

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Animal Health Services

Meat and Poultry Inspection (LAC 7:XXXIII.133)

In accordance with the Administrative Procedure Act R.S. 49:953 and R.S. 3:4232, the Commissioner of Agriculture and Forestry, is exercising the emergency provisions of the Administrative Procedure Act in implementing the following rules and regulations governing fees assessed for the Meat and Poultry Inspection Program.

For the last two years, the Meat and Poultry Inspection Program budget has ended in a deficit. The department has used other funds to make up for each years deficit. The department cannot continue to find funds from other areas to make up this continuing deficit.

Louisiana is experiencing an unprecedented shortfall in state finances. The Legislature has cut the department's budget; therefore, using other department funds to cover the deficit of the Meat and Poultry Inspection Program is not a continuing option.

The department, however, cannot discontinue the Meat and Poultry Inspection Program because the program imposes and enforces requirements with respect to intrastate operations and comer that are at least equal to those imposed and enforced under the Federal Meat Inspection Act. Discontinuing the Meat and Poultry Inspection Program will endanger the health and safety of Louisiana citizens because intrastate operations and commerce would not be subject to rigorous inspections.

The department must adopt an emergency rules increasing fees to insure that the program will have adequate funding for the remaining fiscal year and beyond. Permanent adoption of Rule changes will take place according to the Administrative Procedure Act.

This Rule becomes effective upon signature, December 29, 2004, and will remain in effect 120 days or until the Rule becomes permanent through the normal Administrative Procedure Act process.

This Rule is enabled by R.S. 3:4222 and R.S. 3:4232.

Title 7

AGRICULTURE and ANIMALS

Part XXXIII. Meat and Poultry Inspections

Chapter 1. Meat and Poultry Inspection Program §133. Overtime and Holiday Inspection Service

A. Official establishments shall be provided inspection service, without charge, up to a 40 hours workweek Monday through Friday.

B. Official establishments shall pay the Department of Agriculture \$25.00 per hour per department employee to reimburse the department for the cost of the inspection service furnished for more than 40 hours in any workweek Monday through Friday.

1. A premium overtime rate of \$30.00 per hour shall be assessed for any departmental employee working Saturday and Sunday.

2. A holiday overtime rate of \$35.00 per hour shall be assessed for any departmental employee working statutory holidays as defined in §133.C.

C. Overtime holidays for state employees shall be the statutorily named holidays in R.S. 1:55.

D. Each recipient of overtime or holiday inspection service shall be billed at the rate established in §133.B, in increments of quarter hours. For billing purposes, 15 or more minutes shall be considered a full half hour. Billings will be for each half hour service rendered by each department employee.

E. Establishments requesting and receiving the services of a department employee after he has completed his day's assignment and left the premises, or called back to duty during any overtime or holiday period, shall be billed for a minimum of two hours overtime or holiday inspection service at the established rate.

F. Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Overtime or holiday inspection will not be performed for anyone having a delinquent account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2300.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, LR 11:247 (March 1985), amended LR 31:

Bob Odom
Commissioner

0412#008

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry State Market Commission

Meat Grading and Certification Contractor's Obligation (LAC 7:V.513)

In accordance with the Administrative Procedure Act R.S. 49:953 and R.S. 3:405 and R.S. 3:412, the Commissioner of Agriculture and Forestry, is exercising the emergency provisions of the Administrative Procedure Act in implementing the following rules and regulations governing fees assessed for grading and certification of meat and poultry.

For the last two years, the State Market Commission's budget has ended in a deficit. The department has used other funds to make up for each years deficit. The department cannot continue to find funds from other areas to make up this continuing deficit.

Louisiana is experiencing an unprecedented shortfall in state finances. The Legislature has cut the department's budget; therefore, using other department funds to cover the deficit of grading and certification of meat and poultry is not a continuing option.

The department, however, cannot discontinue the grading and certification services because the program imposes and enforces requirements with respect to intrastate operations and commerce that are at least equal to those imposed and enforced under the Federal Meat Inspection Act. Discontinuing the grading and certification of meat and poultry will endanger the health and safety of Louisiana citizens because intrastate operations and commerce would not be subject to rigorous inspections.

This Rule becomes effective upon signature, December 29, 2004, and will remain in effect until permanent rules are promulgated through the normal Administrative Procedure Act process.

This Rule is enabled by R.S. 3:405 and R.S. 3:412.

Title 7

AGRICULTURE AND ANIMALS

Part V. Advertising, Marketing and Processing

Chapter 5. Market Commission Meat Grading and Certification

§513. Contractor's Obligation

A. Contractors furnishing products under these regulations must furnish such assistance as may be necessary to expedite the grading, examination, and acceptance of products.

B. Contractors desiring grading/certification services must notify the Department of Agriculture and Forestry at least 24 hours in advance of need. Contractors who fail to give at least 24 hours notice in advance of need will be subject to a penalty of \$50, regardless of the time required for the service or the fee assessed on a poundage basis.

