

Rules

RULE

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

Program Participation, Fee Payment and Penalties (LAC 7:XV.321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry has amended the Boll Weevil Eradication Program.

The Department of Agriculture and Forestry has amended these Rules and regulations for the purpose of establishing a deadline for cotton producers to request a waiver of the assessment on any acre of cotton planted for a crop year. These Rules are enabled by R.S. 3:1609, 1612 and 1613.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§321. Program Participation, Fee Payment and Penalties

A. - B.2. ...

3. A waiver of the assessment on any acre planted in cotton for a crop year may be requested and obtained in accordance with the following procedure.

a. A cotton producer may request a waiver of the assessment on any acre planted in cotton for a crop year if a written request for a waiver is received by the commission, through mail, fax or other form of actual delivery, on or before 4:30 p. m. on August 1 of the crop year for which the waiver is requested. A written request for a waiver will be deemed to be timely when the papers are mailed on or before the due date. Timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. A fax shall be considered timely only upon proof of the commission's receipt of the transmission.

b. The written request for a waiver must show the name of the cotton producer, the field number, the number of acres for which a waiver is requested, the date the acres were failed, the reasons the waiver is being requested and a certification that all living cotton plants and cotton stalks were destroyed prior to July 15 of the crop year and that the acreage will remain void of all living cotton plants through December 31 of the same crop year.

c. Each cotton producer who has timely filed a request for a waiver with the commission shall be notified of the date, time and place the commission is scheduled to consider the request for a waiver at least 10 days prior to the commission meeting.

d. The granting of a waiver is within the discretion of the commission.

e. A cotton producer, whose timely request for a waiver is denied by the commission, shall be entitled to pay

his assessment without imposition of a per acre penalty fee if he pays the assessment within 30 days after receiving written notification of the commission's decision.

B.4. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture & Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:669 (July 1995), amended LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003).

Bob Odom
Commissioner

0306#038

RULE

Economic Development Office of Business Development Business Resources Division

Louisiana Small Business Linked Deposit Loan Program (LAC 19:VII.7303 and 7305)

The Department of Economic Development, Office of Business Development, Business Resources Division, pursuant to the authority of R.S. 51:2312 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended §§7303 and 7305 of the Rules of the Louisiana Small Business Linked Deposit Loan Program. The purpose of the amended Rules is to provide for a floor interest rate to the state of 0.5 percent. Currently the program has no floor and in a low interest environment the state would not receive earnings on the deposits.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 7. Louisiana Small Business Linked Deposit Loan Program

Chapter 73. Procedures for Authorization and Administration

§7303. General Provisions

A. The Linked Deposit Program is funded to meet all current and anticipated application needs. The extreme changes in the interest rate environment in recent years have, on occasion, presented the Treasury with a dilemma. Interest earnings on Treasury deposits supporting the Linked Deposit Program have been so low that the rate buy down prescribed below would force the Treasury to accept zero or negative earnings on its money. To preclude such events, a floor of 0.5 percent (0.005) is set as the lowest interest earnings accepted for Treasury funds on deposit under the Linked Deposit Program, as determined by the State Treasury. The buy down described, to the extent that it does not violate this floor, will be awarded on approval of an application.

B. Priority for application approval and funding shall be given as follows:

1. an eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a four percent interest rate buy down;

2. an eligible Louisiana business located in a high employment area which creates three or more jobs shall receive a three percent interest rate buy down (less than three jobs shall receive two percent);

3. an eligible Louisiana certified disadvantaged business, disabled owned business, or research recipient of a Small Business Innovative Research Grant, which creates one or more jobs shall receive a maximum of a three percent interest rate buy down;

4. an eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a two percent interest rate buy down;

5. an eligible Louisiana business in a low unemployment area creating one to four jobs shall receive a maximum of a one percent interest rate buy down.

C. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

D. Applications which provide a "but for" statement shall be eligible for a five year term on the linked deposit. All other applications are eligible for two year terms only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:859 (June 2003).

§7305. Linked Deposit Loan Program Authorization Lending Institution Requirements; Applicants Requirements and Conditions for Approval

A. - K. ...

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year, coinciding with the annual maturity of the linked Treasury funds, and shall be the allowed percentage below the current competitive borrowing rate applicable to each eligible small business. At each annual maturity, the lender shall adjust the loan rate for the next year to the then competitive rate for that business, considering the usual concerns for loan payment performance and overall risk. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. ...

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic

Development, Office of Business Development, Business Resources Division, LR 29:860 (June 2003).

Don J. Hutchinson
Secretary

0306#035

RULE

**Department of Economic Development
Office of Business Development
Economic Development Corporation**

Economic Development Award Program (EDAP)
(LAC 13:III.Chapter 1)

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, pursuant to the authority of R.S. 51:2341(B) and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., has amended §§101-117 of the following Rules of the Economic Development Award Program, and adopted §§119, 121, and 123. The purpose of the Rules is to establish guidelines for both the basic EDAP as well as the Opportunity Fund projects. The inclusion of Rules for the Opportunity Fund will allow the state to provide larger EDAP awards in an effort to be more competitive in trying to attract larger economic development projects. Securing such projects will create additional job opportunities and infrastructure for Louisiana citizens and businesses. In addition the amended Rules comply with changes to the organizational placement of the EDAP within the department and changes to the approval procedures provided by Acts 2001, No. 9.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP)

§ 101. Purpose

A. The Economic Development Award Program and the Louisiana Opportunity Fund Program are vital to support the state's commitment to cluster based economic development and the state's long term goals as set forth in Louisiana: Vision 2020, which is the master plan for economic development for the state of Louisiana.

B. The purpose of the program is to finance publicly-owned infrastructure for industrial or business development projects that promote cluster economic development and that require state assistance for basic infrastructure development. Additionally, through the Louisiana Opportunity Fund, under circumstances hereinafter set forth, the governor, with the approval of the board of directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), amended LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003).

§ 103. Definitions

Applicants Cthe company and the public entity, collectively, requesting financial assistance from DED under this program.

Award Cfunding of financial assistance, appropriations, grants or loans approved under this program for eligible applicants.

Award Agreement Cthat agreement or contract hereinafter referred to between the company, the public entity, DED and LEDC through which, by cooperative endeavor or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these Rules.

Awardee Can applicant receiving an award under this program.

Basic Infrastructure Project Crefers to those infrastructure projects other than those for which the governor and the LEDC Board have made a determination that the Louisiana Opportunity Fund is applicable.

Company Cthe business enterprise for which the project is being undertaken.

DEDC the Louisiana Department of Economic Development.

Infrastructure Project Crefers to the undertaking for which an award is granted hereunder for the new construction, improvement or expansion of roadways, parking facilities, equipment, bridges, railroad spurs, water works, sewerage, buildings, ports and waterways.

LEDC Cthe Louisiana Economic Development Corporation.

Opportunity Fund Cthe Louisiana Opportunity Fund provides for infrastructure project financial assistance, appropriations, grants or loans in order to attract new in-state business investment or in-state expansion of existing businesses when, in the opinion of the governor of Louisiana, there exists a highly competitive project bidding situation where a company is in the final stages of site selection and considers Louisiana to be roughly equivalent in terms of factor advantages to one or more other states.

Program Cthe Economic Development Award Program, including Basic Infrastructure Projects and Opportunity Fund Projects that are undertaken by DED, LEDC, the public entity and the company pursuant to these Rules and the bylaws of LEDC.

Project Can expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which DED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Public Entity Cthe public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with DED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary Cthe Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), amended LR 25:237 (February 1999), LR

26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003).

§105. General Principles

A. The following general principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state will be considered in making the award.

6. Appropriate cost matching among project beneficiaries is a factor in the consideration of the award.

7. A two year moratorium will be required on additional EDAP awards to the same company at the same location.

8. Award funds shall be utilized for the approved project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003).

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. a public or quasi-public state entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if company has another contract with DED or LEDC in which the company is in default and/or is not in compliance.

C. Businesses not eligible for awards under this program are:

1. retail business operations;
2. real estate developments;
3. hospitality operations;
4. gaming operations;
5. this ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities

are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003).

§109. Criteria for Basic Infrastructure Projects

A. In addition to the general principles set forth above, Basic Infrastructure Projects must meet the criteria hereinafter set forth for an award under the Program.

1. Job Creation/Retention and Capital Investment
 - a. Basic Infrastructure Projects must create or retain at least 10 permanent jobs in Louisiana.
 - b. Consideration will be given for projects having a significant new private capital investment.
 - c. The number of jobs to be retained and/or created as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.
2. Preference will be given to projects for industries identified by DED or LEDC as cluster industries, and to projects located in areas of the state with high unemployment levels.
3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.
4. Companies must be in full compliance with all state and federal laws.
5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.
6. The minimum award request size shall be \$25,000.
7. Consideration will be given for wages substantially above the prevailing regional wage.
8. If a company does not begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within 365 calendar days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003).

§111. Criteria for Louisiana Opportunity Fund Projects

A. The governor shall determine that a project meets the general principles set forth above, and that a company meets the following criteria, it is either:

1. in the final stages of site selection and considers Louisiana to be equivalent in terms of factor advantages to one or more other states for locating here; or
2. the governor determines that a company operating in Louisiana is in the final stages of deciding whether or not to expand, invest new capital and to retain or create jobs in Louisiana, or to do so in another state or states rather than in Louisiana.

B. The governor shall provide notice to the chairman of the board of directors of LEDC and request that a special meeting of the board be called in accordance with the bylaws of LEDC, and a meeting of the LEDC Board of Directors shall be called to consider such financial benefits by way of financial assistance, appropriations, grants or loans as may facilitate and provide for necessary infrastructure improvements so as to induce a company to locate in Louisiana, or to expand and invest additional capital in Louisiana.

C. The governor shall certify to LEDC and provide appropriate information and documentation through which the LEDC Board must determine:

1. the project would, because of competition from other states and other pertinent factors, not happen in Louisiana in the absence of the infrastructure assistance being provided;
2. the project does not require government funding in order to be successful, but stands on its own merits;
3. the project provides an important interconnection between constituent companies of cluster-based economic development, and either provides or fulfills critical mass for targeted cluster-based development;
4. the project will result in fulfilling one or more of the purposes for which the offices of DED are created as defined by R.S. 36:108;
5. if the project is a new one for a company not currently located in Louisiana, or a new facility separate and apart from a company's existing facility in Louisiana;
 - a. the project will be instrumental in the creation of a \$15 million minimum new private capital investment by the company, with at least a 5 to 1 ratio of new private capital investment to the award under this Program;
 - b. the project will result in the creation of a minimum of 100 new permanent jobs with salaries at least equal to the respective parish's average weekly wage for the respective industry, or where no industry average is available, at least equal to 10 percent above the parish's per capita average weekly wage, as determined by the Louisiana Department of Labor; and
 - c. the company must offer health care insurance coverage for the employees;
6. if the project is for an existing business operation in Louisiana, there is evidence:
 - a. of either:
 - i. a written commitment from another state of the United States or foreign country setting forth the terms and

conditions for relocation of the Louisiana operation outside of this state; or

ii. that the company will pursue a project for expansion of capital facilities and/or additional jobs, either in Louisiana or in a state other than Louisiana; and

b. that the company will substantially modernize and/or increase its capital investment in Louisiana, creating or retaining at least 50 permanent jobs, with a minimum new private capital investment of \$30 million in improvements and/or modernization of Louisiana facilities, with at least a 5 to 1 ratio of new private capital investment to the award under this program.

D. If a company does not begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within 180 calendar days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003).

§113. Application Procedure for Basic Infrastructure Projects

A. The applicants must submit an application to DED or LEDC on a form provided by DED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including financial statements and business projections;

2. a description of the project along with the factors creating the need, including construction, operation and maintenance plans, and a timetable for the project's completion;

3. evidence of the number, types and compensation levels of jobs to be created or retained by the project, and the amount of capital investment for the project; and

4. any additional information that DED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), amended LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003).

§115. Application Procedure for Louisiana Opportunity Fund Projects

A. The applicants must submit an application to the governor on a form provided by DED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it

operates, including financial statements and business projections;

2. a description of the project along with the factors creating the need, including construction, operation and maintenance plans, and a timetable for the project's completion;

3. evidence of the number, types and compensation levels of jobs to be created or retained by the project, and the amount of capital investment for the project; and

4. any additional information that may be required by DED or LEDC.

B. In order for the application to be considered by the LEDC Board of Directors, the governor must submit it to the board along with his certifications, as required by §111 above.

C. When, in the opinion of the governor, use of the Louisiana Opportunity Fund is warranted under circumstances of highly competitive bidding for a new business or an existing business that meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth in §111 above, the governor may request the chairman of the Board of LEDC to call a special meeting of the Board of Directors of LEDC pursuant to the Bylaws of LEDC; and thereafter, a meeting of the Board of Directors of LEDC shall be called in order for the Board to consider the use of funds from the Louisiana Opportunity Fund as may be recommended by the governor. The LEDC Board may take such action as may be necessary promptly and expeditiously because of and consistent with the competition presented by other states, and shall approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), amended LR 25:239 (February 1999), LR 26:238 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003).

§117. Submission and Review Procedure for Basic Infrastructure Projects

A. Applicants must submit their completed application to DED or to LEDC. Submitted applications will be reviewed and evaluated by DED or LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented;

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor, will be prepared by DED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, DED staff will then make a recommendation to the

LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:405 (March 1999), amended LR 26:239 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003).

§119. Submission and Review Procedure for Louisiana Opportunity Fund Projects

A. DED shall provide staff for prompt and timely review of submissions by the governor of projects to be funded by the Louisiana Opportunity Fund. Input may be required from the company, the public entity, other divisions of DED, LEDC, and other state agencies or political subdivisions of the state as needed in order to:

1. evaluate the strategic importance to the state of the project and its importance to the economic well being of the state and its local communities;

2. validate the information presented, and determine whether or not the project meets the general principles of §105, the eligibility requirements of §107, and falls within the criteria for use of the Opportunity Fund as provided in §111 above;

3. determine the feasibility of the company's plan in the context of the criteria for use of the Opportunity Fund as provided in §111 above;

4. prepare a preliminary economic cost-benefit analysis of the project, including a preliminary analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor;

5. make recommendations based upon the foregoing to the Board of Directors of LEDC, and the LEDC Board shall review and approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003).

§121. General Award Provisions

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards and to Louisiana Opportunity Fund awards. Agreement resulting from the expedited procedures for the Louisiana Opportunity Fund award shall demonstrate the intent of the company, the public entity, DED, and LEDC to enter into the following.

1. Award Agreement. A contract or Cooperative Endeavor Agreement will be executed between DED, acting through the LEDC, the public entity and the company. The agreement will specify the performance objectives expected of the company(ies) and the public entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment and job creation. Under the agreement, the public entity will oversee the progress of the project. DED or LEDC will disburse funds to the public entity in a manner determined by DED or LEDC.

2. Funding

a. Eligible project costs may include, but not be limited to, the following:

i. engineering and architectural expenses;

ii. site acquisition;

iii. site preparation;

iv. construction expenses;

v. building materials;

vi. capital equipment having an Internal Revenue Service (IRS) depreciable life of at least seven years. If any such eligible equipment is not to be located on public property, the owner, lessor and lessee of such private property shall each execute a written lien waiver or release allowing representatives of the public entity to enter upon such private property and remove therefrom any or all of such equipment at any time the public entity shall determine such to be in its ownership interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment having an IRS depreciable life of less than seven years.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards and for Louisiana Opportunity Fund Awards.

1. For Basic Infrastructure Awards

a. The portion of the total project costs financed by the award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

b. Other state funds cannot be used as the match for EDAP funds.

c. All monitoring will be done by DED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

d. The award amount shall not exceed 25 percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 million.

e. The LEDC Board of Directors, in its discretion, may limit the amount of awards to effect the best allocation

of resources based upon the number of projects requiring funding and the availability of program funds.

2. For Louisiana Opportunity Fund Awards, Resources shall be allocated in accordance with the recommendations of the Governor and as approved by the Board of Directors of LEDC and shall effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Award funds will be available to the public entity on a reimbursement basis following submission of required documentation to DED or LEDC from the public entity.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. DED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. DED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for reimbursement at 85 percent until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 15 percent of the award amount will be paid after DED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when DED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

E. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments. Further, public entity shall oversee the timely submission of reporting requirements of the company to DED.

2. In the event a company or public entity fails to meet its performance objectives specified in its agreement with DED and LEDC, DED and LEDC shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company

and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless DED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

4. DED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003).

§123. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation, employee thereof, or employee of the Louisiana Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:865 (June 2003).

Don J. Hutchinson
Secretary

0306#034

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School
Administrators C Louisiana Principal/Assistant
Principal Induction Program
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741C Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975).

The changes to Standard 1.016.10 will change the name of the Louisiana Principal/Assistant Principal Internship Program to the Louisiana Principal/Assistant Principal Induction Program. This will lessen the confusion between the state sponsored program mandated by SBESE and the required internship component for university programs in Educational Leadership.

The changes will also include administrative assistants and acting principals/assistant principals in the program that will provide support and build capacity of these administrators to provide leadership in both instructional and administrative areas during their first year(s) in a school leadership role.

With the development and implementation of a standards-based induction program in 1999-2000 in which assistant principals and first-year principals participate in a parallel program, it is necessary to ensure continuity and a logical transition as the administrator moves along the career path from assistant principal to principal. As a result of these changes, the waiver which allowed principals to request an exemption from participation in year two of the program

based on five years of administrative experience and participation in the Administrative Leadership Academy will no longer apply if their participation in the program was prior to 1998.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans**

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education, LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:866 (June 2003).

| System Policies and Standards | School Policies and Standards |
|--|--|
| <p>1.016.10 All newly appointed principals and assistant principals with standard or provisional certification shall participate in the Principal/Assistant Principal Induction Program.</p> <p>The program shall include the following:</p> <p style="padding-left: 20px;">Individuals appointed to a principalship or an assistant principalship after October 1 shall be enrolled in the Principal Induction Program at the beginning of the following school year.</p> <p style="padding-left: 20px;">Principal/Assistant Principal Induction requirements shall also apply to individuals serving in the following leadership capacities:</p> <ul style="list-style-type: none"> • Administrative Assistant: fully certified and serving in a full-time, full-year administrative capacity. • Acting Principal or Assistant Principal: fully certified and serving in a full-time, full-year administrative capacity. <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 1999-2000 shall complete only Year One requirements of the Principal Induction Program.</p> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 2000-2001 shall complete only Year Two requirements of the Principal Induction Program.</p> <p>A newly appointed principal who did not complete the Assistant Principal Induction Program or completed the program in 1998 or before shall complete the two-year requirements of the Principal Induction Program.</p> <p>Upon successful completion of two years of the Induction Program requirements, an individual may request to have provisional status removed from their certificate.</p> | <p>2.016.10 All newly appointed principals and assistant principals with standard or provisional certification shall participate in the Principal/Assistant Principal Induction Program.</p> <p>The program shall include the following:</p> <p style="padding-left: 20px;">Individuals appointed to a principalship or an assistant principalship after October 1 shall be enrolled in the Principal Induction Program at the beginning of the following school year.</p> <p style="padding-left: 20px;">Principal/Assistant Principal Induction requirements shall also apply to individuals serving in the following leadership capacities:</p> <ul style="list-style-type: none"> • Administrative Assistant: fully certified and serving in a full-time, full-year administrative capacity. • Acting Principal or Assistant Principal: fully certified and serving in a full-time, full-year administrative capacity. <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 1999-2000 shall complete only Year One requirements of the Principal Induction Program.</p> <p>A newly appointed principal who successfully completed the Assistant Principal Induction Program in 2000-2001 shall complete only Year Two requirements of the Principal Induction Program.</p> <p>A newly appointed principal who did not complete the Assistant Principal Induction Program or completed the program in 1998 or before shall complete the two-year requirements of the Principal Induction Program.</p> <p>Upon successful completion of two years of the Induction Program requirements, an individual may request to have provisional status removed from their certificate.</p> |

Weegie Peabody
Executive Director

0306#016

RULE

Board of Elementary and Secondary Education

Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act
Students with Disabilities
(LAC 28:XLIII.Chapters 1-10)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A, Regulations for Students with Disabilities (LAC 28:XLIII).

The revisions to *Bulletin 1706C The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A, Regulations for Students with Disabilities, formally changes the state regulations to be in compliance with the 1999 revisions to the federal regulations of IDEA, Part B and in the state statute at R.S.17:1941 et seq. They make the State Advisory Panel consistent with state and federal statutes; they change the language to be consistent with federal regulations regarding due process and state statute in converting to a one-tier due process hearing system. They clarify timelines regarding re-evaluations for toddlers turning three; they clarify what information must be reviewed at IEP meetings and what clarifies as nonacademic activities, they clarify serving students in their least restrictive environment; they clarify responsibilities when placing students for services in private schools; they clarify rights of parents and students; they provide guidance regarding fiscal responsibilities of noneducational agencies; they provide regulations for interagency coordination with other state agencies; they provide or clarify definitions; they remove all references to handbooks.

**Title 28
EDUCATION**

**Part XLIII. Bulletin 1706C Regulations for Implementation of the Children with Exceptionalities
Subpart A. Regulations for Students with Disabilities
Chapter 1. Responsibilities of the State Board of Elementary and Secondary Education**

§105. Approval of IDEAC Part B Application

A. The state board will review and approve the state policies and procedures required by the IDEA application before their submission to the U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR 29:867 (June 2003).

§130. State Advisory Panel (Panel)

A. - C.2. ...

3. The panel shall advise the state board and the department in developing evaluations and reporting on data to the Secretary of Education.

4. - 7. ...

8. Repealed.

D. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:640 (April 2000), amended LR 29:867 (June 2003).

§§131-199. Reserved.

Chapter 2. Responsibilities of the Superintendent of Public Elementary and Secondary Education and of the Department of Education

§201. General Responsibilities and Authorities

A. The State Superintendent of Public Elementary and Secondary Education (the State Superintendent) and the State Department of Education (the department) shall administer those programs and policies necessary to implement R.S.17:1941 et seq.

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

§240. Impartial Hearing Officers

A. The department and each LEA shall maintain a list of qualified and impartial hearing officers. The list shall include a statement of the qualifications of each of those persons.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:641 (April 2000), amended LR 29:867 (June 2003).

§§253-259. Reserved.

§260. Full Educational Opportunity Goal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:642 (April 2000), repealed LR 29:867 (June 2003).

Chapter 3. Responsibilities and Activities of the Division of Special Populations

§302. Monitoring, Complaint Management and Investigation

A. ...

B. The Division shall monitor in accordance with established procedures all public and participating private schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. - E. 1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:643 (April 2000), amended LR 29:867 (June 2003).

§369. Personnel Standards

A. Personnel of state and local public and private educational agencies, including local agency providers, who deliver special education services (including instructional, appraisal, related, administrative, and support services) to children and youth with disabilities (3 through 21) shall meet appropriate entry level requirements that are based on the highest requirements in Louisiana applicable to the

profession or discipline in which the person is providing special education or related services.

A.1. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:644 (April 2000), amended LR 29:867 (June 2003).

Chapter 4. Responsibilities of Local Educational Agencies

§401. Responsibilities of LEAs

A. Each LEA shall identify and locate each student suspected of having a disability (regardless of the severity of the disability), birth through 21 years of age, residing within its jurisdiction.

B. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:647 (April 2000), amended LR 29:868 (June 2003).

§405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than 3 Years of Age

A. LEAs have the option of providing special education and early intervention services to infants and toddlers with disabilities who are from birth to 3 years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

§410. Child Search (Child Find) Activities for Infants and Toddlers with DisabilitiesC Birth through 2 Years of Age

A. If, in the process of implementing these regulations, any LEA locates a child within these age ranges who is suspected of having a disability shall be referred to the Lead Agency's designated point of entry.

B. For children 2.6 years of age or older, follow the procedures in §415.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:868 (June 2003).

§411. Child Search (Child Find) Activities for Students 3 through 21 Years of Age

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

§413. Students in an Educational Program Operated by the LEA

A. An LEA shall identify a student as suspected of having a disability by the School Building Level Committee (SBLC). This committee shall coordinate and document the results, as appropriate, of educational screening, sensory screening, health screening, speech and language screening, or motor screening, and the results of the intervention efforts.

B. - C. ...

D. Within 10 business days after receipt of the referral by the pupil appraisal office for an individual evaluation, the evaluation coordinator shall complete required initial activities.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:648 (April 2000), amended LR 29:868 (June 2003).

§415. Students Out of School and/or Former Special Education Students Residing in the State

A. Students out of school, including students ages 3 through 5 years who are suspected of having a disability and former special education students who have left a public school without completing their public education by obtaining a state diploma, shall be referred to the LEA's Child Search Coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP based on their individual need following the enrollment process in §416. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five school days.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 2003).

§416. Students with a Documented Severe or Low-Incidence Impairment; Students Who May Be Transferring from out of State; or Infants and Toddlers with Disabilities

A. Students who have a documented severe or low-incidence impairment documented by a qualified professional shall be initially enrolled in a special education program concurrent with the conduct of the evaluation. This enrollment process, from the initial entry into the LEA to placement, shall occur within 10 school days and shall include the steps, as listed below.

1. - 5. ...

B. Students who have been receiving special education services in another state may be initially enrolled in a special education program, on an interim IEP, concurrent with the conduct of the evaluation. The enrollment process shall be the same as in §416.A.

1. ...

C. For toddlers transitioning from Part C programs to preschool special education programs, the LEA shall follow federally mandated time lines and procedures to ensure a smooth and effective transition between programs. The LEA is required to participate in transition planning conferences at least 90 days, and at the discretion of the parties, up to 6 months prior to the age the student is eligible for preschool special education services. The purpose of this conference is to discuss services the student may receive after his or her third birthday. The LEA shall have the multidisciplinary evaluation completed and the IEP developed for all eligible students for implementation by the student's third birthday to ensure the continuity of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:868 (June 20003).

§417. Students with Disabilities Transferring from One LEA to Another LEA within Louisiana

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:869 (June 2003).

§418. Evaluation and Re-Evaluation

A. A full and individual evaluation shall be conducted for each student being considered for special education and related services under these regulations to determine whether the student is a "student with a disability" as defined in these regulations and to determine the educational needs of the student. The evaluation shall be conducted as mandated; and, if it is determined the student is a "student with a disability," the results of the evaluation shall be used by the student's IEP team.

B. A re-evaluation of each student with a disability shall be conducted as mandated; and the results of any re-evaluations shall be addressed by the student's IEP team in reviewing and, as appropriate, revising the student's IEP.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:649 (April 2000), amended LR 29:869 (June 2003).

§431. Required Individual Evaluation

A. - B.1.

2. it is requested in writing by the student's parent(s) (a request for a reevaluation may be presented orally if the parent is illiterate in English or has a disability that prevents the production of a written statement);

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

§433. Evaluation Coordination

A. ...

B. The evaluation coordinator shall ensure that the evaluation is conducted including the following: initial responsibilities following receipt of referral, selection of participating disciplines, procedural responsibilities, and mandated time lines.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

§434. Evaluation Process and Procedures

A. Individual evaluations shall be conducted according to the procedures for evaluation for each disability.

B. The determination of a disability shall be based upon the established criteria for eligibility before the initial delivery of special education and related services.

C. - C.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:650 (April 2000), amended LR 29:869 (June 2003).

§436. Time Lines

A. - B. ...

C. Extensions of evaluation time lines shall be justified by established criteria.

D. The required triennial re-evaluation shall be completed on or before the third year anniversary date.

E. The required evaluation for toddlers transitioning into preschool special education services shall be completed and the IEP developed, if eligible, by the student's third birthday.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

§437. Determination of Needed Evaluation Data

A. In conducting re-evaluations under these regulations and as part of an initial evaluation, if appropriate, the evaluation team shall comply with prescribed procedures as described below.

