

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agro-Consumer Services
Office of the Commissioner

Chloramphenicol in Crabs and Crabmeat Testing and Sale
(LAC 7:XXXV.143 and 145)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of crab or crabmeat in Louisiana. These Rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in crab or crabmeat that are consistent with standards adopted by the FDA regarding Chloramphenicol in foods. All crab or crabmeat sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, FDA, the states of Alabama and Louisiana have found Chloramphenicol in crab or crabmeat imported from other countries. The department has found Chloramphenicol in crab or crabmeat imported from Vietnam, Thailand and China. The possibility exists that other countries may export Chloramphenicol-contaminated crab or crabmeat to the U.S.A.

The sale of such imported crab or crabmeat in Louisiana will expose Louisiana's citizens, including unborn children

and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of crab or crabmeat containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying crab or crabmeat from any source, including Louisiana. If consumers cease to buy, or substantially reduce, their purchases of Louisiana crab or crabmeat then Louisiana's crab industry will be faced with substantial economic losses. Any economic losses suffered by Louisiana's crab industry will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of crab or crabmeat for Chloramphenicol, to provide for the sale of crab or crabmeat and any products containing crab or crabmeat that are not contaminated with Chloramphenicol. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§143. Chloramphenicol in Crab and Crabmeat

Prohibited; Testing and Sale of

A. Definitions

Crab Any such animals, whether whole, portioned, processed, shelled, and any product containing any crab or crabmeat.

Food Producing Animals Both animals that are produced or used for food and animals, such as seafood, that produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Packaged Crab Any crab or crabmeat, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

B. No crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana if such crab or crabmeat contains Chloramphenicol.

C. No crab or crabmeat that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No crab or crabmeat from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such

animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Crab or crabmeat that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of crab or crabmeat that are in lots of fifty pounds or less.

ii. Four samples are to be taken of crab or crabmeat that are in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of crab or crabmeat that are in lots of one hundred and one pounds up to fifty tons.

iv. Twelve samples for each fifty tons are to be taken of crab or crabmeat that are in lots of over fifty tons.

b. For packaged crab or crabmeat, each sample shall be at least six ounces, (170.1 grams), in size and shall be taken at random throughout each lot of crab or crabmeat. For all other crab or crabmeat, obtain approximately one pound, (454 grams), of crab or crabmeat per sample from randomly selected areas.

c. If the crab or crabmeat to be sampled consists of packages of crab or crabmeat grouped together, but labeled under two or more trade or brand names, then the crab or crabmeat packaged under each trade or brand name shall be sampled separately. If the crab or crabmeat to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of crab or crabmeat. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of crab or crabmeat up to and including one pound, use the entire sample. Shell the crabs,

exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the crab or crabmeat being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the crab or crabmeat.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such crab or crabmeat sent to each location in

Louisiana or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring crab or crabmeat that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such crab or crabmeat in Louisiana shall be responsible for having such crab or crabmeat sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any crab or crabmeat if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the crab or crabmeat will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the crab or crabmeat retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the crab or crabmeat are certified as being free of Chloramphenicol.

I. The department may inspect, and take samples for testing, any crab or crabmeat, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any crab or crabmeat that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

K. The department may take physical possession and control of any crab or crabmeat that violate the requirements of this Section if the commissioner finds that the crab or crabmeat presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:
 - a. the countries of Vietnam, Thailand, Mexico, Malaysia and China.
2. All crab and crabmeat harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of crabs or crabmeat or any food containing crab or crabmeat shall be maintained for two years and shall be open to inspection by the department.

NP. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is March 14, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

§145. Labeling of Foreign Crab and Crabmeat by Country of Origin

A. Definitions

Crab or Crabmeat Any crab or crabmeat, whether whole, portioned, processed or shelled and any product containing any crab or crabmeat.

Foreign Crab or Crabmeat Any crab or crabmeat, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

B. All foreign crab or crabmeat, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign crab or crabmeat, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the crab or crabmeat with the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such crab or crabmeat are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign crab or crabmeat are combined with domestic crab or crabmeat, or products made from or containing domestic crab or crabmeat, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign crab or crabmeat.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign crab or crabmeat, or any sign advertising such foreign crab or crabmeat for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the crab or crabmeat, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the crab or crabmeat is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the crab or crabmeat is a product of the United States in a legible, indelible and permanent manner. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," "American," or the letters "U.S.A.," or any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign crab or crabmeat shall not have to be marked or labeled with the country of origin if such crab or crabmeat is included as components in a product manufactured in the United States and the crab or crabmeat is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, portioning, shelling, processing, peeling, partially cooking or combining with domestic crab or crabmeat shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of crab or crabmeat mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#003

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services Office of the Commissioner

Chloramphenicol in Honey Testing and Sale (LAC 7:XXXV.141)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of honey in Louisiana. These Rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The commissioner has promulgated these Rules and regulations to implement standards relating to Chloramphenicol in honey that are consistent with standards adopted by the FDA regarding Chloramphenicol in foods. All honey sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, including bees (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and

Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, Canada, the United Kingdom, the European Union, and Japan have found Chloramphenicol in honey imported from China. The department has found Chloramphenicol in honey imported from Thailand. Preliminary test results from Canada indicate about 80 percent of the samples are positive for Chloramphenicol. The possibility exists that other countries may export Chloramphenicol-contaminated honey to the U.S.A., either by diversion of Chinese honey or their own use of Chloramphenicol.

The sale of such honey in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of honey containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying honey from any source, including Louisiana honey. If consumers cease to buy, or substantially reduce, their purchases of Louisiana honey then Louisiana honey producers will be faced with substantial economic losses. Any economic losses suffered by Louisiana's honey producers will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, including bees, which produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Honey Any honey, whether raw or processed.

B. No honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana if such honey or food containing honey contains Chloramphenicol.

C. No honey that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, including bees, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No honey from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, including bees or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals, including bees, in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Honey that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, including bees, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of honey that is in lots of fifty pounds or less.

ii. Four samples are to be taken of honey that is in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of honey that is in lots of one hundred and one pounds up to fifty tons.

b. For honey in bulk wholesale containers, each sample shall be at least one pound or twelve fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least eight ounces in size and shall be taken at random throughout each lot.

d. If the honey to be sampled consists of packages of honey grouped together, but labeled under two or more trade or brand names, then the honey packaged under each trade or brand name shall be sampled separately. If the honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

e. A composite of the samples shall not be made. All samples shall be delivered to the lab. Each sample shall be clearly identifiable as belonging to a specific group of honey and shall be tested individually.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of honey up to and including eight ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results above 1 ppb must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless it is located in a geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the honey or food containing honey being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the honey.

8. Upon the department's actual receipt of a copy of the certified test results and written documentation required

to accompany the certified test results, the honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment of such honey or food containing honey, and be attached to the documentation submitted with every shipment sent to each location in Louisiana, or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring honey, or any food containing honey, that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such honey or food containing honey in Louisiana shall be responsible for having the honey, sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any honey if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. If any certified test results are rejected by the commissioner then any person shipping or holding the honey or food containing honey will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, any such person shall abide by such order until the commissioner lifts the order in writing. Any such person may have the honey retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the honey is certified as being free of Chloramphenicol.

