

Emergency Rules

DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Boll Weevil Eradication Commission**

**Boll Weevil Eradication Zone
(LAC 7:XV.314 and 321)**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:1609 and R.S. 3:1613, the Louisiana Boll Weevil Eradication Commission declares an emergency to exist and adopts by emergency process the following rules creating the Louisiana Eradication Zone and fee payment in the Boll Weevil Eradication Program. This emergency adoption is necessary in order to prevent imminent peril to the health, safety or welfare of the citizens of Louisiana for the reasons set forth below.

The boll weevil is a pest which is destructive to the commercial crop of cotton and such destruction has persisted over decades despite use of control measures. The cost of destruction to the crop and the cost of efforts to control the boll weevil currently exceed \$30 per acre of cotton which is a cost sufficiently high to eliminate profit for some producers. Both the cost of destruction to the crop and cost of control efforts have risen and continue to do so. It is federal policy as well as the policy of the state of Louisiana to eradicate the boll weevil. The federal government has an eradication program which provides cost subsidies to participating states. The federal eradication program sets time lines for states to participate in the program. Failure of Louisiana to meet the federal time line jeopardizes the much needed subsidy which could put at risk Louisiana's eradication program. Most cotton producing states are participating in the federal eradication program, in their own state eradication program, or in both eradication programs. Failure of Louisiana to achieve eradication of the boll weevil concurrently with other cotton producing states which do achieve eradication creates an imminent threat that Louisiana may be quarantined thus restricting the movement of cotton, equipment, and other regulated articles from the state.

Louisiana's eradication program is essential to the health, safety and welfare of the citizens of this state. Failure to adopt and amend these rules on an emergency basis jeopardizes Louisiana's ability to meet the federal time line and could result in a loss to Louisiana of the federal subsidy thereby threatening the ability of Louisiana to eradicate the boll weevil. Failure to adopt these rules on an emergency basis places Louisiana producers in imminent peril of economic disadvantage when dealing with other cotton producing states which are participating in eradication programs and thus threaten Louisiana's economy by reducing

the ability of Louisiana cotton producers to compete with cotton producers from other states.

The effective date of this rule is September 1, 1998, and it shall be in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever is first.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§314. Boll Weevil Eradication Zone: Creation

A. There is hereby created an eradication zone which shall hereafter be known as the Red River Eradication Zone.

1. The Red River Eradication Zone shall consist of all those territories within the boundaries of the following parishes: Acadia, Avoyelles, Bienville, Bossier, Caddo, Claiborne, DeSoto, East Baton Rouge, Evangeline, Grant, Natchitoches, Pointe Coupee, Rapides, Red River, St. Landry, St. Tammany, Webster, West Baton Rouge, West Feliciana.

2. The effective date of the establishment of the Red River Eradication Zone shall be October 18, 1996.

B. There is hereby created an eradication zone which shall hereafter be known as the Louisiana Eradication Zone.

1. The Louisiana Eradication Zone shall consist of all those territories within the boundaries of all parishes in the state of Louisiana which are not within the Red River Eradication Zone.

2. The effective date of the establishment of the Louisiana Eradication Zone shall be July 15, 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 23:195 (February 1997), amended LR 24:

§321. Program Participation, Fee Payment and Penalties

A. Upon passage of the referendum, all cotton producers growing cotton in an eradication zone shall be required to participate in the eradication program.

B. Assessments on cotton producers in the eradication zones shall be levied as follows.

1. In the Red River Eradication Zone cotton producers shall each year, during the first five years of the program, submit to the ASCS office the annual assessment as set by the commission following the adjudicatory procedure of the Administrative Procedure Act, which assessment shall not exceed \$10 per acre the first year and \$35 per acre for each remaining year, for each acre of certified cotton acreage on file with ASCS.

2. In the Louisiana Eradication Zone cotton producers shall each year, during the first five years of the program, submit to the ASCS office the annual assessment as set by the commission following the adjudicatory procedure of the

Administrative Procedure Act which assessment shall not exceed \$15 per acre for each year or a total of \$75 per acre.

C. Any cotton producer planting a fraction of an acre shall be assessed at a prorated assessment rate for that fractional acre.

D. Any cotton producer failing to file a completed Cotton Acreage Reporting Form by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$2 per acre.

E. Any cotton producer failing to pay all assessments by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$3 per acre.

F. Beginning with the second year of the program and continuing for subsequent years, any cotton producer whose ASCS certified acreage exceeds his reported acreage by more than 10 percent shall, for each ASCS certified acre in excess of that reported, be subject to a penalty fee of \$5 per acre in addition to the assessment fee, payable on or before September 1 of the current growing season.

G. Failure to pay all program costs, including assessments and penalty fees shall be a violation of these regulations. Any cotton growing on a cotton producer's acreage which is subject to the assessment shall be subject to destruction by the commissioner should said cotton producer fail to pay all program costs, including assessments and penalty fees, within 30 days of notification of the default.

H. The commission shall have the right to collect some or all of the program costs, including assessments and penalty fees, by contracting with another entity, public or private, for assessment collection. All cotton producers in an eradication zone shall be notified of such a decision by the commission.