C. The costs of all grading, examination, acceptance, and certification of meat and meat products shall be paid by the contractor at the rate of \$0.04 per pound of meat or meat products graded, examined, or certified, which amount shall be due and payable to the Department of Agriculture and Forestry upon presentation of statement(s) for services rendered.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Market Commission, LR 7:262 (May 1981), amended LR 31:

Bob Odom
Commissioner

0412#009

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs Rockefeller Scholarship
(LAC 28:IV.501, 506, and 2103)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and repromulgate the Rules of the Scholarship/Grant Programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

This Emergency Rule is necessary to implement changes to the Scholarship/Grant Programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has 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 November 17, 2004, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

Part IV. Student Financial Assistance Higher Education Scholarship and Grant Programs

Chapter 5. Applications, Federal Grant Aid and ACT Test

§501. Initial Application

A.1. - B.4. ...

C. Initial Application for Louisiana scholarship and Grant Programs other than TOPS for High School Graduates of 2004 and Thereafter

1. All new applicants for Louisiana scholarship and grant programs other than TOPS and the Rockefeller State Wildlife Scholarship must apply for federal grant aid by completing the Free Application for Federal Student Aid (FAFSA) for the academic year following the year the student graduated from high school. For example, if the student will graduate from high school in school year 2003-2004, submit the 2004-2005 version of the FAFSA.

2. All new applicants for the Rockefeller State Wildlife Scholarship must apply for federal grant aid by submitting the FAFSA so that it is received no later than July 1 immediately preceding the Academic Year (College) for which the scholarship is sought. For example, if the student wants to apply for a Rockefeller Scholarship to be awarded during the 2005-2006 Academic Year (College), submit the 2005-2006 version of the FAFSA no later than July 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), LR 24:1900 (October 1998), amended LR 26:1994 (September 2000), repromulgated LR 27:1846 (November 2001), amended LR 29:554 (April 2003), LR 30:2015 (September 2004), LR 31:

§506. Proof of Compliance

A. As proof of compliance with the state's final deadline for submitting the FAFSA, or the On-Line Application, LASFAC will accept the documentation listed in §506.A.1-6. No other form of verification, including notarized or certified statements, will be accepted as proof of compliance with the deadline requirement.

1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 30:2018 (September 2004), amended LR 31:

Chapter 21. Miscellaneous Provisions and Exceptions
§2103. Circumstances Warranting Exception to the
Initial and Continuous Enrollment
Requirements

A. - E. 7.c. ...

8. Death of Immediate Family Member

a. Definition. The student's spouse, parent, stepparent, custodian, dependent, sister or brother, step sibling, grandparent or step grandparent dies.

E.8.b - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), repromulgated LR 27:1866 (November 2001), amended LR 27:1875 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330 and 2333 (November 2002), LR 29:126 (February 2003), LR 29:2373 (November 2003), LR 29:2373 (November 2003), LR 30:787 (April 2004), LR 30:1167 (June 2004), LR 31:

George Badge Eldredge
General Counsel

0501#003

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of Environmental Assessment

Expedited Penalty Agreement
(LAC 33:I.801, 803, 805, and 807)(OS054E3)

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 expedited penalty agreements. Emergency Rule OS054E2, which was effective on November 5, 2004, and published in the *Louisiana Register* on November 20, 2004, is hereby rescinded. This Emergency Rule, OS054E3, retains the amendments to the original Rule that were made in OS054E2 and adds an additional amendment to LAC 33:I.805.E.5 and two additional water violations to LAC 33:I.807.

This Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, utilize unnecessary resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may

utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent Rule.

This Emergency Rule is effective on January 7, 2005, 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 OS054E3 you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

Agency Interest Number **Ca** site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

Qualifying Permit Parameter **C** for the purposes of these regulations: total organic carbon (TOC), chemical oxygen demand (COD), dissolved oxygen (DO), 5-day biochemical oxygen demand (BOD₅), 5-day carbonaceous biochemical oxygen demand (CBOD₅), total suspended solids (TSS), fecal coliform, and/or oil and grease.

Expedited Penalty Agreement **Ca** predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;

2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;

3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);

4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and

5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§805. Applicability

A. Limit of Penalty Amount. The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations per penalty assessed.

B. Departmental Discretion. The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. Notification to the Respondent. The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. Certification by the Respondent. By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. The violation identified in the expedited penalty agreement is not the same as or similar to a violation identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued by the department within the previous two years for any particular agency interest number. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. The Nature and Gravity of the Violation. The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. The Gross Revenues Generated by the Respondent. By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited

penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders. The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified timeframe demonstrates respect for the regulations and a willingness to comply.

5. The Monetary Benefits Realized Through Noncompliance. The respondent's monetary benefit from noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs Of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant one 30-day extension in order for the respondent to correct the violation cited in the expedited penalty agreement

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified timeframe, the department may issue additional enforcement actions including, but not limited to, a civil penalty assessment and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department may notify the respondent that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the following issuance dates shall apply.

1. If the respondent does not wish to participate in the expedited penalty agreement program, the issuance date for the Notice of Potential Penalty portion of the document shall be 30 days after the respondent receives the document.