I. The department may inspect any honey and any food containing honey, found in Louisiana, and take samples for testing.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements of this Section. Any such order shall remain in place until lifted, in writing, by the commissioner.

K. The department may take physical possession and control of any honey or any food containing honey that violate the requirements of this Section if the commissioner finds that the honey or food containing honey presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals, in certain geographic area(s).

1. The geographic area or areas are:
 - a. the country of the People's Republic of China;
 - b. the country of Thailand.
2. All honey harvested from or produced, processed or packed in any of the above listed geographic areas are

hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of honey or any food containing honey shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#002

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agro-Consumer Services Office of the Commissioner

Chloramphenicol in Shrimp and Crawfish Testing and Sale
(LAC 7:XXXV.137 and 139)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of shrimp and crawfish in Louisiana and the labeling of foreign shrimp and crawfish. These rules are being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the emergency rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The Louisiana Legislature, by SCR 13 of the 2002 Regular Session, has urged and requested that the Commissioner of Agriculture and Forestry require all shrimp and crawfish, prior to sale in Louisiana, meet standards relating to Chloramphenicol that are consistent with those standards promulgated by the United States Food and Drug Administration, (FDA). The legislature has also urged and requested the commissioner to promulgate rules and regulations necessary to implement the standards relating to Chloramphenicol in shrimp and crawfish that are consistent with those standards promulgated by the FDA, and which rules and regulations require all shrimp and crawfish sold in Louisiana to meet the standards adopted by the commissioner, prior to sale.

Chloramphenicol is an antibiotic the FDA has restricted for use in humans only in those cases where other antibiotics or medicines have not been successful. The FDA has banned the use of Chloramphenicol in animals raised for food production {see 21 CFR 522.390(3)}. The FDA has set a zero tolerance level for Chloramphenicol in food.

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy.

Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, European Union inspectors found Chloramphenicol residues in shrimp and crawfish harvested from and produced in China. The inspectors also found "serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field," which may contribute to Chloramphenicol residues in Chinese shrimp and crawfish. The Chinese are known to use antibiotics, such as Chloramphenicol, in farm-raised shrimp. They are also known to process crawfish and shrimp harvested in the wild in the same plants used to process farm-raised shrimp.

The European Union, in January of this year, banned the import of shrimp and crawfish from China because Chloramphenicol has been found in shrimp and crawfish imported from China. Canada has, this year, banned the import of shrimp and crawfish that contain levels of Chloramphenicol above the level established by Canada. Between 1999 and 2000 imports of Chinese shrimp to the United States doubled, from 19,502,000 pounds to 40,130,000 pounds. With the recent bans imposed by the European Union and Canada there is an imminent danger that the shrimp and crawfish that China would normally export to the European Union and Canada will be dumped and sold in the United States, including Louisiana.

The sale of such shrimp and crawfish in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of shrimp and crawfish containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare.

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

Consumers of shrimp and crawfish cannot make an informed decision as to what shrimp or crawfish to purchase and the commissioner cannot adequately enforce the regulations regarding the sampling and testing of shrimp and crawfish unless shrimp and crawfish produced in foreign countries are properly labeled as to the country of origin.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of shrimp and crawfish for Chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with Chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or

packed in countries other than the United States. These Rules become effective upon signature and will remain in effect 120 days, unless renewed by the commissioner or until permanent Rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§137. Chloramphenicol in Shrimp and Crawfish

Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals Both animals that are produced or used for food and animals, such as dairy cows, that produce material used as food.

Geographic Area A country, province, state, or territory or definable geographic region.

Packaged Shrimp or Crawfish Any shrimp or crawfish, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

Shrimp or Crawfish Any such animals, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana if such shrimp or crawfish contain Chloramphenicol.

C. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana without being accompanied by the following records and information, written in English.

1. The records and information required are:

- a. the quantity and species of shrimp and crawfish acquired or sold;
- b. the date the shrimp or crawfish was acquired or sold;
- c. the name and license number of the wholesale/retail seafood dealer or the out-of-state seller from whom the shrimp or crawfish was acquired or sold;
- d. the geographic area where the shrimp or crawfish were harvested;
- e. the geographic area where the shrimp or crawfish was produced processed or packed;
- f. the trade or brand name under which the shrimp or crawfish is held, offered or exposed for sale or sold; and
- g. the size of the packaging of the packaged shrimp or crawfish.

2. Any person maintaining records and information as required to be kept by the Louisiana Department of Wildlife & Fisheries in accordance with R.S. 56:306.5, may submit a copy of those records, along with any additional information requested herein, with the shrimp or crawfish.

3. Any shrimp or crawfish not accompanied by all of this information shall be subject to the issuance of a stop-sale, hold or removal order until the shrimp or crawfish is tested for and shown to be clear of Chloramphenicol, or the commissioner determines that the shrimp or crawfish does not come from a geographic area where Chloramphenicol is being used on or found in food producing animals, or in products from such animals.

D. No shrimp or crawfish that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where

Chloramphenicol is being used on or found in food producing animals, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection F.

E. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

F. Shrimp or crawfish, that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of shrimp or crawfish that are in lots of fifty pounds or less.

ii. Four samples are to be taken of shrimp or crawfish that are in lots of fifty-one to one hundred pounds.

iii. Twelve samples are to be taken of shrimp or crawfish that are in lots of one hundred and one pounds up to fifty tons.

iv. Twelve samples for each fifty tons are to be taken of shrimp or crawfish that are in lots of over fifty tons.

b. For packaged shrimp or crawfish, each sample shall be at least eight ounces (226.79 grams) in size and shall be taken at random throughout each lot of shrimp or crawfish. For all other shrimp or crawfish, obtain approximately one pound (454 grams) of shrimp or crawfish per sample from randomly selected areas.

c. If the shrimp or crawfish to be sampled consists of packages of shrimp or crawfish grouped together, but labeled under two or more trade or brand names, then the shrimp or crawfish packaged under each trade or brand name shall be sampled separately. If the shrimp or crawfish to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of shrimp or crawfish. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;

- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. For small packages of shrimp or crawfish up to and including one pound, use the entire sample. Shell the shrimp or crawfish, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the shrimp or crawfish being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the shrimp or crawfish.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the shrimp or crawfish may be held, offered or exposed for sale, or sold in

Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such shrimp or crawfish sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

G. Any person who is seeking to bring shrimp or crawfish that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such shrimp or crawfish in Louisiana shall be responsible for having such shrimp or crawfish sampled and tested in accordance with Subsection F. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

H. The commissioner may reject the test results for any shrimp or crawfish if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

I. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the shrimp or crawfish will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the shrimp or crawfish retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the shrimp or crawfish are certified as being free of Chloramphenicol.

J. The department may inspect, and take samples for testing, any shrimp or crawfish, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

K. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any shrimp or crawfish that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

L. The department may take physical possession and control of any shrimp or crawfish that violate the requirements of this Section if the commissioner finds that the shrimp or crawfish presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

M. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:
 - a. the country of the People's Republic of China.
2. All shrimp and crawfish harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

N. The records and information required under this Section shall be maintained for two years and shall be open to inspection by the department.

O. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

§139. Labeling of Foreign Shrimp and Crawfish by Country of Origin

A. Definitions.

Foreign Shrimp or Crawfish Any shrimp or crawfish, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

Shrimp or Crawfish Any shrimp or crawfish, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. All foreign shrimp or crawfish, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign shrimp or crawfish, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the shrimp or crawfish the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such shrimp or crawfish are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign shrimp or crawfish are combined with domestic shrimp or crawfish, or products made from or containing domestic shrimp or crawfish, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign shrimp or crawfish.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign shrimp or crawfish, or any sign advertising such foreign shrimp or crawfish for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the shrimp or crawfish, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the shrimp or crawfish is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the shrimp or crawfish is a product of the United States in a legible, indelible and permanent manner. No provision of

this Section is intended to or is to be construed as authorizing the use of the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign shrimp or crawfish shall not have to be marked or labeled with the country of origin if such shrimp or crawfish are included as components in a product manufactured in the United States and the shrimp or crawfish is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, de-heading, de-veining, peeling, partially cooking or combining with domestic shrimp or crawfish shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of shrimp or crawfish mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0502#001

DECLARATION OF EMERGENCY
Department of Environmental Quality
Office of Environmental Assessment

Expedited Penalty Agreement
(LAC 33:I.801, 803, 805, and 807)(OS054E4)

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 OS054E3, which was effective on January 7, 2005, and published in the *Louisiana Register* on January 20, 2005, is hereby rescinded. This Emergency Rule, OS054E4, retains the amendments in OS054E3 and adds two underground storage tank 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 February 10, 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 OS054E4 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 **C**a 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 **C**a 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
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
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

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
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

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
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

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
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)

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
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

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
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 meet the performance requirements when performing release detection required in LAC 33:XI.703	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
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
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	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

0502#056

DECLARATION OF EMERGENCY

Office of the Governor Boxing and Wrestling Commission

Boxing and Wrestling Emergency
Medical Technician Requirement
(LAC 46:XI.101 and 115)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and adopts the following Rule. This Emergency Rule is necessary to promote the safety and welfare of those in the professions governed by this commission. This Emergency Rule provides for the availability of an ambulance and duly licensed EMT with resuscitation equipment during bouts.

This Emergency Rule is effective January 14, 2005, and is to remain effective for a period of 120 days or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§101. Definitions

* * *

Emergency Medical Technician (EMT) **Ca** duly registered and state certified emergency medical services professional pursuant to LAC 46:XXXVIII.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§115. Medical Equipment Required

A. There shall be an ambulance no further than 300 feet from the ring and duly licensed EMT's or paramedics with appropriate resuscitation equipment no further than 100 feet away from the ring at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Anthony L. Embanato, Jr.
Chairman

0502#008

DECLARATION OF EMERGENCY

Office of the Governor
Boxing and Wrestling Commission

Boxing and Wrestling Standards
(LAC 46:XI.Chapters 1, 3 and 5)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and adopts the following Rule. This Emergency Rule is necessary to prevent the lost of tax revenues resulting from locations rebroadcasting television related events and wrestling promoters/producers scheduling of events and to promote the safety and welfare of commission and ring officials and to move rules to show correct placement, repeal rules which are not in effect and to join with all sanctioning bodies that have now adopted the *Uniform Rules of Boxing* for championship bouts.

This Emergency Rule is being promulgated to continue the provisions contained in the December 9, 2004 Emergency Rule (*Louisiana Register*, Volume 30, Number 12). This Emergency Rule is effective starting February 11, 2005, for a period of 120 days or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§101. Definitions

* * *

Exhibition **Ca** boxing, kickboxing or martial arts engagement in which the boxers, kickboxers or martial arts contestants show or display their skill without necessarily striving to win. This definition excludes wrestling, pursuant to R.S. 4:75 and 76.

* * *

Physician **Ca** a person possessing a doctor of medicine (allopathic/M.D.), doctor of osteopathy or doctor of osteopathic medicine degree (osteopathic/D.O.) or an equivalent degree duly awarded by a medical or osteopathic educational institution approved by the commission.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§102. Annual License Fees

A. The following is a scale of fees for licensees.

1. Promoters	\$500
2. Matchmakers	\$500
3. Referees	\$ 25
4. Managers	\$ 25
5. Announcers	\$ 25
6. Professional boxers	\$ 25
7. Seconds	\$ 25
8. Professional wrestling contestants	\$ 25
9. Event coordinator	\$500
10. Other licenses	\$ 25

B. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§117. Permit

A. No contracts will be recognized or considered valid unless filed with the commission and until a permit is issued for the event by the commission. A permit fee of \$250 for a non-television show and a permit fee of \$2,000 for a television show may be required by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§119. Deposits: Closed Circuit and Pay-Per-View Television Rebroadcasting

A. All locations rebroadcasting television related events, may be required to deposit a maximum of \$1,000, in advance for expenses and taxes. *Location* in this particular rule meaning any casino, public auditorium, hotel or civic center. Money, less taxes and expenses, will be refunded by the commission to producer if taxes collected do not equal amount deposited. If taxes exceed the deposit, then the commission will proceed with collecting taxes as outlined in Revised Statute 4:67. Sports bars with a 250 person capacity

or less will be required to purchase a permit for \$100; sports bars with a 400 person capacity or less will be required to purchase a permit for \$200; over 400 person capacity a promoters license is required. If sports bars are part of a location, as defined in this rule, then the same rule will apply as a location. Five percent taxes will apply as indicated in Revised Statute 4:67. Complimentary passes or tickets are taxable if ticket prices are outlined in the television contract or advertised and sold at a specified price. The capacity of a location will be determined by the state/local fire marshal's office. Locations are required to obtain a promoters license from the commission; sports bars with a capacity of less than 400 are exempt from purchasing a promoters license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§121. Hold Harmless and Indemnity Agreement

A. All individuals, except the members of the commission, acting in any official capacity for any event(s) sanctioned by the commission shall be required to execute the Hold Harmless and Indemnity Agreement of the commission, prior to receiving any assignment from the commission. This shall be in addition to the agreement as set forth in the license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§123. Ringside Physicians

A. The ringside physicians shall be stationed at places designated by the commission.

B. The ringside physician may terminate any contest or exhibition at any time if in the opinion of such physician the health or well-being of any participant would be significantly jeopardized by continuation of the contest or exhibition. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommended further treatment or hospitalization if required, and fully report the entire matter to the commission within 24 hours, and thereafter, as required by the commission. Such physician may also require that the injured participant and his or her manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable.

C. Any contrary provisions of these rules notwithstanding, the ringside physician may enter the ring during the progress of a bout at any time to fulfill his or her official duties. A ringside physician desiring to enter the ring for this purpose shall first signal the referee of his or her intention, upon which the referee shall stop the progress of the bout by signaling the timekeeper. At any time during the progress of a bout, the referee may stop the progress of the bout by signaling the timekeeper, and require the ringside physician to enter the ring to examine a participant. Nothing herein shall be deemed to prohibit the ringside physician from entering the ring to examine any contestant during the rest periods, with or without invitation from the referee.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996),

repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§125. Event Approval

A. A member of the Louisiana Boxing and Wrestling Commission, including the chairman, may not legally and/or officially authorize and/or give approval to any television network, corporation, limited liability company, promoter, match-maker or any other entity, private or corporate, for any major event date and site selection, without the prior approval of a majority of the commission members voting in favor. *Major Event* in this rule means any boxing, kick-boxing or wrestling (WCW, WWF, etc.) contests that the state of Louisiana authorizes this commission to sanction. Minor local wrestling shows may be excluded from this rule. (Local area commissioners should coordinate these shows through the deputy commissioners and chairman, once they are made aware of such events.)