I. Cotton producers shall destroy cotton stalks in every field location planted to cotton, on or before December 31 of each year. Cotton stalk destruction shall consist of shredding or disking to the extent of eliminating standing cotton stalks. Failure to destroy stalks by December 31 of each year shall be a violation of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1609, 1612, and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:

Bob Odom
Commissioner

9808#002

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS) ACT
Deadline (LAC 28:IV.301, 703, and 803)

The Louisiana Student Financial Assistance Commission (LASFAQ) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to revise the Tuition Opportunity Program for Students [R.S. 17:3048.11] program rules.

The emergency rules are necessary to provide a one-time extension of the deadline for completing the ACT test to the national test date scheduled in October 1998 for those students who failed to take the test prior to their high school graduation date. Failure to provide this exception would have an adverse impact on the financial welfare of the affected students and on the financial condition of their families by denying the students a reasonable opportunity to establish their program eligibility. Such students may not have been aware of the requirement to take the ACT test by the date of their high school graduation in order to qualify for the TOPS program. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective July 23, 1998, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

Part IV. Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

* * *

ACT Score—the highest composite score achieved by the student on the official American College Test ("ACT") taken on only one national test date (or a special test date specifically authorized by ACT for a disabled student or exceptional child) prior to the date of high school graduation or an equivalent score, as determined by the comparison tables used by LASFA, on the Scholastic Aptitude Test (SAT) taken prior to the date of high school graduation. ACT test scores which are unofficial, including "residual" test scores, or composites of scores from more than one test date, are not acceptable for purposes of determining program eligibility. For 1997 and 1998 high school graduates who have not previously taken an ACT test, the ACT score shall include those scores obtained from a national ACT test taken not later

than the October 1998 national test date.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:

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

§703. Establishing Eligibility

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

* * *

6. Have achieved an ACT score, as defined in §301 of at least:

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

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

1. - 6. ...

7. have achieved an ACT score, as defined in §301, of at least:

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:

Jack L. Guinn
Executive Director

9808#001

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

**Lead-Based Paint Activities
(LAC 33:III.2807)(AQ179E)**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary because the current rule LAC 33:III.Chapter 28 does not adequately provide for those persons who were trained and/or worked previously in lead-based paint activities to receive accreditations, based on their previous training and/or work experiences. The purpose of the lead program is to reduce exposure to lead paint hazards, especially in young children who are the most seriously

affected by such exposures, in the environment of the state of Louisiana. Since the program is a new program, implemented as of March 20, 1998, there are insufficient courses available to the regulated community to become trained, and the "grandfather" provisions in the rule are too restrictive to allow experienced individuals to receive accreditations based on prior training and experience. Without this emergency rule individuals and companies are unable to become accredited and licensed to mitigate lead-based paint hazards properly. Failure to adopt this rule through emergency procedures will delay the beginning of federally funded projects by public entities and abatement contractors that are designed to mitigate lead paint hazards in housing where families with young children reside. This will result in continued and unnecessary exposure to the at-risk population.

This emergency rule is effective on July 13, 1998, and shall remain in effect for a maximum of 120 days or until the final rule is promulgated, whichever comes first.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

**Chapter 28. Lead-Based Paint Activities—
Recognition, Accreditation, Licensure,
and Standards for Conducting
Lead-Based Paint Activities**

§2807. Accreditation of Individuals

* * *

[See Prior Text in A-A.3]

4. After November 30, 1998, individuals seeking accreditation in the lead inspector, risk assessor, lead project supervisor, or lead project designer disciplines must pass the applicable state examination given by the department or its proxy. Individuals must pass the state examination, with a score of 70 or above, within 30 days of receiving a course completion certificate. Individuals who fail the state exam will be allowed to take the exam a second time within the 30-day period. Individuals who fail the state examination twice must retake the initial course before they will be allowed to retake the state examination. Anyone who fails the test three times within a six-month period may not apply for testing in that category for 90 days.

* * *

[See Prior Text in A.5-B.1.c.ii.(e)]

iii. lead project supervisor: either one year of experience as an accredited lead-based paint worker or at least two years of experience in lead, asbestos, or environmental remediation work or in the building trades;

* * *

[See Prior Text in B.1.c.iv-C]

1. Individuals in all disciplines who received training in a lead-based paint activity between January 1, 1995, and March 20, 1998, shall be eligible for accreditation by completing the following procedures:

* * *

[See Prior Text in C.1.a]

b. submit the appropriate certificate from an EPA-authorized state accredited training program; or
c. submit documentation to demonstrate the applicant has successfully completed training or on-the-job training in

the conduct of a lead-based paint activity, and submit evidence of completion of an approved refresher training course for the appropriate discipline;

- d. submit a 1" x 1¼" photograph of the applicant;
- e. meet the education and/or experience requirements listed in Subsection B of this Section; and
- f. submit the appropriate fees as required under LAC 33:III.223.

2. Individuals have until November 30, 1998, to apply for accreditation under the procedures in Subsection C.1 of this Section. After that date all individuals wishing to obtain accreditation must do so through the procedures described in Subsection A of this Section.

* * *

[See Prior Text in D-D.4]

5. Any applicant who was accredited initially in accordance with Subsection C of this Section or prior to November 30, 1998, must pass the appropriate state examination prior to being reaccredited by the department.