2. If the respondent does wish to participate in the expedited penalty agreement program, the issuance date for the expedited penalty agreement portion of the document shall be the date the administrative authority signs the document for the second, and final, time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3925.A	\$300	per day
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable	LAC 33:III.919	\$500	per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable	LAC 33:III.5107	\$500	per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne	LAC 33:III.1305.A	\$250	per occurrence
Failure to provide notice of change of ownership within 90 days after the change	LAC 33:III.517.G	\$200	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit	LAC 33:III.501.C.4	\$250	per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit	LAC 33:III.501.C.4	\$750	per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date	LAC 33:III.507.E.4	\$1,000	per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116	LAC 33:III.2116.F	\$250	per occurrence
Failure to submit an initial perchloroethylene inventory report	LAC 33:III.5307.A	\$250	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3917.A	\$300	per day

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year	LAC 33:III.5307.B	\$250	per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to have at least one person trained as required by the regulations	LAC 33:III.2132.C	\$300	per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter	LAC 33:III.2132.D	\$500	per occurrence
Failure to post operating instructions on each pump	LAC 33:III.2132.E	\$100	per occurrence
Failure to maintain equipment as defined in LAC 33:III.2132.F.1-2	LAC 33:III.2132.F.1-2	\$300	per occurrence
Failure to tag defective equipment "out of order"	LAC 33:III.2132.F.3	\$500	per occurrence
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request	LAC 33:III.2132.G.1-7	\$300	per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site	LAC 33:III.905	\$100	per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4013.E	\$500	per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4035.H	\$500	per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4049.G	\$500	per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service	LAC 33:V.4069.G	\$500	per occurrence
SOLID WASTE			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority	LAC 33:VII.10509.B	\$200	per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate	LAC 33:VII.10509.C	\$200	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Storing tires for greater than 365 days	LAC 33:VII.10509.E	\$200	per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority	LAC 33:VII.10509.G	\$200	per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations	LAC 33:VII.10519.A	\$300	per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire	LAC 33:VII.10519.B	\$100	per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified	LAC 33:VII.10519.D	\$100	per occurrence
Failure to post required notifications to the public	LAC 33:VII.10519.E	\$100	per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee	LAC 33:VII.10519.F	\$100	per occurrence
Failure to keep waste tires or waste tire material covered as specified	LAC 33:VII.10519.H	\$200	per occurrence
Failure to segregate waste tires from new or used tires offered for sale	LAC 33:VII.10519.M	\$200	per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires	LAC 33:VII.10533.A	\$200	per occurrence
Failure to maintain completed manifests for three years and have them available for inspection	LAC 33:VII.10533.D	\$200	per occurrence
Failure to collect appropriate waste tire fee for each new tire sold	LAC 33:VII.10519.C, 10535.B	\$200	per occurrence
WATER QUALITY			
Failure to properly operate and maintain a facility:			
1. Failing to provide disinfection at any applicable sewage treatment plant	LAC 33:IX.2701.E	\$200	per occurrence
2. Failing to operate/maintain backup or auxiliary systems within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
3. Failing to implement adequate laboratory controls and quality assurance procedures	LAC 33:IX.2701.E	\$200	per occurrence
4. Allowing excessive solids to accumulate within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
5. Allowing sample holding times to expire before analyzing any sample and failing to follow approved methods when collecting and analyzing samples	LAC 33:IX.2701.J.4	\$200	per occurrence
Failure to sample any permit parameter in accordance with an LPDES permit	LAC 33:IX.2701.A	\$100	per permit parameter

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit Discharge Monitoring Reports (DMRs):			
1. Failing to submit DMRs, for any outfall, required by any LPDES individual permit	LAC 33:IX.2701.L.4.a	\$200	per submittal (per outfall)
2. Failing to submit DMRs, for any outfall, required by any LPDES general permit	LAC 33:IX.2701.L.4.a	\$100	per submittal (per outfall)
Exceedance of LPDES permit effluent limitations:			
1. Exceeding the daily maximum or weekly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$150	per permit parameter (per exceedance)
2. Exceeding a monthly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$300	per permit parameter (per exceedance)
3. Exceeding a daily maximum or weekly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$200	per permit parameter (per exceedance)
4. Exceeding a monthly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$400	per permit parameter (per exceedance)
5. Discharging effluent outside of the permitted range for pH (grab samples only)	LAC 33:IX.2701.A	\$150	per grab sample (per exceedance)
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility	LAC 33:IX.905	\$500	per occurrence
2. Failing to implement any component of an SPC plan	LAC 33:IX.905	\$100	per occurrence
Failure to submit certain reports as required by an LPDES permit, including storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports	LAC 33:IX.2701.A	\$300	per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by an LPDES permit	LAC 33:IX.2701.A	\$500	per occurrence
Failure to submit a Notice of Intent for coverage under the LPDES Storm Water Permit for Construction Activities or under the LPDES Storm Water Multi-Sector General Permit	LAC 33:IX.2511.C.1	\$1,000	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide notification of facility changes as required by an LPDES permit	LAC 33:IX.2701.L.1	\$300	per occurrence
Failure to submit a noncompliance report required by an LPDES individual permit	LAC 33:IX.2701.L.7	\$200	per occurrence
Failure to submit a noncompliance report required by an LPDES general permit	LAC 33:IX.2701.L.7	\$100	per occurrence
Unauthorized discharge of oil field wastes, including produced water	LAC 33:IX.1901.A	\$1,000	per occurrence
Unauthorized discharge of oily fluids	LAC 33:IX.1701.B	\$1,000	per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances	LAC 33:XI.301.A-B	\$300	per occurrence
Failure to certify and provide required information on the department's approved registration form	LAC 33:XI.301.B.1-2	\$300	per occurrence
Failure to notify the Office of Environmental Services, Permits Division within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility	LAC 33:XI.301.C.1-3	\$300	per occurrence
Failure to provide corrosion protection to tanks and/or piping that routinely contain regulated substances using one of the specified methods	LAC 33:XI.303.A.1-2	\$500	per occurrence
Failure to provide spill and/or overflow prevention equipment as specified	LAC 33:XI.303.A.3 and/or B.4	\$300	per occurrence
Failure to upgrade existing UST systems to new system standards as specified	LAC 33:XI.303.B	\$300	per occurrence
Failure to pay fees by the required date	LAC 33:XI.307.D	\$200	per occurrence
Failure to report, investigate, and/or clean up any spills and overfills	LAC 33:XI.501.B	\$1,500	per occurrence
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground	LAC 33:XI.503.A	\$300	per occurrence
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified	LAC 33:XI.503.B	\$500	per occurrence
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly	LAC 33:XI.503.C	\$300	per occurrence
Failure to comply with recordkeeping requirements	LAC 33:XI.503.D	\$150	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to meet requirements for repairs to UST systems	LAC 33:XI.507	\$300	per occurrence
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them within 24 hours after a request	LAC 33:XI.509	\$300	per occurrence
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems and/or failure to notify the Office of Environmental Compliance when a leak detection method indicates that a release may have occurred	LAC 33:XI.703.A.1-2	\$1,500 and completion of a department-sponsored compliance class	per occurrence
Failure to satisfy the additional requirements for petroleum UST systems as specified	LAC 33:XI.703.B	\$100	per occurrence
Failure to maintain release detection records	LAC 33:XI.705	\$150	per occurrence
Failure to report any suspected release to the Office of Environmental Compliance within 24 hours after becoming aware of the occurrence	LAC 33:XI.707	\$500	per occurrence