B. Once a commissioner is contacted by a promoter, he must advise the promoter that a typewritten request on official letterhead must be submitted to the chairman by mail or facsimile. In the request disclosure must be made regarding the venue (television contracts, promoter, matchmaker, number of bouts, bout contracts, arena contracts, sanctioning bodies, ticket information, etc.) After date and site selection is approved, full disclosure of all venue information must be submitted no later than two weeks prior to the event.

C. Once an official request is made, the chairman must call a meeting to approve or reject the request. A quorum, according to state statute, must be present to approve or reject such requests. An emergency meeting will not be necessary, if the time table is such, that the request may be discussed at the regular scheduled commission meeting.

D. The commission may demand that all monies relative to boxing venues be placed in escrow in the commission treasury. Monies in this rule means fighters purses and ring officials (referees, timekeepers, inspectors, physicians, judges, etc.) expenses. All ring officials pay will be predetermined and coordinated through the commission with the promoter. The ring officials will be paid by commission checks the same day or night before the start of the first bout. If the commission required fighters' purses to be placed in escrow then the fighters also will be paid by commission checks, less any expenses due the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S.4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§127. Charity Events

A. Permission to hold charity events must be obtained from the commission.

1. If expenses for the event are to be deducted from the proceeds, then a report estimating the expenses to be incurred shall be presented to the commission 21 days prior to the event for approval. The report shall contain an expense limit to be incurred for the event.

2. A final report showing the actual expenses incurred along with the amount of donated proceeds must be submitted to the commission no later than 7 days after the event.

3. A receipt from the charitable organization must be included in the final report to the commission.

B. Shows advertised as charity events must announce in advance in the public press what contribution will be for charity and for what particular charity and this money must be paid before other expenses are deducted.

C. Should the entire proceeds, (except actual expenses) be given to charity, then this fact must be published. A complete report of all expenses and the actual amount turned over to charity must be available for the press on the day following the exhibition.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§129. Tickets and Sale of Tickets

A. All tickets shall have a number, price and date printed or stamped plainly on the face of the ticket as well as the stub retained by the ticket holder. Any ticket sold or deposited in the ticket box that is not printed or stamped plainly with a price on the face of the ticket will be counted, for tax purposes, at a value or price of the highest price ticket sold for the event.

B. Tickets of different prices shall be printed or stamped on heavy paper of different colors. Use of passout tickets is prohibited unless the club receives written permission from the commission to use them.

C. Under no circumstances shall a ticket holder be passed through the gate without having the ticket separated from the stub, or be allowed to occupy a seat unless in possession of the ticket stub. The ticket taker at the door shall separate the ticket from the stub and deposit the ticket in the sealed box provided by the commission or the commission representative.

D. The commission or the commission representative shall check numbers and places of ticket boxes at the gates and cause them to be sealed and after the event, have them opened and tickets counted under his supervision.

E. The commission may approve the use of roll tickets. No advance sale of roll tickets shall be permitted. Each roll must be numbered and priced according to the color of the roll. The commission or representative of the commission must be informed of the price of the tickets before they can be sold. The starting ticket number of each roll must be recorded by the commission or the commission representative.

F. Promoters shall provide complimentary tickets or official passes to the commission for attendance of commissioners and commission staff to efficiently conduct commission business for the presentation of a good show. If necessary 30 complimentary tickets or passes will be provided.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:73.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§131. Penalties and Sanctions

A. Anyone licensed and/or subject to the authority of the commission, who violates any of the rules and regulations of the commission as set forth in title, parts and chapters, shall be subject to such sanctions as imposed by the commission which may result in fines, suspensions and revocations of licenses to be determined by the commission pursuant to the laws of the state of Louisiana and the authority of the commission vested to the commission by those laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 31:

§133. Unauthorized Matchmakers, Promoters, Managers

A. Anyone under the authority of the commission who deals with undercover matchmakers, promoters or managers of anyone not licensed by the commission shall be suspended by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§135. Safety

A. Licensed clubs shall take all necessary precautions looking toward safety, order and proper behavior.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Chapter 3. Professional Boxing

§134. Prohibited Ring Official Assignments

A. A ring official domiciled in the state of Louisiana shall not accept an assignment in the United States or its possessions that is not sponsored, sanctioned, approved or supervised by the commission, another official state commission, or a member of the Association of Boxing Commissions. *Official State Commission*, in this rule, meaning a commission domiciled and coming under the jurisdiction and regulatory powers of their state or United States possession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§135. Judges and Referees

A. - B.2. ...

C. The referee is the sole arbiter of a bout and is the only individual authorized to stop a contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D. R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996),

amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§317. Judging Methods and Procedures

A. Scoring

1. - 1.d. ...

2. It is also noted that sportsmanship should be taken into consideration by the judges and the condition of the boxer at the end of the bout. The items listed do not have the same scoring value. Clearly, a man who hits his opponent and is aggressive throughout the contest is entitled to more credit than the one who is merely defensive and shows ring generalship. If the referee or the commission shall decide, at any time, that either contestant did not enter into a contest in good faith, or if the commission or referee discovers, at any time, that either or both contestants are not performing their part in good faith, or is guilty of any foul tactic, or of faking, or of violating any rule of the commission, the referee or commission may stop the contest. The referee may stop the contest when either contestant shows marked superiority or is apparently outclassed. If a contestant is knocked down, or falls through weakness, he must get up unassisted within 10 seconds. The referee shall count off the seconds. If the contestant attempts to get up, and goes back down, the count shall be continued by the referee where he left off. During the count, the opponent shall go to the farthest neutral corner and remain there. Should the opponent refuse to do so, or leave the farthest neutral corner, the referee may stop counting. Upon compliance by the opponent, however, the referee shall continue counting where he left off. If a contestant, who has fallen out of the ring during a contest, fails to return immediately, the referee shall count him out as if he were "down" allowing 20 seconds. In every round but the last round of a bout, should a boxer be down at the time the bell rings ending the round, the count shall continue until the boxer gets up or is counted out. The termination of the bout is at the discretion of the referee and/or the ring physician. Should a contestant leave the ring during the one-minute period between rounds, and fail to be in the ring when gong rings to resume boxing, the referee shall declare his opponent the winner. A contestant shall be deemed "down" when:

a. any part of his body other than his feet is on the floor;

b. or he is hanging helplessly over the ropes;

c. or he is rising from a "down" position.

