the sexual harassment of female (or male) correctional staff. Lack of respect and control in dealing with inmates can endanger the lives and safety of staff and inmates.

ii. The viewing of sexually explicit material undermines the rehabilitation of offenders as it can encourage deviant, criminal sexual behavior. Additionally, once sexually explicit material enters an institution, it is impossible to control who may view it. When viewed by an incarcerated sex offender, it can undermine or interrupt rehabilitation efforts.

iii. Publications that depict nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one time issues will not be allowed.

c.i When screening publications for acceptability, the following categories shall be utilized:

(a). Category 1—presumption of non-acceptability;

(b). Category 2—those that need to be reviewed on a case-by-case basis prior to allowing them to be delivered to the recipient and subject to review by the regional warden;

(c). Category 3—presumption of acceptability.

ii. Publications can be added, deleted or moved from one category to another at the discretion of the secretary at any time.

iii. See Attachments E, F, and G for the current listing of publications in each category. When an institution receives a Category 2 publication which has not already been ruled on by the regional wardens, the mailroom will send the inmate a Notice of Pending Review of Publication form (Attachment H) and forward the publication to their regional warden who will determine acceptability. When an institution suspends delivery of an issue of a Category 3 publication, the regional warden is notified. The mailroom will send the inmate a Notice of Pending Review of Publication Form (Attachment H). The regional wardens will determine if the publication should be moved to Category 2. When magazines are received that are not currently listed, the regional warden will be notified.

d. Procedures When Publication is Refused. The inmate shall be notified within three working days of the refusal and the reason therefore on the Publications Notice of Rejection Form (Attachment I) describing the reason for the rejection and advising that he has seven working days to determine the publication's disposition. Rejections are appealable through the administrative remedy procedure. The institution should retain possession of the disputed item(s) until the exhaustion of administrative and judicial review.

H. Procedures for Photographs, Digital or Other Images

1. Inmates will not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of inmates, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area, cheeks of the buttocks or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.

2. Lingerie will not normally be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses alone may be sufficient cause of rejection regardless of the type of clothing worn.

3. Each institution shall develop a procedure that serves to reasonably restrict an inmate's possession of multiple copies of the same photograph or digital or other image.

4. Hard backed and laminated photographs or digital or other images that are subject to alteration or modification may be rejected.

5. The term "photograph" includes other images such as those created by a digital imaging device or e-mails.

6. The inmate shall be notified within three working days, in writing, of the photograph rejection and the reason therefore on the Photographs Notice of Rejection form (Attachment J) describing the reason for the rejection and advising that he has seven working days to determine the photograph's disposition. Rejections are appealable through the Administrative Remedy Procedure.

I. Appendices

1. Attachment A

Louisiana Department of Public Safety and Corrections

NOTIFICATION OF MAIL HANDLING

I. GENERAL CORRESPONDENCE TO BE RETURNED TO THE POSTAL SERVICE

I have read or had read to me, the foregoing notice regarding mail. I do not want my general correspondence opened and read; therefore, I request that the Department of Public Safety and Corrections return my general correspondence to the postal service. I understand that privileged correspondence will be delivered to me.

Printed Name DOC No. Date

Signature

II. GENERAL CORRESPONDENCE TO BE OPEN, READ AND DELIVERED

I have read or had read to me, the foregoing notice regarding mail. I wish to receive my general correspondence. I understand that the Department of Public Safety and Corrections may open and read my general correspondence. I also understand that privileged correspondence will be delivered to me.

Printed Name DOC No. Date

Signature

DO NOT WRITE BELOW THIS LINE (FOR MAILROOM USE ONLY)

Letter to inmate Date _____
Rejected item(s) returned per inmate's request Date _____
Rejected item(s) destroyed per inmate's request Date _____

Mailroom Officer's Signature Date

5. Attachment E
Louisiana Department of Public Safety and Corrections

CATEGORY 1 PUBLICATIONS

Examples of publications, which, as currently published, feature nudity and/or sexually explicit material or present a clear threat to the security of the institution:

- Barely Legal
- Bludaman
- Hustler
- Penthouse
- Playboy
- Playgirl
- Purely 18

6. Attachment F
Louisiana Department of Public Safety and Corrections

CATEGORY 2 PUBLICATIONS

Examples of publications that must be viewed on a case by case basis:

- American Institute of Theology
- Church of Jesus Christ Christian Materials
- Final Call
- National Vanguard
- The Defenestrator

7. Attachment G
Louisiana Department of Public Safety and Corrections

CATEGORY 3 PUBLICATIONS

Examples of publications, which, as currently published, have a presumption of acceptability:

- Advocate
- Airbrush Action
- American Artist
- American Cowboy
- American Photo
- Architectural Digest
- Art News
- Art of the West
- Artist's Magazine
- Arts & Antiques
- Better Homes and Gardens
- Black Enterprise
- Black Men
- Blender
- Bon Appetit
- Business 2.0
- Car and Driver
- Cargo
- Complex
- Cook's Illustrated
- Cosmopolitan
- Country Weekly
- Details
- Discover
- Easy Rider
- Ebony
- Entertainment Weekly
- Entrepreneur
- ESPN
- Esquire
- Essence
- Family Circle
- Field & Stream
- Fitness