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:

Mike D. McDaniel, Ph.D.
Secretary

0501#084

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of Environmental Assessment

New or Revised Emissions Estimation Methods (LAC 33:III.501)(AQ240E1)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary to implement rules concerning the use of new or revised emissions estimation methods for annual compliance certifications required by LAC 33:III.507.H.

This Emergency Rule revision clarifies requirements set forth in LAC 33:III.919, concerning emissions inventory, and LAC 33:III.507.H, concerning annual compliance certifications. LAC 33:III.919.C requires that emissions

reported in the emissions inventory shall be calculated using the best available information. The department is reissuing Emergency Rule AQ240E, which was effective on December 24, 2003, and published in the *Louisiana Register* on January 20, 2004.

The department realizes that the Clean Air Act (42 U.S.C. §7430) requires EPA to periodically review AP-42 factors and that such emission factors may change upwards or downwards due to receipt of improved data.

The failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare. The air regulations require that permittees use the latest version of any AP-42 factor used to calculate emissions reported on an annual emissions inventory. For some facilities, this will result in a change in the calculation of emissions from levels that were previously in compliance with permit limits to levels that exceed those permit limits. Those facilities that have been reporting emissions in compliance with their permits may now be reporting emissions that exceed permit limits, even though their actual emissions have not changed. As a result, these facilities face potential enforcement actions, including substantial civil penalties. Some such facilities may elect to reduce or cease operations, which would have severe economic consequences for the firms involved, as well as their employees, suppliers, and customers. Adding LAC 33:III.501.C.11 allows the department to review changes in emission factors on a case-by-case basis prior to any actions taken by the department.

This Emergency Rule is effective on December 28, 2004, 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 AQ240E1 you may contact the Regulation Development Section at (225) 219-3550.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - C.10. ...

11. Emissions estimation methods set forth in the Compilation of Air Pollution Emission Factors (AP-42) and other department-approved estimation methods may be promulgated or revised. Emissions increases due solely to a change in AP-42 factors do not constitute violations of the air permit. Changes in emission factors other than AP-42 factors will be evaluated by the department on a case-by-case basis for appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445

Mike D. McDaniel, Ph.D.
Secretary

0501#007

DECLARATION OF EMERGENCY

**Office of the Governor
Board of Examiners for the New Orleans and
Baton Rouge Steamship Pilots**

Mandatory Rest Period (LAC 46:LXX.6653)

The Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), adopts the following rule on an emergency basis. The Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950, and shall become effective December 14, 2004, and shall remain in effect for the maximum period allowed under the Act, or until adoption of a permanent Rule, whichever occurs first.