3. Answering the Bell. Should a contestant finish any one round of a contest and fail to answer the bell for the succeeding round for any one of numerous reasons, such as cuts, injuries or admission of overwhelming superiority, the proper termination of the bout is by a technical knockout in the round for which he fails to answer the bell. For instance, both contestants have finished round 6. One of them fails to answer the bell for round 7, or indicates to the referee that he will not answer the bell. It is a "TKO-7." Indeed the man should be regarded as technically counted out while seated in his corner just as though the bell sounded for the seventh round. Certainly he completed round 6 and cannot, therefore, be charged with a loss in the sixth. Boxers suffering a knockout or a technical knockout will automatically be suspended for a minimum period of 30 days. Any violation of this rule jeopardizes the welfare of the boxer. No boxer

will be reinstated in less than 30 days unless investigated and specifically authorized by the commission or commission physician.

B. In the event a boxer has been knocked down the referee shall order such boxer's opponent to a neutral corner and commence a count of eight and such mandatory eight count after knockdowns is standard procedure in all bouts. Upon completion of said eight count the referee shall determine whether such boxer is able to continue.

C. There is no standing eight count.

D. When a boxer loses his mouthpiece, the referee shall call time as soon as possible and instruct such boxer's seconds to promptly wash or replace such boxer's mouthpiece and re-install same. If a referee determines that a boxer has deliberately spit out his mouthpiece for any reason, the referee shall issue a warning for the first such infraction and instruct the judges at the end of the round following a second such infraction to deduct one point from their scores for such boxer for that round. A boxer may be disqualified for deliberately spitting out his mouthpiece for the third time in any one round and his opponent declared the winner.

E. At the end of each round, each judge shall mark his or her scorecard in ink or indelible pencil with the score of each boxer in such round, and shall deliver the scorecard to the referee, who shall in turn deliver the scorecard of all judges to the commission.

F. At the conclusion of a contest or exhibition, except a contest or exhibition which has been concluded by knockout, technical knockout or disqualification, the commission shall tally the total points awarded to each participant and inform the announcer of the decision of the three judges.

G. The announcer shall announce the decision of the judges from the ring, and in the main events, the announcer shall call out the total points awarded by each judge. The boxer who has more points on the scorecard of the official is the winner on that judge's scorecard. The boxer who has been awarded the decision on at least two of the three judge's scorecard is the winner of the bout. In the event that neither boxer has been awarded the decision on at least two of the three judge's scorecard the decision shall be a draw, majority draw and all other possibilities.

H. The judges shall score a knockdown in any one round in a manner which is consistent with §317.A.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D, R.S.4:64, R.S. 4:76 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§318. Rounds, Duration and Intermission

A. Rounds shall be a minimum of 180 seconds long and 120 seconds long for female boxers.

B. There shall be a 60-second intermission between rounds, unless otherwise directed or authorized by the commission. The referee, at the request of the ringside physician, may extend this intermission, if necessary to examine a participant, for up to 30 additional seconds.

C. Each championship contest will be scheduled for 12 rounds, 180 seconds long, and a 60 second rest period.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§321. Fouls, Deductions of Points Because of a Foul and Accidental Fouling

A. - A.17. ...

B. If a contestant fouls his opponent during a contest or commits any other infraction, the referee may penalize him by deducting points from his score, whether or not the foul or infraction was intentional. The referee may determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul or infraction and its effect upon the opponent. Point deductions for intentional fouls are mandatory.

C. If an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately, the boxer causing the injury shall lose by disqualification.

D. If an intentional foul causes an injury, and the injury results in the bout being stopped in a later round, the injured boxer will win by a technical decision if he is ahead on the score cards or the bout will result in a technical draw if the injured boxer is behind or even on the score cards.

E. If a boxer injures himself while attempting to intentionally foul his opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

F. When the referee determines that it is necessary to deduct a point or points because of a foul or infraction, he shall warn the offender of the penalty to be assessed.

G. The referee shall, as soon as practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the contestant.

H. Any point or points to be deducted for any foul or infraction must be deducted in the round in which the foul or infraction occurred, and may not be deducted from the score of any subsequent round.

I. Accidental Foul

1. If a bout is stopped because of an accidental foul, the referee shall determine whether the boxer who has been fouled can continue or not. If the boxer's chance of winning has not been seriously jeopardized as a result of a foul, the referee may order the bout continued after a reasonable interval. Before the bout begins again, the referee shall inform the commission's representative of his determination that the foul was accidental.

2. If the referee determines that the bout may not continue because of an injury suffered as the result of an accidental foul, the bout will result in a no decision if stopped before four completed rounds.

3. If an accidental foul renders a contestant unable to continue the bout after four completed rounds have occurred the bout will result in a technical decision awarded to the boxer who is ahead on the score cards at the time the bout is stopped.

a. After the fourth round has been completed, partial or incomplete rounds shall be scored.

b. However, any point deduction(s) occurring during this partial round will be deducted from the score of the completed rounds.

J. If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the bout.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S.4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§335. Compensation of Officials

A. All officials that participate in an event sanctioned by the commission, shall be compensated by the promoters/producers. The amount compensated will be pre-determined, prior to the event, between the commission and the promoter/producer. Officials, in this rule, not to include the commission or physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

Chapter 5. Professional Wrestling

§523. Wrestling Booking Agent

Repealed (Reserved).

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§525. Wrestling Promoters

Repealed (Reserved).

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

§527. Application of Professional Boxing Rules

A. The following conditions specifically described in the professional boxing rules also apply to professional wrestling: appearance, weight, the fulfilling of contracts, ring introductions, acceptance of decision, managers, timekeepers, physicians, seconds, coaching, clothing worn by attendants, ring equipment, water bottles and buckets, betting, and notifying men before the contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:

A.L. "Buddy" Embanato, Jr.
Chairman

0502#064

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Corrupt and Prohibited Practices (LAC 35:I.1720)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to amend this Rule to lower the post-race allowable levels of, and provide for pre-race testing of TCO₂ (total dissolved carbon dioxide), which is consistent with other racing jurisdictions.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1720. Total Dissolved Carbon Dioxide Testing

A. - B.1. ...

2. Blood samples for TCO₂ may be drawn prior to or after the race. Samples drawn after the race shall not be drawn earlier than 90 minutes following official post time. Samples drawn pre-race shall be drawn prior to the official post time.

3. The pre- or post-race TCO₂ level in the blood shall not exceed 36.0 milliequivalents per liter (mEq/L).

4. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 26:1992 (September 2000), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 31:

Charles A. Gardiner III
Executive Director

0502#012

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

**Human Recombinant Erythropoietin and/or Darbepoietin
(LAC 35:I.1716)**

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to adopt this Rule to prohibit the use and presence of human recombinant erythropoietin and/or darbepoietin in race horses.

Title 35

HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1716. Human Recombinant Erythropoietin and/or Darbepoietin

A. The possession and/or use of human recombinant erythropoietin and/or darbepoietin is strictly prohibited, and shall be classified as an RCI Category I substance. Every horse eligible to race in Louisiana is subject to random testing for these and other substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 31:

Charles A. Gardiner III
Executive Director

0502#014

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Vesting of Title; Tests (LAC 35:XI.9913)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., amends the following Emergency Rule effective January 24, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. The Louisiana State Racing Commission finds it necessary to amend this Rule to provide for consequences of positive tests for equine infectious anemia and/or the presence of erythropoietin and/or darbepoietin antibodies in race horses being claimed.