- Flex
- For Him Magazine (FHM)
- Fortune
- Fur, Fish & Game
- Globe
- Gourmet
- Guideposts
- Hot Rod
- Hot Rod Bikes
- House & Garden
- Interview
- Jet
- King
- Kiplinger's Personal Finance
- Louisiana Game & Fish
- Louisiana Sportsman
- Maxim
- Men's Health
- Men's Fitness
- Military Heritage
- Motor Trend
- Mustangs & Fast Foods
- Muscle & Fitness
- National Geographic
- Newsweek
- North American Whitetail
- Oprah
- OUT
- Outdoor Life
- PDN
- People
- Peterson's Hunting
- Popular Mechanics
- Popular Science
- POZ
- Predator Extreme
- Premiere
- Prison Legal News (PLN)
- Razor
- Reader's Digest
- Redbook
- Rolling Stone
- Savoy
- Science News
- Scientific American
- Scratch
- Shape
- Sista to Sista
- Slam
- Smithsonian
- Smooth
- Source
- Southern Sporting
- Southwest Art
- Spin
- Sporting News
- Sports Illustrated (including swimsuit issue)
- Star
- Street Trucks
- Stuff
- The National Enquirer
- The New Yorker
- The Pastel Journal
- The Source
- Thoroughbred Times
- Tiger Rag
- Time
- Truck Trend
- T.V. Guide
- US
- U.S. News and World Report
- Vanity Fair
- Vibe
- Vibe Vixen
- W
- Wired
- Writer's Digest
- WW Raw

8. Attachment H
Louisiana Department of Public Safety and Corrections
Publication

NOTICE OF PENDING REVIEW

Printed Name DOC No. Location
The publication received in the mailroom on ____
Name of Publication Date
has been forwarded to the Regional Warden for review and
determination of acceptability.
Mailroom Officer Date
Do Not Write Below This Line (Mailroom Use Only)
Notice sent to inmate Date
Forwarded to Regional Warden Date
Decision from Regional Warden received Date
Publication forwarded to inmate Date
Notice of Publication Rejection sent Date

9. Attachment I
Louisiana Department of Public Safety and Corrections
Publications

NOTICE OF REJECTION

Name DOC No. Location

The publication, _____, was received
on _____ and was rejected for the following reason(s):

- _____ Printed matter must be received directly from the publisher
- _____ Contains maps, road atlas, etc. that depict a geographic region
that could be reasonably construed to be a threat of security
- _____ Contains writing that advocates, assists, or are evidence of
criminal activity or facility misconduct
- _____ Contains instruction regarding the ingredients or manufacturing
of intoxicating beverages or drugs
- _____ Contains information regarding the introduction of, or
instructions in the use, manufacture, storage, or replication of
weapons, explosives, incendiaries, escape devises or other
contraband
- _____ Instructs in the martial arts
- _____ Contains racially inflammatory material
- _____ Contains writings which advocate violence or which create a
danger within the context of a correctional facility.
- _____ Contains nudity or sexually explicit material

Mailroom Officer's Signature Date Postage Due

THIS FORM MUST BE COMPLETED AND RETURNED TO THE
MAILROOM WITH DISPOSITION WITHIN SEVEN WORKING DAYS.
IF YOU WISH TO RETURN TO SENDER, "REFUSED" WILL BE
STAMPED ON THE PUBLICATION AND POSTAGE WILL NOT BE
REQUIRED. THE PUBLICATION WILL BE RETURNED TO SENDER
via 3rd CLASS MAIL. IF YOU WISH TO MAIL HOME, PLEASE
PROVIDE POSTAGE AND THE ADDRESS. IT IS YOUR
RESPONSIBILITY TO CONTACT THE PUBLISHER TO CANCEL
YOUR SUBSCRIPTION. THIS IS THE ONLY NOTICE YOU WILL
RECEIVE.

- _____ I wish to return to sender
- _____ I wish to destroy publication
- _____ I wish to mail home to the following address: _____

Inmate's Signature and DOC No. Witnessed By:
(Officer's Signature)

DO NOT WRITE BELOW THIS LINE (FOR MAILROOM USE
ONLY)

Letter to inmate Date _____
Rejected item(s) returned per inmate's request Date _____
Rejected item(s) destroyed per inmate's request Date _____

Mailroom Officer's Signature Date

10. Attachment J
Louisiana Department of Public Safety and Corrections
Photographs

NOTICE OF REJECTION

Name DOC No. Location

The mailroom has refused photographs for the following reason(s) in
accordance with Department Regulation No. C-02-009 "Inmate Mail and
Incoming Publications":

- _____ Exposed genitals _____ Lingerie
- _____ Expose genital areas _____ Suggestive poses
(pubic hair, anal area, buttocks) _____ Hard backed
Genitals or genital areas are _____ photograph(s)
covered by transparent materials _____
- _____ Swimwear worn during _____ Multiple copies of same
activities in which swimwear is _____ photograph
not normally worn _____ Security threat group
- _____ Other _____

Mailroom Officer's Signature Date Postage Due

If you wish to have the rejected item removed and destroyed with the
permitted letter sent to you, sign below:

Inmate's Signature and DOC No. Witnessed By: (Officer's Signature)

If you wish to mail the rejected item to sender and have the permitted
letter sent to you, sign below and send required posted requested.