1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:651 (April 2000), amended LR 29:869 (June 2003).

§438. Evaluating Students with Specific Learning Disabilities

A. The procedures for evaluating a student suspected of having a specific learning disability including team members, criteria for eligibility, observation requirements, and the written report shall be conducted according to mandated procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

§440. IEP/Placement Responsibilities

A. ...

1. Each LEA shall be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability in accordance with all the requirements of this Subpart.

A.2. - C.2. ...

3. Each LEA shall ensure the team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate, as well as concerns in any areas noted in §444.

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

§441. IEP Team Participants

A. - A.7. ...

a. The LEA shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's

transition service needs under §444.M.1, the needed transition services for the student under §444.M2., or both.

7.b. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:652 (April 2000), amended LR 29:869 (June 2003).

§444. IEP Content and Format

A. - M.2. ...

3. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:654 (April 2000), amended LR 29:870 (June 2003).

§446. Least Restrictive Environment

A. - A.8. ...

9. Nonacademic and extracurricular services and activities shall be provided in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities including meals and recess periods and participates with nondisabled children in these services and activities to the maximum extent appropriate to the needs of that child; and may include counseling services, recreational activities, athletics, transportation, health services, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

A.10. - C. ...

1. early childhood setting;
2. early childhood special education setting;
3. home;
4. part-time early childhood/part-time early childhood special education setting;
5. residential facility;
6. separate school;
7. itinerant service outside the home; or
8. reverse mainstream setting.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:655 (April 2000), amended LR 29:870 (June 2003).

§447. Extended School Year Services

A. ...

B. LEAs shall provide educational and related services beyond the normal school year to students with disabilities when these students are determined to be in need of or eligible for such services for the provision of a FAPE. Student eligibility, which may not limit ESY services to particular categories of disabilities, shall be determined in accordance with extended school year program eligibility criteria requirements.

C. The student's extended school year program is to be designed according to the ESY IEP team, in determining the duration, amount and type of extended school year services,

shall not be bound or limited by any predetermined program or length. The extended school year services shall be determined by the IEP team on an individual basis for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:656 (April 2000), amended LR 29:870 (June 2003).

§449. IEP Declassification Placement

A. When a re-evaluation indicates that a student with a disability currently enrolled in special education no longer meets all the criteria for classification as a student with a disability, the LEA shall either:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003).

§451. Requirements for Placed or Referred Students with Disabilities

A. - F. ...

G. Notwithstanding any other provision of these regulations, when it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined that the student cannot be appropriately educated by another governmental agency of the state. After determination has been made that neither the public schools nor another governmental agency of the state can adequately provide special education and related services, then private programs within the state (the third alternative) must be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:657 (April 2000), amended LR 29:870 (June 2003).

§460. Students with Disabilities in Private Schools Placed or Referred by LEAs

A. ...

B. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting to develop an IEP for the child in accordance with §§440-460 of these regulations.

C. The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

D. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

E. If the private school or facility initiates and conducts these meetings the LEA shall ensure that the parents and an agency representative:

1. are involved in any decision about the child's IEP; and
2. agree to any proposed changes in the IEP before those changes are implemented.

F. Even if a private school or facility implemented a child's IEP, responsibility for compliance with this Part remains with the LEA and the SEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:870 (June 2003).

§462. Students with Disabilities Enrolled by Their Parents in Private Schools

A. - D.2. ...

a. Each LEA shall consult with representatives of private school students in deciding how to conduct the annual child count of the number of private school students with disabilities and shall ensure that the count is conducted on December 1 of each year.

D.2.b. - L.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:658 (April 2000), amended LR 29:871 (June 2003).

§491. Child Count

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:662 (April 2000), amended LR 29:871 (June 2003).

§494. Obligation of Noneducational Public Agencies

A. - B. ...

C. If a public agency other than the educational agency fails to provide or pay for the special education and related services in Subsection A, the LEA or department shall provide or pay for these services to the student in a timely manner. The LEA or department may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or department in accordance with the terms of the interagency agreement.

D. Nothing in this part relieves the participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for transition services that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:663 (April 2000), amended LR:871 (June 2003).

Chapter 5. Procedural Safeguards

§503. Independent Educational Evaluation

A. - C.3. ...

4. If a parent requests an IEE at public expense, the LEA must ensure that the evaluation is provided at public expense, unless the LEA demonstrates in a hearing under

§507 of these regulations that the evaluations obtained by the parent did not meet agency criteria.

D. An IEE obtained at public expense shall meet the same criteria established by these regulations. The LEA may not impose conditions on obtaining an IEE, other than the mandated criteria

E. If the parents obtain an IEE at private expense and it meets the mandated criteria, the results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the student; and they may be presented as evidence at a hearing as described in §507 of these regulations regarding the student.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

§504. Prior Notice and Procedural Safeguard Notice

A. - B. ...

1. a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered and reasons why those options were rejected;

B.2. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:664 (April 2000), amended LR 29:871 (June 2003).

§505. Parental Consent

A. ...

B. Consent for initial evaluations may not be construed as consent for initial placement described in Subsection A.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

§506. Complaint Management and Mediation

A. Complaint procedures are established to resolve disputes regarding educational decisions between an LEA and a parent.

A.1. - B. ...

1. Mediation, which is voluntary on the part of both parties, shall be conducted by a qualified and impartial mediator trained in effective mediation techniques and assigned randomly by the department.

2. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:665 (April 2000), amended LR 29:871 (June 2003).

§507. Impartial Due Process Hearing

A. A parent or LEA may initiate a hearing on any of the matters described in §504 A.1 and 2. A parent of a child with a disability or the attorney representing the child, initiates a hearing by sending written notice to the department, which remains confidential. The LEA initiates a hearing by sending written notice to the parent and to the department. When a

hearing has been initiated, the department shall inform the parents of the availability of mediation.

1. The written notice to the department for a due process hearing shall include the student's name and address, the name of the school the student is attending, a description of the nature of the problem, of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the person requesting the hearing. The department must provide a model form to a parent to assist in filing a request for a due process hearing.

2. ...

3. The department may not deny or delay a parent's right to a due process hearing for failure to provide the required notice described above.

B. ...

1. The hearing shall be conducted at a time and place reasonably convenient to the parent and the student involved.

2. Any party shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.

B.3. - C.2. ...

3. be informed, upon request, of any free or low-cost legal and other relevant services if the parent requests the information or when either the parent or the LEA initiates a due process hearing; and

C.4. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:666 (April 2000), amended LR 29:871 (June 2003).

§508. Hearing Officer Appointment and Hearing Procedures

A. - A.1.b. ...

c. No attorney who has represented an LEA or a parent in education litigation within three years may act as a hearing officer.

2. The department and each LEA shall maintain the list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers. The department shall ensure that these hearing officers have successfully completed an in-service training program approved by the department. Additional in-service training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments shall be for a period of one year.

B. ...

1. The hearing officer shall be assigned within five business days by the department, on a rotational basis from the department's list of certified hearing officers.

2. ...

3. If the parent or LEA has reasonable doubt regarding the impartiality of a hearing officer, written information shall be submitted to the department within three business days of receipt of the notice of the assigned hearing officer.

4. The department shall review any written challenge and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

B.5. - C. 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), amended LR 29:872 (June 2003).

§509. Appeal of the Hearing Decision

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:667 (April 2000), repealed LR 29:872 (June 2003).

§510. The State Level Review Panel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

§511. Appeal to the State Level Review Panel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), repealed LR 29:872 (June 2003).

§512. Appeal to State or Federal Court

A. Any party aggrieved by the decision and the findings of the hearing officer has the right to bring a civil action in State or Federal court. The civil action shall be filed in State or Federal court of competent jurisdiction without regard to the amount of controversy within 90 days after notification of the decision or finding of the hearing officer is received by the aggrieved person, agency, or party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§514. Student Status during Proceedings

A. Except as provided in §519.K of the regulations during the pendency of any administrative or judicial proceeding regarding due process, the student involved shall remain in the current educational placement unless the parent and the LEA agrees otherwise.

B. ...

C. If the decision of a hearing officer agrees with the parent that a change of placement is appropriate, that placement shall be treated as an agreement between the state or the LEA and the parents for the purposes of Subsection A.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§515. Costs

A. LEAs shall be responsible for paying administrative costs or reasonable expenses related to participation of LEA personnel in a hearing. The cost and expenses of the hearing officer and stenographic services shall be paid by the department in accordance with its policies and procedures.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:668 (April 2000), amended LR 29:872 (June 2003).

§517. Confidentiality of Information

A. - B.5. ...

C. In ensuring access rights, each LEA shall permit parents to inspect and review any educational records relating to their child, which are collected, maintained or used by the LEA under these regulations. The LEA shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or any hearing pursuant to §507 and §519.D-M of these regulations; in no case shall the time exceed 45 days after the request has been made. The LEA shall not destroy any education records if there is an outstanding request to inspect and review the records.

C.1. - M.1. ...

N. All rights of privacy accorded to parents shall be afforded to students with disabilities, taking into consideration the age of the child and type of severity of the disability.

1. ...

2. Rights accorded to parents under Part B of the IDEA and these regulations are transferred to a student who reaches the age of majority, consistent with §518 of these regulations.

O. State-mandated Compliance Monitoring includes the policies, procedures and sanctions the state shall use to ensure that the requirements of IDEACPart B and these regulations are met.

P. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:669 (April 2000), amended LR 29:873 (June 2003).

§518. Transfer of Parental Rights at the Age of Majority

A. - A.3. ...

B. When a student with a disability reaches the age of majority and has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the students' rights immediately vest with the student.

3. LEAs are required to document in the child's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the

IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003).

§519. Discipline Procedures for Students with Disabilities

A. - B.2. ...

a. the student carries or possesses a weapon at school or at a school function under the jurisdiction of the state or an LEA; or

b. the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state or an LEA.

C. ...

* * *

Weapon has the meaning given the term *dangerous weapon* under Paragraph (2) of the first Subsection (g) of Sec 930 of Title 18, United States Code.

D. - D.1.c. ...

d. determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in Subsection G.

E. - E.1.a. ...

b. for behavior that is not a manifestation of the student's disability consistent with §519.H of these regulations; the student's IEP team shall determine the extent of which services are necessary to enable the student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the student's IEP.

E.2. - F.1. ...

2. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary, to address the behavior.

3. - 4.a. ...

G. The interim alternative educational setting referred to in Paragraph B of this section shall be determined by the IEP team. Any interim alternative educational setting in which a student is placed under Paragraph B.2 and Subsection D of this Section shall:

1. ...

2. include services and modifications designed to address the behavior described in Paragraph B.2 and Subsection D and to prevent the behavior from recurring.

H. - H.4. ...

a. consider, in terms of the behavior subject to disciplinary action, all relevant information, the evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student; observation of the student; and the student's IEP and placement, and

4.b. - 5. ...

6. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur,

unless the removal is in accordance with §519.B.2.(a) and (b) and §519 D of these regulations.

H.7. - I.3. ...

J. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement and discipline, the parent may request a hearing.

1. The department, consistent with §507 and §508.B of these regulations, shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.

a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of §519.H.5.

b. In reviewing a decision under §519.B.2 of these regulations to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in §519.D of these regulations.

K. ...

1. If the parents request a hearing regarding a disciplinary action described in §519.B.2 or §519.D.1.a-d to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in §519.B.2 or §519.D.1.a-d, whichever occurs first, unless the parent and the state or LEA agree otherwise.

2. If a student is placed in an interim alternative educational setting pursuant to §519B.2 and §519.D.1.a-d and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pending of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in K.3 below.

3. ...

a. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §519.D.1.a-d.

K.3.b. - L.4. ...

5. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services in accordance with the provisions of these regulations including the requirements of §519.B-N and R.S. 17:1943.6.

M. - M.5. ...

6. The decisions on expedited due process hearings are appealable consistent with the procedures established at §512 of these regulations.

N. - N.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:670 (April 2000), amended LR 29:873 (June 2003).

Chapter 6. Establishment and Operation of Special School District

§602. Program Approval

A. Each educational program operated by SSD shall meet the standards for school approval.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:674 (April 2000), amended LR 29:874 (June 2003).

§690. Instructions for Child Count

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education (IEP).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:675 (April 2000), amended LR 29:874 (June 2003).

Chapter 7. Responsibilities of State Board Special Schools

§711. Instructions for Child Count

A. ...

B. Each LEA/State agency shall determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B. It is the responsibility of the LEA/State agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program (IEP).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

§716. Louisiana Schools for the Deaf and the Visually Impaired Alternative Placement

A. ...

B. Upon receipt from a parent (as defined in Chapter 9 of these regulations) of an application for admission of his or her child, LSD or LSVI shall require, at a minimum, an individual evaluation for classification as having a hearing impairment (i.e., deaf, hard of hearing) or a visual impairment (i.e., blindness, partial sight) as a part of the application. LSD or LSVI shall notify the LEA of the parent/student domicile that the application has been made, in order to fulfill the provisions established in §709 of these regulations.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:677 (April 2000), amended LR 29:874 (June 2003).

Chapter 8. Interagency Agreements

§830. Types of Interagency Agreements

A. The department and SSD shall have agreements or promulgate regulations for interagency coordination with the Department of Health and Hospitals (DHH), the Department

of Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C), and/or other state agencies and their sub-offices, where appropriate. LEAs shall have those agreements whenever necessary for the provisions of a free appropriate public education. The State School for the Deaf, State School for the Visually Impaired and the State Special Education Center, now under the auspices of SSD, shall have interagency agreements with the LEA in whose geographic area they are located; with each LEA that places a student in the day programs of that facility; with the regional state agencies; and with habilitation agencies with which they share students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:678 (April 2000), amended LR 29:874 (June 2003).

§861. DHH and the Department's Responsibilities under IDEA and the Louisiana Education of Children with Exceptionalities Act

A. This regulation and the following regulations at §§861-870 control the legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (the department), for the interagency coordination of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941 et seq., and encompasses all offices, division, bureaus, units and programs at the state, regional and local levels with each department.

B. These regulations are promulgated to comply with the obligations imposed upon the state of Louisiana and its agencies at 20 U.S.C. §1412 and 34 CFR §300.142.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

§862. Definitions

A. For the purposes of this Chapter, the following definitions apply.

Educational Services Call other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student's IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing state or federal law.

Eligibility Criteria for DHH Health and Medical Services the criteria for individuals receiving a specific health or medical service provided by DHH.

Family the child's parents or legal guardians as well as surrogate parents and persons acting as a parent as defined by *Bulletin 1706 C Regulations for the Implementation of the Children with Exceptionalities Act*.

IEP Individualized Education Program, as defined in §904 herein.

LEA a local educational agency, as defined in §904 herein.

Related Services in addition to the definition of these terms in IDEA and Bulletin 1706, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by DHH, is required by any existing state or federal law to provide to a

qualified recipient in the state of Louisiana. *Related services* includes but is not limited to supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, medical services for diagnostic or evaluation purposes, and transition services.

Services any special education and/or related services as defined in IDEA and Bulletin 1706, Regulations for Implementation of the Children with Exceptionalities Act.

Student any individual between the ages of 3 and 22 years and is enrolled in a Louisiana Local Education Agency ("LEA") or is the responsibility of the department and/or the LEAs.

Student with a Disability as defined in §904 herein.

Transition Services Transition services, as defined in §904 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

§863. Responsibility for Services

A. In order to ensure that all services described in §864 of these regulations that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on the department and DHH.

1. Agency Financial Responsibility. All relevant federal and state mandates apply. The department and DHH, as obligated under federal or state law, must use allocated federal, state and local funds to provide, pay or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education ("FAPE") as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and state laws, including but not limited to 20 U.S.C. §1400 et seq., 34 CFR Parts 300, R.S. 17:1941 et seq., Louisiana Department of Education *Bulletin 1706*, 42 U.S.C. §1396 and 42 CFR Part 430.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.5 relating to assistive technology devices, 34 CFR §300.24 relating to related services, 34 CFR §300.28 relating to supplementary aids and services, and 34 CFR §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH must precede the financial responsibility of the LEA or the state agency responsible for developing the student's IEP.

2. Conditions and Terms of Reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the department is responsible for providing or paying for these services. The department or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the department for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. Interagency Disputes. Disputes relating to the provision of services pursuant to 20 U.S.C. §1400 et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941 et seq., must be addressed in the following manner.

a. If a family disputes the actions of an LEA, that family may either file a complaint with the department or file for a due process hearing, both as set out in Louisiana Bulletin 1706, Chapter 5, Procedural Safeguards. If a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant state or federal statute or regulation.

b. If an LEA disputes the actions of the department, that LEA may file suit against the department only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

c. If an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant state or federal statute or regulation.

d. An interagency dispute between DHH and the department, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the department may seek resolution from a court of competent authority.

e. During the pending of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the department is responsible for those program and/or financial obligations.

4. Coordination of Services Procedures. The department and DHH shall coordinate services to students with disabilities by complying with procedures that are

specific to each agency, including, but not limited to, the following.

a. The department bears the following responsibilities:

i. maintain the Child Search system under Part B of IDEA, specifically, the identification, location and evaluation of students from 3 through 21 years of age who are suspected of having a disability;

ii. provide DHH with a listing of its primary contacts and service description for the Child Search Program on a parish basis for DHH to make available to its regional and parish offices;

iii. ensure that each eligible student/student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services and paperwork, the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being disabled and in the re-evaluation of students;

iv. ensure that each eligible student with a disability receives a free appropriate public education ("FAPE") in accordance with an IEP. FAPE includes special education and related services;

v. ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. monitor the provision of services on IEPs through assurances with LEAs; and

vii. monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or state funds.

b. DHH bears the following responsibilities:

i. provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the state where the students currently reside. The student must meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services, which it would be required to provide to a student with a disability solely because those services are included on IEP;

iii. refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the department and DHH with the proper written consent;

iv. provide information at the consent and request of a parent; and

v. ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:875 (June 2003).

§864. Obligations of DHH

A. If DHH is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to §§861-870 herein, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR

§300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.24 relating to related services, §300.28 relating to supplementary aids and services, and §300.29 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in Paragraph A hereinabove, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or state agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or state agency in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:876 (June 2003).

§865. Students with Disabilities Who are Covered by Public Insurance

A. An LEA may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this agreement, as permitted under the public insurance program, except as follows.

1. With regard to services required to provide FAPE to an eligible student under this part, the LEA:

a. may not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to §867.B of these regulations, may pay the cost that the parent otherwise would be required to pay; and

c. may not use a student's benefits under a public insurance program if that use would:

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§866. Students with Disabilities Who are Covered by Private Insurance

A. With regard to services required to provide FAPE to an eligible student under this Chapter, an LEA may access a

parent's private insurance proceeds only if the parent provides informed consent consistent with 34 CFR §300.500(b)(1).

B. Each time the LEA proposes to access the parent's private insurance proceeds, it must:

1. obtain parent consent in accordance with Subsection A of this Section; and

2. inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§867. Use of Part B Funds

A. If an LEA or state agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

B. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§868. Proceeds from Public or Private Insurance

A. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR §80.25.

B. If an LEA spends reimbursements from federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in 34 CFR §§300.154 and 300.231.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§869. Limitations of These Requirements

A. No provision of this Chapter should be construed to alter the requirements imposed on DHH or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act or any other public insurance program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

§870. General Provisions Governing §§861-870

A. Confidentiality of Information. In accordance with federal and state law, information on a student's disabilities is confidential. For the purposes of identification, location, evaluation, development and implementation of the IEP, information and records on mutually served students may be exchanged between the department and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange must be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the department and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly, through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the department and DHH only after written approval of such regional or local agreements by the Secretary of DHH and the Division Director of Special Populations in the department, respectively.

C. Joint Coordination and Monitoring. DHH and the department are required to develop jointly state level annual goals that are based on needs/data. DHH and the department are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations; facilitate their implementation; and make recommendations for revisions as deemed appropriate.

D. Modifications to these Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the department is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy or otherwise, without the express written consent of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:877 (June 2003).

Chapter 9. Definitions

§904. Definitions

Adapted Physical Education C specially designed physical education for not only students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis but also for students with disabilities, ages 3 through 5, who meet the mandated criteria. The delivery of adapted physical education required by an IEP shall meet the following conditions:

1. evaluation and instruction are provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with mandated criteria for eligibility are included in the caseload;
3. the caseload is in accordance with the pupil/teacher ratios listed in Chapter 10 of these regulations.

Alternate Assessment C a substitute approach used in gathering information on the performance and progress of students who do not participate in typical state assessments. Under these regulations, alternate assessments shall be used to measure the performance of a relatively small population of students with disabilities who are unable to participate in the general statewide assessment system, even with accommodations and modifications.

Certificate of Achievement C an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a Certificate of Achievement shall not limit a student's continuous eligibility for services under these regulations unless the student has reached the age of 22.

1. The student has a disability under the mandated criteria.
2. The student has participated in the Louisiana Alternate Assessment Program (LAA).
3. ...
4. The student has met attendance requirements.
5. - 6. ...

Certificate of Achievement C *Provisional Eligibility Criteria* C an exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below.

1. Eligible students are those:
 - a. who have disabilities under the mandated criteria;
 - 1.b. - 2.b. ...
 - c. The student has met attendance requirements according to the *School Administrator's Handbook, Bulletin 741*.
 - d. - f. ...

Evaluation C is a multidisciplinary evaluation of a child/student, ages 3 through 21 years, in all areas of suspected disability through a systematic process of review; examination; interpretation; and analysis of screening data, developmental status, intervention efforts, interviews, observations, and test results, as required; and other assessment information relative to the predetermined criteria.

Extended School Year (ESY) Services C is the provision of special education and related services to students with disabilities beyond the normal school year of the LEA. All students (ages 3 through 21) classified as having a disability with a current evaluation and IEP are to be screened annually by the ESY screening date to determine eligibility for ESY. Services are to be provided in accordance with the student's IEP once eligibility is determined.

Generic Class C an instructional setting (self-contained or resource).

1. - 1.b. ...
2. The instruction is provided by a special education teacher with appropriate certification.
3. - 4. ...

Individualized Family Service Plan (IFSP) C

1. a written plan for providing early intervention services for eligible children and their families. The determination of the most appropriate early intervention services, including any modifications in placement, service delivery, service providers or early intervention services, is accomplished through the development of the IFSP. The IFSP shall:

- a. be developed jointly by the family and appropriate qualified personnel, including family service

coordinators involved in the provision of early intervention services;

b. be based on the multidisciplinary evaluation and assessment of the child and family;

c. include the services necessary to enhance the development of the child and the capacity of the family to meet the special needs of their child;

d. continue until the child transitions out of early intervention, either to other appropriate service providers at age 3, or at such time that the family and multidisciplinary professionals determine that services are no longer necessary; or the family no longer desires early intervention services;

e. identify the location of the early intervention services to be provided in natural environments, including the home and community settings, in which children without special needs would participate.

2. If there is a dispute between agencies regarding the development or the implementation of the IFSP, the Lead Agency is responsible for taking the necessary actions to resolve the dispute or assign responsibility for developing or implementing the IFSP.

*Infants and Toddlers with Disabilities*Cchildren between the ages of birth and 3 years of age who have been determined eligible for early intervention services.

*Occupational Therapy*Cas a related service, means mandated services provided by a qualified occupational therapist.

*Physical Therapy*Cas a related service means mandated services provided by a qualified physical therapist.

*Related Services*Ctransportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. Related services include speech/language pathology and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

*School Health Services*Cas a related services means services provided by a certified school nurse or other qualified person.

*Specific Learning Disability*Ca severe and unique learning problem characterized by significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. This learning problem is typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit disorders, perceptual disabilities or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with the

mandated criteria. The term does not apply to students who have learning problems primarily the result of visual, hearing, or motor impairments; of mental disabilities; of an emotional disturbance; of lack of instruction in reading or mathematics; of limited English proficiency; or of economic, environmental, or cultural disadvantage.

*Student with a Disability*Ca student evaluated in accordance with §§430-436 of these regulations and determined as having one of the disability categories and, by reason of that disability, needing special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:679 (April 2000), amended LR 29:878 (June 2003).

Chapter 10. State Program Rules for Special Education

§1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education

A. - 6. ...

7. Repealed. (Reserved for future use.)

8. - 12. ...

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 26:687 (April 2000), amended LR 29:879 (June 2003).

Weegie Peabody
Executive Director

0306#017

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs
(LAC 28:IV.301, 701, 805, 1703, and 1705)

The Louisiana Student Financial Assistance Commission (LASFAC) amends its Scholarship/Grant Rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial AssistanceC Higher
Education Scholarship and Grant Programs**

Chapter 3. Definitions

§301. Definitions

*Program Year (Non-Academic Program)*Cthe schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible colleges and universities, beginning with the fall semester or

term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

Qualified Summer Session Those summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or

2. the student can complete his program's graduation requirements in the summer session; or

3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or

4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003).

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

§701. General Provisions

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and each program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve

quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the average award amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each program year (non-academic program). The stipend will be paid for each qualified summer session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003).

Chapter 8. TOPS-TECH Award

§805. Maintaining Eligibility

A. - A.4. ...

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the program year (non-academic program), unless granted an exception for cause by LASFAC; and

A.6. - B. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998), LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003).

Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools

§1703. High School's Certification of Student Achievement

A. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 academic year (high school), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 academic year (high school), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

B. Procedures for Reporting and Certifying Student Performance

1.a. Through the 2002 academic year (high school), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 academic year (high school), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 academic year (high school), the certification form shall contain, but is not limited to, the following reportable data elements:

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum.); and

iv. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 academic year (high school), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 academic year (high school), the responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 academic year (high school), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS cumulative high school grade point average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 graduates for the TOPS performance award. 1998 graduates who are ranked in the top five percent

of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the following criteria shall be eligible for the performance award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 academic year (high school), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 academic year (high school), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 academic year (high school), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26:1998 (September 2000), LR 26:2269 (October 2000), LR 27:1863 (November 2001), LR 29:880 (June 2003).

§1705. Notification of Certified Students

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS performance and honors awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 academic year (high school), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

b. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

c. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

d. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 academic year (high school), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Students (TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS cumulative high school grade point average, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

b. LASFAC must determine that your TOPS cumulative high school grade point average based on the TOPS core curriculum meets the statutory requirements;

c. you must be a Louisiana resident as defined by LASFAC;

d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;

e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:644 (April 1998), amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), amended LR 29:126 (February 2003), LR 29:882 (June 2003).

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General Counsel

0306#018

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

Managed Care Option (MCO)CPlan of Benefits
(LAC 32:IX.Chapters 1-7)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB has adopted an entire new Plan of Benefits for the Office of Group Benefits, designating it as the Managed Care Option (MCO) Plan of Benefits. The MCO Plan of Benefits sets forth the terms and conditions pursuant to which eligibility and benefit determinations are made with regard to the self-insured health and accident benefits plan, designated as the MCO Plan, provided for state employees and their dependents pursuant to R.S. 42:851 et seq. Effective July 1, 2003, LAC Title 32, Part IX, entitled "Health Maintenance OrganizationsCHMO" is repealed in its entirety and replaced by a new Part IX, entitled "Managed Care Option (MCO)CPlan of Benefits," as follows.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO)CPlan of Benefits
Chapter 1. Eligibility

§101. Persons to be Covered

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan, the MCO Plan, or an HMO plan.

A. Employee Coverage

1. Employee (see §601).

2. Husband and Wife, both Employees. No one may be enrolled simultaneously as an *employee* and as a *dependent* under the plan, nor may a *dependent* be covered by more than one *employee*. If a covered spouse chooses at a later date to be covered separately, and is eligible for coverage as an *employee*, that person will be a covered *employee* effective the first day of the month after the election of separate coverage. The change in coverage will not increase the benefits.