In order to provide for the continued safe and efficient pilotage of vessels along the Mississippi River, as well as to prevent any imminent peril to public health, safety and welfare, the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots finds that it is necessary that all pilots perform their duties while adequately and completely rested. To that end, the Board of Examiners finds an immediate need to provide rules and regulations regarding a mandatory rest period for New Orleans and Baton Rouge Steamship Pilots.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXX. River Pilots

**Subpart 7. Board of Examiners for the New Orleans and
Baton Rouge Steamship Pilots**

Chapter 66. Standards of Conduct

§6653. Mandatory Rest Period

A. All New Orleans-Baton Rouge Steamship Pilots shall have a minimum six hour rest period between turns.

B. For the purpose of this rule, the "rest period" begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

C. For the purpose of this rule, a "turn" is the time period from dispatch to the termination of the allotted travel time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 31:

Henry G. Shows
President

0501#061

DECLARATION OF EMERGENCY

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

**Early and Periodic Screening, Diagnosis and Treatment
Program Health Services (LAC 50:XV.Chapter 71)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.Chapter 71 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 for health services provided for recipients under the age of 21 under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The bureau promulgated the service descriptions and the staffing requirements for EPSDT health services and amended the reimbursement methodology for services rendered by local education agencies. (*Louisiana Register*, Volume 30, Number 10). This Emergency Rule is being promulgated to continue the provisions contained in the October 20, 2004 Rule. This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT school-based services. It is effective February 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the service descriptions and the staffing requirements for EPSDT health services and amends the reimbursement methodology for services rendered by local education agencies.

**Title 50
PUBLIC HEALTH MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening,
Diagnosis, and Treatment**

Chapter 71. Health Services

§7101. Covered Services

A. Health services for children are covered if they are included on the Individualized Family Service Plan (IFSP) for ages 0 to 3 years of age, and on the Individualized Education Plan (IEP) for ages 3 to 21 years of age.

1. Audiology services are for the identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques. Audiology services include:

- a. determination of range, nature and degree of hearing loss and communications, by use of audiological procedures;
- b. referral for medical and other services necessary for the rehabilitation of children with auditory impairment; and

c. provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services.

2. Speech pathology services are for the identification of children with communicative or oropharyngeal disorders and delays in development of communication skills including diagnosis and treatment. These services include:

a. referral for medical or other professional services necessary for the rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

b. provision of services for the rehabilitation or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

3. Occupational therapy services address the functional needs of a child related to the performance of self-help skills, adaptive behavior, play and sensory, motor and postural development. Occupational therapy services include:

a. identification, assessment, and intervention;

b. adaptation of the environment;

c. selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

d. prevention or reduction of the impact of initial or future impairment, delays in development, or loss of functional ability.

4. Physical therapy services are designed to improve the child's movement dysfunction. Physical therapy services include:

a. screening of infants and toddlers to identify movement dysfunction;

b. obtaining, interpreting and integrating information appropriate to program planning; and

c. services to prevent or alleviate movement dysfunction and related functional problems.

5. Psychological services are designed to obtain, integrate, and interpret information about child behavior, and child and family conditions related to learning, mental health, and development. Psychological services include:

a. administering psychological and developmental tests and other assessment procedures;

b. interpreting assessment results;

c. planning and managing a program of psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

B. Services Provided by Local Education Agencies. Services provided by local education agencies include the health services as defined above and specified related services as described below that are provided to children ages 3 to 21 determined to be medically necessary and are listed on the child's Individualized Education Plan (IEP).

1. Transportation to and from school is covered for Medicaid children only when a child's medical needs require the use of specialized transportation services and when the child receives another covered EPSDT Health Service at the school on the day the transportation is provided. The EPSDT Health Service and the child's specialized transportation needs MUST be identified in the child's IEP.

2. Counseling services are services provided to the child and/or parents for the assessment, understanding and

treatment of the child's disability, the special needs of the child, and the child's development. Providers of counseling services must meet all licensing requirements for their respective licensing boards.

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 29:176 (February 2003), amended LR 30:1034 (May 2004), LR 31:

§7103. Professional Staffing Requirements

A. Audiological Services. Audiological services must be provided by an audiologist or physician licensed in Louisiana to provide these services. A referral must be made by the child's physician, preferably the primary care physician, at least annually in accordance with federal Medicaid regulations. The audiologist must have one of the following:

1. a certificate of clinical competence from the American Speech and Hearing Association;

2. completion of the equivalent educational requirements and work experience necessary for certification; or

3. completion of the academic program and is acquiring supervised work experience to qualify for a certificate.

B. Speech Pathology Services. Speech pathology services must be provided by or under direction of a speech pathologist or audiologist in accordance with licensing standards of the State Examiners Board for Speech Pathologists or Audiologists. The speech pathologist or audiologist must be licensed in the state of Louisiana to provide these services and have one of the following:

1. a certificate of clinical competence from the American Speech and Hearing Association;

2. completion of the equivalent educational requirements and work experience necessary for certification; or

3. completion of the academic program and is acquiring supervised work experience to qualify for a certificate.

C. Occupational Therapy Services. Occupational therapy services must be provided by or under the direction of a qualified occupational therapist licensed in Louisiana to provide these services in accordance with the licensing standards of the State Examiners Board of Occupational Therapists. Occupational therapy treatment services require a written referral or prescription by a physician licensed in Louisiana on at least an annual basis. An initial evaluation may be done without a referral or prescription.

1. The occupational therapist must also be:

a. registered (OTR) by the American Occupational Therapy Association, Inc. (AOTA); or

b. a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience before registration by the AOTA.

2. Services provided under the direction of an occupational therapist must be provided by an occupational therapist assistant certified by the AOTA, who is licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist licensed in Louisiana.