Inmate's Signature and DOC No. Witnessed By: (Officer's Signature)

If the letter had no return address or an incomplete address, you must fill
out a complete return address below if you wish this rejected item returned

This form must be returned to the mailroom with disposition within
seven working days.

DO NOT WRITE BELOW THIS LINE (FOR MAILROOM USE ONLY)

Letter to inmate Date _____
Rejected item(s) returned per inmate's request Date _____
Rejected item(s) destroyed per inmate's request Date _____

Mailroom Officer's Signature Date

AUTHORITY NOTE: Promulgated in accordance with R.S.
15:833(A), *Guajardo v. Esteile*, 580 F.2d 748 (5th Cir. 1978).

HISTORICAL NOTE: Promulgated by the Department of
Corrections, Office of Adult Services, LR 5:4 (January 1979),
amended LR 10:803 (October 1984), LR 11:360 (April 1985), LR
33:

Richard L. Stalder
Secretary

0701#016

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections State Uniform Construction Code Council

Uniform Construction Code
(LAC 55:VI.Chapters 1-11)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rules governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature by the authorized representative of the Louisiana State Uniform Construction Council and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. Since this new code goes into effect statewide on January 1, 2007, it was necessary for the Louisiana State Uniform Construction Code Council to promulgate rules in order to help clarify the building code officer registration process, the specific codes to be enforced, and the provisional registration periods for code enforcement officers. The council instituted the regular rulemaking process in August 2006, however, due to the various procedural delays, the rules are still in the rulemaking process and have not become final. Immediately adopting these administrative rules will greatly improve the facilitation of the intent of this legislation in mandating a statewide uniform construction code until the permanent rules are finalized.

Title 55 PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 1. Preliminary Provisions

§101. Request for Rule Change

A. Anyone petitioning the Undersecretary, Department of Public Safety, for the adoption of, or change of, any rule shall submit in writing to the Council Administrator at 8181 Independence Boulevard, Baton Rouge, LA 70806, an application containing the following basic information organized and captioned:

1. the name, address, telephone number and email address of the applicant;
2. a brief description of the facts supporting the applicant's request for the adoption of a rule or the change of a rule that has already been adopted;
3. suggested specific language or language setting forth the substance of the rule or rule change which is being requested;
4. an indication as to whether or not a public hearing is requested;
5. a copy of each and every document upon which the applicant bases his request for a rule or a citation of the information and where it can be easily obtained for review by this office.

B. Whenever the council administrator determines that a public hearing or public hearings should be held prior to the adoption of any rule or rule change, a notice of the meeting date and place and the agenda will be recorded in the *Louisiana Register*; however, whenever that is not possible, a copy of the meeting notice including the date, time, and place, and agenda of the meeting will be mailed to the official journals of the cities of Lafayette, Alexandria, Shreveport, Monroe, Lake Charles, Baton Rouge and New Orleans.

C. Within 90 days of the request for adoption of or change of a rule, the council administrator will notify the applicant and each individual who request a copy of either his denial of the application or notice of intent to adopt the requested rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. In accordance with the requirements set forth in R.S. 40:1730.28, effective, January 1, 2007, the following is hereby adopted as the Louisiana State Uniform Construction Code.

1. International Building Code, 2006 Edition, not including Chapter 1-Administration, Chapter 11-Accessibility, Chapter 27-Electrical and Chapter 29-Plumbing Systems. The applicable standards referenced in that code are included for regulation of construction within this state.

2. International Existing Building Code, 2006 Edition, not including Chapter 1-Administration, and the standards referenced in that code for regulation of construction within this state.

3. International Residential Code, 2006 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. Appendix J, Existing Buildings and Structures, is also included for mandatory regulation. For purposes of this part, section R301.2.1.1 of the 2003 edition of the International Residential Code is hereby specifically adopted in lieu of the 2006 edition and shall be effective until January 1, 2008. Furthermore, IRC R301.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code:

- a. amendment of R301.2.1.1 (Design Criteria);
- b. item 6, the American Concrete Institute, *Guide to Concrete Masonry Residential Construction in High Winds Areas*, shall be added;
- c. item 7, Institute for Business and Home Safety, *Optional Code-plus Fortified for Safer Living*, shall be added;
- d. item 8, Federal Alliance for Safe Homes, *Optional Code-plus Blueprint for Safety*, shall be added.

4. International Mechanical Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state.

5. The Louisiana State Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code] as amended by the state health officer acting through the Office of Public Health of the Department of Health and Hospitals. Nothing in this Part shall be construed so as to prevent the state health officer from enforcing Part XIV (Plumbing) of the State Sanitary Code, the enforcement of which is his statutory and regulatory responsibility.