3. Effective Dates of Coverage, New Employee. Coverage for each *employee* who completes the applicable enrollment form and agrees to make the required payroll contributions to his *participant employer* is to be effective as follows.

a. If employment begins on the first day of the month, coverage is effective the first day of the following month.

b. If employment begins on the second day of the month or after, coverage is effective the first day of the second month following employment.

c. *Employee coverage* will not become effective unless the *employee* completes an application for coverage within 30 days following the date of employment. An

employee who completes an application after 30 days following the date of employment will be considered an overdue applicant.

4. Re-Enrollment, Previous Employment

a. An *employee* whose employment terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (*employee*, *employee* and one *dependent*, family) in force on the effective date of termination.

b. If an *employee* acquires an additional *dependent* during the period of termination, that *dependent* may be covered if added within 30 days of re-employment.

5. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the plan. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the *participant employer* as full time *employees*.

6. Legislative Assistants. Legislative assistants are eligible to participate in the plan if they are declared to be full-time *employees* by the *participant employer* and have at least one year of experience or receive at least 80 percent of their total compensation as legislative assistants.

7. Pre-Existing Condition (PEC)CNew employees (on and after July 1, 2001).

a. The terms of the following paragraphs apply to all eligible *employees* whose employment with a *participant employer* commences on or after July 1, 2001, and to the *dependents* of such *employees*.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

d. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. Retiree Coverage

1. Eligibility

a. *Retirees of participant employers* are eligible for *retiree* coverage under this Plan.

b. An *employee* retired from a *participant employer* may not be covered as an *employee*.

c. *Retirees* are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage. *Retiree* coverage will be effective on the first day of the month following the date of retirement, if the *retiree* and *participant employer* have agreed to make and are making the required contributions.

C. Dependent Coverage

1. Eligibility. A *dependent* of an eligible *employee* or *retiree* will be eligible for *dependent coverage* on the later of the following dates:

- a. the date the *employee* becomes eligible;
- b. the date the *retiree* becomes eligible;
- c. the date the covered *employee* or covered *retiree*

acquires a *dependent*.

2. Effective Dates of Coverage

a. *Dependents of Employees*. Coverage for *dependents* will be effective on the date the *employee* becomes eligible for *dependent coverage*.

b. *Dependents of Retirees*. Coverage for *dependents* of *retirees* will be effective on the first day of the month following the date of retirement if the *employee* and his *dependents* were covered immediately prior to retirement. Coverage for *dependents* of *retirees* first becoming eligible for *dependent coverage* following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn *children*, or the *date acquired* for other classifications of *dependents*, if application is made within 30 days of the date of eligibility.

D. Pre-Existing Condition (PEC) Overdue Application

1. The terms of the following paragraphs apply to all eligible *employees* who apply for coverage after 30 days from the date the *employee* became eligible for coverage and to all eligible *dependents* of *employees* and *retirees* for whom the application for coverage was not completed within 30 days from the *date acquired*. The provisions of this Section do not apply to military reservists or national guardsmen ordered to active duty who return to state service and reapply for coverage with the *program* within 30 days of the date of reemployment. Coverage will be reinstated effective on the date of return to state service. The effective date of coverage will be:

a. the first day of the month following the date of receipt by the *program* of all required forms prior to the fifteenth of the month;

b. the first day of the second month following the date of the receipt by the *program* of all required forms on or after the fifteenth of the month.

2. The *program* will require that all overdue applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

3. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

4. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days

or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

E. Special Enrollments *CHIPAA*. In accordance with *HIPAA*, certain eligible persons for whom the option to enroll for coverage was previously declined, and who would be considered overdue applicants, may enroll by written application to the *participant employer* under the following circumstances, terms and conditions for special enrollments.

1. Loss of Other Coverage. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined because the *employees* or *dependents* had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the *plan* participant; or

b. cessation of *participant employer* contributions for the other coverage, unless the *participant employer* contributions were ceased for cause or for failure of the individual participant to make contributions; or

c. the *employee* or *dependent* having had *COBRA* continuation coverage under a *group health plan* and the *COBRA* continuation coverage has been exhausted, as provided in *HIPAA*.

2. After Acquiring *Dependents*. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined when the *employee* acquires a new *dependent* by marriage, birth, adoption, or placement for adoption.

a. A special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new *dependent* is acquired. Persons eligible for special enrollment for which an application is made more than 30 days after eligibility will be considered overdue applicants subject to a pre-existing condition limitation.

b. The effective date of coverage shall be:

i. for loss of other coverage or marriage, the first day of the month following the date of receipt by the *program* of all required forms for enrollment;

ii. for birth of a *dependent*, the date of birth;

iii. for adoption, the date of adoption or placement for adoption.

c. Special enrollment applicants must complete acknowledgment of pre-existing condition and statement of physical condition forms.

d. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this *plan* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care or *treatment* was recommended or received during the 6-month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

e. If the special enrollee was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in *HIPAA*, the duration of the prior coverage will be credited against the initial 12-month period used by the *program* to exclude benefits for a pre-existing condition if the termination under the prior coverage

occurred within 63 days of the date of coverage under the *plan*.

F. *Retirees Special Enrollment*. *Retirees* will not be eligible for special enrollment, except under the following conditions:

1. retirement began on or after July 1, 1997;
2. the *retiree* can document that creditable coverage was in force at the time of the election not to participate or continue participation in the *plan*;
3. the *retiree* can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
4. the *retiree* has exhausted all *COBRA* and/or other continuation rights and has made a formal request to enroll within 30 days of the loss of other coverage; and
5. the *retiree* has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

G. Health Maintenance Organization (HMO) Option

1. In lieu of participating in the *plan*, *employees* and *retirees* may elect coverage under an approved HMO.

2. New *employees* may elect to participate in an HMO during their initial period of eligibility. Each HMO will hold an annual enrollment period for a coverage effective date of July 1. Transfer of coverage from the *plan* to the HMO or vice-versa will only be allowed during this annual enrollment period. Transfer of coverage will also be allowed as a consequence of the *employee* being transferred into or out of the HMO geographic service area, with an effective date of the first day of the month following transfer.

3. If a *covered person* has elected to transfer coverage, but is hospitalized on July 1, the *plan*, which is providing coverage prior to July 1, will continue to provide coverage up to the date of discharge from the *hospital*.

H. *Medicare Risk HMO Option for Retirees*. *Retirees* who are eligible to participate in a *Medicare Risk HMO plan* who cancel coverage with the *program* upon enrollment in a *Medicare Risk HMO plan* may re-enroll in the *program* upon withdrawal from or termination of coverage in the *Medicare Risk HMO plan*, at the earlier of the following:

1. during the month of November, for coverage effective January 1; or
2. during the next annual enrollment, for coverage effective at the beginning of the next *plan* year.

I. *Tricare for Life Option for Military Retirees*. *Retirees* eligible to participate in the *Tricare for Life (TFL) option* on and after October 1, 2001 who cancel coverage with the *program* upon enrollment in *TFL* may re-enroll in the *program* in the event that the *TFL option* is discontinued or its benefits significantly reduced.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:883 (June 2003).

§103. Continued Coverage

A. *Leave of Absence*. If an *employee* is allowed an approved leave of absence by his *participant employer*, he may retain his coverage for up to one year, if the premium is paid. Failure to do so will result in cancellation of coverage. The *program* must be notified by the *employee* and the *participant employer* within 30 days of the effective date of the leave of absence.

B. Disability

1. *Employees* who have been granted a waiver of premium for basic or supplemental life insurance prior to July 1, 1984 may continue health coverage for the duration of the waiver if the *employee* pays the total contribution to the *participant employer*. *Disability* waivers were discontinued effective July 1, 1984.

2. If a *participant employer* withdraws from the *plan*, health and life coverage for all *covered persons* will terminate as of the effective date of withdrawal.

C. *Surviving Dependents/Spouse*. The provisions of this Section are applicable to surviving *dependents* who elect to continue coverage following the death of an *employee* or *retiree*. On or after July 1, 1999, eligibility ceases for a *covered person* who becomes eligible for coverage in a *group health plan* other than *Medicare*. Coverage under the *group health plan* may be subject to *HIPAA*.

1. Benefits under the *plan* for covered *dependents* of a deceased covered *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurred unless the surviving covered *dependents* elect to continue coverage.

a. The surviving legal spouse of an *employee* or *retiree* may continue coverage until the surviving spouse becomes eligible for coverage in a *group health plan* other than *Medicare*.

b. The surviving *children* of an *employee* or *retiree* may continue coverage until they are eligible for coverage under a *group health plan* other than *Medicare*, or until attainment of the termination age for *children*, whichever occurs first.

c. Surviving *dependents/spouse* will be entitled to receive the same *participant employer* premium contributions as *employees* and *retirees*.

d. Coverage provided by the civilian health and medical program of the uniform services will not be sufficient to terminate the coverage of an otherwise eligible surviving legal spouse or a *dependent child*.

2. A surviving spouse or *dependent* cannot add new *dependents* to continued coverage other than a child of the deceased *employee* born after the *employee's* death.

3. *Participant Employer/Dependent Responsibilities*

a. It is the responsibility of the *participant employer* and surviving covered *dependent* to notify the *program* within 60 days of the death of the *employee* or *retiree*.

b. The *program* will notify the surviving *dependents* of their right to continue coverage.

c. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification, and premium payment must be made within 45 days of the date continued coverage is elected for coverage retroactive to the date coverage would have otherwise terminated.

d. Coverage for the surviving spouse under this Section will continue until the earliest of the following events occurs:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. on or after July 1, 1999, becomes eligible for coverage under a *group health plan* other than *Medicare*.

e. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following events:

- i. failure to pay the applicable premium;
- ii. on or after July 1, 1999, becomes eligible for coverage under any *group health plan* other than *Medicare*;
- iii. the attainment of the termination age for *children*.

D. *Over-Age Dependents*. If an unmarried, never married *dependent* child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity and became incapable prior to the termination age for *children* and is dependent upon the covered *employee* for support, the coverage for the *dependent* child may be continued for the duration of incapacity.

1. Prior to attainment of age 21, the *program* must receive documentation for *dependents* who are mentally retarded or who have a physical incapacity.

2. For purposes of this Section, mental illness does not constitute mental retardation.

3. The *program* may require that the covered *employee* submit current proof from a licensed medical doctor of continued mental retardation or physical incapacity as often as it may deem necessary.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:885 (June 2003).

§105. COBRA

A. Employees

1. Benefits under this *plan* for a covered *employee* will terminate on the last day of the calendar month during which employment is terminated voluntarily or involuntarily, the *employee* no longer meets the definition of an *employee* or coverage under a leave of absence expires unless the covered *employee* elects to continue at the *employee's* own expense. *Employees* terminated for gross misconduct are not eligible for *COBRA*.

2. It is the responsibility of the *participant employer* to notify the *program* within 30 days of the date coverage would have terminated because of any of the foregoing events and the *program* will notify the *employee* within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification and premium payment must be made within 45 days of the date the *employee* elects continued coverage, for coverage retroactive to the date coverage would have otherwise terminated. Coverage under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 18 months from the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

B. Surviving Dependents

1. Benefits for covered surviving *dependents* of an *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurs, unless the surviving covered *dependents* elect to continue coverage at his/her own expense.

2. It is the responsibility of the *participant employer* or surviving covered *dependents* to notify the *program* within 30 days of the death of the *employee* or *retiree*. The *program* will notify the surviving *dependents* of their right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification. Premium payment must be made within 45 days of the date the continued coverage was elected, retroactive to the date coverage would have terminated.

a. Coverage for the surviving *dependents* under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

b. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. 36 months beyond the date coverage would have terminated;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition.

C. Divorced Spouse

1. Coverage under this *plan* will terminate on the last day of the month during which dissolution of the marriage occurs by virtue of a legal decree of divorce from the *employee* or *retiree*, unless the covered divorced spouse elects to continue coverage at his or her own expense. It is the responsibility of the divorced spouse to notify the *program* within 60 days from the date of divorce and the *program* will notify the divorced spouse within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of notification. Premium payment must be made within 45 days of the date continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

2. Coverage for the divorced spouse under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

D. Dependent Children

1. Benefits under this *plan* for a covered *dependent* child of a covered *employee* or *retiree* will terminate on the last day of the month during which the *dependent* child no longer meets the definition of an eligible covered *dependent*, unless the *dependent* elects to continue coverage at his or her own expense. It is the responsibility of the *dependent* to notify the *program* within 60 days of the date coverage would have terminated and the *program* will notify the *dependent* within 14 days of his or her right to continue coverage.

2. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification and premium payment must be made within 45

days of the date the continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

3. Coverage for *children* under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

E. *Dependents* of *COBRA* Participants

1. If a covered terminated *employee* has elected to continue coverage and if during the period of continued coverage the covered spouse or a covered *dependent* child becomes ineligible for coverage due to:

- a. death of the *employee*;
- b. divorce from the *employee*; or
- c. a *dependent* child no longer meets the definition of an eligible covered *dependent*;

2. Then, the spouse and/or *dependent* child may elect to continue coverage at their own expense. Coverage will not be continued beyond 36 months from the date coverage would have terminated.

F. *Dependents* of Non-Participating Terminated *Employee*

1. If an *employee* no longer meets the definition of an *employee*, or a leave of absence has expired and the *employee* has not elected to continue coverage, the covered spouse and/or covered *dependent children* may elect to continue coverage at their own expense. The elected coverage will be subject to the notification and termination provisions.

2. In the event a *dependent* child, covered under the provisions of the preceding paragraph no longer meets the definition of an eligible covered *dependent*, he or she may elect to continue coverage at his or her own expense. Coverage cannot be continued beyond 36 months from the date coverage would have terminated.

G. *Miscellaneous Provisions*. During the period of continuation, benefits will be identical to those provided to others enrolled in this *plan* under its standard eligibility provisions for *employee* and *retirees*.

H. *Disability COBRA*

1. If a covered *employee* or covered *dependent* is determined by social security or by the *program* staff (in the case of a person who is ineligible for social security *disability* due to insufficient "quarters" of employment), to have been totally disabled on the date the *covered person* became eligible for continued coverage or within the initial 18 months of coverage, coverage under this *plan* for the *covered person* who is totally disabled may be extended at his or her own expense up to a maximum of 29 months from the date coverage would have terminated. To qualify the *covered person* must:

a. submit a copy of his or her social security *disability* determination to the *program* before the initial 18-month continued coverage period expires and within 60 days after the date of issuance of the social security determination; or

b. submit proof of total *disability* to the *program* before the initial 18-month continued coverage period expires.

2. For purposes of eligibility for continued coverage under this Section, total *disability* means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of 12 months. To meet this definition one must have a severe impairment which makes one unable to do his previous work or any other substantial gainful activity which exists in the national economy, based upon a person's residual functional capacity, age, education and work experience.

3. The staff and medical director of the *program* will make this determination of total *disability* based upon medical evidence, not conclusions, presented by the applicant's *physicians*, work history, and other relevant evidence presented by the applicant.

4. Coverage under this Section will continue until the earliest of the following:

a. 30 days after the month in which social security determines that the *covered person* is no longer disabled. (The *covered person* must report the determination to the *program* within 30 days after the date of issuance by social security);

b. 29 months from the date coverage would have terminated;

I. *Medicare COBRA*. If an *employee* becomes entitled to *Medicare* on or before the date the *employee's* eligibility for benefits under this *plan* terminates, the period of continued coverage available for the *employee's* covered *dependents* will be the earliest of the following:

1. failure to pay the applicable premium;
2. 36 months beyond the date coverage would have terminated;
3. entitlement to *Medicare*;
4. coverage under a *group health plan*, except when subject to a pre-existing condition.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:886 (June 2003).

§107. Change of Classification

A. *Adding or Deleting Dependents*. The *plan member* must notify the *program* whenever a *dependent* is added to, or deleted from, the *plan member's* coverage, regardless of whether the addition or deletion would result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

B. *Change in Coverage*

1. When, by reason of a change in family status (e.g., marriage, birth of child), the class of coverage is subject to change, effective on the date of the event, if application for the change is made within 30 days of the date of the event.

2. When the addition of a *dependent* results in the class of coverage being changed, the additional premium will be charged for the entire month if the date of change occurs on or before the fourteenth day of the month. If the date of change occurs on or after the fifteenth day of the month, additional premium will not be charged until the first day of the following month.

C. Notification of Change. It is the responsibility of the *employee* to notify the *program* of any change in classification of coverage affecting the *employee's* contribution amount. Any such failure later determined will be corrected on the first day of the following month.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:887 (June 2003).

§109. Contributions

A. The state of Louisiana may make a contribution toward the cost of the *plan*, as determined on an annual basis by the legislature.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

Chapter 2. Termination of Coverage

§201. Active Employee and Retired Employee Coverage

A. Subject to continuation of coverage and *COBRA* rules, all benefits of a *covered person* will terminate under this *plan* on the earliest of the following dates:

1. on the date the *program* terminates;
2. on the date the group or agency employing the covered *employee* terminates or withdraws from the *program*;
3. on the contribution due date if the group or agency fails to pay the required contribution for the covered *employee*;
4. on the contribution due date if the *covered person* fails to make any contribution which is required for the continuation of his coverage;
5. on the last day of the month of the covered *employee's* death;
6. on the last day of the month in which the covered *employee* ceases to be eligible.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

§203. Dependent Coverage Only

A. Subject to continuation of coverage and *COBRA* rules, *dependent coverage* will terminate under this *plan* on the earliest of the following dates:

1. on the last day of the month the *employee* ceases to be covered;
2. on the last day of the month in which the *dependent*, as defined in this *plan* ceases to be an eligible *dependent* of the covered *employee*;
3. for grandchildren for whom the *employee* does not have legal custody or has not adopted, on the date the child's parent ceases to be a covered *dependent* under this *plan* or the grandchild no longer meets the definition of *children*;
4. upon discontinuance of all *dependent coverage* under this *plan*.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

Chapter 3. Medical Benefits

§301. Medical Benefits Apply when Eligible Expenses are Incurred by a Covered Person

A. Eligible Expenses. Eligible expenses are the charges incurred for the following items of service and supply when *medically necessary* for the *treatment* of disease, accident, illness, or injury. These charges are subject to the applicable limits of the *fee schedule*, schedule of benefits, exclusions and other provisions of the *plan*. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. *hospital* care. The medical services and supplies furnished by a *hospital* or ambulatory surgical center. covered charges for *room and board* will be payable as shown in the schedule of benefits;
2. services of a *physician*;
3. routine nursing services, i.e., "floor nursing" services provided by nurses employed by the *hospital* are considered as part of the *room and board*;
4. anesthesia and its administration;
5. laboratory examinations and diagnostic X-rays;
6. nuclear medicine and electroshock therapy;
7. blood and blood plasma, blood derivatives and blood processing, when not replaced;
8. surgical and medical supplies billed for *treatment* received in a *hospital* or ambulatory surgical center, and other covered provider's surgical and medical supplies as listed below:
 - a. catheters Cexternal and internal;
 - b. cervical collar;
 - c. leg bags for urinal drainage;
 - d. ostomy supplies;
 - e. prosthetic socks;
 - f. prosthetic sheath;
 - g. sling (arm or wrist);
 - h. suction catheter for oral evacuation;
 - i. surgical shoe (following foot surgery only);
 - j. plaster casts;
 - k. splints;
 - l. surgical trays (for certain procedures);
9. services of licensed physical, occupational or speech therapist when prescribed by a *physician* and pre-approved through outpatient procedure certification;
10. intravenous injections, solutions, and eligible related intravenous supplies;
11. services rendered by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) for the *treatment* of accidental injuries to a *covered person's* sound natural teeth, if:
 - a. coverage was in effect with respect to the individual at the time of the accident;
 - b. *treatment* commences within 90 days from the date of the accident and is completed within two years from the date of the accident; and
 - c. coverage remains continuously in effect with respect to the *covered person* during the course of the *treatment*; eligible expenses will be limited to the original estimated total cost of *treatment* as estimated at the time of initial *treatment*;
12. *durable medical equipment*, subject to the lifetime maximum payment limitation as listed in the schedule of benefits. The *program* will require written certification by

the treating *physician* to substantiate the medical necessity for the equipment and the length of time it will be used;

13. initial prosthetic appliances. Subsequent prosthetic appliances are eligible only when acceptable certification is furnished to the *program* by the attending *physician*;

14. professional ambulance services, subject to the following provisions:

a. licensed professional ambulance service in a vehicle licensed for highway use to or from a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$350 less a \$50 copayment for transportation charges. Medical services and supplies will be considered separately;

b. licensed air ambulance service to a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$1,500 less a \$250 copayment. Medical services and supplies will be considered separately;

15. one pair of eyeglass lenses or contact lenses required as a result of bilateral cataract surgery performed while coverage was in force. Expenses incurred for the eyeglass frames will be limited to a maximum benefit of \$50;

16. the first two pairs of surgical pressure support hose. Additional surgical support hose may be considered an eligible expense at the rate of one pair per six-month period;

17. the first two ortho-mammary surgical brassieres. Additional ortho-mammary surgical brassieres may be considered an eligible expense at the rate of one per six-month period;

18. orthopedic shoes prescribed by a *physician* and completely custom built;

19. acupuncture when rendered by a medical doctor;

20. eligible expenses associated with an organ transplant procedure including expenses for patient screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, if:

a. the transplantation must not be considered experimental or investigational by the American Medical Association;

b. the transplant surgery must be performed at a medical center, which has an approved transplant program as determined by *Medicare*;

c. the *plan* will not cover expenses for the transportation of surgeons or family members of either the patient or donor;

d. all benefits paid will be applied against the *lifetime maximum benefit* of the transplant recipient;

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed medical doctor;

b. services require the skills of and performed by a licensed physical therapist or licensed occupational therapist;

c. restorative potential exists;

d. meets the standard for medical practice;

e. reasonable and necessary for the *treatment* of the disease, illness, accident, injury or postoperative condition;

f. approved through outpatient procedure certification;

22. cardiac *rehabilitation* when:

a. rendered at a medical facility under the supervision of a *physician*;

b. rendered in connection with a myocardial infarction, angioplasty with or without stenting, or cardiac bypass surgery;

c. completed within 6 months following the qualifying event;

NOTE: Charges incurred for dietary instruction, educational services, behavior modification literature, health club membership, exercise equipment, preventative programs and any other items excluded by the *plan* are not covered.

23. routine physical examinations and immunizations as follows:

a. *well-baby care* expenses subject to co-payments:

i. newborn facility and professional charges;

ii. birth to age 1 office visits for scheduled immunizations and screening;

b. *well-child care* expenses subject to co-payments:

i. age 1 to age 3 office visits per year for scheduled immunizations and screening;

ii. age 3 to age 16 office visit per year for scheduled immunizations and screening;

c. *well-adult care* expenses, subject to co-payment specified in the schedule of benefits, for routine physical examination by a *physician* and related laboratory and radiology charges:

i. age 16 until age 40 \$200 during a 3-year period;

ii. age 40 until age 50 \$200 during a 2-year period;

iii. age 50 and over \$200 during a 1-year period;

24. cancer screenings as follows:

a. one pap test for cervical cancer per *plan year*;

b. screening mammographic examinations performed according to the following schedule:

i. one baseline mammogram during the five-year period a person is 35-39 years of age;

ii. one mammogram every two *plan years* for any person who is 40-49 years of age or more frequently if recommended by a *physician*;

iii. one mammogram every 12 months for any person who is 50 years of age or older;

c. testing for detection of prostate cancer, including digital rectal examination and prostate-specific antigen testing, once every twelve months for men over the age of 50 years, and as *medically necessary* for men over the age of 40 years;

25. *outpatient surgical facility* fees as specified in the maximum payment schedule;

26. midwifery services performed by a certified midwife or a certified nurse midwife;

27. *physician's assistants*, perfusionists, and registered nurse assistants assisting in the operating room;

28. splint therapy for the *treatment* of temporomandibular joint dysfunction (TMJ), limited to a lifetime benefit of \$600 for a splint and initial panoramic x-ray only. Surgical *treatment* for TMJ will only be eligible following a demonstrated failure of splint therapy and upon approval by the *program*;

29. oxygen and oxygen equipment;

30. outpatient self-management training and education, including medical nutrition therapy, for the *treatment* of

diabetes, when these services are provided by a licensed health care professional with demonstrated expertise in diabetes care and *treatment* who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with National Standards for Diabetes Self Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the *covered person* has successfully completed the *program*, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the patient's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

c. services must be rendered at a facility with a diabetes educational program recognized by the American Diabetes Association;

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Sleep Disorders Association or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

b. no benefits are payable for surgical *treatment* of sleep disorders (including LAUP) except following demonstrated failure of non-surgical *treatment* and upon approval by the *program*;

32. mental health and/or substance abuse services only when obtained through the *program's* managed behavioral health care organization contractor as shown in the schedule of benefits. These services must be identified by a DSM IV diagnosis code.

B. Emergency Services - Subject to all applicable terms of the Plan, *emergency services* will be considered *eligible expenses* whether rendered by a *participating provider* or non-participating provider, as follows.

1. *Emergency services* provided to a *covered person* who is later determined not to have required *emergency services* will be considered *eligible expenses* except:

a. when the *covered person's* medical condition would not have led a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to health, serious impairment to bodily functions, or serious dysfunction of any bodily organ, unless the *covered person* was referred for *emergency services* by a *participating provider* or by an agent of OGB; or

b. when there was material misrepresentation, fraud, omission, or clerical error.

2. If a *covered person* requires hospitalization at a non-participating provider medically necessary inpatient services rendered by the non-participating provider will be considered *eligible expenses* until the *covered person* can be transferred to a participating provider.

3. OGB must be notified of the *emergency services* within 48 hours following commencement of treatment or admission, or as soon as medical circumstances permit. See also §307.C regarding the requirement for pre-admission certification (PAC) for emergency admissions.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003).

§303. Fee Schedule

A. The *fee schedule* sets the maximum fee that the *program* will allow for an eligible medical expense.

B. If the medical provider accepts an assignment of benefits, the *plan member* cannot be billed for amounts exceeding the *fee schedule*.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

§305. Automated Claims Adjusting

A. Auto audit is a software program that applies all claims against its medical logic program to identify improperly billed charges, and charges for which this *plan* provides no benefits. Any claim with diagnosis or procedure codes deemed inadequate or inappropriate will be automatically reduced or denied. Providers accepting assignment of benefits cannot bill the *plan member* for the reduced amounts.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

§307. Utilization ReviewC Pre-Admission Certification, Continued Stay Review

A. Pre-admission certification (PAC) and continued stay review (CSR) establish the medical necessity and length of inpatient *hospital* confinement.

B. For a routine vaginal delivery, PAC is not required for a stay of 2 days or less. If the mother's stay exceeds or is expected to exceed 2 days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a scheduled caesarean section, it is required that PAC be obtained prior to or the day of admission.

C. No benefits will be paid under the *plan*:

1. unless PAC is requested at least 72 hours prior to the planned date of admission;

2. unless PAC is requested within 48 hours of admission, or as soon as medical circumstances, permit in the case of *emergency services*;

3. for *hospital* charges incurred during any confinement for which PAC was requested, but which was not certified as *medically necessary* by the *program's* utilization review contractor;

4. for *hospital* charges incurred during any confinement for any days in excess of the number of days certified through PAC or CSR.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003).

§309. Outpatient Procedure Certification (OPC)

A. OPC certifies that certain outpatient procedures and therapies are *medically necessary*.

B. OPC is required on the following procedures:

1. cataract;
2. laparoscopic cholecystectomy;
3. lithotripsy;
4. all PET scans and MRI's, as follows:
 - a. brain/head lower extremity;
 - b. upper extremity;
 - c. spine;
5. knee arthroscopy;
6. septoplasty;
7. therapies:
 - a. physical therapy;
 - b. speech therapy;
 - c. occupational therapy;
 - d. therapy with unlisted modality.