Title 35

HORSE RACING

Part XI. Claiming Rules and Engagements

Chapter 99. Claiming Rule

§9913. Vesting of Title; Tests

A. Title to a claimed horse shall be vested in the successful claimant at the time the horse becomes a starter. The successful claimant shall then become the owner of the horse whether alive or dead, sound or unsound, or injured at any time after leaving the starting gate, during the race or after.

B. The successful claimant may request on the claim blank at the time he makes his claim that the horse be tested for the presence of equine infectious anemia via a Coggins test and/or erythropoietin and/or darbepoietin antibodies.

1. Should the test for equine infectious anemia prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana.

2. Should the test for recombinant erythropoietin and/or darbepoietin antibodies prove positive, it shall be cause for a horse to be returned to his previous owner and barred from racing in the state of Louisiana until such time as the horse tests negative.

C. Additionally, if such erythropoietin and/or darbepoietin antibody positive result is found, the claimant, claimant's trainer or claimant's authorized agent shall have 48 hours in which to request the claim be declared invalid, such request to be made in writing to the stewards.

D. The expense of the tests and the maintenance of the horse during the period requested for the tests shall be absorbed by the successful claimant.

E. If such tests are requested the claimed horse will be sent to the retention barn of the Louisiana State Racing Commission where the state veterinarian will draw blood samples.

1. Blood samples drawn to test for equine infectious anemia shall be sent to a laboratory approved by the Louisiana Livestock Sanitary Board for the conduct of such test.

2. Blood samples drawn to detect by immunoassay the antibody to recombinant erythropoietin and/or darbepoietin shall be sent to the Louisiana State Racing Commission's state chemist.

F. Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin and/or darbepoietin was present in the sample taken from that horse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), amended LR 3:42 (January 1977), LR 4:285 (August 1978), LR 5:136 (June 1979), by the Office of the Governor, Division of Administration, Racing Commission, LR 30:1476 (July 2004), LR 31:

Charles A. Gardiner III
Executive Director

0502#013

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Nursing

Licensure as Advanced Practice Registered Nurse (LAC 46:XLVII.4507)

The Louisiana State Board of Nursing in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted the board by R.S. 37:918 et seq., R.S.37:920 adopts the following Emergency Rule effective January 20, 2005, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

This Rule is being adopted on an emergency basis to diminish the potential disruption to Advanced Practice Registered Nurse (APRN) services in the state. This Rule provides for technical changes regarding the restructuring of Licensure requirements for APRNs; this re-promulgation is not open for comment.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4507. Licensure as Advanced Practice Registered Nurse

A. Initial Licensure

1. After January 1, 1996, the applicant shall meet the following requirements:

a. holds a current, unencumbered, unrestricted and valid registered nurse license in Louisiana and there are no grounds for disciplinary proceedings, as stated in R.S. 37:921;

b. completion of a minimum of a master's degree with a concentration in the respective advanced practice nursing specialty and/or functional role or completion of a post master's concentration in the respective advanced practice nursing specialty and/or functional role from an accredited college or university that meets the curriculum guidelines established by the board. Exception to the master's degree will be granted to those applicants who provide documentation as requested by the board that, prior to December 31, 1995, the applicant completed or was continuously enrolled in a formalized post-basic education program preparing for the advanced practice nursing specialty and/or functional role as approved by the board prior to December 31, 1995 as follows:

i. a program of studies offered through an institution of higher education which qualifies the graduate to take a certification examination in the advanced practice specialty and/or functional role; or

ii. a program of studies accepted by a nationally recognized certifying body which is recognized by the Louisiana State Board of Nursing; or

iii. a program which is individually recognized by the Board of Nursing based on established criteria; as stated in LAC 46:XLVII.4509;

c. submission of a completed application on a form furnished by the board;

d. submission of evidence of current certification in the respective advanced practice nursing specialty and/or functional role by a nationally recognized certifying body approved by the board. When specialty and/or functional role certification is not available, in addition to meeting the above requirements, the individual will be required to meet the commensurate requirements specified below in Paragraph 2;

e. submission of a non-refundable fee as specified in LAC 46:XLVII.3341;

f. after initial licensure, applicants seeking licensure for advanced practice in an additional specialty/role shall meet the requirements stated in LAC 46:XLVII.4507.A.1.a-d.

2. Commensurate requirements when certification is not available:

a. holds the minimum of a master's degree with a concentration in the respective advanced practice nursing specialty and/or functional role from a regionally accredited college or university or a program otherwise approved by the

board and has practiced with a APRN temporary permit for a minimum of six months to a maximum of 24 months; and

b. have provided a minimum of 800 hours of patient care under the direction of an approved preceptor within the past 24 months; up to 400 of these may be earned through clinical practicum in a masters program; and

c. submit an affidavit for waiver of Certification Examination on a form provided by the board.

3. An APRN license shall be issued with an expiration date that coincides with the applicant's RN license.

B. Temporary Permit: Initial Applicants

1. An APRN applicant who possesses a current RN license or a valid RN temporary permit, may be granted a temporary permit which allows the applicant to practice under guidance of a licensed APRN, physician, dentist or approved preceptor within the practice specialty and/or functional role of the applicant, except as provided for in R.S. 37:930.A.3:

a. in the process of applying for initial licensure under LAC 46:XLVII.4507.A; and

b. has been accepted as a first- time candidate for the national professional certification examination; or

c. in the process of meeting the practice eligibility requirements for the national professional certification examination for the advanced nursing practice specialty and/or functional role as recognized by the board; or

d. in the process of meeting the practice requirements for licensure by commensurate requirements; or

e. is awaiting certification results based upon initial application; and

f. there are no grounds for disciplinary proceedings as stated in R.S. 37:921.

2. A nurse practicing under the temporary permit shall use the title advanced practice registered nurse applicant or APRN applicant.

3. Upon receipt of initial certification examination results:

a. the temporary permit shall expire;

b. applicant shall submit or cause to be submitted, a copy of the results to the board;

c. unsuccessful candidates shall:

i. cease to practice as an APRN applicant (does not prohibit practice as a registered nurse);

ii. return the temporary permit to the board;

iii. notify the employer of the results.

4. Upon completion of the commensurate requirements or at the end of two years, the temporary permit shall expire.

5. An advanced practice registered nurse seeking licensure in either an additional advanced practice nursing category or area of specialization, may seek a temporary permit as stated in LAC 46:XLVII.4507.B and D.

6. The APRN temporary permit may be extended until receipt of initial certification results.

C. Licensure by Endorsement. The board may issue a license by endorsement if the applicant has practiced under the laws of another state and if, in the opinion of the board, the applicant meets the requirements for licensure as an APRN in this jurisdiction.

1. If the applicant is applying from another jurisdiction that licenses the category of APRN for which the applicant is seeking licensure, the applicant shall submit:

a. a completed application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3341;

c. verification of current RN licensure in this jurisdiction or documentation that the applicant has applied for licensure as a RN and meets the requirements of this jurisdiction, and there are no grounds for disciplinary proceeding as stated in R.S. 37:921;

d. verification of licensure status directly from the jurisdiction of original licensure in the advanced practice category;

e. verification of current unencumbered license in the advanced practice category directly from the jurisdiction of current or most recent employment as an APRN;

f. verification of educational requirements as stated in LAC 46:XLVII.4507.A.1.b;

g. verification of current national certification in the respective specialty and/or functional role area as recognized by the board; or meets commensurate requirements as specified in LAC 46:XLVII.4507.A.2;

h. documentation of meeting the requirements in LAC 46:XLVII.4515.