6. International Fuel Gas Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state.

7. National Electrical Code, 2005 Edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 5. Enforcement of Louisiana State Uniform Construction Code

§501. General

A. Effective January 1, 2007, all municipalities and parishes shall enforce the Louisiana State Uniform Construction Code. Municipalities and parishes may establish agreements with other governmental entities or registered and certified third party providers to issue permits and enforce the state uniform construction code. No municipality or parish shall require that residential building plans for one and two family dwellings be prepared or stamped by a licensed architect or engineer if the dwelling falls within the prescriptive codes of the Louisiana State Uniform Construction Code, except as required by Chapter 12 of the Louisiana State Plumbing Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§503. Farm or Recreational Structures

A. Definitions

1. For the purposes of these regulations the words defined in this Section have the following meaning.

Farm Structure—a structure which is constructed on a farm, other than a residence or structure attached to it, for use on the farm including, but not limited to barns, sheds and poultry houses.

Private Outdoor Recreational Structure—a hunting or fishing camp not used as a residence nor attached to a residence.

B. Exemptions to State Uniform Construction Code

1. The governing authority of a parish or municipality may not enforce the Louisiana State Uniform Construction Code pertaining to the construction or improvement of a farm structure or private outdoor recreational structure. For private outdoor recreational structures only, the property owner of record, in applying for an exemption, shall execute an affidavit attesting to the structure's exempt status. The affidavit shall be filed into the parish conveyance records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 7. Certificates of Registration

§701. General

A. On and after January 1, 2007, no person shall practice as a code enforcement officer in this state unless registered with the Louisiana State Uniform Construction Code Council (council). A person desiring to be registered as a parish or municipality building code enforcement officer or a third party provider shall apply to the council for a Certificate of Registration. The applicant shall apply on the application form prescribed by the council. An applicant shall furnish satisfactory proof to the council of valid certification. A Certificate of Registration is valid for one year and expires on the last day of the month of issuance. Those possessing Certificates of Registration must timely renew their certificates in order to remain in good standing with the council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§703. Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers

A. General

1. In order to obtain a Certificate of Registration from the council for a particular classification, an individual must meet the following qualifications.

B. Definitions

Building Code Enforcement Officer (BCEO)—a person employed by a public entity who is primarily responsible for the overall inspection or enforcement of applicable building code requirements within the jurisdiction of the employer.

Building Official—the BCEO employed and charged by a public entity with the administration and enforcement of the Louisiana State Uniform Construction Code (LSUCC).

Inspector—a BCEO, who under the authority of the building official, is charged with the inspection of structures for compliance with his or her specialty classification(s) of the LSUCC.

Plans Examiner or Reviewer—a BCEO, who under the authority of the Building Official, is charged with the inspection of construction documents for compliance with his or her specialty classification(s) of the LSUCC.

Third-Party Provider (TPP)—any individual, entity or an individual employed by an entity contracted by a municipality, parish or licensed contractor to act in the capacity of a BCEO.

C. BCEO Registration Classifications/Requirements

1. General Classifications

a. *Building Official (BO)*—requirements; possess a current ICC Certified Building Official certificate or a current ICC Master Code Professional certificate and have two years experience as an architect, engineer, inspector, plans examiner, contractor or superintendent of construction or any combination of these. General classifications are not restricted and may enforce all classified specialties of the LSUCC.

2. Specialty Classifications

a. Commercial Inspectors

i. Commercial Building Inspector Requirements—possess a current ICC Commercial Building Inspector certificate.

ii. Commercial Electrical Inspector Requirements—possess a current ICC Commercial Electrical Inspector certificate.

iii. Commercial Mechanical Inspector Requirements—possess a current ICC Commercial Mechanical Inspector certificate.

iv. Commercial Plumbing Inspector Requirements—possess a current ICC Commercial Plumbing Inspector certificate.

v. Commercial Energy Requirements—shall be enforced by the Office of the State Fire Marshal.

b. Commercial and Residential Plan Examiners or Reviewers

i. Building Plans Examiner Requirements possess a current ICC Commercial Building Plans Examiner certificate.

ii. Electrical Plans Examiner Requirements—possess a current ICC Commercial Electrical Plans Examiner certificate.

iii. Mechanical Plans Examiner Requirements—possess a current ICC Commercial Mechanical Plans Examiner certificate.

iv. Plumbing Plans Examiner Requirements—possess a current ICC Commercial Plumbing Plans Examiner certificate.

v. Commercial Energy Requirements—shall be enforced by the Office of the State Fire Marshal.

c. Residential Inspectors

i. Residential Building Inspector Requirements—possess a current ICC Residential Inspector certificate.

ii. Residential Electrical Inspector Requirements—possess a current ICC Residential Electrical Inspector certificate.

iii. Residential Mechanical Inspector Requirements—possess a current ICC Residential Mechanical Inspector certificate.

iv. Residential Plumbing Inspector Requirements—possess a current ICC Residential Plumbing Inspector certificate.

v. Residential Energy Inspector Requirements—possess a current ICC Residential Energy Inspector/Plans Examiner certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§705. Third Party Providers

A. General

1. A third party provider shall register with the council. Third party providers shall meet the requirements of the general or specialty classification(s) whichever applicable and as contracted with the parish or municipality. Furthermore, any individual employed by a third party provider who is also performing work for the parish or municipality, shall also be council certified.