* * *

[See Prior Text in D.6-E.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1669 (December 1997), amended LR 24:

For more information concerning AQ179E, contact Department of Environmental Quality, Investigations and Regulation Development Division (504) 765-0399.

J. Dale Givens
Secretary

9808#004

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Massage Therapists

Declaratory Order and Rulings (LAC 46:XLIV.103)

In accordance with R.S. 37:3551 et seq., which authorizes the Board of Massage Therapy to promulgate rules and regulations and R.S. 49:953(B), the emergency rule provision of the Administrative Procedure Act, the board hereby declares an emergency rule pertaining to the issuance of declaratory rulings.

The board finds it necessary to adopt this emergency rule in order to establish authority to issue declaratory rulings on the scope of massage therapy licensings and practice and general board operations. Currently, without this provision formally adopted and promulgated as part of its rules, the board lacks regulatory authority to clarify the definition and scope of practice to differentiate certain areas of massage therapy services from those of physical therapy. Further, the board currently lacks regulatory authority to make this necessary distinction in order that the Office of Workers' Compensation has a clear definition of the scope of practice of massage

therapy so that it may properly make reimbursements for services rendered by massage therapists.

This emergency rule is effective August 3, 1998 and shall remain in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLIV. Massage Therapists

Chapter 1. General Provisions

§103. Declaratory Order and Rulings

A. The board, on its own motion, may move for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or order of the board. Any interested party may petition the board for a declaratory order or ruling as stated above.

B. Said petition shall contain the following information:

- 1. the full name, address, telephone number of the petitioner;
- 2. the interest asserted by the petitioner;
- 3. specific reference to the statute, rule, or order with respect to which the declaratory order or ruling is sought;
- 4. a concise statement of the purpose, reasons and nature of the declaratory order or ruling sought.

C. Said petition shall be considered by the board at its next regularly scheduled meeting provided that the petition has been filed at least 30 days prior to said meeting.

D. The order or ruling rendered by the board on said petition shall be in writing and mailed to petitioner at last address furnished to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3551 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Massage Therapists, LR 24:

Kayla Aymond
Executive Director

9808#021

DECLARATION OF EMERGENCY

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

Private Hospitals—Reimbursement Methodology

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

The Department of Health and Hospitals, Office of the

Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1994 which established the prospective reimbursement methodology for private hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The Department has determined that it is necessary to amend the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the Department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private hospital care and services under the state plan are available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private hospitals in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$8,482,610 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of service on or after July 1, 1998, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for private hospitals contained in the June 20, 1994 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of the inflationary adjustment to the reimbursement rates for private hospitals shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

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

David W. Hood
Secretary

9808#053

DECLARATION OF EMERGENCY

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

Private Intermediate Care Facilities for Mentally Retarded—Reimbursement Methodology

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on October 20, 1989 which established the reimbursement methodology for private intermediate care facilities for the mentally retarded (*Louisiana Register*, Volume 15, Number 10). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department has determined that it is necessary to amend the reimbursement methodology contained in the October 20, 1989 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private intermediate care facility care and services for the mentally retarded under the state plan are available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$2,744,512 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of service on or after July 1, 1998, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology contained in the October 20, 1989 rule for private intermediate care facilities for the mentally retarded to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. Subsequent application of an inflationary adjustment to the reimbursement rates for private intermediate facilities for the mentally retarded shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

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

David W. Hood
Secretary

9808#052

DECLARATION OF EMERGENCY

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

Private Nursing Facilities—Reimbursement Methodology

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule on June 20, 1984 which established the reimbursement methodology for private nursing facilities (*Louisiana Register*, Volume 10, Number 6). The reimbursement methodology provides for the application of an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The department has determined that it is necessary to amend the reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill. Notwithstanding the elimination of the

inflation adjustment for fiscal year 1999, the department has carefully reviewed the current rates and is satisfied that they are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that private nursing facility care and services under the state plan are available at least to the extent that they are available to the general population in the state. This action is necessary to avoid a budget deficit because the Louisiana Legislature did not include a budget allocation for an inflationary adjustment to the reimbursement rates for private nursing facilities in the 1998-99 Appropriation Bill. Public notice of this action was provided by statewide newspaper publication prior to July 1, 1998. It is anticipated that the discontinuance of the application of inflationary adjustment to the reimbursement rates will reduce expenditures by approximately \$14,057,887 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of service on or after July 1, 1998, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for private nursing facilities contained in the June 20, 1984 rule to discontinue the practice of automatically applying an inflationary adjustment to the current reimbursement rates for non-fixed costs in those years when the rates are not rebased. The subsequent application of an inflationary adjustment to the reimbursement rates for private nursing facilities shall be contingent on the allocation of funds by the Legislature in the Appropriation Bill.

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

David W. Hood
Secretary

9808#051

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Managed Care Contracting Requirements (LAC 37:XIII.Chapter 43)

In accordance with the provisions of La. R.S. 49:953(B) of the Administrative Procedure Act, the Department of Insurance has adopted this emergency regulation in order that it might be implemented without delay and allow the statutory provisions of Acts 897 and 1485 of the 1997 Regular Session of the Louisiana Legislature and protect the general health and safety of residents of the state from imminent peril resulting from inappropriate medical care and lack of access to health insurance coverage.