D. Physical Therapy Services. Physical therapy services must be provided by or under the directions of a qualified physical therapist in accordance with state licensing standards of the State Examiners Board for Physical Therapists. The physical therapist must be a graduate of a program of physical therapy approved by both the Council in Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent. Physical therapy treatment requires a written referral or prescription by a physician licensed in Louisiana on at least an annual basis. An initial evaluation does not require such referral or prescription.

E. Psychological services must be provided by a:

1. Louisiana licensed physician;
2. psychiatrist;
3. psychologist; or
4. certified school psychologist.

F. Counseling services must be provided by a:

1. licensed professional counselor;
2. licensed clinical social worker; or
3. graduate social worker with supervision in accordance with the state licensing standards of the State Board of Social Work Examiners.

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 30:1034 (May 2004), amended LR 31:

§7105. Reimbursement

A. Early Intervention Centers. Reimbursement for rehabilitation services rendered to Medicaid recipients who are age 0 up to 3 provided by EPSDT early intervention center providers is as follows,

Procedure	Rate
Electrical stimulation	\$ 17
Physical therapy-one area—therapeutic-30 minutes	\$ 17
Physical therapy-neuromuscular reed-30 minutes	\$ 17
Physical therapy-gait training-30 minutes	\$ 34
Orthotic training	\$ 14
Kinetic act one area-30 minutes	\$ 14
Physical performance test	\$ 14
Physical therapy evaluation/re-evaluation	\$ 92
Occupational therapy evaluation/re-evaluation	\$ 70
Speech/language evaluation/re-evaluation	\$ 70
Speech/language therapy—30 minutes	\$ 26
Speech/language therapy-add 15 minutes	\$ 13
Group speech/language/hearing therapy—30 minutes	\$ 26
Speech group therapy—20 minutes	\$ 13
Speech group therapy—add 15 minutes	\$ 13
Group Speech/language/hearing therapy—1 hour	\$ 52
Speech/language/hearing therapy—20 minutes	\$ 17
Speech/language/hearing therapy—1 hour	\$ 52
Procedures and modalities—30 minutes	\$ 34
Procedures and modalities—45 minutes	\$ 52

B. Local Educational Agencies. All local education agencies that participate in Medicaid as EPSDT health services providers must submit a signed school system certification of understanding (PE-50 EPSDT provider supplement agreement "C") in order to receive the new reimbursement rates for these services. The new reimbursement rates will not be activated until a completed

PE-50 EPSDT provider supplement agreement form has been received from all of the local education agencies enrolled as EPSDT health services providers.

C. Rates for services provided by local education agencies will be established by dividing total costs related to providing the service, less any federal funds, by the total units of service provided. This will be determined as follows:

1. total costs will consist of salaries, benefits and an allocation of indirect costs;
2. annual salaries and benefits will be obtained each rebasing year for all direct service personnel;
3. indirect costs will be allocated using the unrestricted indirect cost rate calculated by the Department of Education;
4. a time study will be conducted each rebasing year using the random moment sampling methodology. The time study will determine the percentage of time direct service personnel spend on billable services;
5. total costs will be multiplied by the percentage of direct service time to determine the amount of allocable costs;
6. allocable costs will then be multiplied by the Medicaid discount factor for this program;
7. discounted costs will be divided by total units of service billed for the year to determine cost per unit of service;
8. current rates will be inflated and paid as an interim rate. At the end of the first year, costs and time study results will be obtained and rates will be calculated for a representative sample of the school districts. The median of this sample will then be used to set a state-wide rate. The State will then calculate the difference between the calculated state-wide rate time the units billed and compare this to the amount paid to the district during the base year. A retroactive adjustment will then be paid to each district;
9. the state-wide rate will be inflated using wage inflation factors, and become the per unit rate for the year "Base Year Plus 1;" and
10. rebasing will be done at least every three years.

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 31:

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 Ben A. Bearden at the 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.

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

0501#094

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

General Prohibited Behaviors (LAC 22.I:365)

In order for the Department to be in compliance with federal jurisprudence, we must modify the Department's Disciplinary Rules and Procedures for Adult Inmates in light of the holding in *Cassels v. Stalder*, 342 F. Supp. 2d 555. In particular, the case held that Rule 30k was vague and overbroad on its face and as applied. The Administrative Procedures Act, R.S. 49:950, et seq., requires, unless a Rule is promulgated as an emergency rule, a period of approximately one hundred 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 goal of guaranteeing an inmate's constitutional First Amendment right to communicate information and 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, this is an imminent threat to the stability of the Department, which impacts the public health, safety and welfare.

For the foregoing reasons, the Louisiana Department of Public Safety and Corrections has determined that the adoption of an emergency rule for implementation of the amendment to the Disciplinary Rules and Procedures for Adult Inmates, Department Regulation No.B-05-001, is necessary and hereby provides notice of its declaration of emergency. This Emergency Rule shall be in effect on January 20, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedures Act or until adoption of the final Rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter B. Disciplinary Rules and Procedures for Adult Offenders

§365. Disciplinary Rules

A. - X. ...

Y. General Prohibited Behaviors (Schedule B). The following behaviors, which may impair or threaten the security or stability of the unit or well being of an employee, visitor, guest, inmate or their families are prohibited:

1. - 10. ...