B. Insurance

1. All third party providers shall carry at least \$100,000 in general liability insurance. Proof of valid and current insurance coverage must be provided to the council upon registration and renewal of registration.

C. Restrictions

1. Third party providers shall not provide plan review or inspections on projects of their own design and/or construction.

D. Code Enforcement Services for Non-Governmental Entities

1. Third party providers providing plan review services for non-governmental entities shall provide written copies of the plan review to the code enforcement officer of the municipality or parish prior to issuance of construction permits.

2. Where a third party provider provides services in a jurisdiction which has a building department, third party providers shall adhere to the permitting and inspection procedures of said jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 9. Temporary Exemption to Certification Requirement

§901. Employment after January 1, 2007

A. Upon employment by a parish, municipality, or other political subdivision, an individual must be granted a provisional certificate of registration without certification by a recognized code organization or testing agency, provided that such individual is under the supervision of a registered code enforcement officer who is certified by the International Code Council. This provisional certificate of registration is valid for 12 months. Residential plan reviewers shall be granted an additional 12 month provisional certificate of registration commencing on the date of the first ICC residential plans examiner test. Thereafter, anyone renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§903. Employment prior to January 1, 2007

A. Certificates of Registration may be issued without certification by a recognized code organization or testing agency to building code enforcement officers already employed in code enforcement on January 1, 2007 only for the position and locality held at the time of registration. This registration is valid for three years for building officials and six months for building inspectors and plans reviewers. Additionally, inspectors and plan reviews who were employed by an authority having jurisdiction before July 1, 2006, and remain employed by that authority having jurisdiction, an additional 30 month provisional certificate or registration may be granted provided the individual can demonstrate an annual minimum of 3 continuing education units for a core discipline as require in §703. Thereafter, anyone renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§905. Third Party Providers

A. Third party providers obtaining a certificate of registration after January 1, 2007 shall be granted a 12 month provisional certificate of registration without certification by a recognized code organization. Additionally, effective January 1, 2007, third party providers who were registered with the Louisiana State Uniform Construction Code Council prior to July 1, 2006 shall be granted a provisional certificate of registration for up to 36 months. Thereafter, any third party provider renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 11. Disciplinary Proceedings

§1101. General

A. The council shall have the authority to suspend, revoke or deny renewal of Certificates of Registration upon any violation of R.S. 40:1730.21 et seq. after notice and proper hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1102. Informal Proceedings

A. Notice. If the council receives written information indicating that a person holding a Certificate of Registration (registrant) is violating or has violated any provision of R.S. 40:1730.21 et seq. or this Part, the council, after an investigation, may, in writing, order the person to immediately refrain from the conduct or violation.

B. Response. The registrant shall respond in writing to the council's informal notice within 10 days of receipt by providing the council with a written statement containing any information related to the allegations of the informal notice which would show compliance with all requirements for retention or renewal of his or her Certificate of Registration. In lieu of providing a written statement, the registrant may request an informal conference with the council administrator and council chair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1103. Formal Proceedings

A. Complaint. In the event that the matter is not resolved during the informal proceedings, the council shall file a formal complaint which then shall be forwarded to the registrant, via certified mail, to the address on file with the council.

B. Hearing. No hearing shall be conducted prior to 20 business days following the filing of the formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1105. Procedures

A. Hearings. All hearings conducted before the council or a designated committee shall be in accordance with the Administrative Procedure Act.

B. Notice. The hearing notice shall include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority under which the hearing is to be had;

3. a reference to the particular sections of the statutes and rules involved;

4. a short plain statement of the matters asserted.

C. Opportunity shall be afforded to all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order or default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1107. Decisions and Orders

A. A final decision or order adverse to a party in an adjudication proceeding shall be in writing. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified by mail of the decision or order. A copy of the decision or order shall be sent via certified mail forthwith to each party and, if applicable, to his attorney of record. The parties by written stipulation may waive compliance with this Section. The council, in the event there is no contest, may eliminate compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1109. Rehearings

A. A decision or order in a case of adjudication are subject to rehearing, reopening, or reconsideration by the council, within ten days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the law and the evidence;

2. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

3. there is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

4. there is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the council granting it, shall set forth the grounds which justify such action. On reconsideration, reopening, or rehearing, the matter may be heard by the council, or it may be referred to a subordinate committee. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1111. Judicial Review of Adjudication

A. A registrant who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling is immediately reviewable if review of the final council decision would not provide an adequate remedy and would inflict irreparable injury.

B. Proceedings for review may be instituted by filing a petition in the District Court of East Baton Rouge Parish within thirty days after mailing of notice of the final decision or, if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the council and all parties of record.