Emergency rulemaking is necessary to establish reasonable requirements for inclusion of rural hospitals and their

practicing physicians in managed care networks. The regulations are being adopted to assure compliance with Acts 897 and 1485 of the 1997 Regular Session of the Louisiana Legislature. This rule is necessary to provide for the required participation of qualified rural hospitals and their practicing physicians, through the establishment of reasonable contracting requirements for medical services, that do not jeopardize the health of enrollees or plan members. This emergency regulation is effective July 15, 1998 and shall remain in effect for the maximum period of time allowed by state law.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 43. Managed Care

§4301. Contracting Requirements

A. Purpose. The purpose of this regulation is to establish the reasonable authority and obligation of managed care organizations related to provider contracts under Acts 1485 and 897 of the 1997 Regular Session of the Louisiana Legislature. The provisions of La. R.S. 40:1300.115 establish the legislative intent for qualifying rural hospitals, and their practicing physicians, to be allowed to participate in the health care delivery systems of managed care organizations. These statutes also establish the intent of the legislature that managed care organizations provide reasonable reimbursement for the services provided by qualifying rural hospitals and the physicians who practice at these hospitals. Act 897 of the 1997 Regular Session of the Louisiana Legislature amends Titles 40 and 22 of the Louisiana Revised Statutes to prohibit managed care organizations from using incentive arrangements that impede, impair, or otherwise diminish the ability of a plan member or enrollee to receive appropriate and necessary medical care and treatment. These statutes also establish the legislative intent that any prohibitions on the authority of an insurer to contract for delivery of health benefits through capitation or shared risk arrangements be limited to noncompliant incentive arrangements. To carry out the intent of the legislation and assure full compliance with the provisions of these acts, this regulation establishes reasonable contracting requirements that are applicable to managed care organizations and assures uniformity in application of terms and conditions for participation.

B. Definitions

Accreditation/Certification—a hospital that is accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or Medicare certified for provision of acute care hospital services.

Community—the parish in which a qualifying rural hospital is located.

Discriminate—to apply a payment methodology that relies upon terms and conditions that are more restrictive than those terms and conditions applicable to nonrural hospitals or their practicing physicians in a region which result unreasonable payment to a qualifying rural hospital or physician practicing in such hospitals. A payment methodology that results in reimbursement to a qualifying rural hospital or practicing

physician that is equal to or greater than the reimbursement to non-rural participating hospitals or physicians in the region shall be considered nondiscriminating.

Employee—a person employed directly by a managed care organization and does not include any contract, temporary, or other type of employment arrangement.

Geographic Area—a parish.

Health Benefit Plan—any health insurance policy, plan, or health maintenance organization subscriber agreement, issued for delivery in this state under a valid certificate of authority by an entity authorized by law to bear risk for the payment of health care services.

Health Care Provider—a physician duly licensed to practice medicine by the Louisiana State Board of Medical Examiners, or other health care professional duly licensed in Louisiana, or an acute care hospital licensed to provide medical care in this state. The term shall also mean any legal entity or organization formed for the primary purpose of providing medical or health care services and provides such services directly or through its participants.

Incentive Arrangement—any payment or contractual obligation included in a general payment plan, capitation contract, shared risk arrangement, or other agreement between a managed care organization and a health care provider that is tied to utilization of covered benefits.

Managed Care Organization—a health maintenance organization or other entity authorized by law to bear risk for the payment of health care services that holds a valid certificate of authority to issue for delivery in this state a health benefit plan.

Pass Through Payments—any funds or payments received by a managed care organization for the purpose of reimbursing the cost of services provided by a health care provider, that are not covered by the health care provider's contract, including but not limited to research grants, and federal payments for indigent care.

Payment Differential—a difference in the amount paid to a health care provider resulting from negotiations to establish a capitation, risk sharing, or other payment arrangement that is based on financial incentives necessary to establish medical services within a geographic area of the state.

Practicing—a physician licensed to practice medicine by the Louisiana State Board of Medical Examiners who has established his/her practice in the geographic area where the rural hospital is located, maintains active hospital staff privileges, and provides medical treatment in said hospital on a weekly basis. The term shall also include any physician whose participation is essential to provision of services covered under a rural hospital's contract with a managed care organization or treatment of enrollees admitted to the hospital, provided such services are appropriate and within the scope of the hospital's accreditation/certification. The term does not include physicians who are merely affiliated, or associated with a rural hospital or any physician whose participation is essential to treatment of enrollees admitted to the hospital based on the unreasonable refusal of a hospital to utilize another physician available through the managed care organization who is qualified to provide the needed medical services to the patient.

Region—a group of parishes designated by a managed care organization for establishing reimbursement amounts for payment of practicing health care providers. A managed care organization may follow congressional districts or such other reasonable grouping of contiguous parishes in establishing regions. In establishing regions, a managed care organization shall include all parishes of the state and limit the total number of regions to seven. In no event shall any regional configuration be established that acts to discriminate unfairly against qualifying rural hospitals or their practicing physicians.