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with outpatient therapies:

1. unless OPC is requested at least 72 hours prior to the planned date of procedure or therapy;
2. for charges incurred on any listed procedure for which OPC was requested but not certified as *medically necessary* by the *program's* utilization review contractor.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

§311. Case Management

A. Case management (CM) is the care management program available in cases of illness or injury where critical care is required and/or *treatment* of extended duration is anticipated.

B. Case management may provide coverage for services that are not normally covered. To be eligible, the condition being treated must be a covered condition, and Case management must be approved prior to the service being rendered.

C. These charges are subject to the applicable co-payments, *fee schedule* and maximum benefit limitations.

D. The following criteria must be met:

1. the *program* must be the primary carrier at the time case management is requested. Any case management plan will be contingent upon the *program* remaining the primary carrier;
2. the patient must not be confined in any type of nursing home setting at the time case management is requested;
3. there must be a projected savings to the *program* through case management; or a projection that case management expenses will not exceed normal *plan* benefits; and
 - a. the proposed *treatment plan* will enhance the patient's quality of life;

b. benefits will be utilized at a slower rate through the alternative *treatment plan*.

E. If approved, case management may provide any of the following:

1. alternative care in special *rehabilitation* facilities;
2. alternative care in a skilled nursing facility/unit or swing bed (not nursing home), or the patient's home, subject to the applicable co-payments;
3. avoidance of complications by earlier *hospital* discharge, alternative care and training of the patient and/or family;
4. home health care services limited to 150 visits per *plan* year;
5. hospice care/benefits are always payable at 80 percent never at 100 percent;
6. private duty nursing care;
7. total parenteral nutrition, provided that home visits for TPN are not reimbursable separately;
8. enteral nutrition up to a single 90-day period for instances where through surgery or neuromuscular mechanisms the patient cannot maintain nutrition and the condition can reasonably be expected to improve during this one 90-day timespan.

F. Mental health and substance abuse *treatments* or conditions are not eligible for case management.

G. Benefits are considered payable only upon the recommendation of the *program's* contractor, with the approval of the attending *physician*, patient or his representative, and the *program* or its representative. Approval is contingent upon the professional opinion of the *program's* medical director, consultant, or his designee as to the appropriateness of the recommended alternative care.

H. If a condition is likely to be lengthy or if care could be provided in a less costly setting, the *program's* contractor may recommend an alternative plan of care to the *physician* and patient.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

§313. Dental Surgical Benefits

A. When excision of one or more impacted teeth is performed by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) while coverage is in force, the *program* will pay the eligible expense actually incurred for the surgical procedure.

B. Expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care are subject to the applicable co-payments and the maximum benefit provisions of the *plan*.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

§315. Medicare Reduction

A. If the patient has not chosen and paid a separate premium for the full coordination of benefits option, the charges will be reduced by whatever amounts are paid or payable by *Medicare*. The *program* requires written confirmation from the Social Security Administration or its

successor if a person is not eligible for *Medicare* coverage. All provisions of this *plan*, including all limitations and exceptions, will be applied.

B. *Retiree 100-Medicare COB*. Upon enrollment and payment of the additional monthly premium, a *plan member* and his *dependents* may choose to have full coordination of benefits with *Medicare*. Enrollment must be made within 30 days of eligibility for *Medicare* or within 30 days of retirement if already eligible for *Medicare* and at the annual open enrollment.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003).

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this *plan* for:

1. cases covered, in whole or in part, by any worker's compensation program, regardless of whether the patient has filed a claim for benefits. This applies to compensation provided on an expense-incurred basis or blanket settlements for past and future losses;

2. convalescent, skilled nursing, sanitarium, or *custodial care* or *rest cure*;

3. expenses for elective, non-therapeutic voluntary abortion, although expenses for complications as a result are covered;

4. injuries sustained while in an aggressor role;

5. expenses incurred as a result of the patient's attempt at a felony or misdemeanor;

6. expenses incurred by a *covered person* in connection with cosmetic surgery, unless necessary for the immediate repair of a deformity caused by a disease and/or injury which occurs while coverage is in force. No payment will be made for expenses incurred in connection with the *treatment* of any body part not affected by the disease and/or injury;

7. expenses incurred for shoes and related items similar to wedges, cookies and arch supports;

8. any expense, except for actual out-of-pocket expenses, incurred by a member of a Health Maintenance Organization (HMO), Health Maintenance *Plan* (HMP) or other prepaid medical plan or medical services plan if the *covered person* is enrolled on a group (employer-sponsored) basis;

9. dental braces and orthodontic appliances (for whatever reason prescribed or utilized) and *treatment* of periodontal disease;

10. dentures, dental implants and any surgery for their use, except if needed as the result of an accident that meets the *program's* requirements;

11. medical services, *treatment* or prescription drugs provided without charge to the *covered person* or for which the *covered person* is not legally obligated to pay;

12. maternity expenses incurred by any person other than the *employee* or the *employee's* legal spouse;

13. personal convenience items including, but not limited to, admit kits, bedside kits, telephone and television, guest meals, beds, and similar items;

14. charges for services and supplies which are in excess of the maximum allowable under the medical *fee*

schedule, *outpatient surgical facility fee schedule*, or any other limitations of the *plan*;

15. services and supplies which are not *medically necessary*;

16. services rendered for remedial reading and recreational, visual and behavioral modification therapy, *pain rehabilitation control and/or therapy*, and dietary or educational instruction for all illnesses, other than diabetes;

17. services and supplies in connection with or related to gender dysphoria or reverse sterilization;

18. artificial organ implants, penile implants, transplantation of other than homo sapiens (human) organs;

19. expenses subsequent to the initial diagnosis, for infertility and complications, including, but not limited to, services, drugs, and procedures or devices to achieve fertility; in-vitro fertilization, low tubal transfer, artificial insemination, intracytoplasmic sperm injection, embryo transfer, gamete transfer, zygote transfer, surrogate parenting, donor semen, donor eggs, and reversal of sterilization procedures;

20. air conditioners and/or filters, dehumidifiers, air purifiers, wigs or toupees, heating pads, cold devices, home enema equipment, rubber gloves, swimming pools, saunas, whirlpool baths, home pregnancy tests, lift chairs, devices or kits to stimulate the penis, exercise equipment, and any other items not normally considered medical supplies;

21. administrative fees, interest, penalties or sales tax;

22. marriage counseling and/or family relations counseling;

23. charges for services rendered over the telephone from a *physician* to a *covered person*;

24. radial keratotomy or any procedures for the correction of refractive errors;

25. speech therapy, except when ordered by a *physician* for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

26. services and supplies related to obesity, surgery for excess fat in any area of the body, resection of excess skin or fat following weight loss or pregnancy;

27. hearing aids, or any examination to determine the fitting or necessity;

28. hair transplants;

29. routine physical examinations or immunizations not listed under eligible expenses;

30. diagnostic or *treatment* measures which are not recognized as generally accepted medical practice;

31. medical supplies not listed under eligible expenses;

32. *treatment* or services for mental health and substance abuse provided outside the *treatment* plan developed by the *program's* managed behavioral health care organization or by therapists with whom or at facilities with which the *program's* managed behavioral health care organization does not have a contract;

33. expenses for services rendered by a dentist or oral surgeon and any ancillary or related services, except for covered dental surgical procedures, dental procedures which fall under the guidelines of eligible dental accidents, procedures necessitated as a result of or secondary to cancer, or oral and maxillofacial surgeries which are shown to the

satisfaction of the *program* to be *medically necessary*, non-dental, non-cosmetic procedures;

34. genetic testing, except when determined to be *medically necessary* during a covered pregnancy;

35. *treatment* for temporomandibular joint dysfunction (TMJ), except as listed under eligible expenses;

36. services of a private-duty registered nurse (R.N.) or of a private-duty licensed practical nurse (L.P.N.);

37. breast thermograms;

38. services rendered by any provider related to the patient by blood, adoption or marriage;

39. facility fees for services rendered in a *physician's* office or in any facility not approved by the federal Health Care Financing Administration for payment of such fees under *Medicare*;

40. glucometers;

41. services rendered by a non-participating provider, except *emergency services* as provided herein.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:892 (June 2003).

§319. Coordination of Benefits

A. Coordination of benefits is the order of payment when two or more plans are involved. When a patient is also covered by another plan, the plans will coordinate benefits.

B. Benefit *plan* is this *plan* or any one of the following:

- 1. group or employer sponsored *plan*;
- 2. group practice and other group prepayment *plan*;
- 3. other plans required or provided by law. This does not include Medicaid or any benefit plan that does not allow coordination.

C. Primary Plan and Secondary Plan

1. All benefits provided are subject to coordination of benefits.

2. Benefit *Plan* Payment Order

a. If an individual is covered by more than one plan, the order of *benefit payment* will follow guidelines established by the National Association of Insurance Commissioners, except for *Health Maintenance Organizations* or other types of employer-sponsored prepaid medical plans.

b. The plan that pays first will pay as if there were no other plan involved. The secondary and subsequent plans may pay the balance due up to 100 percent of the total allowable expense. No plan will pay benefits greater than it would have paid in the absence of coordination of benefits.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (July 2003).

§321. Managed Care Option

A. The *program* may implement Managed Care Option (MCO) arrangements or other agreements to discount payable fees. The *program* reserves to itself the right to negotiate the amount of the discount, the incentives to be offered to *plan members* and all other provisions which are a part of any discount fee arrangement. To be eligible, the *program* must be the primary carrier at the time services are rendered. The only exception would be on a *covered person* with only *Medicare* Part A, who did not also have *Medicare*

Part B. The Part B charges would be eligible for *MCO* benefits.

1. If a *covered person* obtains medical services or *hospital* services from an eligible provider who has agreed to provide the services at a mutually agreed upon discount from the maximum medical *fee schedule* or at a per diem or discounted rate from a *hospital*, the *program* will pay after applicable co-pays, as specified in the schedule of benefits. There is a contractual assignment to all *MCO* participating providers.

2. Point of Service *MCO* Regions (Areas)

a. The following regions are used to determine whether there is an *MCO participating provider* in the same area as the point of service.

| |
|--|
| Region 1 - Zip Codes 70000 through 70199 |
| Region 2 - Zip Codes 70300 through 70399 |
| Region 3 - Zip Codes 70400 through 70499 |
| Region 4 - Zip Codes 70500 through 70599 |
| Region 5 - Zip Codes 70600 through 70699 |
| Region 6 - Zip Codes 70700 through 70899 |
| Region 7 - Zip Codes 71300 through 71499 |
| Region 8 - Zip Codes 71100 through 71199 |
| Region 9 - Zip Codes 71200 through 71299 |

b. If a *non-participating* provider is used, then no benefits are payable except for emergency services as provided herein.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003).

§323. Prescription Drug Benefits

A. This *plan* allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a *covered person* as an inpatient *hospital* patient or an outpatient *hospital* patient, including insulin, Retin-A dispensed for *covered persons* under the age of 26, vitamin B12 injections, prescription potassium chloride, and over-the-counter diabetic supplies, including, but not limited to, strips, lancets, and swabs. In addition, this *plan* allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the *treatment* of inherited metabolic diseases if the low protein food products are *medically necessary* and are obtained from a source approved by the OGB. Such expenses shall be subject to co-payments relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*Ca disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. phenyketonuria (PKU);
- b. maple syrup urine disease (MSUD);
- c. methylmalonic acidemia (MMA);
- d. isovaleric acidemia (IVA);
- e. propionic acidemia;
- f. glutaric acidemia;
- g. urea cycle defects;
- h. tyrosinemia.

2. *Low Protein Food Products*Ca food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary *treatment* of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

B. The following drugs, medicines, and related services are not covered:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for a *covered person* over age 26;
5. amphetamines dispensed for diagnoses other than Attention Deficit Disorder or Narcolepsy;
6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;
7. nutritional or parenteral therapy;
8. vitamins and minerals;
9. drugs available over the counter; and
10. serostim dispensed for any diagnoses or therapeutic purposes other than AIDS wasting;
11. drugs for *treatment* of impotence, except following surgical removal of the prostate gland; and
12. glucometers.

C. Outpatient prescription drug benefits are adjudicated by a third-party pharmacy benefits manager with whom the *program* has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this *plan of benefits*, the following apply to expenses incurred for outpatient prescription drugs.

1. The *eligible expense* for a prescription drug is limited to the allowable cost of the generic drug, if a generic is available, and to the allowable cost for brand drugs identified on the pharmacy benefits manager's list of preferred drugs, if generic is not available.

2. Upon presentation of the *OGB* health benefits identification card at a *participating pharmacy*, the *plan member* is responsible for payment of 50 percent of eligible expense, up to \$50 per prescription dispensed, and 100 percent of excess cost (over and above the *eligible expense*) at the point of purchase. The *plan* will pay the balance of the *eligible expense* for prescription drugs dispensed at a *participating pharmacy*.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (below).

3. In the event the *plan member* does not present the *OGB* health benefits identification card to the *participating pharmacy* at the time of purchase, or prescription drugs are purchased from a non-participating pharmacy, the *plan member* will be responsible for full payment for the drug cost. No benefits are payable by the plan, and the *plan member's* payment will not be applied toward satisfaction of the annual out-of-pocket threshold in Paragraph 4.

4. There is a \$1200 per person per *plan year* out-of-pocket threshold for *eligible expenses* for prescription drugs. Once this threshold is reached, that is, the *plan member* has paid \$1,200 of *eligible expenses* for prescription drugs, the *plan member* will be responsible for a \$15 co-pay for brand drugs on the pharmacy benefits manager's list of preferred

drugs, with no co-pay for generic drugs. The *plan* will pay the balance of the eligible expense for prescription drugs dispensed at a *participating pharmacy*.

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 34-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 102-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-34 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 69-102 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-34 days supply, \$30 for a 35-64 days supply, and \$45 for a 69-102 days supply, with no co-pay for up to a 102-days supply of generic drugs.

6. *Brand Drug*Cthe trademark name of a drug approved by the U. S. Food and Drug Administration.

7. *Generic Drug*Ca chemically equivalent copy of a brand drug.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003).

Chapter 4. Uniform Provisions

§401. Statement of Contractual Agreement

A. This written *plan of benefits* as amended and any documents executed by or on behalf of the covered *employee* constitute the entire agreement between the parties.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:894 (June 2003).

§403. Properly Submitted Claim

A. For *plan reimbursements*, all bills must show:

1. employee's name;
2. name of patient;
3. name, address, and telephone number of the provider of care;
4. diagnosis;

5. type of services rendered, with diagnosis and/or procedure codes;
6. date of service;
7. charges;
8. *employee's* member number;
9. provider tax identification number;
10. *Medicare* explanation of benefits, if applicable.

B. The *program* can require additional documentation in order to determine the extent of coverage or the appropriate *reimbursement*. Failure to furnish the requested information will constitute reason for the denial of benefits.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:894 (June 2003).

§405. When Claims must be Filed

A. A claim for benefits must be received by the *program* within one year from the date on which the medical expenses were incurred.

B. The receipt date for electronically filed claims is the date on which the *program* receives the claim, not the date on which the claims is submitted to a clearinghouse or to the providers practice management system.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

§407. Right to Receive and Release Information

A. The *program* may release to, or obtain from any company, organization, or person, without consent of or notice to any person, any information regarding any person which the *program* deems necessary to carry out the provisions of this *plan*, or like terms of any plan, or to determine how, or if, they apply. Any claimant under this *plan* must furnish to the *program* any information necessary to implement this provision.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

§409. Legal Limitations

A. A *plan member* must exhaust the administrative claims review procedure before filing a suit for benefits. No action shall be brought to recover benefits under this *plan* more than one year after the time a claim is required to be filed or more than 30 days after mailing of the notice of decision of the administrative claims *committee*, whichever is later.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (July 2003).

§411. Benefit Payment to other Group Health Plans

A. When payments, which should have been made under this *plan*, have been made by another *group health plan*, the *program* may pay to the other plan the sum proper to satisfy the terms of this *plan of benefits*.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

§413. Recovery of Overpayments

A. If an overpayment occurs, the *program* retains the right to recover the overpayment. The *covered person*, institution or provider receiving the overpayment must return the overpayment. At the *plan's* discretion, the overpayment may be deducted from future claims. Should legal action be required as a result of fraudulent statements or deliberate omissions on the application, the defendant will be responsible for attorney fees of 25 percent of the overpayment or \$1,000 whichever is greater. The defendant will also be responsible for court costs and legal interest from date of judicial demand until paid.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

§415. Third Party Recovery Provision

A. Right of *Subrogation* and *Reimbursement*. When this provision applies, the *covered person* may incur medical or dental charges due to injuries which may be caused by the act or omission of a third party or a third party may be responsible for payment. In such circumstances, the *covered person* may have a claim against the third party, or insurer, for payment of the medical or dental charges. Accepting benefits under this *plan* for those incurred medical or dental expenses automatically assigns to the *program* any rights the *covered person* may have to recover payments from any third party or insurer. This right allows the *program* to pursue any claim which the *covered person* has against any third party, or insurer, whether or not the *covered person* chooses to pursue that claim. The *program* may make a claim directly against the third party or insurer, but in any event, the *program* has a lien on any amount recovered by the *covered person* whether or not designated as payment for medical expenses. This lien will remain in effect until the *program* is repaid in full. The *program* reserves the right to recover either from the liable third party or the *covered person*. The *covered person*:

1. automatically assigns to the *program* his or her rights against any third party or insurer when this provision applies;
2. must notify the *program* of a pending third-party claim; and
3. must repay to the *program* the benefits paid on his or her behalf out of the *recovery* made from the third party or insurer.

B. Amount Subject to *Subrogation* or *Reimbursement*

1. The *covered person* agrees to recognize the *program's* right to *subrogation* and *reimbursement*. These rights provide the *program* with a priority over any funds paid by a third party to a *covered person* relative to the injury or sickness, including a priority over any claim for non-medical or dental charges, attorney fees, or other costs and expenses.

2. Notwithstanding its priority to funds, the *program's* *subrogation* and *reimbursement* rights, as well as the rights assigned to it, are limited to the extent to which the *program* has made, or will make, payments for medical or dental

charges as well as any costs and fees associated with the enforcement of its rights under the *program*.

3. When a right of *recovery* exists, the *covered person* will cooperate and provide requested information as well as doing whatever else is needed to secure the *program's* right of *subrogation* and *reimbursement* as a condition to having the *program* make payments. In addition, the *covered person* will do nothing to prejudice the right of the *program* to subrogate or seek *reimbursement*.

4. This right of refund also applies when a *covered person* recovers under an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any liability plan.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003).

§417. Employer Responsibility

A. It is the responsibility of the Participant Employer to submit enrollment and change forms and all other necessary documentation on behalf of its employees to OGB. Employees of a *participant employer* will not by virtue of furnishing any documentation to OGB on behalf of a *plan member*, be considered agents of OGB, and no representation made by any such person at any time will change the provisions of this Plan.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the Re-employed Retiree category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a covered employee. If not timely forwarded to OGB, then OGB will assume responsibility only for Covered medical benefits due to Medicare, for a covered employee pursuant to this *plan of benefits*. The participant employer will be responsible for any interest, fines or penalties due.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

§419. Program Responsibility

A. The *program* will administer the *plan* in accordance with the terms of the *plan of benefits*, state and federal law, and its established policies, interpretations, practices, and procedures. It is the express intent of this *program* that the *board of trustees* will have maximum legal discretionary authority to construe and interpret the terms and provisions of the *plan*, to make determinations regarding issues which relate to eligibility for benefits, to decide disputes which may arise relative to *covered person's* rights, and to decide

questions of *plan of benefits* interpretation and those of fact relating to the *plan of benefits*. The decisions of the *board of trustees* or its *committees* will be final and binding on all interested parties.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (July 2003).

§421. Reinstatement to Position following Civil Service Appeal

A. Indemnity Plan Participants. When coverage of a terminated *employee* who was a participant in the health indemnity plan is reinstated by reason of a civil service *appeal*, coverage will be reinstated to the same level in the health indemnity plan retroactive to the date coverage terminated. The *employee* and *participant employer* are responsible for the payment of all premiums for the period of time from the date of termination to the date of the final order reinstating the *employee* to his position. The *program* is responsible for the payment of all eligible benefits for charges incurred during this period. All claims for expenses incurred during this period must be filed with the *program* within 60 days following the date of the final order of reinstatement.

B. *Health Maintenance Organization (HMO)* Participants. When coverage of a terminated *employee* who was a participant in an HMO is reinstated by reason of Civil Service *appeal*, coverage will be reinstated in the HMO in which the *employee* was participating effective on the date of the final order of reinstatement. There will be no retroactive reinstatement of coverage and no premiums will be owed for the period during which coverage with the HMO was not effective.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

§423. Plan of Benefits and/or Contract Amendments or Termination

A. The *program* has the statutory responsibility of providing health and accident and death benefits for *covered persons* to the extent that funds are available. The *program* reserves to itself the right to terminate or amend the eligibility and benefit provisions of its *plan of benefits* from time to time as it may deem necessary to prudently discharge its duties. Termination or modifications will be promulgated subject to the applicable provisions of law, and nothing contained herein shall be construed to guarantee or vest benefits for any participant, whether active or retired.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

Chapter 5. Claims Review and Appeal

§501. Administrative Review

NOTE: This Section establishes and explains the procedures for review of benefit and eligibility decisions by the *program*.

A. Administrative Claims Review

1. The *covered person* may request a review of any claim for benefits or eligibility. The written request must

include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the *appeal*.

2. The request for review must be submitted within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager

B. Review and *Appeal* Prerequisite to Legal Action

1. The *covered person* must exhaust the administrative claims review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

C. Administrative Claims *Committee*

1. An administrative claims *committee* (the *committee*) will consider all such requests for review and to ascertain whether the initial determination was made in accordance with the *plan of benefits*.

D. Administrative Claims Review Procedure and Decisions

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the *committee* in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan of benefits* and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003).

§503. Appeals from Medical Necessity Determinations

NOTE: The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

A. First Level Appeal. Within 60 days following the date of an adverse initial determination based upon medical necessity, the *covered person*, or the provider acting on behalf of the *covered person*, may request a first level *appeal*.

1. Each such *appeal* will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

B. Second level review. Within 30-days following the date of the notice of an adverse decision on a first level *appeal*, a *covered person* may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the *covered person* at least fifteen working days in advance.

b. The *covered person* may:

i. present his/her case to the review panel;

ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and

iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the *covered person* and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

C. External Review. Within 60 days after receipt of notice of a second level *appeal* adverse determination, the *covered person* whose medical care was the subject of such determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level *appeal* adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the *covered person* or the *covered person's* health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the *covered person*, and the *covered person's* health care provider.

4. An external review decision will be binding on the URO, on OGB and on the *covered person* regarding the medical necessity determination.

D. Expedited Appeals

1. An expedited *appeal* may be initiated by the *covered person*, with the consent of the treating health care professional, or the provider acting on behalf of the *covered person*, with regard to:

a. an adverse determination involving a situation where the time frame of the standard *appeal* would seriously jeopardize the life or health of a *covered person* or would jeopardize the *covered person's* ability to regain maximum function; or

b. any request concerning an admission, availability of care, continued stay, or health care service for a *covered person* who has received emergency services but has not been discharged from a facility.

2. In an expedited *appeal* the URO will make a decision and notify the *covered person*, or the provider acting on behalf of the *covered person*, as expeditiously as the *covered person's* medical condition requires, but in no event more than seventy-two hours after the *appeal* is commenced.

3. The URO will provide written confirmation of its decision concerning an expedited *appeal* if the initial notification is not in writing.

4. In any case where the expedited *appeal* does not resolve a difference of opinion between the URO and the

covered person, or the provider acting on behalf of the covered person, such provider may request a second level review of the adverse determination.

E. Expedited External Review of Urgent Care Requests

1. When the covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the covered person, the URO, and the covered person's health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:897 (June 2003).

Chapter 6. Definitions

§601. Definitions

Appeal Ca request for and a formal review by a plan member of a medical claim for benefits or an eligibility determination.

Benefit Payment Cpayment of eligible expenses incurred by a covered person during a plan year at the rate shown under percentage payable in the schedule of benefits.

CEO Cthe Chief Executive Officer of the program.

Children C

1. any natural or legally adopted children of the employee and/or the employee's legal spouse dependent upon the employee for support;

2. any children in the process of being adopted by the employee through an agency adoption who are living in the household of the employee and who are or will be included as a dependent of the employee's federal income tax return for the current or next tax year (if filing is required);

3. other children for whom the employee has legal custody, who live in the household of the employee, and who are or will be included as a dependent on the employee's federal income tax return for the current or next tax year (if filing is required);

4. grandchildren for whom the employee does not have legal custody, who are dependent upon the employee for support, and one of whose parents is a covered dependent. If the employee seeking to cover a grandchild is a paternal grandparent, the program will require that the biological father, i.e. the covered son of the plan member, execute an acknowledgement of paternity.

NOTE: If dependent parent becomes ineligible, the grandchild becomes ineligible for coverage, unless the employee has legal custody of the grandchild.

COBRAC federal continuation of coverage laws originally enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 with amendments.

Committee Cthe grievance committee of the board.

Covered Person Can active or retired employee, or his eligible dependent, or any other individual eligible for coverage for whom the necessary application forms have been completed and for whom the required contribution is being made.

Custodial Care Ccare designed essentially to assist an individual to meet his activities of daily living (i.e. services which constitute personal care such as help in walking, getting in and out of bed, assisting in bathing, dressing, feeding, using the toilet and care which does not require admission to the hospital or other institution for the treatment of a disease, illness, accident or injury, or for the performance of surgery; or, care primarily to provide room and board with or without routine nursing care, training in personal hygiene and other forms of self-care) and supervisory care by a doctor for a person who is mentally or physically incapacitated and who is not under specific medical, surgical or psychiatric treatment to reduce the incapacity to the extent necessary to enable the patient to live outside an institution providing medical care, or when, despite treatment, there is not reasonable likelihood that the incapacity will be so reduced.

Date Acquired Cthe date a dependent of a covered employee is acquired in the following instance and on the following dates only:

1. legal spouse-date of marriage;

2. children:

a. natural children-the date of birth;

b. children in the process of being adopted:

i. agency adoption-the date the adoption contract was executed by the employee and the adoption agency;

ii. private adoption-the date of the execution of the act of voluntary surrender in favor of the employee, if the program is furnished with certification by the appropriate clerk of court setting forth the date of execution of the act and the date that said act became irrevocable, or the date of the first court order granting legal custody, whichever occurs first;

c. other children living in the household of the covered employee who are or will be included as a dependent on the employee's federal income tax return-the date of the court order granting legal custody;

d. grandchildren for whom the employee does not have legal custody, who are dependent upon the employee for support, and one of whose parents is a covered dependent as defined:

i. the date of birth, if all the requirements are met at the time of birth; or

ii. the date on which the coverage becomes effective for the covered dependent, if all the requirements are not met at the time of birth.

Dependent Cany of the following persons who are enrolled for coverage as dependents, if they are not also covered as an employee:

1. the covered employee's legal spouse;

2. any (never married) children from date of birth (must be added to coverage within 30 days from date acquired by completing appropriate enrollment documents)

up to 21 years of age, dependent upon the *employee* for support;

3. any unmarried (never married) *children* 21 years of age, but under 24 years of age, who are enrolled and attending classes as full-time students and who depend upon the *employee* for support. The term full-time student means students who are enrolled at an accredited college or university, or at a vocational, technical, or vocational-technical or trade school or institute, or secondary school, for the number of hours or courses which is considered to be full-time attendance by the institution the student is attending;

NOTE: It is the responsibility of the *plan member* to furnish proof acceptable to the *program* documenting the full-time student status of a *dependent* child for each semester.