C. The filing of the petition does not itself stay enforcement of the council decision. The council may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within 30 days after the service of the petition, or within further time allowed by the court, the council shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the council, the court may order that the additional evidence be taken before the council upon conditions determined by the court. The council may modify its findings and decision by reason of

the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the council, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the council or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon unlawful procedure;
4. affected by other error of law;
5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
6. not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the council has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Jill Boudreaux
Acting Undersecretary

0701#011

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Care Assistance (LAC 67:III.5103, 5107, and 5109)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.5103, 5107, and 5109, in the Child Care Assistance Program effective January 1, 2007, pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). This Rule shall remain in effect for a period of 120 days.

The Office of Family Support subsidizes a portion of child care expenses incurred by some low-income families to allow them to participate in training programs, attend school, or maintain employment. Although federal regulations do not mandate that state payment rates for child care services

fall within the seventy-fifth percentile of the average payment rates for the state's child care providers, this level is encouraged by the Administration for Children and Families. A 2005 Child Care Market Rate Survey concluded that Louisiana's payment rates fall below the seventy-fifth percentile. In an effort to reach this desired level of payment, the agency is proposing to increase the State Maximum Rate for services to eligible child care providers in Section 5109.

The proposed amendments will not increase cost to a child care-eligible client as the agency also proposes to increase the percentage of child care costs paid for by the agency thereby absorbing the provider payment increase.

Section 5107 is being amended to include a provision that a Family Child Day Care Home (FCDCH) provider will not be an eligible provider if the child's non-custodial parent is residing in the FCDCH and is not working or attending a job training or educational program during the hours that care is needed and that an FCDCH provider must care for no more than six children. Language in Section 5103.A. is being repromulgated as it was erroneously removed in a previous rule change.

Title 67
SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Strategies to Empower People (STEP) Program, as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/STEP participant's child care costs, up to the maximum amounts listed in §5109.B. The following eligibility criteria must be met.

1. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or by receipt of Supplemental Security Income (SSI), or who is under court supervision.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003),

LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:

Subchapter B. Child Care Providers

§5107. Child Care Provider

A - B. ...

C. An FCDCH provider must be registered and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation, an FCDCH provider must complete and sign an FCDCH provider agreement, complete a request for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

C.1.a. - g. ...

h. caring for no more than six children, including his own children and any other children living at his residence, who are under age 13 or age 13 through 17 if disabled.

C.2. - E. ...

F. Under no circumstances can the following be considered an eligible CCAP provider:

1. - 2. ...

3. an FCDCH provider, (in which child's non-custodial parent is residing in the FCDCH and is not working or attending a job training or educational program during the hours the care is needed);

F.4. - I.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484 (July 2004), LR 30: 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 33:

§5109. Payment

A. The sliding fee scale used for non-FITAP recipients is subject to adjustment based on the state median income and poverty levels, which are published annually. A non-FITAP household shall pay a portion of its child care costs monthly in accordance with the sliding fee scale, and this shall be referred to as a "co-payment." The sliding fee scale is based on a percentage of the state median income.

**Sliding Fee Scale for Child Care Assistance Recipients
75 Percent of Projected Median Income**

Number in Household	2	3	4	5	6	DSS %
Monthly Household Income	0 - 1069	0 - 1341	0 - 1613	0 - 1884	0 - 2156	80%
	1070-1608	1342-1997	1614-2386	1885-2774	2157-3163	60%
	1609-2147	1998-2653	2387-3158	2775-3664	3164-4169	40%
	Above 2147	Above 2653	Above 3158	Above 3664	Above 4169	0%

Number In Household	7	8	9	10	11	DSS %
Monthly Household Income	0-2428	0-2699	0-2971	0-3243	0-3514	80%
	2429-3346	2700-3529	2972-3712	3244-3896	3515-4079	60%
	3347-4264	3530-4358	3713-4453	3897-4548	4080-4643	40%
	Above 4264	Above 4358	Above 4453	Above 4548	Above 4643	0%

Number In Household	12	13	14	15	16	DSS %
Monthly Household Income	0-3786	0-4058	0-4329	0-4601	0-4873	80%
	3787-4262	4059-4445	4330-4628	4602-4811	4874-4995	60%
	4263-4737	4446-4832	4629-4927	4812-5021	4996-5116	40%
	Above 4737	Above 4832	Above 4927	Above 5021	Above 5116	0%

Number In Household	17	18	DSS %
Monthly Household Income	0-5144	0-5416	80%
	5145-5178		60%
	5179-5211		40%
	Above 5211		0%

NOTE: Effective January 1, 2007, the sliding fee scale has been adjusted as reflected in the above tables.

B. Determination of Payments

1. Payments to providers on behalf of non-FITAP recipients will be a percentage of the lesser of:

- a. ...
- b. the State Maximum Rate for authorized services effective January 1, 2007 as indicated below:

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90

2. Payments to providers on behalf of FITAP recipients will be the lesser of:

- a. ...
- b. the State Maximum Rate for authorized services effective January 1, 2007 as indicated below:

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 33:

Ann S. Williamson
Secretary

0701#012

DECLARATION OF EMERGENCY

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

**Support Enforcement Services Program
Mandatory Fee for Successful Child Support Collection
(LAC 67:III.2523)**

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 amend LAC 67:III, Subpart 4, Support Enforcement Services, by adopting §2523 Mandatory Fee for Successful Child Support Collection. This declaration is effective January 29, 2007, and shall remain in effect for 120 days. This declaration is necessary to extend the original Emergency Rule effective October 1, 2006, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the March 2007 issue.)