Rural Hospital—a hospital qualifying to participate in a Health Maintenance Organization under the requirements of Part L of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of La. R.S. 40:1300.115.

C. *Applicability and Scope.* Except as otherwise specifically provided, the requirements of this regulation apply to all managed care organizations holding valid certificates of authority to issue for delivery in this state, an insurance policy, plan, or health maintenance organization subscriber agreement. This regulation addresses the requirements of La. R.S. 40:1300.115 regarding contracts with rural hospitals and their practicing physicians and establishes standards for participation in a managed care organization. The provisions of this regulation require managed care organizations to provide covered medical benefits either directly, or through contractual agreements with health care providers. A contractual agreement between a managed care organization and a health care provider shall require the health care provider to either:

1. provide covered medical services directly; or
2. in conjunction with other health care providers who are required, under contract or other arrangement, to meet the same statutory and regulatory requirements applicable to health maintenance organization contracts with health care providers.

D. *Provider Contracting Requirements*

1. La. R.S. 40:1300.115 requires managed care organizations to accept qualifying rural hospitals, and their practicing physicians who meet specific statutory criteria, as providers of health care subject to the terms and conditions that are no more restrictive than applicable to other hospitals. This requirement applies in every parish where a managed care organization holding a valid certificate of authority issued by the Louisiana Department of Insurance, has policies, subscriber agreements, or contracts for delivery of benefits in effect. La. R.S. 22:2016(E) requires all hospitals and health care providers utilized by health maintenance organizations to be licensed under applicable state law. La. R.S. 22:2021 prohibits health maintenance organizations from adopting or utilizing administrative treatment guidelines that fall below the appropriate standard of care. Additionally, La. R.S. 22:2019 prohibits the utilization of a certificate of authority by any person other than the organization or entity issued said certificate.

2. All contracts for delivery of covered medical services shall be between the managed care organization and a health care provider, except contracts with other insurers for provision of health coverage. A managed care organization is

only authorized to contract for delivery of health care services with one or more health care providers. Contracts with brokers, agents, or any entity other than a health care provider for the provision of covered medical services are prohibited. A managed care organization may allow health care providers to utilize other health care providers under contract with the managed care organization.

a. A managed care organization shall limit the medical services included under a health care provider contract to those for which the health care provider is qualified and reasonably capable of providing.

b. A managed care organization shall not adopt or utilize payment standards for health care providers that:

- i. require or induce by incentive or payment, the delivery of inappropriate medical care or treatment services;
- ii. allow the provision of inappropriate or unnecessary medical procedures or treatment services;
- iii. allow health care providers to perform, for payment, medical or treatment services for which they are not qualified;

iv. in any review of the terms and conditions of a health care provider's contract conducted by the Department of Insurance, the contract shall not be subject to disclosure to any other health care provider without the expressed written consent of the parties to such contract, except as otherwise allowed by law.

3. In any review of the terms and conditions of a health care provider's contract conducted by the Department of Insurance, the contract shall not be subject to disclosure to any other health care provider without the expressed written consent of the parties to such contract, except as otherwise allowed by law.

E. *Requirements for Inclusion of Rural Hospitals*

1. *Managed Care Organizations Utilizing a Staff Model Approach.* Any managed care organization that directly provides health care services to insureds exclusively through its employees and wholly owned facilities that are duly licensed to provide such health care services, are not required to contract with qualifying rural hospitals except:

a. in any geographic area where the managed care organization has insufficient staff and/or facilities to provide the plan of benefits to insureds;

b. for health care services available in the insureds community that are not readily accessible through the managed care organization within a reasonable distance of the community;

c. for other covered services available in the insureds community that are not readily accessible through the managed care organization within a reasonable distance of the community;

d. in a geographic area where the managed care organization utilizes public or private staff or hospitals to furnish health care services.

2. *General Managed Care Organization Requirements.* A qualifying rural hospital shall be allowed to contract for provision of medical services to insureds or enrollees of a managed care organization who reside in the community where the hospital is located, and can reasonably be expected to utilize the hospital for provision of one or more medical

services included in the contract. A qualifying rural hospital shall also be allowed to contract for provision of medical services to other insureds or enrollees of a managed care organization, if the qualifying hospital is located in a parish that is serviced by such managed care organization. The terms and conditions for participation by a qualifying rural hospital shall be no more restrictive than those normally applied to other participating hospitals in the region of the state where the rural hospital is located. Where the managed care organization offers the majority of participating hospitals a choice in contracting on a capitated or non-capitated basis, the same choice shall be available to qualifying rural hospital. In no event shall a managed care organization be required to make any special, enhanced, or extraordinary payment to a qualifying rural hospital based on its rural designation other than pass through payments. Additionally, a managed care organization is expressly prohibited from applying any factor, weight, or other adjustment that acts to reduce payment for medical services provided by a qualifying rural hospital based on its designation as a rural hospital.