4. any *dependent* parent of an *employee* or of an *employee's* legal spouse, if living in the same household, was enrolled prior to July 1, 1984, and who is, or will be, claimed as a *dependent* on the *employee's* federal income tax return in the current tax year. The *program* will require an affidavit stating the covered *employee* intends to include the parent as a *dependent* on his federal income tax return for the current tax year. Continuation of coverage will be contingent upon the payment of a separate premium for this coverage.

Dependent Coverage benefits with respect to the *employee's dependents* only.

Disability that the *covered person*, if an *employee*, is prevented, solely because of a disease, illness, accident or injury from engaging in his regular or customary occupation and is performing no work of any kind for compensation or profit; or, if a *dependent*, is prevented solely because of a disease, illness, accident or injury, from engaging in substantially all the normal activities of a person of like age in good health.

Durable Medical Equipment equipment which:

1. can withstand repeated use;
2. is primarily and customarily used to serve a medical purpose;
3. generally is not useful to a person in the absence of a illness or injury; and
4. is appropriate for use in the home. *Durable medical equipment* includes, but is not limited to, such items as wheelchairs, *hospital* beds, respirators, braces (non-dental) and other items that the *program* may determine to be *durable medical equipment*.

Emergency a medical condition of recent onset and severity which would lead a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the health of a *covered person* (or unborn child if the *covered person* is a pregnant woman), serious impairment to bodily functions, or serious dysfunction of any bodily organ.

Emergency Services those services medically necessary to screen, evaluate, and treat an *emergency*.

Employee a full-time *employee* as defined by a *participant employer* in accordance with state law. No person appointed on a *temporary appointment* will be considered an *employee*.

Employee Coverage benefits with respect to the *employee* only.

Fee Schedule COGB's schedule of maximum allowable charges for professional or *hospital* services.

Future Medical Recovery Recovery from another plan of expenses contemplated to be necessary to complete medical *treatment* of the *covered person*.

Group Health Plan a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or *employee* organization to provide health care (directly or otherwise) to the *employees*, former *employees*, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

Health Insurance Coverage benefits consisting of medical care (provided directly, through insurance or *reimbursement*, or otherwise) under any *hospital* or medical service policy or certificate, *hospital* or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described pursuant to the Health Insurance Portability and Accountability Act are not treated as benefits consisting of medical care.

Health Maintenance Organization (HMO) any legal entity, which has received a certificate of authority from the Louisiana Commissioner of Insurance to operate as a *health maintenance organization* in Louisiana.

HIPAA the Health Insurance Portability and Accountability Act of 1996 (USA Public Law 104-191) and regulations promulgated pursuant thereto.

Hospital an institution, which meets all the following requirements:

1. is currently a licensed as a *hospital* by the state in which services are rendered and is not primarily an institution for rest, the aged, the *treatment* of pulmonary tuberculosis, a nursing home, extended care facility or remedial training institution, or facilities primarily for the *treatment* of conduct and behavior disorders.

Incurred Date the date upon which a particular service or supply is rendered or obtained. When a single charge is made for a series of services, each service will bear a pro rated share of the charge.

Inpatient Confinement a *hospital* stay, which is equal to or exceeds 24 hours.

Lifetime Maximum Benefit the total amount of benefits that will be paid under the *plan* for all eligible expenses incurred by a *covered person*.

Medically Necessary a service or *treatment* which, in the judgement of the *program*:

1. is appropriate and consistent with the diagnosis and which, in accordance with accepted medical standards, could not have been omitted without adversely affecting the patient's condition or the quality of medical care rendered; and
2. is not primarily *custodial care*.

Medicare the health insurance available through *Medicare* laws enacted by the Congress of the United States.

Occupational Therapy the application of any activity in which one engages for the purposes of evaluation, interpretation, *treatment* planning, and *treatment* of problems interfering with functional performance in persons impaired by physical illness or injury in order to significantly improve functioning.

Office of Group Benefits (OGB) Cthe agency of the State of Louisiana, within the Office of the Governor, Division of Administration, established by R.S. 42:801 and vested with the general administration of all aspects of programs of benefits as authorized or provided for under the provisions of Chapter 12 of Title 42 of the Louisiana Revised Statutes.

Outpatient Surgical Facility Can ambulatory surgical facility licensed by the state in which the services are rendered.

Pain Rehabilitation Control and/or Therapy Cany program designed to develop the individual's ability to control or tolerate chronic pain.

Participant Employer Ca state entity, school board or a state political subdivision authorized by law to participate in the *program*.

Participating Pharmacy Ca pharmacy that participates in a network established and maintained by the Pharmacy Benefits Management firm with which the *program* has contracted to provide and administer outpatient prescription drug benefits.

Participating Provider or MCO Participating Provider Ca physician, hospital, or other health care provider that participates in the network established and maintained by *OGB* (or a firm with which *OGB* has contracted) to provide health care services to participant in this *plan*.

Physical Therapy Cthe evaluation of physical status as related to functional abilities and *treatment* procedures as indicated by that evaluation.

Physician C

1. *Physician* means the following persons, licensed to practice their respective professional skills by reason of statutory authority:

- a. doctor of medicine (M.D.);
- b. doctor of dental surgery (D.D.S.);
- c. doctor of dental medicine (D.M.D.);
- d. doctor of osteopathy (D.O.);
- e. doctor of podiatric medicine (D.P.M.);
- f. doctor of chiropractic (D.C.);
- g. doctor of optometry (O.D.);
- h. psychologist meeting the requirements of the National Register of Health Service Providers in Psychology;
- i. board certified social workers who are a members of an approved clinical social work registry or employed by the United States, the State of Louisiana, or a Louisiana parish or municipality, if performing professional services as a part of the duties for which he is employed;
- j. mental health counselors who are licensed by the state in which they practice;
- k. substance abuse counselors who are licensed by the state in which they practice.

2. The term *physician* does not include social workers, who are not board certified; interns; residents; or fellows enrolled in a residency training program regardless of any other title by which he is designated or his position on the medical staff of a *hospital*. A senior resident, for example, who is referred to as an assistant attending surgeon or an associate *physician*, is considered a resident since the senior year of the residency is essential to completion of the training program. Charges made by a *physician*, who is on the faculty of a state medical school, or on the staff of a state

hospital, will be considered a covered expense if the charges are made in connection with the *treatment* of a disease, illness, accident or injury covered under this *plan*, and if the *physician* would have charged a fee for the services in the absence of this provision.

3. It is the specific intent and purpose of the *program* to exclude *reimbursement* to the *covered person* for services rendered by social workers who are not board certified; and intern, resident, or fellow enrolled in a residency training program regardless of whether the intern, resident, or fellow was under supervision of a *physician* or regardless of the circumstances under which services were rendered.

4. The term *physician* does not include a practicing medical doctor in the capacity of supervising interns, residents, senior residents, or fellows enrolled in a training program, who does not personally perform a surgical procedure or provide medical *treatment* to the *covered person*.

Plan Ccoverage under this contract including and comprehensive medical benefits, prescription drug benefits, and mental health and substance abuse benefits.

Plan Member Ca covered person other than a dependent.

Plan Year Cthat period commencing at 12:01 a.m., July 1, standard time, at the address of the *employee*, or the date the *covered person* first becomes covered under the *plan* and continuing until 12:01 a.m., standard time, at the address of the *employee* on the next following July 1. Each successive *plan year* will be the period from 12:01 a.m., July 1, standard time, at the address of the *employee* to 12:01 a.m., the next following July 1.

Program Cthe *Program* of employee benefits authorized by Chapter 12 of Title 42 of the Louisiana Revised Statutes and administered by the *Office of Group Benefits (OGB)*.

Recovery Cmonies paid to the *covered person* by way of judgment, settlement, or otherwise to compensate for all losses caused by the injuries or sickness whether or not said losses reflect medical or dental charges covered by the *program*.

Referee Ca hearing officer, employed or contracted by *OGB*, to whom an *appeal* may be referred for hearing.

Rehabilitation and Rehabilitation Therapy Ccare concerned with the management of patients with impairments of function due to disease, illness, accident or injury.

Reimbursement Crepayment to the *program* for medical or dental benefits that it has paid toward care and *treatment* of the injury or sickness.

Rest Cure Ccare provided in a sanitarium, nursing home or other facility and designed to provide *custodial care* and provide for the mental and physical well being of an individual.

Retiree Can individual who was a covered *employee*, immediately prior to the date of retirement and who, upon retirement:

1. immediately received retirement benefits from an approved state or governmental agency defined benefit plan; or
2. was not eligible for participation in such a plan or had legally opted to not participate in such a plan; and
 - a. began employment prior to September 15, 1979, has 10 years of continuous state service and has reached the age of 65; or

b. began employment after September 16, 1979, has 10 years of continuous state service and has reached the age of 70; or

c. was employed after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment and has reached the age of 65; or

d. maintained continuous coverage with the program as an eligible *dependent* until he/she became eligible as a former state *employee* to receive a retirement benefit from an approved state governmental agency defined benefit plan; or

3. immediately received retirement benefits from a state-approved or state governmental agency-approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him to receive a retirement allowance from the defined benefit plan of the retirement system for which the *employee* would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to the State Employees Group Benefits Program;

4. *retiree* also means an individual who was a covered *employee* who continued the coverage through the provisions of *COBRA* immediately prior to the date of retirement and who, upon retirement, qualified for any of items 1, 2, or 3, above.

Room and Board *Call hospital* expenses necessary to maintain and sustain a *covered person* during a confinement, including but not limited to, facility charges for the maintenance of the *covered person's hospital* room, dietary and food services, nursing services performed by nurses employed by or under contract with the *hospital* and housekeeping services.

Subrogation *the program's* right to pursue the *covered person's* claims for medical or dental charges against a liability insurer, a responsible party or the *covered person*.

Temporary Appointment *Can* appointment to any position for a period of 120 consecutive calendar days or less.

Treatment *includes* consultations, examinations, diagnoses, and as well as medical services rendered in the care of a *covered person*.

Well-Adult Care *Ca* routine physical examination by a *physician* that may include an influenza vaccination, lab work and x-rays performed as part of the exam in that *physician's* office, and billed by that *physician* with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

Well-Baby Care *Croutine* care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a *physician* and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness.

Well-Child Care *Croutine* physical examinations, active immunizations, check-ups and office visits to a *physician*, and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness, from age 1 to age 16.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:898 (June 2003).

Chapter 7. Schedule of Benefits MCO

§701. Comprehensive Medical Benefits

A. Eligible expenses for professional, technical, and facility services, prescription drugs, equipment, and supplies are reimbursed on the basis of a schedule of maximum allowable charges. In addition all eligible expenses are determined in accordance with plan limitations and exclusions.

1. No Lifetime Maximum Limitation on Benefits (except for Outpatient Prescription Drug Benefits and Durable Medical Equipment, below)

2. Member Co-payments

| | |
|--|---|
| a. Inpatient Hospital Services | \$100 per day, maximum \$300 per admission |
| b. Outpatient Services (per visit/encounter) | |
| Physician services | \$15 Primary Care Physician \$25 Specialist ¹ |
| Emergency Room Services | \$100 (waived if admitted) |
| Ambulatory Surgical Facility | \$100 |
| Physical /OccupationalTherapy ² | \$ 15 |
| Speech Therapy ² | \$ 15 |
| MRI/CAT SCAN ² | \$ 50 |
| Sonograms | \$ 25 |
| Cardiac Rehabilitation (6-month limit) | \$ 15 |
| Pre-Natal and Postpartum Maternity (one-time co-payment to include Physician delivery charge, all pre-natal, one postpartum visit) | \$ 90 |
| Well Care Services | \$15 |
| Home Health ² (Limit 150 visits per Plan year) | \$ 15 per visit |

¹Primary Care Physicians are limited to General Practice, Internal Medicine, Family Practice, Ob-Gyn, and Pediatrics.

²Prior authorization required.

3. Percentage Payable by the Plan after Co-Payments

| | |
|---|------|
| a. Eligible expenses incurred for services of a participating MCO provider | 100% |
| b. Eligible expenses incurred at a non-participating provider, except for emergencies as provided herein | 0% |
| c. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction | 80% |

B. Pharmacy Benefits Prescription Drugs

1. lifetime maximum for all outpatient prescription drug benefits, per person \$250,000

2. Participating Pharmacy member pays 50 percent of eligible expense and 100 percent of excess cost at the point of purchase.

NOTE: Excess payments do not count toward the out of pocket threshold (below).

a. Eligible expense is limited generic drug cost, if generic is available, and to drugs identified on the pharmacy benefits manager's list of preferred drugs, if generic is not available.

b. Maximum co-payment for eligible expenses \$50 per prescription dispensed.

c. No maximum co-payment for excess costs.
 d. Out-of-pocket threshold C\$1,200 per person, per plan year (for eligible expenses ONLY). Co-pay after threshold is reached:

- i. brand C\$15;
- ii. generic Cno co-pay.

e. Plan pays balance of eligible expense.

3. Non-participating pharmacy Cmember pays 100 percent, no credit toward out-of-pocket threshold.

C. Durable Medical Equipment

1. Lifetime maximum benefit for durable medical expenses, per person C\$50,000

2. Plan pays 80 percent of eligible expense.

D. Well Care Services

1. Well baby care (birth to age 1) Coffice visits for scheduled immunizations and screenings

2. Well child care C

a. age 1-2 Cthree office visits per year for scheduled immunizations and screenings;

b. age 3-15 Cone office visit per year for scheduled immunizations and screenings.

3. Well adult care Croutine physical examination and associated laboratory and radiology:

a. age 16-39 C\$200 during a 3-year period;

b. age 40-49 C\$200 during a 2-year period;

c. age 50 and \$200 Conce during a 1-year period.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003).

§703. Mental Health and Substance Abuse

(Prior authorization required for all services.)

A. Member Co-Payments

| | |
|--------------------------------|--|
| 1. Inpatient Hospital Services | \$100 per day, maximum \$300 per admission |
| 2. Outpatient Services | \$25 per visit |

B. Benefits Limitations

| | |
|--------------------------------|--|
| 1. Inpatient Hospital Services | Maximum of 45 inpatient days per person, per plan year |
| 2. Outpatient Services | Maximum of 52 outpatient visits per person, per plan year, inclusive of the intensive outpatient program |

NOTE: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day plan year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours. Expenses incurred for emergency services will only be reimbursed if, after review, the services are determined to be a life-threatening psychiatric emergency resulting in an authorized mental health or substance abuse admission within 24 hours to an inpatient, partial, or intensive outpatient level care. Non-emergent psychiatric or substance abuse problems treated in the emergency room will not be eligible for reimbursement.

C. Percentage Payable by the Plan after Co-payments

| | |
|---|------|
| 1. Eligible expenses incurred for services of a participating MCO provider | 100% |
| 2. Eligible expenses incurred at a non-participating provider, except for emergencies as defined herein | 0% |
| 3. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction | 80% |

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:902 (June 2003).

A. Kip Wall
 Chief Executive Officer

0306#042

RULE

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

**Abortion Facility Licensure
 (LAC 48:I.Chapter 44)**

Editor's Note: The following Rule is being repromulgated to correct submission errors. This Rule was promulgated in the May 20, 2003 edition of the *Louisiana Register* and may be viewed on pages 705-710.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule as authorized by R.S. 40:2175.1 et seq. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTHC GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 44. Abortion Facilities

§4401. Definitions

Abortion Cany surgical procedure performed after pregnancy has been medically verified with the intent to cause the termination of the pregnancy other than for the purpose of:

- 1. producing a live birth;
- 2. removing an ectopic pregnancy; or
- 3. removing a dead fetus caused by a spontaneous abortion.

Department CDepartment of Health and Hospitals, (DHH).

Existing Outpatient Abortion Facility Cany outpatient abortion facility, as defined in this §4401, in operation at the time that the licensing standards governing outpatient abortion facilities are promulgated and published.

First Trimester Cthe time period from 6 to 14 weeks after the first day of the last menstrual period.

General Anesthesia Cany drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to

independently maintain an airway and respond purposefully to physical stimuli or verbal command.

Gestational Age—the duration of a pregnancy as estimated from the first day of a woman's last menstrual period (LMP) or fertilization date plus two weeks.

Licensed Physicians Assistant—a person who:

1. is a graduate of a program accredited by the Committee on Allied Health Education and Accreditation or its successors; and

2. has successfully passed the national certificate examination administered by the National Commission on the Certification of Physician's Assistants or its predecessors; and

3. is approved and licensed by the Louisiana State Board of Medical Examiners to perform medical services under the supervision of a physician or group of physicians who are licensed by and registered with the board to supervise such assistant.

Licensee—the person, partnership, corporation, association, organization or professional entity on whom rests the ultimate responsibility and authority for the conduct of the outpatient abortion facility.

Licensing Agency—the Louisiana Department of Health and Hospitals.

Local Anesthesia—those anesthetizing agents administered to affect a very small localized area.

Medical Director—a physician licensed to practice medicine in Louisiana who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an outpatient abortion facility.

Outpatient Abortion Facility—any outpatient facility, other than a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in R.S. 40:2133, in which any second trimester or five or more first trimester abortions per month are performed.

Patient—the woman receiving services from an outpatient abortion facility.

Products of Conception—placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

Second Trimester—the time period from 14 to 23 weeks after the first day of the last menstrual period.

Secretary—the secretary of the Louisiana Department of Health and Hospitals.

Telecommunications—any means of transmitting messages at a distance, including but not limited to telephones, cell phones, pagers, or other similar devices which foster communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:705 (May 2003), repromulgated LR 29:902 (June 2003).

§4403. Licensing Requirements

A. An outpatient abortion facility may not be established or operated in this state without an appropriate license issued by the licensing agency.

B. Initial License Application

1. Initial applicants and existing outpatient abortion facilities shall submit a set of architectural plans and specifications to the Office of State Fire Marshal and

Division of Engineering and Architectural Services of the department for review and approval.

2. When an architectural requirement on an existing outpatient abortion facility would impose a hardship, financial or otherwise, but would not adversely affect the health and safety of any patient, the existing outpatient abortion facility may submit a request for exception (waiver) to the department, with supporting documentation. The issuance of a waiver by the department does not apply to the Office of State Fire Marshal requirements for approval, which must be addressed exclusively with the Office of State Fire Marshal.

3. An application for license shall be completed and returned to the Health Standards Section by the applicant on forms supplied by the department.

a. Existing outpatient abortion facilities must secure and return a completed licensing application packet to the department within six months from promulgation and publication of the outpatient abortion facility licensing standards.

b. Existing outpatient abortion facilities shall be allowed to continue to operate without a license until such time as their initial application is acted upon by the department and until any and all appeals processes associated with that initial license have been completed, or the time within which any appeal process may be undertaken and completed has expired, whichever is later.

4. The application must be accompanied with a nonrefundable licensing fee set in accordance with R.S. 40:2006.

5. The department will respond to the applicant within 45 days of submitting the completed application.

6. Announced on-site inspections will be performed and the facility must be in substantial compliance with the requirements of the following offices prior to the issuance of an initial license:

- a. Office of State Fire Marshal
- b. Office of Public Health
- c. DHH Health Standards Section

C. Renewal Application

1. Application for license renewal shall be completed and returned to the Health Standards Section prior to the expiration date of the current license on forms supplied by the department. The application must be accompanied by the annual renewal fee set in accordance with R.S. 40:2006.

2. Inspection and approval by the State Fire Marshal and Office of Public Health are required annually.

3. The licensing agency may perform an unannounced on-site inspection upon annual renewal. If the outpatient abortion facility continues to meet the requirements established in R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof, a license shall be issued which is valid for one year.

D. Other on-site inspections may be performed to investigate complaints in accordance with R.S. 40:2009.13-2009.20 and perform follow-up surveys as deemed necessary to ensure compliance with these licensing standards.

E. Issuance of License

1. Following receipt of the application and the licensing fee, the department shall issue a license if, after an on-site inspection, it finds that the outpatient abortion

facility is in full compliance with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof.

2. A provisional license may be issued in cases where additional time is needed for the outpatient abortion facility to comply fully with the requirements established in accordance with R.S. 40:2175.1 et seq., and the licensing standards adopted in pursuance thereof. The licensing agency may issue a provisional license to an outpatient abortion facility for a period not to exceed six months only if the failure to comply is not detrimental to the health or safety of the women seeking treatment in the outpatient abortion facility. The deficiencies that preclude the outpatient abortion facility from being in full compliance must be cited at the time the provisional license is issued.

3. A license issued to an outpatient abortion facility:

- is valid for only one location;
- shall be valid for one year from the date of issuance; unless revoked prior to that date;
- is not transferable or assignable;
- shall be posted in a conspicuous place on the licensed premises.

F. Denial, Suspension or Revocation of License. The procedure for denial, suspension and revocation of a license and appeals resulting from these actions will be the same as provided in the licensing regulations for hospitals, and as contained in R.S. 40:2110.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:705 (May 2003), repromulgated LR 29:903 (June 2003).

§4405. Governing Body

A. The abortion facility must have a governing body which meets at least annually. The governing body is the ultimate authority of the facility, and as such, it shall approve and adopt all bylaws, rules, policies, and procedures formulated in accordance with these licensing standards. All bylaws, rules, policies, and procedures formulated in accordance with these licensing standards shall be in writing, revised as necessary, and reviewed annually. If, due to type of ownership or other reasons, it is not possible or practical to establish a governing body, as such, then documents shall reveal the person(s) who are legally responsible for the conduct of the facility and are also responsible for carrying out the functions and obligations contained herein pertaining to the governing body.

B. The responsibilities of the governing body shall include, but not be limited to:

- organization and administration of the facility;
- acting upon recommendations from the medical staff relative to medical staff appointments;
- designation of an administrator who has the responsibility to carry out the day-to-day operations of the facility;
- designation of a medical director who has responsibility for the direction of medical services, nursing services, and health-related services provided to patients;
- maintenance of the physical plant;
- ensuring that the facility is equipped and staffed to meet the needs of the patients in the facility; and

7. establishing a system for periodic evaluation of its operation (quality assurance).

C. The governing body shall establish formal lines of communication with the medical staff through a liaison committee or other acceptable methods. This committee will address problems and programs of mutual concern regarding topics including, but not limited to, patient care, cost containment and improved practice.

D. Minutes of meetings of the governing body shall be maintained to adequately reflect the discharging of its duties and responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:706 (May 2003), repromulgated LR 29:904 (June 2003).

§4407. Administration

A. The administrator is the person who has been designated to carry out the day-to-day operations of the facility which include, but are not limited to the following functions:

- employing qualified staff to provide the medical and clinical services to meet the needs of the patients being served;
- assigning duties and functions to each employee commensurate with his/her licensure, certification, and experience and competence;
- retaining a readily accessible written protocol for managing medical emergencies and the transfer of patients requiring further emergency care to a hospital. The written protocol shall identify which emergency equipment and medications the facility will use to provide for basic life support until emergency transportation can arrive and assume care of those in need of service. The facility shall ensure that when a patient is in the facility for an abortion, there is one physician present who has admitting privileges or has a written transfer agreement with a physician(s) who has admitting privileges at a local hospital to facilitate emergency care;
- developing disaster plans for both internal and external occurrences. Annual drills shall be held in accordance with the plan. Documentation of these drills shall be recorded;
- ensuring that a CPR-certified staff member who is currently trained in the use of emergency equipment is on the premises at all times when abortion services are being performed in the facility.

B. Personnel Files

- Personnel folders shall be maintained on each employee. Contents shall include:
 - application;
 - current license (when required);
 - health screening reports;
 - documentation of areas covered in orientation;and
 - other pertinent information as deemed necessary by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 29:706 (May 2003), repromulgated LR 29:904 (June 2003).

§4409. Personnel

A. Medical Staff

1. The medical staff of the facility shall consist of at least one physician who is licensed to practice medicine in Louisiana and is responsible to the governing body of the facility for the quality of all medical care provided to patients in the facility and for the ethical and professional practices of its members.

2. The medical staff shall formulate and adopt bylaws, rules, and policies for the proper conduct of its activities and recommend to the governing body physicians who are considered eligible for membership on the medical staff. Such bylaws, rules, and policies must be in writing and must be approved by the governing body.

3. All applications for membership to the medical staff shall be reviewed by the medical staff and recommendations for appropriate action shall be made to the governing body. The governing body's bylaws shall establish time frames for response to the recommendations of the medical staff.

4. An abortion shall be performed only by a physician who is licensed to practice in Louisiana.

5. A physician must be either present in the facility or immediately available by telecommunications to the staff when there is a patient in the facility.

6. A physician must remain in the facility until all patients are assessed to be stable.

B. Nursing Personnel

1. The nursing services shall be provided under the direction of a qualified registered nurse or medical director.

2. There shall be a plan of administrative authority with delineation of responsibilities and duties for each category of nursing personnel.

3. The number of nursing personnel on duty shall be sufficient to meet the needs of the patient(s) in the facility, as determined by the governing body, medical director, or registered nurse.

4. All nurses employed by the facility to practice professional nursing shall have a current and valid Louisiana nursing license as a registered nurse (RN) or licensed practical nurse (LPN), as appropriate.

5. Nursing care policies and procedures shall be in writing and be consistent with accepted nursing standards. Policies shall be developed for all nursing service procedures provided at the facility. The procedures shall be periodically reviewed and revised as necessary.

6. A formalized program of in-service training shall be developed for all categories of nursing personnel. Training related to required job skills shall be provided to nursing personnel.

C. General Staffing

1. When a patient is in the facility for an abortion, there shall be at least two staff members present, one of which must be either a licensed physician, RN, or LPN.

2. All employees shall be provided orientation and training related to the facility's policies, philosophy, job responsibilities of all staff, and emergency procedures.

D. Health Screening. The facility must have policies governing health screening on personnel in accordance with federal, state and local health laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:707 (May 2003), repromulgated LR 29:905 (June 2003).

§4411. Pre-Operative Procedures

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by one of the following:

1. urine or serum pregnancy test performed on-site;
2. detection of fetal heart tones; or
3. ultrasonography.

B. Duration of Pregnancy. Gestational age shall be estimated by the following methods pre-operatively:

1. date of last menstrual period, if known; and
2. pelvic examination; or
3. ultrasonography.

C. The following laboratory tests shall be performed and documented within 30 days prior to the performance of abortion:

1. hematocrit or hemoglobin determination; and
2. Rh Factor status.

D. Information and Informed Consent. Prior to an Abortion

1. A written informed consent shall be obtained in accordance with R.S. 40:1299.35.6(B).

2. The clinical record shall reflect informed consent for general anesthesia, if it is to be administered, as well as an indication of the patient's history of negative or positive response (for example, allergic reactions) to medications or any anesthesia to be given.

3. The patient shall be made aware of the importance of her post-operative care and follow-up to ensure that the procedure was properly completed and no long-term sequelae have ensued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:707 (May 2003), repromulgated LR 29:905 (June 2003).

§4413. Post-Operative Care and Procedures

A. The patient's recovery shall be supervised by a licensed physician, a nurse trained in post-operative care, or a licensed physician's assistant. A patient in the post-operative or recovery room shall not be left unattended.

B. The patient shall be given written post-operative instructions for follow-up care. A contact for post-operative care from the facility shall be available to the patient on a 24-hour basis.

C. A licensed physician, nurse or licensed physician's assistant shall assess the patient to be awake, alert and medically stable before she is discharged in accordance with policies established by the medical director.

D. Upon completion of an abortion procedure, the physician shall immediately perform a gross examination of the uterine contents and shall document the findings in the patient's chart. If no products of conception are visible, a high-risk protocol for continuing pregnancy or ectopic pregnancy shall be followed.

E. Products of conception shall be disposed in compliance with Occupational Safety and Health

Administration (OSHA), Environmental Protection Agency (EPA) and other state and local standards covering the treatment of medical waste.

F. Rh immunoglobulin administration shall be offered to Rh-negative women and documented. If Rh immunoglobulin is not administered in the facility, one of the following is required:

1. informed waiver signed by a patient who refuses RH immunoglobulin; or
2. documentation of other arrangements for administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:708 (May 2003), repromulgated LR 29:905 (June 2003).