11. the communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonable intended to harm, embarrass, or intimidate an employee, visitor, guest, or inmate. This rule shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance;

12. - 23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995). *Cassels v. Stalder*, 342 F. Supp. 2d 555.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:419 (March 2001), amended LR 31:

Richard L. Stalder
Secretary

0501#036

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF Initiatives (LAC 67:III.Chapters 55 and 56)

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 repeal LAC 67:III, Subpart 15, Chapter 55, §§5501, 5509-5513, 5525, 5527, 5533, 5537, 5539, 5547, 5553, 5557, 5567, 5569, 5577 and Chapter 56, Diversion Assistance Program, in its entirety and to adopt §5579, Earned Income Tax Credit as a new TANF Initiative. Additionally, §5541, Court-Appointed Special Advocates, is being amended to remove specific language regarding the TANF partner who will be administering the program and §5561, Child-Parent Enrichment Services Program, is being amended to specify the public awareness portion of this quality child care initiative program. This Emergency Rule effective January 28, 2005, will remain in effect for a period of 120 days. This declaration of emergency is necessary to extend the original Emergency Rule of September 30, 2004, 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 February 2005).

Pursuant to Act 1 of the 2004 Regular Session of the Louisiana Legislature, the agency proposes to repeal several of the TANF Initiatives, as funding is no longer available for these programs. Additionally, §5579 is being adopted to promote a public awareness and training program regarding the benefits of claiming the earned income tax credit and §§5541 and 5561 are being amended as noted above. The authorization for emergency action in this matter is contained in HB 1 of the 2004 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5501. Starting Points Early Childhood Development Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:2265 (December 2001), amended LR 29:715 (May 2003), repealed LR 31:

§5509. Domestic Violence Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:

§5511. Micro-Enterprise Development

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2373 (November 2002), repealed LR 31:

§5513. Post-Release Skills Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 29:715 (May 2003), repealed LR 31:

§5525. Pre-GED/Skills Option Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:501 (March 2004), repealed LR 31:

§5527. Program Evaluation, Comprehensive Needs Assessment, and Training

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 31:

§5533. Transportation Services Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), LR 29:190 (February 2003), repealed LR 31:

§5537. Education and Training

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), repealed LR 31:

§5539. Truancy Assessment and Service Centers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:502 (March 2004), repealed LR 31:

§5541. Court-Appointed Special Advocates

A. OFS shall enter into Memoranda of Understanding to provide services to needy children identified as abused or neglected who are at risk of being placed in foster care or, are already in foster care. Community advocates provide information gathering and reporting, determination of and advocacy for the children's best interests, and case monitoring to provide for the safe and stable maintenance of the children or return to their own home.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 31:

§5547. Housing Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:871 (April 2002), amended LR 28:2374 (November 2002), repealed LR 31:

§5553. Substance Abuse Treatment Program for Office of Community Services Clients (Effective July 1, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:

§5557. Energy Assistance Program for Low-Income Families (Effective July 1, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2375 (November 2002), repealed LR 31:

§5561. Child-Parent Enrichment Services and Public Awareness Program (Effective September 30, 2004)

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to create quality, early childhood education and parenting programs at various sites, such as schools, Head Start Centers, churches, and Class A Day Care Centers to provide children with age-appropriate services during the school year, school holidays, summer months and before-and-after school and to provide parents, legal guardians, or caretaker relatives of children with parenting and adult/family educational services. A Public Awareness Program will develop public education materials for parents, providers, professionals, and interested parties to: promote applications for CCAP; assist providers; encourage eligible

families to apply for services offered through OFS; and educate parents and others who have an interest in children and families about criteria of quality child care and the needs of young children.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing supervised, safe environments for children thus limiting the opportunities for engaging in risky behaviors, and to encourage the formation and maintenance of two-parent families by providing educational services to parents or other caretakers to increase their own literacy level and effectiveness as a caregiver, and to foster positive interaction with their children.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:190 (February 2003), amended LR 31

§5567. Parental Involvement Services Program (Effective September 30, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:

§5569. Alternatives to Abortion Services Program (Effective September 30, 2002)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), repealed LR 31:

§5577. Skills Training for Incarcerated Fathers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004), repealed LR 31:

§5579. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide a public awareness and education regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program. Strategies include collaboration with the IRS and the expansion of existing outreach activities that work in conjunction with free taxpayer assistance.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:

Chapter 56. Diversion Assistance Program (DAP)

§5601. General Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5603. Application Date

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

§5605. Standard Filing Unit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

§5607. Application Time Limit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

§5609. Certification Period and Payment Amounts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2566 (December 2002), repealed LR 31:

§5611. Domestic Violence

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

Subchapter B. Conditions of Eligibility

§5613. Citizenship

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

§5615. Enumeration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

§5617. Living in the Home of a Qualified Relative

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

§5619. Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2567 (December 2002), repealed LR 31:

§5621. Residency

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

§5623. Resources

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

§5625. Work Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

§5627. Job Loss Factors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2568 (December 2002), repealed LR 31:

§5629. Fleeing Felons and Probation/Parole Violators

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:

§5631. Strikers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231, and Act 13, 2002 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2569 (December 2002), repealed LR 31:

Ann Silverberg Williamson
Secretary

0501#079

DECLARATION OF EMERGENCY

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

DROP Interest (LAC 58.I.2715)

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") advertises its intent to amend LAC 58.I.2715, which sets out the manner of calculating interest paid on traditional DROP accounts.