3. Capitation Contracting Requirements

a. In establishment of capitation based pricing mechanisms or risk sharing arrangements, a managed care organization is authorized to use reasonable criteria that includes the scope of services available at the hospital and patient volume. A managed care organization may consider the amount and scope of services being included under such contractual arrangements in negotiating reimbursement amounts. However, in no instance shall a managed care organization base reimbursement on the exclusion of one or more qualifying rural hospitals or otherwise limiting enrollee access to appropriate medical care from such hospitals that are located in the community where the enrollee or plan member resides.

b. A managed care organization shall be authorized to use payment differentials to establish a network of providers in a geographic area. A managed care organization shall be authorized to exclude application of such payment differentials to a qualifying rural hospital unless such payment differentials are being offered to other hospitals in the same geographic area. In no instance shall a managed care organization be prohibited from offering payment differentials to a qualifying rural hospital to gain access to health care providers in a geographic area.

4. Other Contracting Requirements. Managed care organizations shall not discriminate against qualifying rural hospitals in establishing or utilizing pricing mechanisms. In no event shall a managed care organization establish payment rates or reimbursement systems that discriminate on the basis of a hospital's designation as a qualifying rural hospital. Modifiers, outliers, or weighting factors applicable to payments made to such qualifying rural hospitals on the basis of diagnosis, diagnosis for related groups (DRGs), procedure, procedure code, per diem, length of stay, or services rendered, shall not discriminate against qualifying rural hospitals, or be used to prevent participation by such hospitals or have this effect.

F. Inclusion of Physicians Practicing in Qualifying Rural Hospitals

1. General Managed Care Organization Requirements. A physician licensed to practice medicine by the Louisiana Board of State Medical Examiners, practicing in a qualifying rural hospital that has a health care provider contract with a managed care organization for provision of hospital services included under its accreditation/certification, shall be allowed to enter into a health care provider contract for provision of medical services to insureds or enrollees of the plan, policy, or subscriber agreement. The terms of the health care provider contract shall be no more restrictive than the terms and conditions offered to other health care providers who deliver the same services or benefits to insureds or enrollees of the managed care organization in the state, or applicable region of the state where the physician participates in a qualifying rural hospital. Where the managed care organization offers the majority of participating physicians a choice in contracting on a capitated or non-capitated basis, the same choice shall be available to a physician practicing in qualifying rural hospital. In no event shall a managed care organization be required to make any special, enhanced, or extraordinary payment to a physician practicing in a qualifying rural hospital based on the rural designation of the physician's practice. Additionally, a managed care organization is expressly prohibited from applying any factor, weight, or other adjustment that acts to reduce payment for medical services provided by a physician practicing in a qualifying rural hospital based on the rural designation of the physician's practice.

2. Capitation Contracting Requirements

a. In establishment of capitation based pricing mechanisms or risk sharing arrangements, a managed care organization is authorized to use reasonable criteria that includes the scope of services available from the physician and patient volume. A managed care organization may consider the amount and scope of services being included under such contractual arrangements in negotiating reimbursement amounts.

b. A managed care organization shall be authorized to use payment differentials to gain access to physicians in a geographic area. A managed care organization shall not be required to include in a health care provider contract, any amount that can be reasonably documented as resulting from application of a payment differential that is not applicable to the majority of participating physicians within a geographic area of the state who provide the same services to plan members.

3. Other Contracting Requirements. Managed care organizations shall not discriminate against physicians practicing in qualifying rural hospitals in establishing or utilizing pricing mechanisms. In no event shall a managed care organization establish payment rates or reimbursement systems that discriminate on the basis of a physician's designation as a practicing physician in a qualifying rural hospital or have that effect.

G. General Provisions

1. No health care provider contract entered into by a managed care organization shall include any provision or requirement that directly, or indirectly acts to transfer the organization's certificate of authority. A managed care

organization shall not be relieved from performance of all required obligations under Title 22 of the Louisiana Revised Statutes of 1950 by any contract or agreement with a health care provider.

2. Managed care organizations shall assure that all contracts issued on or after July 15, 1998 are in full compliance with the requirements of this regulation. All other contracts shall be brought into compliance upon renewal, amendment, or revision, but in no event later than December 31, 1999.

3. Qualifying rural hospitals and their practicing physicians shall be subject to the same administrative procedures and remedies as any other complainant who files a valid complaint with the Department of Insurance. Managed care organizations found to be violating the requirements of this regulation shall be considered to be engaging in unfair trade practices as defined under La. R.S. 1214 (12). All administrative remedies for any aggrieved party shall be governed by the provisions of Part XXIX of Chapter 1, of Title 22 of the Louisiana Revised Statutes of 1950 comprised of §§1351 - 1367.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:10, 22:2006, 22:2014, 22:2019, and 22:2021.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 24:

James H. "Jim" Brown
Commissioner

9808#003

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Office of Motor Vehicles

Driver's License—Issuance without Social Security Number (LAC 55:III.147)

In accordance with R.S. 32:409.1 as amended by Acts 1998, No. 8, §2, of the First Extraordinary Session, and in particular R.S. 32:409.1(A)(8), the Department of Public Safety and Corrections, Office of Motor Vehicles, is exercising the provisions of the Administrative Procedure Act to adopt an emergency rule pertaining to the implementation of the requirement that an applicant for a new or renewed driver's license must provide the department with his or her Social Security Number. This emergency rule provides an exception for alien individuals as defined in the rule who do not have or are ineligible to obtain a Social Security Number. This emergency rule is to become effective upon the signature of the acting undersecretary, and shall remain in effect for 120 days.