§4415. Patient Records and Reports

A. Retention of Patient Records

1. An abortion facility shall establish and maintain a medical record on each patient. The facility shall maintain the record to assure that the care and services provided to each patient is completely and accurately documented, and that records are readily available and systematically organized to facilitate the compilation and retrieval of information. Safeguards shall be established to maintain confidentiality and protection from fire, water, or other sources of damage.

2. The department is entitled to access all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to ensure compliance with this Chapter 44. Ensuring compliance includes permitting photocopying by the department or providing photocopies to the department of any records or other information by or on behalf of the department as necessary to determine or verify compliance with this Chapter.

3. Patient records shall be under the custody of the facility for a period of seven years from the date of discharge. Patient records shall be maintained on the premises for at least one year and shall not be removed except under court orders or subpoenas. Any patient record maintained off-site after the first year shall be provided to the department for review no later than 24 hours from the time the department requests the medical record.

B. Content of Medical Record

1. The following minimum data shall be kept on all patients:

- a. identification data;
- b. date of procedure;
- c. medical and social history;
- d. physical examination;
- e. chief complaint or diagnosis;
- f. clinical laboratory reports (when appropriate);
- g. pathology report (when appropriate);
- h. physician's orders;
- i. radiological report (when appropriate);
- j. consultation reports (when appropriate);
- k. medical and surgical treatment;
- l. progress notes, discharge notes, and summary;
- m. nurses' records of care given, including medication administration records;
- n. authorizations, consents or releases;
- o. operative report;

p. anesthesia report, including post-anesthesia report; and

q. special procedures reports.

2. Signatures. Clinical entries shall be signed by the physician as appropriate, i.e., attending physician, consulting physician, anesthesiologist, pathologist, etc. Nursing notes and observations shall be signed by the nurse.

3. Nurses' Notes. All pertinent observations, treatments and medications given shall be entered in the nurses' notes. All other notes relative to specific instructions from the physician shall be recorded.

4. Completion of the medical record shall be the responsibility of the attending physician.

C. Nothing in this §4415 is intended to preclude the use of automated or centralized computer systems or any other techniques for the storing of medical records, provided the regulations stated herein are met.

D. Other Reports. An abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of three years.

E. Confidentiality

1. If the department, in the course of carrying out its licensing responsibilities under this Chapter 44, obtains any patient identifiable health information regarding a patient from an abortion facility, it shall keep such information strictly confidential and shall not disclose it to any outside person or agency, except as follows:

- a. to the patient who is the subject of the patient identifiable health information;
- b. pursuant to and in compliance with a valid written authorization executed by the patient who is the subject of the patient identifiable health information; or
- c. when required by the secretary of the U.S. Department of Health and Human Services to investigate or determine DHH's compliance with the requirements of the *Code of Federal Regulations*, Title 45, Part 164, Subpart E.

2. Any person who knowingly discloses such patient identifiable information in violation of Paragraph E.1 shall be subject to punishment pursuant to 42 U.S.C. §1320d-6 as follows:

- a. a fine of not more than \$50,000, or imprisonment for not more than one year, or both;
- b. if the violation is committed under false pretenses, a fine of not more than \$100,000, or imprisonment for not more than five years, or both; and
- c. if the violation is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than \$250,000, or imprisonment for not more than 10 years, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:708 (May 2003), repromulgated LR 29:906 (June 2003).

§4417. Physical Environment

A. The facility shall have a safe and sanitary environment that is properly constructed, equipped and maintained to protect the health and safety of patients and staff at all times.

1. Abortions shall be performed in a segregated procedure room, removed from general traffic lines with a minimum of 120 square feet, exclusive of vestibule, toilets or closets.

2. There shall be a hand washing fixture within each procedure room.

3. The facility shall have a separate recovery room or area with a minimum clear area of 2 feet, 6 inches around the three sides of each stretcher or lounge chair for work and circulation.

4. The following equipment and supplies shall be maintained to provide emergency medical care for problems that may arise and be immediately available to the procedure and recovery room(s):

- a. surgical or gynecologic table;
- b. surgical instruments for the performance of abortion;
- c. emergency drugs (designated as such by the medical director);
- d. oxygen;
- e. intravenous fluids; and
- f. sterile dressing supplies.

5. All openings to the outside shall be maintained to protect against the entrance of insects and animals.

6. A nurse's station with a countertop, space for supplies, provisions for charting and a communication system shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:906 (June 2003).

§4419. Infection Control

A. The facility shall have policies and procedures that address:

1. decontamination;
2. disinfection;
3. sterilization; and
4. storage of sterile supplies.

B. The facility shall make adequate provisions for furnishing properly sterilized supplies, equipment, utensils and solutions.

1. It is expected that some disposable goods shall be utilized; but when sterilizers and autoclaves are used, they shall be of the proper type and necessary capacity to adequately meet the needs of the facility.

2. Procedures for the proper use of equipment and standard procedures for the processing of various materials and supplies shall be in writing and readily available to personnel responsible for sterilizing procedures.

3. Acceptable techniques for handling sterilized and contaminated supplies and equipment shall be established to avoid contamination.

4. Medically necessary surgical instruments used to enter the uterine cavity shall be sterilized for each abortion procedure.

C. There shall be a separate sink for cleaning instruments and disposal of liquid waste.

D. Each facility shall develop, implement, and enforce written policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

1. If the facility provides an in-house laundry, the areas shall be designed in accordance with acceptable hospital laundry design in that a soiled laundry area will be provided and separated from the clean laundry area. Dirty and/or contaminated laundry shall not be stored or transported through the clean laundry area.

2. For an in-house laundry, special cleaning and decontaminating processes shall be used for contaminated linens.

E. The facility shall provide housekeeping services that shall assure a safe and clean environment.

1. Housekeeping procedures shall be in writing and followed.

2. Housekeeping supplies shall be provided to adequately maintain the facility.

F. All garbage and waste materials shall be collected, stored and disposed of in a manner designed to prevent the transmission of contagious diseases, and to control flies, insects, and animals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:907 (June 2003).

§4421. Pharmaceutical Services

A. The facility shall provide pharmacy services and these services shall be commensurate with the needs of the patients and in conformity with state and federal laws.

B. There shall be policies and procedures for the storage, distribution, and handling and administration of drugs and biologicals in the facility.

C. The facility shall provide facilities for proper storage, safeguarding and distribution of drugs.

1. Drug cabinets must be constructed and organized to assure proper handling and safeguard against access by unauthorized personnel.

2. Storage areas shall have proper controls for ventilation, lighting and temperature.

3. Locked areas shall be designed to conform with state and federal laws.

D. In accordance with all applicable laws, records shall be kept on:

1. all ordering, purchasing, dispensing, and distribution of drugs; and

2. the disposal of unused drugs.

E. Records for prescription drugs dispensed to each patient shall contain the:

1. full name of the patient;

2. name of the prescribing physician;

3. name and strength of the drug;

4. quantity dispensed; and

5. date of issue.

F. Provision shall be made for emergency pharmaceutical service.

G. All outpatient abortion facilities shall have a site-specific Louisiana controlled dangerous substance license and United States Drug Enforcement Administration controlled substance registration for the facility in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and Title 21 of the *United States Code*.

H. Drugs and biologicals shall be administered in compliance with an order from an individual who has prescriptive authority under the laws of Louisiana. Such orders shall be in writing and signed by the individual with prescriptive authority under the laws of Louisiana.

I. There shall be a supply of drugs for stabilizing and/or treating medical and surgical complications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:709 (May 2003), repromulgated LR 29:907 (June 2003).

§4423. Anesthesia Services

A. The facility shall have policies and procedures pertaining to the administration of general and local anesthesia that are approved by the medical director.

B. Local anesthesia, nitrous oxide, and intravenous sedation shall be administered by the treating physician or by qualified personnel under the orders and supervision of the treating physician, as allowed by law.

C. General anesthesia, if used, shall be given by an anesthesiologist, certified registered nurse-anesthetist (CRNA), or a physician trained in the administration of general anesthesia.

D. The physician who will perform the abortion shall be present in the facility before anesthesia is administered.

E. A physician shall be present in the facility during the post anesthesia recovery period until the patient is fully reacted and stable.

F. When there is a general anesthesia patient present in the facility, personnel trained in the use of all emergency equipment required shall be present on the premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:710 (May 2003), repromulgated LR 29:908 (June 2003).

David W. Hood
Secretary

0306#020

RULE

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

**Freedom of Choice Waivers
(LAC 50:I.Chapter 29)**

Editor's Note: This Subpart has recently been codified and is being promulgated for codification purposes.

The table below shows the compiled Rules used to create each Section in Subpart 3, Freedom of Choice Waivers.

| Section | Rules |
|---------|---|
| 2901 | LR 17:788 (August 1991), LR 19:645 (May 1993) |
| 2903 | LR 19:645 (May 1993) |
| 2905 | LR 17:788 (August 1991), LR 19:645 (May 1993), LR 27:547 (April 2001) |
| 2907 | LR 17:788 (August 1991), LR 19:645 (May 1993) |
| 2909 | LR 17:788 (August 1991), LR 19:645 (May 1993), LR 25:669 (April 1999) |
| 2911 | LR 19:645 (May 1993) |
| 2913 | LR 17:788 (August 1991), LR 19:645 (May 1993), LR 23:201. (February 1997) |

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Freedom of Choice Waivers

Chapter 29. CommunityCARE

§2901. Introduction

A. A managed care program called CommunityCARE implemented in designated parishes of the state provide improved access to health care for eligible Medicaid beneficiaries, particularly those who reside in rural communities. The CommunityCARE program is administered in accordance with all regulations applicable to the program and the waiver request document approved by the U.S. Department of Health and Human Services. The goal of the CommunityCARE program is to improve the accessibility and the continuity and quality of care provided to Medicaid recipients in rural areas.

B. The CommunityCARE program provides Medicaid recipients in the designated parishes with a primary care physician (PCP), osteopath, or family doctor as the primary care provider for assigned beneficiaries.

C. Physician Case Management is defined as individualized planning and service coordination of medical services. Services shall be provided to Medicaid patients who are residents of designated geographic areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003).

§2903. Recipient Qualifications

A. All nonexcluded recipients are required to have a CommunityCARE provider. The following groups of Medicaid eligible recipients are required to enroll in the CommunityCARE program in the designated parishes:

1. AFDC-related recipients; and
2. SSI-related, nonMedicare recipients.

B. The following groups of eligibles are excluded from participation:

1. residents of skilled nursing facilities;
2. intermediate care facilities and mental hospitals;
3. Medicare (Part A or B) recipients;
4. medically needy;
5. foster children or adoptive children;
6. refugees;
7. lock-in recipients;

8. members of health management organizations (HMOs).

C. Newborns or newly certified or Medicaid eligible recipients may not be enrolled for up to 30 days from the date of certification and any prior month of retroactive coverage (up to three months).

D. Once enrolled in the CommunityCARE program, recipients are not re-enrolled at recertification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003).

§2905. Provider Selection

A. Beneficiaries have the opportunity to select a participating doctor, federally qualified health center (FQHC), or rural health clinic to be their primary care provider in their parish of residence or in a contiguous parish. Beneficiaries are assigned a participating provider if they do not select one. The individual or family physician will provide basic primary care, referral and after-hours coverage services for each beneficiary. The fact that each beneficiary has a PCP allows continuity of care centered around a single physician (or organized group) as a care manager.

B. CommunityCARE recipients may request to change primary care providers for cause at any time. They may change primary care providers without cause at any time during the first 90 days of enrollment with a primary care provider and at least every 12 months thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

§2907. Provider Qualifications

A. All doctors of medicine or general osteopathy who are currently enrolled Medicaid providers in good standing, practice primary care, and have offices in one of the designated or contiguous parishes, are eligible to participate in Community Care as primary care physicians (PCPs). However, they must meet all of the program requirements and agree to abide by the regulations. Primary care physicians enrolling in CommunityCARE must meet all of the general Medicaid enrollment conditions. The physicians who may participate as PCPs are:

1. general practitioner;
2. family practitioner;
3. pediatrician;
4. gynecologist;
5. internist;
6. obstetrician; or
7. other physician specialists who may be approved by

the department under certain circumstances.

B. The PCP must be licensed to practice medicine in Louisiana and must hold admitting privileges at a Medicaid-enrolled hospital in the designated parish or contiguous parish.

C. Quality assurance/utilization review is an integral component of the care management concept. CommunityCARE physicians are monitored for over and under utilization and quality cost-effectiveness of the program. Providers who are out of compliance receive

provider education, but continued noncompliance may result in disenrollment from the program.

D. The PCP as the care manager bears responsibility for the beneficiary's total health care, which includes:

1. providing preventive, maintenance and acute care;
2. referring to specialists, when appropriate, for medically necessary diagnosis and treatment not provided in his/her practice;
3. exchanging medical information about the beneficiary with specialists;
4. admitting the beneficiary to the nearest appropriate hospital when necessary; and
5. coordinating inpatient care and maintaining an integrated medical record of the care the patient receives.

E. Only the PCP may authorize services for his/her assigned beneficiaries in appropriate settings according to medical necessity.

F. Twenty-four hour, seven day a week availability by telephone of primary care must be assured. The PCP may authorize coverage in his/her absence or in emergencies in accordance with CommunityCARE policy. The PCP must also enroll and participate as a KIDMED medical, vision, and hearing screening provider. Routine preventive health care and age-appropriate immunizations must be provided to or arranged for children by the PCP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

§2909. Emergency Services

A. The provisions of §4704 of the Balanced Budget Act of 1997 were adopted by the Department concerning provisions of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE program.

B. Emergency services do not require authorization prior to the provision of the services, however, authorization must be obtained after the emergency services have been provided. Emergency medical services with respect to a CommunityCARE enrollee are defined as furnished by a provider that is qualified to provide such services under Medicaid and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

§2911. Prior Authorization

A. The following Medicaid covered services do not require authorization and a written referral by the beneficiary's PCP:

1. dental;

2. pharmacy;
3. family planning;
4. skilled nursing facility care;
5. transportation;
6. ICF/MR services;
7. ophthalmology;
8. targeted case management services;
9. optometry and eyeglasses;
10. EPSDT health services for disabled children;
11. psychiatric hospital services;
12. home and community-based waiver services;
13. chiropractic services; and
14. mental health services.

B. All other Medicaid services, including obstetrical services, require prior authorization by the beneficiary's assigned PCP.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003).

§2913. Physician Management

A. The physician management fee in the CommunityCARE Waiver program is \$3 per enrolled recipient per month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:910 (June 2003).

David W. Hood
Secretary

0306#008

RULE

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

**Medicaid EligibilityCExpansion of Coverage
for Low Income Pregnant Women**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current provisions governing eligibility for low income pregnant women and expands coverage to include low income pregnant women with family income greater than 133 percent, but less than or equal to 185 percent of the federal poverty level (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

David W. Hood
Secretary

0306#059

RULE

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

Medicaid EligibilityCInclusion of the Unborn Child

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of Section H of the May 20, 1996 Rule governing the determination of Medicaid eligibility. Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, an unborn child shall be considered when establishing the household size for determination of Medicaid eligibility for other children in the household.

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0306#061

RULE

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

**Medicaid EligibilityCIncome Disregards
for Low Income Pregnant Women**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current policy governing countable income in the determination of Medicaid eligibility for low income pregnant women.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the department disregards the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0306#060

RULE

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

Nursing Facility Services CStandards for Payment
Ventilator Dependent Care CRequirements for Payments
(LAC 50:II.10155)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTHB MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payments

Chapter 101. Nursing Facilities CStandards for Payment

Subchapter G. Levels of Care

§10155. Standards of Levels of Care

A. - S.2.t ...

u. require staff to attend specialized training on ventilator assisted care if the facility provides SN-TDC services to Medicaid recipients from birth through age 25. The training will be conducted by a contractor designated by the department. The facility shall also cooperate with ongoing monitoring conducted by the contractor. Training content includes:

- i. the special health needs of, and risks to ventilator-dependent recipients;
- ii. the proper use and maintenance of equipment in use or new to the facility;
- iii. current, new, or unusual health procedures and medications;
- iv. diagnoses and treatments specific to pediatrics and in the development and nutritional needs of recipients;
- v. emergency intervention;
- vi. accessing school services for ventilator-assisted recipients; and
- vii. discharge planning where families express interest in a recipient returning home.

S.2.v - T. ...

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 22:34 (January 1996), amended LR 23:970 (August 1997), LR 29:911 (June 2003).

David W. Hood
Secretary

0306#062

RULE

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

Personal Care Services CLong Term Care
(LAC 50:XV.Chapter 129)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTHB MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to enable an individual whose needs would otherwise require placement in an acute or long term care facility to remain safely in that individual's own home. The mission of Medicaid funded personal care services is to supplement the family and/or community supports that are available to maintain the recipient in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal care services must be prescribed by a physician and provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal care services will be provided in a manner consistent with the basic principles of consumer direction as set forth in § 12907.

B. An assessment shall be performed for every recipient who requests personal care services. This assessment shall be utilized to identify the recipient's long term care needs, preferences, the availability of family and community supports and to develop the service plan. The Minimum Data Set-Home Care (MDS-HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS-HC to address the needs of special groups within the target population.

C. Prior Authorization. Personal care services must be prior authorized. Requests for prior authorization must be submitted to the Bureau of Health Services Financing or its designee and include a copy of the assessment form and the service plan. Any other pertinent documents that substantiates the recipient's request for services may also be submitted. These documents will be reviewed to determine whether the recipient meets the criteria for personal care services and the necessity for the number of services hours requested.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003).

§12903. Covered Services

A. Personal care services are defined as those services that provide assistance with the activities of daily living (ADL) and the instrumental activities of daily living (IADL). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by an individual for continued well-being, health and safety. ADLs include tasks such as:

1. eating;
2. bathing;
3. dressing;
4. grooming;
5. transferring (getting in/out of the tub, from a bed to a chair);
6. reminding the recipient to take medication;
7. ambulation; and
8. toileting.

B. IADLs are those activities that are considered essential for sustaining the individual's health and safety, but may not require performance on a daily basis. IADLs include tasks such as:

1. light housekeeping;
2. food preparation and storage;
3. grocery shopping;
4. laundry;
5. assisting with scheduling medical appointments when necessary;
6. accompanying the recipient to medical appointments when necessary due to the recipient's frail condition; and
7. assisting the recipient to access transportation.

C. Emergency and non-emergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance. See §12917 regarding reimbursement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

§12905. Recipient Qualifications

A. Personal care services shall be available to recipients who are 65 years of age or older, or 21 years of age or older and disabled. Disabled is defined as meeting the eligibility criteria established by the Social Security Administration for disability benefits. The recipient must meet the requirements for a nursing facility level of care as defined in the Standards for Payment for Nursing Facility Services and be able to participate in his/her care and self direct the services provided by the personal care worker independently or through a responsible representative. Responsible representative is defined as the person designated by the recipient to act on his/her behalf in the process of accessing

personal care services. In addition, the recipient must meet one of the following criteria:

1. is in a nursing facility and could be discharged if community-based services were available;
2. is likely to require nursing facility admission within the next 120 days;
3. has a primary care-giver who has a disability or is over the age of 70; or
4. faces a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided in less than 120 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

§12907. Recipient Rights

A. Recipients who receive services under Personal Care Services-Long Term Care Program have the right to actively participate in the development of their service plan and the decision-making process regarding service delivery. Recipients also have the right to freedom of choice in the selection of a provider of personal care services and to participate in the following activities:

1. interviewing and selecting the personal care worker who will be providing services in their home;
2. developing the work schedule for their personal care worker;
3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while safely maintaining him/her in the home;
4. developing an emergency component in the service plan that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled work from providing services;
5. signing off on payroll logs and other documentation to verify staff work hours and to authorize payment;
6. evaluating the personal care worker's job performance; and
7. transferring or discharging the personal care worker assigned to provide their services;
8. an informal resolution process to address their complaints and/or concerns regarding personal care services; and
9. a formal resolution process to address those situations where the informal resolution process fails to resolve their complaint.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

§12909. Standards for Participation

A. In order to participate as a personal care services provider in the Medicaid Program, an agency:

1. must comply with:
 - a. state licensing regulations;
 - b. Medicaid provider enrollment requirements;
 - c. the standards of care set forth by the Louisiana Board of Nursing; and

d. the policy and procedures contained in the Personal Care Services provider manual;

2. must possess a current, valid license for the Client Services Providers, Personal Care Attendant Services Module issued by the Department of Social Services, Bureau of Licensing.

B. In addition, a Medicaid enrolled agency must:

1. either demonstrate experience in successfully providing direct care services to the target population or demonstrate the ability to successfully provide direct care services to the target population;

2. employ a sufficient number of personal care and supervisory staff to ensure adequate coverage in the event that a worker's illness or an emergency prevents him/her from reporting for work;

3. ensure that a criminal background check and drug testing is conducted for all direct care staff prior to an offer of employment being made;

4. ensure that the direct care staff is qualified to provide personal care services. Assure that all new staff satisfactorily completes an orientation and training program in the first 30 days of employment. A legally responsible relative is prohibited from being the paid personal care worker for a family member;

5. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations. The subcontracting of individual personal care staff and/or supervisors is prohibited;

6. implement and maintain an internal quality assurance plan to monitor recipient satisfaction with services on an ongoing basis; and

7. document and maintain recipient records in accordance with federal and state regulations governing confidentiality and licensing requirements;

8. have written policies and procedures that recognize and reflect the recipient's right to participate in the activities set forth in § 12907;

9. have a written policy for an informal resolution process to address recipient complaints and/or concerns regarding personal care services; and

10. have a written policy for a formal resolution process to address those situations where the informal resolution process fails to resolve the recipient's complaint.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003).

§12911. Reserved.

§12913. Place of Service

A. Personal care services may be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities. The recipient's home is defined as the recipient's place of residence including his/her own house or apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. A hospital, an

institution for mental disease, a nursing facility, or an intermediate care facility for the mentally retarded, are not considered to be the recipient's home.

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state. However, consideration will be given when the recipient lives in an area adjacent to the state's border and it is customary for residents of that area to seek medical and other services in the neighboring state.

C. Personal care services shall not be provided in the personal care worker's home. However, consideration will be given if it can be satisfactorily assured that:

1. the selection of the place of service is consistent with the recipient's choice;

2. the recipient's health and safety can be maintained when services are provided in the personal care worker's home; and

3. the services do not substitute for otherwise available family and/or community supports.

D. Place(s) of service must be documented in the service plan and progress notes.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

§12915. Service Limitations

A. Personal care services shall be limited to up to 56 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient's service plan and supporting documentation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

§12917. Reimbursement Methodology

A. Reimbursement for personal care services shall be a prospective flat rate for each approved unit of service that is provided to the recipient. One quarter hour is the standard unit of service for personal care services. Reimbursement shall not be paid for the provision of less than one quarter hour of service. Additional reimbursement shall not be available for transportation furnished during the course of providing personal care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003).

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.

David W. Hood
Secretary

0306#063

RULE

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

Private Hospitals COutlier Payments

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 20, 1996 Rule by changing the definition of marginal cost. The marginal cost factor for outliers shall be considered to be 100 percent of costs after the costs for the case exceed the hospital's prospective payment. In addition, the Bureau amends the reimbursement methodology for calculating outlier payments for private hospitals by changing the hospital specific cost-to-charge ratio from the base period currently being utilized to a hospital specific cost-to-charge ratio based on the hospital's cost report period ending in state fiscal year (SFY) 2000 (July 1, 1999 through June 30, 2000). The cost-to-charge ratio for new hospitals and hospitals that did not provide Medicaid Neonatal Intensive Care Unit (NICU) services in SFY 2000 will be calculated based on the first full year cost reporting period that the hospital was open or that Medicaid NICU services were provided. Outlier payments are not payable for transplant procedures as transplants are not reimbursed on a prospective basis.

A deadline of six months subsequent to the date that the final claim is paid is established for receipt of the written request filing for outlier payments.

The hospital specific cost-to-charge ratio will be reviewed bi-annually and the outlier payment may be adjusted as a result of this review at the discretion of the Secretary. Upon adoption of the Rule, hospitals shall receive notification of an impending change to the hospital specific outlier payment by means of a letter sent directly to the hospital.

Implementation 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.

David W. Hood
Secretary

0306#064

RULE

**Department of Natural Resources
Office of Conservation**

**Disposal of Exploration and Production Waste
(LAC 43:XVII.Chapter 31 and XIX.Chapter 5)**

The Louisiana Office of Conservation has promulgated the following new salt cavern exploration and production (E&P) waste disposal regulations at LAC 43:XVII.3101 et

seq. and has amended the existing commercial facility regulations in LAC 43:XIX.501, 503.F.3, 505.B, 507.A.1 and 6, 511.E.2, 519.C.4.d and C.7, 523.D, 525.D, 535.G, 547.A.6, 555 and 565.F in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4.C(1), (2), (3), (6), (8), (9), (10), (14), (16) and I. The new and amended regulations included herewith will provide for the disposal of E&P waste into salt caverns and clarify certain areas of existing commercial facility regulations in LAC 43:XIX.501 et seq.

Title 43

NATURAL RESOURCES

PART XVII. Office of ConservationCInjection and Mining

Subpart 4. Statewide Order No. 29-M-2

Chapter 31. Disposal of Exploration and Production Waste in Solution-Mined Salt Caverns

§3101. Definitions

*Application*Cthe filing on the appropriate Office of Conservation form(s), including any additions, revisions, modifications, or required attachments to the form(s), for a permit to operate a salt cavern waste disposal facility or parts thereof.

*Aquifer*Ca geologic formation, groups of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Blanket Material*Csometimes referred to as a "pad." The blanket material is a fluid placed within a salt cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the salt cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, diesel, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low density properties. The blanket material is placed between the salt cavern's outermost hanging string and innermost cemented casing.

*Brine*Cwater within a salt cavern that is completely or partially saturated with salt.

*Cap Rock*Cthe porous and permeable strata immediately overlying all or part of the salt stock of some salt structures typically composed of anhydrite, gypsum, limestone, and occasionally sulfur.

*Casing*Cmetallic pipe placed and cemented in the wellbore for the purpose of supporting the sides of the wellbore and to act as a barrier preventing subsurface migration of fluids out of or into the wellbore.

*Catastrophic Collapse*Cthe sudden or utter failure of the overlying strata caused by the removal or otherwise weakening of underlying sediments.

*Cementing*Cthe operation (either primary, secondary, or squeeze) whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

*Circulate to the Surface*Cthe observing of actual cement returns to the surface during the primary cementing operation.

*Commercial Salt Cavern Facility*Ca legally permitted salt cavern waste disposal facility that disposes of exploration

and production waste off the site where produced by others for a fee or other consideration.

Commissioner the Commissioner of Conservation for the State of Louisiana.

Contamination the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable of their intended purposes.

Discharge the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, ground, or waters of the state. A discharge shall not include that which is allowed through a federal or state permit.

E&P Waste exploration and production waste.

Effective Date the date of final promulgation of these rules and regulations.

Emergency Shutdown Valve a valve that automatically closes to isolate a salt cavern well from surface piping in the event of a specified condition that, if uncontrolled, may cause an emergency.

Exempted Aquifer an aquifer or its portion that meets the criteria of the definition of underground source of drinking water but which has been exempted according to the procedures set forth in §3103.E.2.

Existing Salt Cavern a salt cavern originally permitted by the Office of Conservation for use other than E&P waste disposal.

Existing Well a wellbore originally permitted by the Office of Conservation for use other than to facilitate E&P waste disposal into a salt cavern.

Exploration and Production Waste (E&P Waste) drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells and which is not regulated by the provisions of, and, therefore, exempt from the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended. E&P Wastes include, but are not limited to, those wastes listed in the definition for E&P Waste located in LAC 43:XIX.501 (Definitions).