This emergency enactment is necessary to timely calculate and pay interest for traditional DROP participants and is being adopted in identical form through the ordinary promulgation process.

This Rule shall become effective on January 07, 2005, and shall remain in effect for 120 days or until it becomes effective through the normal promulgation process, whichever comes first.

**Title 58
RETIREMENT**

Part I. Louisiana State Employees' Retirement System

Chapter 27. DROP Program

Subchapter C. Withdrawal

§2715. Interest

A. Interest shall not be credited to a participant's subaccount during the period of participation and shall be based on the balance of the account at the end of each month. All amounts which remain credited to the individual's subaccount after termination of participation in the plan, which is not transferred to a self-directed subaccount under R.S. 11:451.1, shall be credited with interest at the end of each plan year at a rate equal to the realized return on the system's portfolio for that plan year as certified by the system actuary in his actuarial report, less one-half of one percent.

B. Plan year shall mean calendar year. The actual posting of interest shall not be performed until the system actuary's report is approved by the Public Retirement Systems Actuarial Committee.

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 22:373 (May 1996), amended LR 31:

Robert L. Borden
Executive Director

0501#054

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2004 Fall Shrimp Season Extension 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 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 or parts of state inside waters by zone, based upon biological and technical data which indicates that marketable shrimp in sufficient quantities are available for harvest, and a resolution adopted by the Wildlife and Fisheries Commission on August 4, 2004 which authorizes the Secretary of the Department of Wildlife and Fisheries to change the closing dates of the 2004 Fall Shrimp Season if biological and technical data indicate the need to do so, the Secretary hereby declares:

That the 2004 Fall Shrimp Season in Shrimp Management Zone 1 shall be extended and will close on December 31, 2004 at official sunset except in the open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307D) which shall remain open until 6:00 a.m., March 31, 2005.

Dwight Landreneau
Secretary

0501#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2005 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 and trip limits 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, 2005 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, 2006, which is the date

expected to be set for the re-opening of the 2006 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.

Wayne J. Sagrera
Vice-Chairman

0501#049

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2005 Recreational Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective midnight October 31, 2004 until 12:01 a.m., April 21, 2005 by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in Louisiana waters. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 2005 recreational red snapper season, it is necessary that emergency rules be enacted.

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 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 sets the

following seasons for recreational harvest of red snapper in Louisiana state waters:

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a.m., April 21, 2005 by reducing the bag limit to zero for that time period. The season will open at 12:01 a.m., April 21, 2005 and continue until midnight October 31, 2005.

The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to close the recreational red snapper season when he is informed by the Regional Administrator of NMFS that the recreational red snapper quota for the Gulf of Mexico has been filled or is projected to be filled.

The commission also hereby authorizes the Secretary to modify the opening and closing dates in State waters if he is notified that the opening and closing of Federal waters are other than those specified in this Declaration of Emergency, and to open an additional recreational red snapper season in Louisiana state waters if he is informed that NMFS has opened an additional recreational season, and to close such season when he is informed that the recreational quota for the Gulf of Mexico has been filled, or is projected to be filled.

Effective with the recreational red snapper season closure, no person, except those who possess a Class 1 or Class 2 commercial red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish and who are legally taking red snapper during an open commercial season, shall possess any red snapper whether taken from within or without Louisiana territorial waters.

Wayne J. Sagrera
Vice-Chairman

0501#052

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2005 Reef Fish (Including Red Snapper) Commercial Seasons

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:

Red snapper commercial seasons: The 2005 seasons for the commercial harvest of red snapper in Louisiana state waters are as follows: the first commercial fishing season for red snapper will open at 12 noon on February 1, 2005, and remain open until 12 noon on February 10. This pattern will continue each month until two-thirds of the 2005 commercial quota for red snapper is harvested. The second commercial red snapper season will open at 12 noon on October 1, 2005, and remain open until 12 noon on October 10, and will also continue in this format each month until the entire 2005 quota is harvested.

The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close the 2005 commercial red snapper seasons in Louisiana state waters when he is informed by the Regional Director of the National Marine Fisheries Service (NMFS) that the designated portions of the commercial red snapper quota for the Gulf of Mexico have been filled, or are projected to be filled, for each set of seasons, and such closure order shall close the season until the date set for the re-opening of the commercial red snapper season in federal waters. All applicable rules regarding red snapper harvest including trip limits, permit requirements, and size limits, established by the Commission shall be in effect during the open seasons hereby established.

The Wildlife and Fisheries Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening and closing dates for the commercial red snapper season in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the Regional Administrator of NMFS requests that the season be modified in Louisiana state waters.

Commercial Seasons for Reef Fish: In addition to the seasons set forth above for the commercial harvest of red snapper, 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 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.

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.

Wayne J. Sagrera
Vice-Chairman

0501#050

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2005 Shrimping Closure State Outside Waters

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 longitude 92° 18' 33" W to the eastern shore of Belle Pass at latitude 29° 05' 07" N and longitude 90° 13' 30" W. This closure is effective at 6 a.m., Monday, January 10, 2005.

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.

Wayne J. Sagera
Vice-Chairman

0501#051