Pursuant to Section 454(6)(B)(ii) of the Social Security Act, the agency is adopting §2523, which will allow for the imposition of an annual fee for successful child support collection in compliance with federal guidelines.

Emergency action in this matter is necessary to ensure continued compliance with federal regulations and avoid federal penalties and sanctions that could be imposed by the Administration for Children and Families, Office of Child Support Enforcement, the governing authority of the Support Enforcement Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter E. Individuals Not Otherwise Eligible

§2523. Mandatory Fee for Successful Child Support Collection

A. Effective October 1, 2006, in the case of an individual who has never received assistance under a state program funded under part A of the Social Security Act and for whom the state has collected at least \$500 of support, the state shall impose an annual fee of \$25 for each case in which services are furnished.

B. The custodial party shall be responsible for the annual fee and the fee shall be retained by the state from support collected, (but not from the first \$500 collected) or paid by

the state out of its own funds (the payment of which from state funds shall not be considered as an administrative cost of the state for the operation of the plan, and the fees shall be considered income to the program).

C. The mandatory fee will accrue based on the federal fiscal year.

D. Fees imposed and not collected in one year will be collected in the following federal fiscal year or subsequent federal fiscal years.

AUTHORITY NOTE: Promulgated in accordance with section 454(6) (B) (ii) of Social Security Act, AT-06-01, and DCL-06-28.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann Silverberg Williamson
Secretary

0701#067

DECLARATION OF EMERGENCY

**Department of Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

**Voluntary Deductions from Retiree Benefits Payroll
(LAC 58.I:1101 and 1103)**

Under the authority of R.S. 11:515 and in accordance with R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has adopted an Emergency Rule amending LAC 58.I:1101 and 1103, which provide for voluntary deductions by LASERS retirees from their benefits paid by this system. They are being amended in order to have them in place for January 01, 2007, as required by the Pension Protection Act of 2006. This Rule complies with and is enabled by R.S. 11:515.

The effective date for this Rule is December 15, 2006, and it shall remain in effect for the maximum number of days allowed or the date this Rule becomes effective through the ordinary promulgation process, whichever comes first.

Title 58

RETIREMENT

**Part I. Louisiana State Employees' Retirement System
Chapter 11. Voluntary Deductions from Retiree
Benefits Payroll**

**§1101. Application Process for Voluntary Payroll
Deduction**

A. Application shall be made by the company, corporation, or organization which is the provider of coverage, product, service, or recipient of monies and shall be signed by two officers of the applicant company, corporation, or organization. The completed application shall be submitted to LASERS.

B. The following type providers of services shall be considered for approval:

1. the State Group Benefits program;
2. the group insurance plan administered by the Department of Employment and Training;
3. the Retired State Employees' Association;
4. general insurance companies and other providers that are included on the annual listing maintained by the Office of State Uniform Payroll;

5. credit unions formed for the primary purpose of serving state employees that have a payroll deduction for employees of the members' agencies;

6. other member or retiree associations approved by the board of trustees;

7. vendors receiving payment through voluntary deductions on the effective date of these rules; and

8. other insurance companies approved by the board of trustees.

C. Applicant shall designate a coordinator to act as primary contact with LASERS for resolution of invoicing, refund, and reconciliation problems and resolving claims problems for retirees.

D. All vendors shall file annual renewal applications with LASERS.

E. Applications shall be received by LASERS beginning December 15, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:

§1103. Applicant and Vendor Requirements

A. General insurance vendors shall meet the requirements established by the Division of Administration and shall either be included on the annual listing maintained by the Office of State Uniform Payroll or approved by the board of trustees.

B. Any provider who qualifies to submit an application under §1101.B.5 or B.7 above shall meet the regulatory requirements of the appropriate federal or state regulatory agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:

Cindy Rougeou
Executive Director

0701#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007 Closure of State Outside Waters to Shrimping

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close state outside waters to shrimping by zone each year as it deems appropriate, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of state outside waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude to the U.S. Coast Guard navigational light off the northwest

shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude. This closure is effective at 6 a.m., Monday, January 8, 2007.

R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound except during the time period from October fifteenth through the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in this portion of state outside waters do not average 100 possession count and additional small white shrimp are expected to recruit to these waters. This action is being taken to protect these small white shrimp and provide them the opportunity to grow to a larger and more valuable size.

The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any part of remaining state outside waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer necessary; and hereby authorizes the Secretary of the Department of Wildlife and Fisheries to open and close special shrimp seasons in any portion of state inside waters where such a season would not detrimentally impact developing brown shrimp populations.