Fluid any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

Generator a person or corporate entity who creates or causes to be created any E&P waste.

Ground Subsidence the downward settling of the Earth's surface with little or no horizontal motion in response to natural or manmade subsurface actions.

Groundwater Aquifer water in the saturated zone beneath the land surface that contains less than 10,000 mg/l total dissolved solids.

Groundwater Contamination the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

Hanging String casing whose weight is supported at the wellhead and hangs vertically in a larger cemented casing or another larger hanging string.

Injection and Mining Division the Injection and Mining Division of the Louisiana Office of Conservation within the Department of Natural Resources.

Leaching the process whereby an undersaturated fluid is introduced into a salt cavern thereby dissolving additional salt and increasing the volume of the salt cavern.

Migrating any movement of fluids by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as allowed by law, regulation, or permit.

New Well a wellbore permitted by the Office of Conservation after the effective date of these rules and regulations to be completed into an existing salt cavern to facilitate E&P waste disposal.

Non-Commercial Salt Cavern Facility a legally permitted salt cavern waste disposal facility that disposes of only E&P waste generated by the owner of the facility during oil and gas exploration and production activities.

Office of Conservation the Louisiana Office of Conservation within the Department of Natural Resources.

Oil-Based Drilling Muds any oil-based drilling fluid composed of a water in oil emulsion, organophillic clays, drilled solids and additives for down-hole rheology and stability such as fluid loss control materials, thinners, weighting agents, etc.

Operator the person recognized by the Office of Conservation as being responsible for the physical operation of the facility or activity subject to regulatory authority under these rules and regulations.

Owner the person recognized by the Office of Conservation as owning the facility or activity subject to regulatory authority under these rules and regulations.

Person an individual, association, partnership, public or private corporation, firm, municipality, state or federal agency and any agent or employee thereof, or any other juridical person.

Produced Water liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

Public Water System means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

1. any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
2. any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Release the accidental or intentional spilling, pumping, leaking, pouring, emitting, leaching, escaping, or dumping of pollutants into or on any air, land, groundwater, or waters of the state. A release shall not include that which is allowed through a federal or state permit.

Salt Cavern see *solution-mined salt cavern*

Salt Cavern Roof the uppermost part of a salt cavern being just below the neck of the wellbore. The shape of the salt cavern roof may be flat or domed.

Salt Cavern Waste Disposal Facility any public, private, or commercial property, including surface and subsurface lands and appurtenances thereto, used for receiving, storing, and/or processing E&P waste for disposal into a solution-mined salt cavern.

*Salt Cavern Well*Ca well extending into the salt stock to facilitate the disposal of waste or other fluids into a salt cavern.

*Salt Dome*Ca diapiric, typically circular structure that penetrates, uplifts, and deforms overlying sediments as a result of the upward movement of a salt stock in the subsurface. Collectively, the salt dome includes the salt stock and any overlying uplifted sediments.

*Salt Stock*Ca typically cylindrical formation composed chiefly of an evaporite mineral that forms the core of a salt dome. The most common form of the evaporite mineral is halite known chemically as sodium chloride (NaCl). Cap rock shall not be considered a part of the salt stock.

*Solution-Mined Salt Cavern*Ca cavity created within the salt stock by dissolution with water.

*State*the State of Louisiana.

*Subsidence*Csee *ground subsidence*.

*Surface Casing*Cthe first string of casing installed in a well, excluding conductor casing.

*Transport Vehicle*Ca motor vehicle, rail freight car, freight container, cargo tank, portable tank, or vessel used for the transportation of E&P wastes or other materials for use or disposal at a salt cavern waste disposal facility.

*Transportation*Cthe movement of wastes or other materials from the point of generation or storage to the salt cavern waste disposal facility by means of commercial or private transport vehicle.

*Unauthorized Discharge*Ca continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the commissioner of Conservation.

*Underground Source of Drinking Water*Can aquifer or its portion:

1. which supplies any public water system; or
2. which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. currently supplies drinking water for human consumption; or
 - b. contains fewer than 10,000 mg/1 total dissolved solids; and which is not an exempted aquifer.

*Waters of the State*Cboth surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters, and the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:914 (June 2003).

§3103. General Provisions

A. Applicability

1. These rules and regulations shall apply to all applicants, owners and/or operators of non-commercial salt cavern waste disposal facilities for disposal or proposed for disposal of E&P waste. However, where indicated, certain criteria found herein will also apply to commercial facility

operators, in addition to the requirements of LAC 43:XIX.501 et seq.

2. These rules and regulations do not address creation of a salt cavern, rather, only the disposal of E&P waste into a salt cavern. Rules governing the permitting, drilling, constructing, operating, and maintaining of a Class III brine solution mining well and cavern are codified in applicable sections of Statewide Order No. 29-N-1 (LAC 43:XVII, Subpart 1) or successor documents.

3. An applicant, owner and/or operator of a salt cavern being solution-mined for conversion to E&P waste disposal should become familiar with these rules and regulations to assure that the well and salt cavern shall comply with these rules and regulations.

B. Prohibition of Unauthorized Disposal of Exploration and Production Waste

1. Construction, conversion and/or operation of a salt cavern for disposal of E&P waste without obtaining a permit from the Office of Conservation is a violation of these rules and regulations and applicable laws of the State of Louisiana.

2. Any salt cavern well or salt cavern existing before the effective date of these Rules must comply with the requirements of these rules and regulations before converting the existing well and salt cavern to E&P waste disposal.

C. Prohibition on Movement of Fluids into Underground Sources of Drinking Water

1. No authorization by permit shall allow the movement of injected or disposed fluids into underground sources of drinking water or outside the salt stock. The owner or operator of the salt cavern waste disposal facility shall have the burden of showing that this requirement is met.

2. The Office of Conservation may take emergency action upon receiving information that injected or disposed fluid is present in or likely to enter an underground source of drinking water or may present an imminent and substantial endangerment to the environment, or the health, safety and welfare of the public.

D. Prohibition of Surface Discharges. The intentional, accidental, or otherwise unauthorized discharge of fluids, wastes, or process materials into manmade or natural drainage systems or directly into waters of the State is strictly prohibited.

E. Identification of Underground Sources of Drinking Water and Exempted Aquifers

1. The Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, except where exempted under §3103.E.2 all aquifers or parts of aquifers that meet the definition of an underground source of drinking water. Even if an aquifer has not been specifically identified by the Office of Conservation, it is an underground source of drinking water if it meets the definition.

2. After notice and opportunity for a public hearing, the Office of Conservation may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, all aquifers or parts thereof that the Office of Conservation

proposes to denote as exempted aquifers if they meet the following criteria:

- a. the aquifer does not currently serve as a source of drinking water; and
- b. the aquifer cannot now and shall not in the future serve as a source of drinking water because:
 - i. it is mineral, hydrocarbon, or geothermal energy producing or can be demonstrated to contain minerals or hydrocarbons that when considering their quantity and location are expected to be commercially producible;
 - ii. it is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical;
 - iii. it is so contaminated that it would be economically or technologically impractical to render said water fit for human consumption; or
 - iv. it is located in an area subject to severe subsidence or catastrophic collapse; or
- c. the total dissolved solids content of the groundwater is more than 3,000 mg/l and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

F. Exceptions/Variations

1. Except where noted in specific provisions of these rules and regulations, the Office of Conservation may allow, on a case-by-case basis, exceptions or variances to these rules and regulations. It shall be the obligation of the applicant, owner, or operator to show that the requested exception or variance shall not create an increased endangerment to the environment, or the health, safety and welfare of the public. The applicant, owner, or operator shall submit a written request to the Office of Conservation detailing the reason for the requested exception or variance. No deviation from the requirements of these rules or regulations shall be undertaken by the applicant, owner, or operator without prior written authorization from the Office of Conservation.

2. Granting of exceptions or variances to these rules and regulations shall only be considered upon proper showing by the applicant, owner, or operator at a public hearing that such exception or variance is reasonable, justified by the particular circumstances, and consistent with the intent of these rules and regulations regarding physical and environmental safety and the prevention of waste. The requester of the exception or variance shall be responsible for all costs associated with a public hearing.

G Prohibition Through Oilfield Site Restoration Fund. Without exception or variance to these rules and regulations, no solution-mined salt cavern or associated well shall be used for exploration and production waste disposal if the well or salt cavern was previously plugged and abandoned by or where site restoration has occurred pursuant to funding provided through the Oilfield Site Restoration Fund, R.S. 30:80 et seq. (Act 404 of 1993).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:916 (June 2003).

§3105. Permit Requirements

A. Applicability. No person shall convert or operate a non-commercial salt cavern waste disposal facility without

first obtaining written authorization (permit) from the Office of Conservation.

B. Application Required. Applicants for a non-commercial salt cavern waste disposal facility, permittees with expiring permits, or any person required to have a permit shall complete, sign, and submit one original application form with required attachments and documentation and two copies of the same to the Office of Conservation. The complete application shall contain all information necessary to show compliance with applicable State laws and these regulations.

C. Who Applies. It is the duty of the owner or proposed owner of a facility or activity to submit a permit application and obtain a permit. When a facility or activity is owned by one person and operated by another, it is the duty of the operator to file and obtain a permit.

D. Signature Requirements. All permit applications shall be signed as follows.

1. **Corporations.** By a principle executive officer of at least the level of vice-president, or duly authorized representative of that person if the representative performs similar policy making functions for the corporation. A person is a duly authorized representative only if:

a. the authorization is made in writing by a principle executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or position having responsibility for the overall operation of the salt cavern waste disposal facility, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. the written authorization is submitted to the Office of Conservation.

2. **Partnership or Sole Proprietorship.** By a general partner or proprietor, respectively; or

3. **Public Agency.** By either a principle executive officer or a ranking elected official of a municipality, state, federal, or other public agency.

E. Signature Reauthorization. If an authorization under §3105.D is no longer accurate because a different individual or position has responsibility for the overall operation of the salt cavern waste disposal facility, a new authorization satisfying the signature requirements must be submitted to the Office of Conservation before or concurrent with any reports, information, or applications required to be signed by an authorized representative.

F. Certification. Any person signing a document under §3105.D shall make the following certification on the application:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and/or imprisonment."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:917 (June 2003).

§3107. Application Content

A. The following minimum information required in §3107 shall be submitted in a permit application for a non-commercial salt cavern E&P waste disposal facility. The applicant shall also refer to the appropriate application form for any additional information that may be required.

B. Administrative information:

1. all required state application form(s);
2. the nonrefundable application fee(s) and public hearing fee;
3. the name, mailing address, and physical address of the salt cavern waste disposal facility;
4. the operator's name, address and telephone number;
5. ownership status as federal, state, private, public, or other entity;
6. a brief description of the nature of the business associated with the activity;
7. list of all permits or construction approvals that the applicant has received or applied for and which specifically affect the legal or technical ability of the applicant to undertake the activity or activities to be conducted by the applicant under the permit being sought;
8. a copy of the title to the property for the salt cavern waste disposal facility. If a lease, option to lease, or other agreement is in effect on the property, a copy of this instrument shall be included with the application;
9. acknowledgment as to whether the facility is located on Indian lands or other lands under the jurisdiction or protection of the federal government, or whether the facility is located on state water bottoms or other lands owned by or under the jurisdiction or protection of the State of Louisiana;
10. documentation of financial responsibility and insurance or documentation of the method by which proof of financial responsibility and insurance will be provided as required in §3109.B. Where applicable, include copies of a draft letter of credit, bond, or any other evidence of financial responsibility acceptable to the Office of Conservation. Before making a final permit decision, final (official) documentation of financial responsibility and insurance must be submitted to and approved by the Office of Conservation;
11. names and addresses of all property owners within a one-half mile radius of the property boundary of the salt cavern waste disposal facility.

C. Maps and Related Information

1. a location plat of the salt cavern well prepared and certified by a registered civil engineer or registered land surveyor. The location plat shall be prepared according to standards of the Office of Conservation;
2. a topographic or other map extending at least one mile beyond the property boundaries of the salt cavern waste disposal facility depicting the facility and each well where fluids are injected underground; and those wells, springs, or surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;
3. the section, township and range of the area in which the salt cavern waste disposal facility is located and any parish, city or municipality boundary lines within one mile of the facility location;

4. a map showing the salt cavern well for which the permit is sought, the property boundaries of the salt cavern waste disposal facility, and the area of review. Within the area of review, the map shall show the number, name, and location of all existing producing wells, injection wells, abandoned wells and dry holes, public water systems and water wells. The map shall also show surface bodies of water, mines (surface and subsurface), quarries, and other pertinent surface features including residences and roads, and faults if known or projected;

5. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the disposal formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed project;

6. generalized maps and cross sections illustrating the regional geologic setting;

7. structure contour mapping of the top-of-salt on a scale no smaller than one inch to five hundred feet;

8. vertical cross sections detailing the geologic structure of the local area. The cross sections shall be structural (as opposed to stratigraphic cross sections), be referenced to sea level, show the salt cavern well and the salt cavern being permitted, all surrounding salt caverns regardless of use and current status, conventional (room and pillar) mines, and all other bore holes and wells that penetrate the salt stock. Cross sections should be oriented to indicate the closest approach to surrounding salt caverns, bore holes, wells, etc., and shall extend at least one-mile beyond the edge of the salt stock. Any faulting in the area shall be illustrated on the cross sections such that the displacement of subsurface formations is accurately depicted; and

9. any other information required by the Office of Conservation to evaluate the salt cavern well, salt cavern, and related surface facility.

D. Area of Review Information. Refer to §115.E for area of review boundaries and exceptions. Only information of public record need be researched or submitted with the application, however, a diligent effort must be made to identify all wells and other manmade structures in response to the area of review requirements. The applicant shall provide the following information on all wells or structures within the defined area of review:

1. a discussion of the protocol used by the applicant to identify wells and manmade structures in the defined area of review;

2. a tabular listing of all known water wells in the area of review to include the name of the operator, well location, well depth, well use (domestic, irrigation, public, etc), and current well status (active, abandoned, etc.);

3. a tabular listing of all known wells (excluding water wells) in the area of review with penetrations into the cap rock or salt stock to include at a minimum:

a. operator name, well name and number, state serial number (if assigned), and well location;

b. well type and current well status (producing, disposal, storage, solution mining, shut-in, plugged and abandoned), date the well was drilled, and the date the current well status was assigned;

c. well depth, construction, completion (including completion depths), plug and abandonment data;

4. the following information shall be provided on manmade structures within the salt stock regardless of use, depth of penetration, or distance to the salt cavern well or salt cavern being the subject of the application:

a. a tabular listing of all salt caverns to include:

i. operator name, well name and number, state serial number, and well location;

ii. current or previous use of the salt cavern (waste disposal, hydrocarbon storage, solution mining), current status of the salt cavern (active, shut-in, plugged and abandoned), date the salt cavern well was drilled, and the date the current salt cavern status was assigned;

iii. salt cavern depth, construction, completion (including completion depths), plug and abandonment data;

b. a tabular listing of all conventional (dry or room and pillar) mining activities, whether active or abandoned. The listing shall include the following minimum items:

i. owner or operator name and address;

ii. current mine status (active, abandoned);

iii. depth and boundaries of mined levels;

iv. the closest distance of the mine in any direction to the salt cavern well and salt cavern.

E. Technical Information. The applicant shall submit, as an attachment to the application form, the following minimum information in technical report format:

1. results of a current salt cavern sonar survey and mechanical integrity pressure and leak tests;

2. corrective action plan required by §3115.F for wells or other manmade structures within the area of review that penetrate the salt stock but are not properly constructed, completed or plugged and abandoned;

3. plans for performing the geological and hydrogeological studies of §3115.B, C, and D. If such studies have already been done, submit the results obtained along with an interpretation of the results;

4. properly labeled schematic of the surface construction details of the salt cavern well to include the wellhead, gauges, flowlines, and any other pertinent details;

5. properly labeled schematic of the subsurface construction and completion details of the salt cavern well and salt cavern to include borehole diameters (bit size or calipered); all cemented casings with cement specifications, casing specifications (size, depths, etc.); all hanging strings showing sizes and depths set; total depth of well; top, bottom, and diameter of cavern; and any other pertinent details;

6. surface site diagram(s) drawn to scale to include details and locations of the entire salt cavern waste disposal facility layout (surface pumps, piping and instrumentation, controlled access roads, fenced boundaries, waste offloading, storage, treatment and processing areas, field office, monitoring and safety equipment and location of such equipment, required curbed or other retaining wall heights, etc.);

7. detailed plans and procedures to operate the salt cavern well, salt cavern, and related surface facilities in accordance with the following requirements:

a. the cavern and surface facility design requirements of §3117, including, but not limited to cavern spacing requirements and cavern coalescence;

b. the well construction and completion requirements of §3119, including, but not limited to open borehole surveys, casing and cementing, casing and casing seat tests, cased borehole surveys, hanging strings, and wellhead components and related connections;

c. the operating requirements of §3121, including, but not limited to cavern roof restrictions, blanket material, remedial work, well recompletion, multiple well caverns, cavern allowable operating pressure and rates, cavern displacement fluid management, and E&P waste storage;

d. the safety requirements of §3123, including, but not limited to an emergency action plan, controlled site access, facility identification, personnel, wellhead protection and identification, valves and flowlines, alarm systems, emergency shutdown valves, vapor monitoring and leak detection, gaseous vapor control, fire detection and suppression, systems test and inspections, and surface facility retaining walls and spill containment, as well as contingency plans to cope with all shut-ins or well failures to prevent the migration of contaminating fluids into underground sources of drinking water;

e. the monitoring requirements of §3125, including, but not limited to equipment requirements such as pressure gauges, pressure sensors and flow sensors, continuous recording instruments, vapor monitoring and leak detection, subsidence monitoring, and weather conditions (wind sock), as well as a description of methods that will be undertaken to monitor salt cavern growth due to undersaturated fluid injection. The plan shall incorporate method(s) for monitoring the salinity of all wastes disposed and the carrier fluid used in aiding the disposal of wastes;

f. the pre-operating requirements of §3127, specifically the submission of a completion report, and the information required therein, prior to accepting, storing, treating, processing or otherwise initiating waste disposal activities;

g. the mechanical integrity pressure and leak test requirements of §3129, including, but not limited to frequency of tests, test methods, submission of pressure and leak test results, notification of test failures and prohibition of waste acceptance during mechanical integrity failure;

h. the cavern configuration and capacity measurement procedures of §3131, including, but not limited to sonar caliper surveys, frequency of surveys, and submission of survey results;

i. the cavern waste disposal capacity exceedance requirements of §3133;

j. the requirements for inactive caverns in §3135;

k. the reporting requirements of §3137, including, but not limited to the information required in monthly waste receipts and operation reports;

l. the record retention requirements of §3139;

m. the closure and post-closure requirements of §3141, including, but not limited to closure plan requirements, notice of intent to close, standards for closure, and post-closure requirements; and

n. any other information pertinent to operation of the salt cavern E&P waste disposal facility, including, but not limited to procedures for waste characterization and testing, waste acceptance, waste storage, waste processing, waste disposal, any waiver for surface siting, monitoring equipment and safety procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:918 (June 2003).

§3109. Legal Permit Conditions

A. Signatories. All reports required by permit or regulation and other information requested by the Office of Conservation shall be signed as in applications by a person described in §3105.D or §3105.E.

B. Financial Responsibility

1. Closure and Post-Closure. The owner or operator of a non-commercial salt cavern E&P waste disposal facility shall maintain financial responsibility and the resources to close, plug and abandon and, where necessary, for post-closure care of the salt cavern well, salt cavern, and related facility as prescribed by the Office of Conservation. Evidence of financial responsibility shall be by submission of a surety bond, a letter of credit, certificate of deposit, or other instruments acceptable to the Office of Conservation. The amount of funds available shall be no less than the amount identified in the cost estimate of the closure plan of §3141.A and, if required, post-closure plan of §3141.B. Any financial instrument filed in satisfaction of these financial responsibility requirements shall be issued by and drawn on a bank or other financial institution authorized under state or federal law to operate in the State of Louisiana.

2. Insurance. All owners or operators of a salt cavern waste disposal facility shall provide evidence of sudden and accidental pollution liability insurance coverage for damages that may be caused to any property and party by the escape or discharge of any material or waste from the facility. Such evidence shall be provided to the Office of Conservation before the issuance of a permit for a salt cavern waste disposal facility.

a. Insurance responsibility may be evidenced by filing a certificate of sudden and accidental pollution liability insurance (indicating the required coverage is in effect and all deductible amounts applicable to the coverage), a letter of credit, bond, certificate of deposits issued by and drawn on Louisiana banks, or any other evidence of equivalent financial responsibility acceptable to the Office of Conservation.

b. The amount and extent of such sudden and accidental pollution liability insurance responsibility shall not be less than the face amounts per occurrence and/or aggregate occurrences as set by the Office of Conservation. The minimum coverage for sudden and accidental pollution liability insurance shall be \$5,000,000. The Office of Conservation retains the right to increase the minimum amount of insurance coverage as needed to prevent waste and to protect the environment, or the health, safety and welfare of the public.

c. Insurance coverage shall be issued by a company licensed to operate in the state of Louisiana. A copy of the insurance policy subsequently issued with any certificate of insurance is to be immediately filed with the Office of Conservation upon receipt by the operator.

3. Renewal of Financial Responsibility and Insurance. Any approved instrument of financial responsibility and insurance coverage shall be renewable yearly. Documentation of renewals shall be submitted to the Office of Conservation.

C. Duty to Comply. The operator must comply with all conditions of a permit. Any permit noncompliance is a violation of the permit and these rules and regulations and is grounds for enforcement action, permit termination, revocation and possible reissuance, modification, or denial of any future permit renewal applications. It shall be the duty of the operator to prove that continued operation of the salt cavern waste disposal facility shall not endanger the environment, or the health, safety and welfare of the public.

D. Duty to Halt or Reduce Activity. It shall not be a defense for an owner or operator in an enforcement action to claim it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of the permit.

E. Duty to Mitigate. The owner or operator shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from a noncompliance with the permit or these rules and regulations.

F. Proper Operation and Maintenance

1. The operator shall always properly operate and maintain all facilities and systems of storage, treatment, disposal, injection, withdrawal, and control (and related appurtenances) installed or used to achieve compliance with the permit or these rules and regulations. Proper operation and maintenance include effective performance (including well/cavern mechanical integrity), adequate funding, adequate operation, staffing and training, and adequate controls. This provision requires the operation of back-up, auxiliary facilities, or similar systems when necessary to achieve compliance with the conditions of the permit or these rules and regulations.

2. The operator shall address any unauthorized escape, discharge, or release of any material or waste from the salt cavern waste disposal facility, or part thereof, with a corrective action plan. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge, or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged, or released material or waste if the material or waste is thought to have entered or has the possibility of entering an underground source of drinking water.

3. The Office of Conservation may immediately prohibit further operations if it determines that continued operations at a salt cavern waste disposal facility, or part thereof, may cause unsafe operating conditions, or endanger the environment, or the health, safety and welfare of the public. The prohibition shall remain in effect until it is determined that continued operations can and shall be conducted safely. It shall be the duty of the operator to prove that continued operation of the salt cavern waste disposal facility, or part thereof, shall not endanger the environment, or the health, safety and welfare of the public.

G. Inspection and Entry. Inspection and entry at a salt cavern waste disposal facility by Office of Conservation personnel shall be allowed as prescribed in R.S. of 1950, Title 30, Section 4.

H. Notification Requirements. The operator shall give written, and where required, verbal notice to the Office of Conservation concerning activities indicated in this Subsection.

1. Any change in the principal officers, management, owner or operator of the salt cavern waste disposal facility shall be reported to the Office of Conservation in writing within 10 days of the change.

2. Planned physical alterations or additions to the salt cavern well, salt cavern, surface facility or parts thereof that may constitute a modification or amendment of the permit.

3. Whenever there has been no disposal of waste into a salt cavern for 30 consecutive days or more, the operator shall notify the Office of Conservation in writing within seven days following the thirtieth day of the salt cavern becoming inactive (out of service). The notification shall include the date on which the salt cavern was removed from service, the reason for taking the salt cavern out of service, and the expected date that the salt cavern shall be returned to waste disposal service. See §3135 for additional requirements for inactive caverns.

4. The operator of a new or converted salt cavern well or salt cavern shall not begin waste disposal operations until the Office of Conservation has been notified of the following:

a. well construction or conversion is complete, including submission of the completion report and all supporting information (e.g., as-built diagrams, records, sampling and testing results, well and cavern tests, logs, etc.) required in §3127;

b. a representative of the commissioner has inspected the well and/or facility; and

c. the operator has received written approval from the Office of Conservation clearly stating salt cavern waste disposal operations may begin.

5. Noncompliance or anticipated noncompliance with the permit or applicable regulations including a failed mechanical integrity pressure and leak test of §3129.

6. Permit Transfer. A permit is not transferable to any person except after giving written notice to and receiving written approval from the Office of Conservation clearly stating that the permit has been transferred. This action may require modification or revocation and re-issuance of the permit to change the name of the operator and incorporate other requirements as may be necessary, including but not limited to financial responsibility.

7. Twenty-Four Hour Reporting

a. The operator shall report any noncompliance that may endanger the environment, or the health, safety and welfare of the public. Any information pertinent to the noncompliance shall be reported to the Office of Conservation by telephone within 24 hours from when the operator becomes aware of the circumstances. A written submission shall also be provided within five days from when the operator becomes aware of the circumstances. The written notification shall contain a description of the noncompliance and its cause, the periods of noncompliance including exact times and dates, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

b. The following additional information must also be reported within the 24-hour period:

i. monitoring or other information (including a failed mechanical integrity test of §3129) that suggests the waste disposal operation or disposed waste may cause an

endangerment to underground sources of drinking waters, oil, gas, other commercial mineral deposits (excluding the salt), neighboring salt operations of any kind, or movement outside the salt stock or salt cavern;

ii. any noncompliance with a regulatory or permit condition or malfunction of the waste injection/withdrawal system (including a failed mechanical integrity test of §3129) that may cause fluid migration into or between underground sources of drinking waters or outside the salt stock or salt cavern.

8. The operator shall give written notification to the Office of Conservation upon permanent conclusion of waste disposal operations into a salt cavern. Notification shall be given within seven days after concluding disposal operations.

9. The operator shall give written notification before abandonment (closure) of the salt cavern, salt cavern well, or related surface facility. Abandonment (closure) shall not begin before receiving written authorization from the Office of Conservation.

10. When the operator becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Office of Conservation, the operator shall promptly submit such facts and information.

I. Duration of Permits

1. Authorization to Operate. Authorization by permit to operate a salt cavern waste disposal facility shall be valid for the life of the facility, unless suspended, modified, revoked and reissued, or terminated for cause as described in §3111.K.

2. Authorization to Drill and Complete. Authorization by permit to drill and complete a new salt cavern well into an existing salt cavern shall be valid for one year from the effective date of the permit. If drilling and well completion is not completed in that time, the permit shall be null and void and the operator must obtain a new permit.

3. Authorization to Convert. Authorization by permit to convert an existing salt cavern well or salt cavern to waste disposal shall remain in effect for six months from the effective date of the conversion permit. If conversion has not begun within that time, the permit shall be null and void and the operator must obtain a new permit.

4. Extensions. The operator shall submit to the Office of Conservation a written request for an extension of the times of §3109.I.2 and §3109.I.3; however, the Office of Conservation shall approve the request only for extenuating circumstances. The operator shall have the burden of proving claims of extenuating circumstances.

J. Compliance Review. Cavern disposal facility permits shall be reviewed at least once every five years to determine compliance with applicable permit requirements and conditions. Commencement of the permit review process for each facility shall proceed as authorized by the Commissioner of Conservation.

K. Additional Conditions. The Office of Conservation may, on a case-by-case basis, impose any additional conditions or requirements as are necessary to protect the environment, the health, safety and welfare of the public, underground sources of drinking waters, oil, gas, or other mineral deposits (excluding the salt), and preserve the integrity of the salt dome.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:920 (June 2003).