Currently, the Social Security Administration does not issue Social Security Numbers to certain alien individuals who have come to reside in Louisiana. As these alien individuals are now residents of Louisiana, state law requires that these alien individuals apply for a Louisiana driver's license. R.S. 32:409.1 currently requires that all applicants for new or renewed driver's licenses must provide the department with

their Social Security Number. Many of these alien individuals who have become residents have been unable to obtain a Louisiana driver's license because of the Social Security Administration policy and the amendment to R.S. 32:409.1. The department finds that it is a matter of public welfare that all residents of this state, whether resident aliens or citizens of the United States, are able to travel freely in this state and between the many states in a reasonably convenient manner subject to the reasonable laws and regulations governing the operation of motor vehicles on the public highways. Further, the department finds that it was not the intent of Acts 1998, No. 8, §2, to prevent alien individuals from obtaining driver's licenses as the intent of the amendment was to assist to enforcement of child support orders. As a result, the Department declares an emergency pursuant to R.S. 49:953.

As a result of the above finding, the Department of Public Safety and Corrections, Office of Motor Vehicles, hereby adopts the following emergency rule.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 1. Driver's License

Subchapter A. General Requirements

§147. Issuance of Driver's License without Providing a Social Security Number

A. Except as provided in this Section, every applicant for a new or renewed Louisiana driver's license shall submit his or her Social Security Number to the department. Except as provided in this Section, the department shall not issue a driver's license to any applicant for a new or renewed driver's license who fails to submit his or her Social Security Number to the department.

B. Before issuing a class "E" driver's license to an alien individual who does not possess and is ineligible to obtain a Social Security Number, the department shall:

1. require the alien individual to present, in addition to the documents required in R.S. 32:409.1(A)(2)(d)(x), a document demonstrating lawful presence in the United States in a status in which the alien individual may be ineligible to obtain a Social Security Number. The following is a list of lawful presence documents.

a.i. Arrival-Departure Record (I-94) (Class A-1, A-2, A-3, B-1, B-2, C-1, C-2, C-3, E-1, E-2, F-1, F-2, G-1, G-2, G-3, G-4, G-5, H-4, I, J-2, K-2, L-2, M-1, M-2, NATO 1-7, O-3, P-4, R-2, S-5, S-6, S-7, TC, TD, Cuban/Haitian Entrant, Parolee.

ii. The form I-94 cannot state "Employment Authorized."

iii. If a foreign passport and Form I-94 have been presented as primary or secondary document, that Form I-94 is also an acceptable §147.B document, but only if it fits the §147.B description.

b. Visa Waiver Arrival-Departure Record (I-94W) (Class WB, WT).

c. Crewman's Landing Permit (I-95A).

d. Alien Crewman Landing Permit and Identification Card (I-184).

e. Nonresident Alien Canadian Border Crossing Card (I-185).

- f. Nonresident Alien Mexican Border Crossing Card (I-186).
- g. Nonresident Alien Border Crossing Card (I-586).
- h. B-1/B-2 Visa/BCC (DSP-150).

C. The department shall verify the validity of each applicant's "proof of lawful presence" document by confirming the document reasonably appears on its face to be genuine as it relates to the applicant.

D. Each alien individual who in his or her application claims neither to hold a Social Security Number nor to be eligible to obtain a Social Security Number shall sign a certifying statement to that effect.

E. Definitions. As used in §147, the following terms have the meanings described below.

Alien Individual—a foreign born person who has not qualified as a citizen of the United States.

Genuine—as applied to lawful presence documents, this means the documents are truly what they purport to be, and that they are not false, forged, fictitious, simulated, spurious, or counterfeit.

Proof of Lawful Presence Document—a verifiable document used to establish the identity and lawful presence of an individual who does not have and is ineligible to obtain a Social Security Number.

Social Security Number—a valid and unique number issued by the Social Security Administration to every individual who meets the agency's requirements to receive a number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:409.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

Lt. Col. Ronnie Jones
Acting Undersecretary

9808#031

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Family Independence Temporary Assistance
Program—Food Stamp Program—Disqualifications
(LAC 67:III.1118 and 1988)

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 the following rule effective September 5, 1998 in the Family Independence Temporary Assistance and Food Stamp Programs. It is necessary to extend the original emergency rule of May 7, 1998 since it is effective for a maximum of 120 days and will expire before the final rule takes effect. The agency expects to publish the final rules for each program in the September issue of the *Louisiana Register*.