2. If the applicant is applying from a jurisdiction that does not license the APRN category for which the applicant is seeking licensure, the applicant shall submit LAC 46:XLVII:4507.C.1.a, b, c, f, g, and h as stated above, plus:

a. information regarding the applicant's qualifications for advanced practice directly from the board in the state where the applicant first practiced in the APRN category;

b. information regarding the applicant's qualifications for advanced practice directly from the board in the state where the applicant was last employed in the APRN category.

3. If the applicant is applying from a jurisdiction that does not verify advanced practice or does not meet the endorsement requirements, the applicant shall qualify by meeting the requirements for initial APRN licensure, LAC 46:XLVII.4507.A and B.

D. Temporary Permit: Endorsement Applicants

1. A nurse seeking APRN licensure by endorsement, and has been issued a RN temporary permit, may be issued a temporary permit to practice as an APRN for a maximum of 90 days if the applicant submits:

a. a completed APRN application on a form furnished by the board;

b. the required nonrefundable fee as set forth in LAC 46:XLVII.3341;

c. evidence of meeting the educational and certification requirements specified in LAC 46:XLVII.4507.A.1.b and d; or

d. documentation of registration for the certifying examination within 90 days.

2. The APRN temporary permit may be extended until receipt of initial certification results.

E. Renewal of Licenses by Certification, Commensurate Requirements, or Grandfathering

1. The date for renewal of licensure to practice as an APRN shall coincide with renewal of the applicant's RN license. Renewal of the APRN license is contingent upon renewal of the RN license and verification that there are no grounds for disciplinary proceedings as stated in R.S. 37:921. An applicant for renewal of an APRN license shall submit to the board:

a. a completed application on a form furnished by the board;

b. evidence of current certification/recertification, unless the APRN has been licensed by the board in accordance with R.S. 37:912.B.(3)(4); or in accordance with commensurate requirements when certification is not available (R.S. 37:920.A.2). Effective January 1, 2002, and required for relicensure in 2003, APRNs licensed by the board in accordance with commensurate requirements when certification is not available (R.S. 37:920.A.2.) shall comply with the requirements specified in E.2. below;

c. the licensure renewal fee as specified in LAC 46:XLVII.3341.

2. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) (grandfathered) and are not advanced practice certified, or R.S. 37:920.A.(2) and LAC 46:XLVII.4507.A.2. whose category and area of specialization does not provide for certification/recertification (commensurate requirements) shall submit the following documentation for renewal, in addition to meeting the requirements specified above in §4507.E.1.a.-c.

a. a minimum of 300 hours of practice in advanced practice registered nursing, as defined in R.S.37:913.3.a, within a 12-month period; and

b. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

c. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CME's);

d. the above Subparagraphs b or c will meet the C.E. Requirements for the registered nurse and the advanced practice registered nurse licensure renewal.

F. Reinstatement of an APRN License

1. Reinstatement of an APRN license, which has lapsed or been inactive for less than four years. An APRN who has failed to renew his/her license, or has had an inactive licensure status less than four years, may apply for reinstatement by submitting to the board:

a. evidence of current RN licensure;

b. completed application on a form furnished by the board;

c. evidence of current certification/recertification by a national certifying body accepted by the board; or

d. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) or 920.A.(2.) and 4507.A.2 whose specialty and/or functional role does not provide for certification/recertification shall apply for a six month temporary permit, and practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and submit the following documentation with the application for reinstatement for each year of inactive or lapsed status:

i. a minimum of 300 hours of practice in advanced practice registered nursing as defined in R.S. 37:913.(3)(a) for each year of inactive or lapsed status up to a maximum of 800 hours; and

ii. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

iii. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CMEs); and

e. the required fee as specified in LAC 46:XLVII.3341.

2. Reinstatement of an APRN license, which has lapsed or been inactive four years or more. If the applicant's APRN license has been lapsed or inactive for four or more years, in addition to meeting the above requirements in Subsection F.1.a-e., the applicant shall:

a. apply for a six month temporary permit; and

b. practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and

c. if seeking certification/recertification, successfully complete the number of clinical practice hours required by the national certifying body approved by the board, under the guidance of a preceptor approved by the board; and

d. submit evidence of current certification by a national certifying body approved by the board; or

e. have a minimum of 800 hours of clinical practice in the area of clinical specialization when specialty certification is not available; and

f. submit evidence of compliance with §4507.E.2 b. or c for each year of inactive or lapsed status; and

g. cause to have submitted a final evaluation by the approved preceptor verifying successful completion of six months of full time practice or the equivalent hours in the area of specialization (minimum of 800 hours).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended LR 27:723 (May 2001), LR 29:580 (April 2003), LR 31:

Barbara L. Morvant
Executive Director

0502#019

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
(LAC 50:V.301-315)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in

effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1).

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department repealed and replaced all provisions governing disproportionate share hospital payments (*Louisiana Register*, Volume 29, Number 6). Acts 14, 526 and 1148 of the 2003 Regular Session of the Louisiana Legislature directed the department to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals. In compliance with Acts 14, 526 and 1148, the Bureau amended the July 1, 2003 Emergency Rule (*Louisiana Register*, Volume 29, Number 9). This Emergency Rule is being promulgated to continue provisions contained in the July 1, 2003 Rule. This action is being taken to enhance federal revenue.

Effective February 25, 2005 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing hereby repeals and replaces all rules governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low-income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Any Medicaid profit shall be used to offset the cost of treating the uninsured in determining the hospital specific DHH limits. High Medicaid hospitals can also qualify as other uninsured hospitals. Public hospitals included in §313 shall receive DSH payments up to 175 percent of the hospital's net uncompensated costs.

4. Qualification is based on the hospital's latest filed cost report as of March 31 of the current state fiscal year and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals shall be notified by letter at least 60 days in advance of calculation of DSH payment to submit documentation required to establish DSH qualification. Only hospitals that timely return DSH qualification documentation will be considered for DSH payments. The required documents are:

- a. obstetrical qualification criteria;
- b. low income utilization revenue calculation;
- c. Medicaid cost report; and
- d. uncompensated cost calculation.

6. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

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:

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably

attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of 3 percent. Inpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of 3 percent:

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.2.a-h; and

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least one percent.

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:

§305. High Uninsured Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital—a hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. DSH payments to individual high uninsured hospitals shall be calculated as follows:

1. Inpatient High Uninsured Hospital Payments shall be equal to 100 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such

patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E.; and/or

2. Outpatient High Uninsured **C** Payments shall be equal to 100 percent of the hospital's cost of furnishing outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients. DSH payments calculated under this payment methodology shall be subject to the adjustment provision below in Subsection E.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B.

E. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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:

§307. Other Uninsured Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services to uninsured

persons, supported by patient-specific data, net of any payments received from such patients.

Other Uninsured Utilization Rate Hospital—a qualifying hospital that is not included in §305, §311, §313 or §315.