Terry D. Denmon
Chairman

0701#022

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by Emergency Rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for the commercial harvest of king mackerel in Louisiana state waters.

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2007 and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2008, which is the date

expected to be set for the re-opening of the 2008 commercial king mackerel season in federal waters.

The commission also authorizes the secretary to open additional commercial king mackerel seasons in Louisiana state waters if he is informed that NMFS has opened such additional seasons and to close such seasons when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell king mackerel, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess king mackerel in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Terry D. Denmon
Chairman

0701#018

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007-08 Reef Fish Commercial Seasons and Trip Limits

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Commercial Trip and Possession Limits for Reef Fish. The commercial trip and possession limit for deep-water and shallow-water grouper combined (black, misty, Warsaw, red, snowy, yellowedge, yellowfin and yellowmouth groupers, red hind, rock hind, speckled hind, gag and scamp), shall be 6,000 pounds per vessel. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to establish and modify trip and possession limits for the commercial harvest of any species or group of species of the fishes listed in LAC 76:VII.335, Reef Fish—Harvest Regulations, in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable trip or possession limit has been established for the federal waters of the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the state of Louisiana enact compatible regulations in Louisiana state waters.

Effective with any commercial trip or possession limit under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade or sell the

affected species or group of species, whether taken from within or without Louisiana territorial waters in excess of such established commercial trip or possession limit.

Commercial Seasons for Reef Fish. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the commercial harvest of any species or group of species of the fishes listed in LAC 76:VII.335, Reef Fish—Harvest Regulations, in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the applicable commercial quota has been harvested in the Gulf of Mexico, and if he is requested by the Regional Administrator of NMFS that the State of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to re-open and close the commercial seasons described here in Louisiana state waters if he is informed by NMFS that the season dates for the commercial harvest of these fish species in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters. Such authority shall extend through January 31, 2008.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell the affected species of fish, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess the affected species of fish in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Terry D. Denmon
Chairman

0701#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2007 Reef Fish Harvest

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

Gag, black and red grouper recreational seasons: The 2007 seasons for the recreational harvest of gag, black and red grouper in Louisiana state waters are as follows: the recreational fishing season for gag, black and red grouper will close at 12:01 a.m. on February 15, 2007, and remain closed until 12:01 a.m. on March 15.

Recreational Trip and Possession Limits for groupers: The recreational trip and possession limit for groupers (combined) is as follows: Groupers, combined, excluding goliath grouper and Nassau grouper - 5 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day or 1 red grouper per person per day. However, no grouper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat—their bag limit is zero.

"Groupers, combined" contains the following species: Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, Warsaw grouper, gag grouper, and scamp. No person shall possess Goliath grouper (formerly known as jewfish) or Nassau grouper whether taken from within or without Louisiana territorial waters.

Effective with any recreational trip or possession limit under this Emergency Rule, no person shall harvest or possess the affected species or group of species, whether taken from within or without Louisiana territorial waters in excess of such established trip or possession limit.

Commercial Red Snapper Regulations:

1. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service (NMFS) under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper which may not be bartered or sold. No person aboard any vessel shall commercially possess, sell, barter, trade, exchange or attempt to sell, barter, trade or exchange red snapper unless possessing a federal permit for the harvest of Gulf of Mexico Reef Fish and a federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

2. Requirement for IFQ vessel endorsement and allocation: In addition to the federal commercial vessel permit for Gulf reef fish, in order to fish for, possess, or land Gulf red snapper, regardless of where harvested or possessed, a federal Gulf red snapper IFQ vessel endorsement must have been issued to the vessel and be on board. No person shall commercially harvest or land red snapper without holding or being assigned IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location or off loaded. On the last fishing trip of the year a vessel may exceed by 10 percent the remaining IFQ allocation.

3. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which a commercial license, permit and appropriate allocation was issued.

4. Requirement for federal IFQ dealer endorsement: In addition to the requirement for a federal dealer permit for Gulf reef fish, for a dealer to receive Gulf red snapper from a commercial fishing vessel, he must have a federal red snapper IFQ dealer endorsement. For a person aboard a vessel with a Gulf red snapper IFQ vessel endorsement to sell to anyone other than a permitted dealer, such persons must also have a federal Gulf red snapper IFQ dealer endorsement.

5. Requirement for transaction approval code: The owner or operator of a vessel landing red snapper is responsible for calling NMFS Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of commercial red snapper from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

6. Offloading and transfer: No person shall offload from a vessel or receive from a vessel commercially harvested red snapper during the hours from 6:00 p.m. until 6:00 a.m., local time. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries. At-sea or dockside transfer of commercial red snapper from one vessel to another vessel is prohibited.

7. VMS requirement: No person shall commercially harvest red snapper from a vessel unless that vessel is equipped with a fully operational and approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

The commission authorizes the secretary to set the effective date for the VMS requirements of this Emergency Rule when the effective date is set for the requirement of VMS on reef fish commercial vessels in Federal waters, and when a request is received from the Regional Administrator of NMFS to enact compatible regulations within and without Louisiana state waters.

Terry D. Denmon
Chairman

0701#021