Pursuant to Public Law 105-33, the Balanced Budget Act of 1997, a change in the eligibility of a recipient convicted of a drug-related felony offense is required, since the governing

date of the federal statute now applies to the date of the offense rather than the date of conviction. The agency received clarification of the change in April 1998. Therefore, this emergency rule is necessary in order to avoid federal sanctions or penalties which could be imposed by further delaying implementation.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 11. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1118. Individuals Convicted of a Felony Involving a Controlled Substance

An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C.802[6]) shall be disqualified from receiving cash assistance for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:233.1. and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:449 (April 1997), amended LR 23:1708 (December 1997), LR 24:

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter J. Determining Household Eligibility and Benefit Levels

§1988. Eligibility Disqualification of Certain Recipients

* * *

B. An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C. 802[6]) shall be disqualified from receiving food stamp benefits for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and 105 - 33 and R.S. 46:233.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:

Madlyn B. Bagneris
Secretary

9808#034

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamps—Collection Methods and Penalties (LAC 67:III.2005)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to correct an error in LAC 67:III. 2005.B.4.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, set forth guidelines concerning the ineligibility of certain individuals making fraudulent statements with respect to identity "or" residence. When the rule was promulgated by Office of Family Support (OFS), it incorrectly stated identity "and" residence which is more restrictive than provided by the law. Therefore, this emergency rule is necessary to avoid federal sanctions or penalties which could be imposed as a result of that error.

This emergency rule is effective July 20, 1998 and shall remain in effect for a period of 120 days.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter P. Recovery of Overissued Food Stamp Benefits

§2005. Collection Methods and Penalties

A. - B.1.- 3. ...

4. An individual shall be ineligible to participate for 10 years if found to have made a fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L. 97-35, 97-253, 101-624 §1746, and 102-237 §911, 7 CFR 272, 273, 276 and 277, P.L. 103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April 1994), LR 20:780 (July 1994), LR 20:899 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 24:

Madlyn B. Bagneris
Secretary

9808#011

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Fall Shrimp Season—1998

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S.

56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters, the Wildlife and Fisheries Commission does hereby set the 1998 Fall Inshore Shrimp Season to open as follows:

Zone 1—that portion of Louisiana's inshore waters from the Mississippi state line westward to the eastern shore of South Pass of the Mississippi River; and

Zone 2—that portion of Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island; and

Zone 3—that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Texas state line, all to open at official sunrise August 17, 1998.

The commission also hereby sets the closing date for the 1998 Fall Inshore Shrimp Season at official sunset Monday, December 21, 1998 except in Breton and Chandeleur Sounds in Zone 1, as described in R.S. 56:495.1 A.(2), which shall remain open until 6 a.m. March 31, 1999. The commission also grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing date if biological and technical data indicate the need to do so or if enforcement problems develop.

Thomas M. Gattle, Jr.
Chairman

9808#057

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Migratory Bird Season—1998-99

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

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

The hunting seasons for early migratory birds during the 1998-99 hunting season shall be as follows:

Migratory Birds Other than Waterfowl

DOVE: Split Season, Statewide, 60 days

September 5 - September 13

October 17 - November 6

December 12 - January 10

Daily bag limit 15, possession limit 30

TEAL: September 12 - September 27

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

RAILS: Split Season
September 12 - September 27
November 7 - December 30

KING AND CLAPPER: Daily bag limit 15 in the aggregate,
possession 30.

SORA AND VIRGINIA: Daily bag and possession 25 in the aggregate.

GALLINULES: Split Season
September 12 - September 27
November 7 - December 30
Daily bag limit 15, possession limit 30

SNIPE: November 7 - February 21
Daily bag limit 8, possession limit 16

WOODCOCK: December 18 - January 31
Daily bag limit 3, possession 6

SHOOTING HOURS

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

Dove: one-half hour before sunrise to sunset except on September 5-6, October 17-18, and December 12-13 when shooting hours will be 12 noon to sunset.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 1998 and extend through sunset on February 28, 1999.

Thomas M. Gattle, Jr.
Chairman

9808#058

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season—1998-99

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

1. The Public Oyster Seed Grounds not currently under lease, Bay Junop, Bay Gardene Oyster and Hackberry Bay Oyster Seed Reservations will open one-half hour before sunrise September 9, 1998.

2. The Sister Lake Oyster Seed Reservation will be open for 12 days only from October 5 to October 16, 1998.

3. A designated sacking only area east of the Mississippi River will open one-half hour before sunrise on September 9, 1998. The sacking only area of the public grounds is generally Lake Fortuna and Lake Machias to a line from Mozambique Pt. to Pt. Gardner to Grace Pt. at the Mississippi River Gulf Outlet.

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

5. The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource subsides.

6. The Calcasieu and Sabine Lake tonging areas will open one-half hour before sunrise on October 16, 1998 and remain open until one-half hour after sunset on April 30, 1999.

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

Thomas M. Gattle, Jr.
Chairman

9808#056

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shrimp Season Closure—Zone 1

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, R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters; and pursuant to a resolution adopted by the Wildlife and Fisheries Commission on May 7, 1998 which authorized the secretary of the Department of Wildlife and Fisheries to close the 1998 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the secretary of the Department of Wildlife and Fisheries hereby closes the 1998 Spring Inshore Shrimp Season in most of Zone 1 at 6 a.m., Monday, July 27, 1998. Small white shrimp have begun to show up in department samples in portions of Zone 1 and the secretary has determined that a large portion of Zone 1 should be closed to protect these immigrating white shrimp. Zone 1 is that portion of Louisiana's inshore waters from the Mississippi State line to the eastern shore of South Pass of the Mississippi River.

The open waters of Breton and Chandleur Sounds as described in the menhaden rule (LAC 76:VII.307.D) shall remain open to shrimping until further notice.

James H. Jenkins, Jr.
Secretary

9808#014