B. DSH payments to an individual other uninsured hospital shall be calculated as follows:

1. Inpatient Other Uninsured **C** All qualifying hospitals shall be arrayed from lowest to highest rate according to their inpatient uninsured utilization rate. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients and subject to the adjustment provision below. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients, respectively and subject to the adjustment provision below in Subsection E.

2. Outpatient Other Uninsured **C** All qualifying hospitals shall be arrayed from lowest to highest rate according to their outpatient uninsured utilization rate. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients and subject to the adjustment provision below. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's cost of furnishing inpatient hospital services to uninsured persons, supported by patient-specific data, net of payments received from such patients, respectively and subject to the adjustment provision below in Subsection E.

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

D. DSH payments to an individual other uninsured hospital shall be based on the hospital's uninsured utilization rate and the distribution of all other uninsured hospitals

uninsured utilization rates. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's net uncompensated costs and subject to the adjustment provision in §301.B. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's net uncompensated cost, respectively.

E. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

F. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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:

§309. High Medicaid Hospitals

A. Definition. *High Medicaid Utilization Rate Hospital*—a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments and that is not included in §305.

1. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost-reporting period.

B. DSH payments to individual high Medicaid hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Payment based on Medicaid days provided by qualifying hospitals shall be in accordance with the following two pools:

1. a acute care hospital that is classified as a major teaching hospital and is contractually affiliated with a university located within the State of Louisiana that is recognized by the Centers for Disease Control and Prevention and the Health Resource and Services Administration, Maternal and Child Health Bureau as maintaining a Comprehensive Hemophilia Care Center;

2. all other acute high Medicaid Utilization Rate Hospitals.

D. A pro rata decrease necessitated by conditions specified in §301.B. for high Medicaid hospitals will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying high Medicaid hospitals; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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:

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. Any uncompensated costs of providing health care services in a rural health clinic licensed as part of a small rural hospital as defined below shall be considered outpatient hospital services in the calculation of uncompensated costs.

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

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

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

- c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

- d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

- e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

- f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

- g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

- i. has been in continuous operation since July 1, 1994;

- ii. is currently operating under a license issued by the department; and

- iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

- h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a

parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003, of its intent to reduce its number of hospital beds to no more than 60; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. is located, as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. is located within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 90,000.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following three pools:

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.1, that are privately owned.

3. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.a - §311.A.2.k.ii.

C. Payment to hospitals included in §311.B.1, §311.B.2, and §311.B.3 is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B. for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.2. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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:

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

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

B. DSH payments to individual public state-owned or operated hospitals shall be up to 175 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

D. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration. Acute hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

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:

§315. Psychiatric Hospitals

A. Definitions

Net Uncompensated Cost The cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Psychiatric Hospital A free standing psychiatric hospital that is not included in §313.

B. DSH payments to individual free standing psychiatric hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual free standing psychiatric hospitals shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying free standing psychiatric hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified free standing psychiatric hospitals. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for free standing psychiatric to be determined by the director of the Bureau of Health Services Financing

D. A pro rata decrease necessitated by conditions specified in §301.B. for hospitals in §315 will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in §315; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

0502#042

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 Early Intervention Services
for Infants and Toddlers with Disabilities
(LAC 50:XV.8109)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.Chapter 81 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2004-2005 General Appropriation Act, which states, "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program (*Louisiana Register*, Volume 30, Number 4) in conjunction with the transfer of Louisiana's early intervention system under Part C of the Individuals with Disabilities Education Act (IDEA) from the Department of Education, Division of Special Populations to the Department of Health and Hospitals, Office of Public Health. As a result of a budgetary shortfall, the department has determined that it is necessary to reduce the reimbursement for early intervention services for infants and toddlers with disabilities by 25 percent. This action is being taken in order to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures for early intervention services for infants and toddlers with disabilities by approximately \$1,937,214 for the state fiscal year 2004-2005.

Effective for dates of service on or after February 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement rates by 25 percent for early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50
PUBLIC HEALTH MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening,
Diagnosis, and Treatment
Chapter 81. Early Intervention Services
§8109. Reimbursement

A. The reimbursement for early intervention services rendered to infants and toddlers ages birth to three years shall be the lower of billed charges or 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

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 30:800 (April 2004), amended 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 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

0502#041

DECLARATION OF EMERGENCY
Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing

Targeted Case Management Services
(LAC 50:XV.10701)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 50:XV.Chapter 107 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2004-2005 General Appropriation Act, which states, "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the Rules governing optional targeted case management services under the Medicaid Program for inclusion in the Louisiana Administrative Code (*Louisiana*

Register, Volume 30, Number 5). The provisions governing targeted case management services for infants and toddlers who are age birth through 36 months were included in the May 20, 2004 Rule. As a result of a budgetary shortfall, the bureau now proposes to reduce reimbursement for targeted case management services for infants and toddlers by 25 percent. This action is being taken in order to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will decrease expenditures for targeted case management services for infants and toddlers by approximately \$645,738 for the state fiscal year 2004-2005.

Effective for dates of service on or after February 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement for targeted case management services for infants and toddlers.

Title 50
PUBLIC HEALTH MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. - B.2. ...

C. Effective for dates of service on or after February 1, 2005, the reimbursement rate for targeted case management services for infants and toddlers shall be 75 percent of the rate (a 25 percent reduction) in effect on January 31, 2005.

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 30:1040 (May 2004), amended 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 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

0502#040

DECLARATION OF EMERGENCY
Department of Social Services
Office of Family Support

Food Stamp Program Standard and Basic Utility Allowance
(LAC 67:III.1965 and 1966)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 3, effective February 1, 2005. This Rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1965 and 1966 to comply with mandates issued by the

United States Department of Agriculture, Food and Nutrition Service. Section 4104 of P.L. 107-171 authorizes changes that simplify the application of the standard utility allowance (SUA) and the basic utility allowance (BUA) as it relates to food stamp households residing in public housing, using a shared utility meter, and paying excess utility costs. These households shall now be allowed to claim the full SUA as a shelter deduction if heating or cooling costs are incurred, or the full BUA as a shelter deduction if heating or cooling costs are not incurred.

Emergency action in this matter is necessary as failure to promulgate the Rule could result in the imposition of sanctions or penalties by the USDA, Food and Nutrition Service, the governing authority of the Food Stamp Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter I. Income and Deductions

§1965. Standard Utility Allowance (SUA)

A. ...

B. Effective February 1, 2005, households living in public housing with shared meters that are only charged for excess utilities shall use the SUA if heating or cooling costs are incurred.

C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9, P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 20:860 (August 1994), LR 20:991 (September 1994), LR 20:1363 (December 1994), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 24:108 (January 1998), LR 29:606 (April 2003), LR 31:

§1966. Basic Utility Allowance (BUA)

A. Households which do not incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Basic Utility Allowance (BUA). To be eligible, a household must be billed on a regular basis for utility costs. The full basic utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

B. Effective February 1, 2005, households living in public housing with shared meters that are only charged for excess utilities shall use the BUA if heating or cooling costs are not incurred.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 29:606 (April 2003), LR 31:

Ann S. Williamson
Secretary

0502#028