§3111. Permitting Process

A. **Applicability.** This Section contains procedures for issuing and transferring permits to operate a non-commercial salt cavern waste disposal facility. Any person required to have a permit shall apply to the Office of Conservation as stipulated in §3105. The Office of Conservation shall not issue a permit before receiving an application form and any required supplemental information showing compliance with these rules and regulations and that is administratively and technically completed to the satisfaction of the Office of Conservation.

B. Notice of Intent to File Application

1. The applicant shall make public notice that a permit application is to be filed with the Office of Conservation. A notice of intent shall be published at least 30 days but not more than 120 days before filing the permit application with the Office of Conservation. The applicant shall publish a new notice of intent if the application is not received by the Office of Conservation within the filing period.

2. The notice shall be published once in the official state journal, the official journal of the parish of the proposed project location, and, if different from the official parish journal, in a journal of general circulation in the area of the proposed project location. The cost for publishing the notice of intent shall be the responsibility of the applicant. The notice shall be published in bold-faced type, be not less than one-fourth page in size, and shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility to be regulated by the permit;
- b. the geographic location of the proposed project;
- c. name and address of the regulatory agency to process the permit action where interested persons may obtain information concerning the application or permit action;
- d. a brief description of the business conducted at the facility or activity described in the permit application including the method of storage, treatment, and/or disposal; and
- e. the nature and content of the proposed waste stream(s).

C. Application Submission and Review

1. The applicant shall complete, sign, and submit one original application form, with required attachments and documentation, and two copies of the same to the Office of Conservation. The complete application shall contain all information to show compliance with applicable state laws and these rules and regulations.

2. The applicant shall be notified if a representative of the Office of Conservation decides that a site visit is necessary for any reason in conjunction with the processing of the application. Notification may be either oral or written and shall state the reason for the visit.

3. If the Office of Conservation deems an application to be incomplete, deficient of information, or requires additional data, a notice of application deficiency indicating the information necessary to make the application complete shall be transmitted to the applicant.

4. The Office of Conservation shall deny an application if an applicant fails, refuses, is unable to respond adequately to the notice of application deficiency, or if the Office of Conservation determines that the proposed activity cannot be conducted safely. The Office of Conservation shall notify the applicant by certified mail of the decision denying the application.

D. **Public Hearing Requirements.** A public hearing is required for new applications and shall not be scheduled until administrative and technical review of an application has been completed to the satisfaction of the Office of Conservation.

1. Notice by Office of Conservation

a. Upon acceptance of a permit application as complete and meeting the administrative and technical requirements of these rules and regulations, the Office of Conservation shall fix a time, date, and location for a public hearing. The public hearing shall be held in the parish of the proposed project location. The cost of the public hearing shall be set by LAC 43:XIX.Chapter 7 (Fees, as amended) and is the responsibility of the applicant.

b. The Office of Conservation shall provide notice of a scheduled hearing by mailing a copy of the notice to the applicant, property owners immediately adjacent to the proposed project, operators of existing projects located on or within the salt stock of the proposed project; United States Environmental Protection Agency; Louisiana Department of Wildlife and Fisheries; Louisiana Department of Environmental Quality; Louisiana Office of Coastal Management; Louisiana Office of Conservation, Pipeline Division, Louisiana Department of Culture, Recreation and Tourism, Division of Archaeology; the governing authority for the parish of the proposed project; and any other interested parties.

2. Notice by Applicant

a. Public notice of a hearing shall be published by the applicant in the legal ad section of the official state journal, the official journal of the parish of the proposed project location, and, if different from the official parish journal, in a journal of general circulation in the area of the proposed project location, not less than 30 days before the scheduled hearing.

b. The applicant shall file at least one copy of the complete permit application with the local governing authority of the parish of the proposed project location at least 30 days before the scheduled public hearing to be available for public review.

c. One additional copy of the complete permit application shall be filed by the applicant in a public library in the parish and in close proximity to the proposed project location.

3. **Contents.** Public notices shall contain the following minimum information:

- a. name and address of the permit applicant and, if different, the facility or activity regulated by the permit;
- b. name and address of the regulatory agency processing the permit action;
- c. name, address, and phone number of a person within the regulatory agency where interested persons may obtain information concerning the application or permit action;

- d. a brief description of the business conducted at the facility or activity described in the permit application;
- e. a brief description of the public comment procedures and the time and place of the public hearing;
- f. a brief description of the nature and purpose of the public hearing.

E. Draft Permit. The Office of Conservation shall prepare a draft permit (Order) after accepting a permit application as meeting the administrative and technical requirements of these rules and regulations. Draft permits shall be accompanied by a fact sheet, be publicly noticed, and made available for public comment.

F. Fact Sheet. The Office of Conservation shall prepare a fact sheet for every draft permit. It shall briefly set forth principal facts and significant factual, legal, and policy questions considered in preparing the draft permit.

- 1. The fact sheet may include:
 - a. a brief description of the type of facility or activity that is the subject of the draft permit or application;
 - b. the type and proposed quantity of material to be injected;
 - c. a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provision;
 - d. a description of the procedures for reaching a final decision on the draft permit or application including the ending date of the public comment period of §3111.H, the address where comments shall be received, and any other procedures whereby the public may participate in the final decision;
 - e. the name and telephone number of a person within the permitting agency to contact for additional information.

2. The fact sheet shall be distributed to the permit applicant and, on request, to any interested person.

G. Public Hearing. Public hearings for permitting activities shall be held in the parish of the proposed project location. The cost of the public hearing shall be the responsibility of the applicant.

- 1. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All public hearings shall be publicly noticed as required by these rules and regulations.
- 2. At the hearing, any person may make oral statements or submit written statements and data concerning the application or permit action being the basis of the hearing. Reasonable limits may be set upon the time allowed for oral statements; therefore, submission of written statements may be required. The hearing officer may extend the comment period by so stating before the close of the hearing.

3. A transcript shall be made of the hearing and such transcript shall be available for public review.

H. Public Comments, Response to Comments, and Permit Issuance

1. Any interested person may submit written comments concerning the permitting activity during the public comment period. All comments pertinent and significant to the permitting activity shall be considered in making the final permit decision.

2. The Office of Conservation shall issue a response to all pertinent and significant comments as an attachment to and at the time of final permit decision. The final permit with response to comments shall be made available to the public.

3. The Office of Conservation shall issue a final permit decision within 90 days following the close of the public comment period; however, this time may be extended due to the nature, complexity, and volume of public comments received.

4. A final permit decision shall be effective on the date of issuance.

5. Approval or the granting of a permit to construct a salt cavern waste disposal facility or salt cavern well shall not become final until a certified copy of a lease or proof of ownership of the property of the proposed project location is submitted to the Office of Conservation.

I. Permit Application Denial

1. The Office of Conservation may refuse to issue, reissue, or reinstate a permit or authorization if an applicant or operator has delinquent, finally determined violations of the Office of Conservation or unpaid penalties or fees, or if a history of past violations demonstrates the applicant's or operator's unwillingness to comply with permit or regulatory requirements.

2. If a permit application is denied, the applicant may request a review of the Office of Conservation's decision to deny the permit application. Such request shall be made in writing and shall contain facts or reasons supporting the request for review.

3. Grounds for permit application denial review shall be limited to the following reasons:

- a. the decision is contrary to the laws of the State, applicable regulations, or evidence presented in or as a supplement to the permit application;
- b. the applicant has discovered since the permit application public hearing or permit denial, evidence important to the issues that the applicant could not with due diligence have obtained before or during the initial permit application review;
- c. there is a showing that issues not previously considered should be examined so as to dispose of the matter; or
- d. there is other good ground for further consideration of the issues and evidence in the public interest.

J. Permit Transfer

1. Applicability. A permit may be transferred to a new owner or operator only upon written approval from the Office of Conservation. Written approval must clearly read that the permit has been transferred. It is a violation of these rules and regulations to operate a salt cavern waste disposal facility without a permit or other authorization if a person attempting to acquire a permit transfer allows operation of the salt cavern waste disposal facility before receiving written approval from the Office of Conservation.

2. Procedures

a. The proposed new owner or operator must apply for and receive an operator code by submitting a completed Organization Report (Form OR-1), or subsequent form, to the Office of Conservation.

b. The current operator shall submit an application for permit transfer at least 30 days before the proposed permit transfer date. The application shall contain the following:

- i. name and address of the proposed new owner or operator;
- ii. date of proposed permit transfer; and
- iii. a written agreement between the existing and new owner or operator containing a specific date for transfer of permit responsibility, insurance coverage, financial responsibility, and liability between them.

c. If no agreement described in §3111.J.2.b.iii above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing operator to the new operator on the date the transfer is approved.

d. The new operator shall submit an application for a change of operator using Form MD-10-R-A, or subsequent form, to the Office of Conservation containing the signatories of §3105.D and E along with the appropriate filing fee.

e. The new operator shall submit evidence of financial responsibility under §3109.B.

f. Any additional information as may be required to be submitted by these regulations or the Office of Conservation.

K. Permit Suspension, Modification, Revocation and Reissuance, Termination. This subsection sets forth the standards and requirements for applications and actions concerning suspension, modification, revocation and reissuance, termination, and renewal of permits. A draft permit must be prepared and other applicable procedures must be followed if a permit modification satisfies the criteria of this subsection. A draft permit, public notification, or public participation is not required for minor permit modifications of §3111.K.5.

1. Permit Actions

a. The permit may be suspended, modified, revoked and reissued, or terminated for cause.

b. The operator shall furnish the Office of Conservation within a predetermined time any information that the Office of Conservation may request to determine whether cause exists for suspending, modifying, revoking and reissuing, or terminating a permit, or to determine compliance with the permit. Upon request, the operator shall furnish the Office of Conservation with copies of records required to be kept by the permit.

c. The Office of Conservation may, upon its own initiative or at the request of any interested person, review any permit to determine if cause exists to suspend, modify, revoke and reissue, or terminate the permit for the reasons specified in §§3111.K.2, 3, 4, 5, and 6. All requests shall be in writing and shall contain facts or reasons supporting the request.

d. If the Office of Conservation decides the request is not justified, the person making the request shall be sent a brief written response giving a reason for the decision. Denials of requests for suspension, modification, revocation and reissuance, or termination are not subject to public notice, public comment, or public hearings.

e. If the Office of Conservation decides to suspend, modify or revoke and reissue a permit under §§3111.K.2, 3,

4, 5, and 6, additional information may be requested and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Office of Conservation shall require the submission of a new application.

f. The suitability of an existing salt cavern well, salt cavern, or salt cavern waste disposal facility location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards suggest continued operation at the site endangers the environment, or the health, safety and welfare of the public which was unknown at the time of permit issuance. If the salt cavern well, salt cavern, or salt cavern waste disposal facility location is no longer suitable for its intended purpose, it shall be closed according to applicable sections of these rules and regulations.

2. Suspension of Permit. The Office of Conservation may suspend the operator's right to accept additional E&P wastes, or to treat, process, store, or dispose such waste until violations are corrected. If violations are corrected, the Office of Conservation may lift the suspension. Suspension of a permit and/or subsequent corrections of the causes for the suspension by the operator shall not preclude the Office of Conservation from terminating the permit, if necessary. The Office of Conservation shall issue a Notice of Violation (NOV) to the operator, by certified mail, return receipt requested, of violations of the permit or these regulations that list the specific violations. If the operator fails to comply with the NOV by correcting the cited violations within the date specified in the NOV, the Office of Conservation shall issue a Compliance Order requiring the violations to be corrected within a specified time and may include an assessment of civil penalties. If the operator fails to take corrective action within the time specified in the Compliance Order, the Office of Conservation shall assess a civil penalty, and shall suspend, revoke, or terminate the permit.

3. Modification or Revocation and Reissuance of Permits. The following are causes for modification and may be causes for revocation and reissuance of permits.

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. Information. The Office of Conservation has received information pertinent to the permit. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. Cause shall include any information indicating that cumulative effects on the environment, or the health, safety and welfare of the public are unacceptable.

c. New Regulations

i. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued and conformance with the changed standards or regulations is necessary for the protection of the environment, or the health, safety and

welfare of the public. Permits may be modified during their terms when:

(a). the permit condition requested to be modified was based on a promulgated regulation or guideline;

(b). there has been a revision, withdrawal, or modification of that portion of the regulation or guideline on which the permit condition was based; or

(c). an operator requests modification within 90 days after Louisiana Register notice of the action on which the request is based.

ii. The permit may be modified as a minor modification without providing for public comment when standards or regulations on which the permit was based have been changed by withdrawal of standards or regulations or by promulgation of amended standards or regulations which impose less stringent requirements on the permitted activity or facility and the operator requests to have permit conditions based on the withdrawn or revised standards or regulations deleted from his permit.

iii. For judicial decisions, a court of competent jurisdiction has remanded and stayed Office of Conservation regulations or guidelines and all appeals have been exhausted, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the operator to have permit conditions based on the remanded or stayed standards or regulations deleted from his permit.

d. Compliance Schedules. The Office of Conservation determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the operator has little or no control and for which there is no reasonable available remedy.

4. Causes for Modification or Revocation and Reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit.

a. Cause exists for termination under §3111.K.6, and the Office of Conservation determines that modification or revocation and reissuance is appropriate.

b. The Office of Conservation has received notification of a proposed transfer of the permit and the transfer is determined not to be a minor permit modification.

c. A determination that the waste being disposed into a salt cavern is not E&P waste as defined in §3101 or LAC 43:XIX.501, or subsequent revisions, either because the definition has been revised or because a previous determination has been changed.

5. Minor Modifications of Permits. The Office of Conservation may modify a permit to make corrections or allowances for changes in the permitted activity listed in this subsection without issuing a draft permit and providing for public participation. Minor modifications may only:

a. correct administrative or make informational changes;

b. correct typographical errors;

c. amend the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities;

d. change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;

e. allow for a change in ownership or operational control of a salt cavern waste disposal facility where the Office of Conservation determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Office of Conservation;

f. change quantities or types of waste or other material disposed into the salt cavern which are within the capacity of the salt cavern waste disposal facility and, in the judgement of the Office of Conservation, would not interfere with the operation of the facility or its ability to meet other conditions prescribed in the permit, and would not change the waste classification of the disposed material;

g. change construction requirements or plans approved by the Office of Conservation provided that any such alteration is in compliance with these rules and regulations. No such changes may be physically incorporated into construction of the salt cavern well, salt cavern, or surface facility before written approval from the Office of Conservation; or

h. amend a closure or post-closure plan.

6. Termination of Permits

a. The Office of Conservation may terminate a permit during its term for the following causes:

i. noncompliance by the operator with any condition of the permit;

ii. the operator's failure in the application or during the permit issuance process to fully disclose all relevant facts, or the operator's misrepresentation of any relevant facts at any time; or

iii. a determination that continued operation of the permitted activity cannot be conducted in a way that is protective of the environment, or the health, safety and welfare of the public.

b. If the Office of Conservation decides to terminate a permit, such shall only be done after a public hearing.

c. The Office of Conservation may alternatively decide to modify or revoke and reissue a permit for the causes in §3111.K.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:922 (June 2003).

§3113. Location Criteria

A. No physical structure at a salt cavern waste disposal facility shall be located within 500 feet of a residential, commercial, or public building. Adherence to this requirement may be waived by the owner of the building. For a public building, the waiver shall be provided by the responsible administrative body. Any such waiver shall be in writing and be made part of the permit application. Examples of physical structures include, but are not limited to, the wellhead of the salt cavern well, waste storage, waste transfer and waste processing areas, onsite buildings, pumps, etc. An exception to the 500-foot restriction may be granted upon request for the placement of instruments or equipment required for safety or environmental monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:925 (June 2003).

§3115. Site Assessment

A. Applicability. This section applies to all applicants, owners and/or operators of salt cavern waste disposal facilities. The applicant, owner and/or operator shall be responsible for showing that disposal of E&P wastes into the salt cavern shall be accomplished using good engineering and geologic practices for salt cavern operations to preserve the integrity of the salt stock and overlying sediments. This shall include, but not be limited to:

1. an assessment of the geological, geomechanical, geochemical, geophysical properties of the salt stock;
2. stability of the salt cavern design (particularly regarding its size, shape, depth, and operating parameters);
3. physical and chemical characteristics of the waste;
4. the amount of separation between the salt cavern of interest and adjacent caverns and structures within the salt stock; and
5. the amount of separation between the outermost salt cavern wall and the periphery of the salt stock.

B. Geological Studies and Evaluations. The applicant shall do a thorough geological, geophysical, geomechanical, and geochemical evaluation of the salt stock to determine its suitability for waste disposal, stability of the salt cavern under the proposed set of operating conditions, and where applicable, the structural integrity of the salt stock between an adjacent cavern and salt periphery under the proposed set of operating conditions. The applicant shall provide a listing of data or information used to characterize the structure and geometry of the salt stock.

1. Where applicable, the geologic evaluation shall include, but should not be limited to:
 - a. geologic mapping of the structure of the salt stock and any cap rock;
 - b. geologic history of salt movement;
 - c. an assessment of the impact of possible anomalous zones (salt spines, shear planes, etc.) on the salt cavern well or salt cavern;
 - d. deformation of the cap rock and strata overlying the salt stock;
 - e. investigation of the upper salt surface and adjacent areas involved with salt dissolution;
 - f. cap rock formation and any non-vertical salt movement.

2. The applicant shall perform a thorough hydrogeological study on strata overlying the salt stock to determine the occurrence of the lowermost underground source of drinking water immediately above and in the vicinity of the salt stock.

3. The applicant shall investigate regional tectonic activity and the potential impact (including ground subsidence) of the waste disposal project on surface and subsurface resources.

C. Core Sampling.

1. At least one well at the site of the salt cavern waste disposal facility (or the salt dome) shall be or shall have been cored over sufficient depth intervals to yield representative samples of the subsurface geologic environment. This shall include coring of the salt stock and may include coring of overlying formations, including any

cap rock. Cores should be obtained using the whole core method. Core acquisition, core handling, and core preservation shall be done according to standard field sampling practices considered acceptable for laboratory tests of recovered cores.

2. Data from previous coring projects may be used instead of actual core sampling provided the data is specific to the salt dome of interest. If site-specific data is unavailable, data may be obtained from sources that are not specific to the area as long as the data can be shown to closely approximate the properties of the salt dome of interest. It shall be the responsibility of the applicant to make a satisfactory demonstration that data obtained from other sources are applicable to the salt dome of interest.

D. Core Analyses and Laboratory Tests. Analyses and tests shall consider the characteristics of the injected materials and should provide data on the salt's geomechanical, geophysical, geochemical, mineralogical properties, microstructure, and where necessary, potential for adjacent salt cavern connectivity, with emphasis on salt cavern shape and the operating conditions. All laboratory tests, experimentation, and numeric modeling shall be conducted using methods that simulate the proposed operating conditions of the salt cavern. Test methods shall be selected to define the deformation and strength properties and characteristics of the salt stock under salt cavern operating conditions.

E. Area of Review. A thorough evaluation shall be undertaken of both surface and subsurface activities in the defined area of review of the individual salt cavern well or project area that may influence the integrity of the salt stock, salt cavern well, and salt cavern, or contribute to the movement of injected fluids outside the salt cavern, wellbore, or salt stock.

1. Surface Delineation. The area of review for a salt cavern well shall be a fixed radius around the wellbore of not less than one-half mile. Exception shall be noted as shown in §§3115.E.2.c and d below.

2. Subsurface Delineation. At a minimum, the following shall be identified within the area of review:

- a. all known active, inactive, and abandoned wells within the area of review with known depth of penetration into the cap rock or salt stock;
- b. all known water wells within the area of review;
- c. all salt caverns within the salt stock regardless of usage, depth of penetration, or distance to the proposed salt cavern well or salt cavern;
- d. all conventional (dry or room and pillar) mining activity either active or abandoned occurring anywhere within the salt stock regardless of distance to the proposed salt cavern well or salt cavern.

F. Corrective Action

1. For manmade structures identified in the area of review that are not properly constructed, completed, or plugged and abandoned, the applicant shall submit a corrective action plan consisting of such steps, procedures, or modifications as are necessary to prevent the movement of fluids outside the salt cavern or into underground sources of drinking water.

a. Where the plan is adequate, the provisions of the corrective action plan shall be incorporated into the permit as a condition.

b. Where the plan is inadequate, the Office of Conservation shall require the applicant to revise the plan or the application shall be denied.

2. Any permit issued for an existing salt cavern well or salt cavern for which corrective action is required shall include a schedule of compliance for complete fulfillment of the approved corrective action procedures. If the required corrective action is not completed as prescribed in the schedule of compliance, the permit shall be suspended, modified, revoked and possibly reissued, or terminated according to these rules and regulations.

3. No permit shall be issued for a new salt cavern well until all required corrective action obligations have been fulfilled.

4. The Office of Conservation may prescribe additional requirements for corrective action beyond those submitted by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:926 (June 2003).

§3117. Cavern and Surface Facility Design Requirements

A. This section provides general standards for design of salt caverns to assure that project development can be conducted in a reasonable, prudent, and a systematic manner and shall stress physical and environmental safety. The cavern design shall be modified where necessary to conform with good engineering and geologic practices.

B. Cavern Spacing Requirements

1. Property Boundary. The wellhead and borehole shall be located such that the salt cavern at its maximum diameter shall not extend closer than 100 feet to the property boundary of the salt cavern waste disposal facility.

2. Adjacent Structures Within the Salt. As measured in any direction, the minimum separation between walls of adjacent salt caverns or between the walls of the salt cavern and any manmade structure within the salt stock shall not be less than 200 feet.

3. Salt Periphery. Without exception or variance to these rules and regulations, the minimum separation between the walls of a salt cavern at any point and the periphery of the salt stock shall not be less than 300 feet.

C. Cavern Coalescence. The Office of Conservation may permit the use of coalesced salt caverns for waste disposal. It shall be the duty of the applicant, owner or operator to demonstrate that operation of coalesced salt caverns under the proposed cavern operating conditions can be accomplished in a physical and environmentally safe manner. The intentional subsurface coalescing of adjacent salt caverns must be requested by the applicant, owner or operator in writing and be approved by the Office of Conservation before beginning or resumption of salt cavern waste disposal operations. Approval for salt cavern coalescence shall only be considered upon a showing by the applicant, owner or operator that the stability and integrity of the salt cavern and salt stock shall not be compromised and that salt cavern waste disposal operations can be conducted in a physical and environmentally safe manner. If the design of adjacent salt caverns should include approval for the subsurface coalescing of adjacent salt caverns, the minimum

spacing requirement of §3117.B.2 above shall not apply to the coalesced salt caverns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:927 (June 2003).

§3119. Well Construction and Completion

A. General Requirements

1. All materials and equipment used in the construction of the salt cavern well and related appurtenances shall be designed and manufactured to exceed the operating requirements of the specific project. Consideration shall be given to depth and lithology of all subsurface geologic zones, corrosiveness of formation fluids, hole size, anticipated ranges and extremes of operating conditions, physical and behavioral characteristics of the injected and disposed material under the specific range of operating conditions, subsurface temperatures and pressures, type and grade of cement, and projected life of the salt cavern well.

2. All salt cavern wells and salt caverns shall be designed, constructed, completed, and operated to prevent the escape of injected or disposed materials out of the salt stock, into an underground source of drinking water, or otherwise create or cause pollution or endanger the environment or public safety. All phases of design, construction, completion, and testing shall be prepared and supervised by qualified personnel.

B. Open Borehole Surveys

1. Open hole wireline surveys that delineate subsurface lithologies, formation tops (including top of cap rock and salt), formation fluids, formation porosity, and fluid resistivities shall be done on wells from total well depth to either ground surface or base of conductor pipe. Wireline surveys shall be presented with gamma-ray and, where applicable, spontaneous potential curves. All surveys shall be presented on a scale of one inch to one hundred feet and a scale of five inches to one hundred feet.

2. Gyroscopic multi-shot surveys of the borehole shall be taken at intervals not to exceed every 100 feet of drilled borehole.

3. Where practicable, caliper logging to determine borehole size for cement volume calculations shall be done before running casings.

C. Casing and Cementing. Except as specified below, the wellbore of the salt cavern shall be cased, completed, and cemented according to rules and regulations of the Office of Conservation and good petroleum industry engineering practices for wells of comparable depth that are applicable to the same locality of the salt cavern. Design considerations for casings and cementing materials and methods shall address the nature and characteristics of the subsurface environment, the nature of injected and disposed materials, the range of conditions under which the well, cavern, and facility shall be operated, and the expected life of the well including closure and post-closure.

1. Cementing shall be by the pump-and-plug method or another method approved by the Office of Conservation and shall be circulated to the surface. Circulation of cement may be done by staging.

a. For purposes of these rules and regulations, circulated (cemented) to the surface shall mean that actual

cement returns to the surface were observed during the primary cementing operation. A copy of the cementing company's job summary or cementing ticket indicating returns to the surface shall be submitted as part of the pre-operating requirements of §3127.

b. If returns are lost during cementing, the owner or operator shall have the burden of showing that sufficient cement isolation is present to prevent the upward movement of injected or disposed material into zones of porosity or transmissive permeability in the overburden along the wellbore and to protect underground sources of drinking water.

2. Surface casing shall be set to a depth into a confining bed below the base of the lowermost underground source of drinking water. Surface casing shall be cemented to surface where practicable.

3. All salt cavern wells shall be cased with a minimum of two casings cemented into the salt. The surface casing shall not be considered one of the two casings of this Subparagraph.

4. New wells drilled into an existing salt cavern shall have an intermediate casing and a final cemented casing set into the salt. The final cemented casing shall be set a minimum distance of 300 feet into the salt and shall make use of a sufficient number of casing centralizers.

5. The following applies to wells existing in salt caverns before the effective date of these rules and regulations and are being converted to salt cavern waste disposal. If the design of the well or cavern precludes having distinct intermediate and final casing seats cemented into the salt, the wellbore shall be cased with two concentric casings run from the surface of the well to a minimum distance of 300 feet into the salt. The inner casing shall be cemented from its base to surface.

6. The intermediate and final casings shall be cemented from their respective casing seats to the surface when practicable.

D. Casing and Casing Seat Tests. When doing tests under this paragraph, the owner or operator shall monitor and record the tests by use of a surface readout pressure gauge and a chart or a digital recorder. All instruments shall be properly calibrated and in good working order. If there is a failure of the required tests, the owner or operator shall take necessary corrective action to obtain a passing test.

1. Casing. After cementing each casing, but before drilling out the respective casing shoe, all casings shall be hydrostatically pressure tested to verify casing integrity and the absence of leaks. For surface casing, the stabilized test pressure applied at the surface shall be a minimum of 500 pounds per square inch gauge (PSIG). The stabilized test pressure applied at the surface for all other casings shall be a minimum of 1,000 PSIG. All casing test pressures shall be maintained for one hour after stabilization. Allowable pressure loss is limited to five percent of the test pressure over the stabilized test duration.

2. Casing Seat. The casing seat and cement of intermediate and production casings shall each be hydrostatically pressure tested after drilling out the casing shoe. At least 10 feet of formation below the respective casing shoes shall be drilled before the test. The test pressure applied at the surface shall be the greater of 1,000 PSIG or 125 percent of the maximum predicted salt cavern operating

pressure. The appropriate test pressure shall be maintained for one hour after pressure stabilization. Allowable pressure loss is limited to five percent of the test pressure over the stabilized test duration.

3. Casing or casing seat test pressures shall never exceed a pressure gradient equivalent to 0.80 PSI per foot of vertical depth at the respective casing seat or exceed the known or calculated fracture gradient of the appropriate subsurface formation. The test pressure shall never exceed the rated burst or collapse pressures of the respective casings.

E. Cased Borehole Surveys. A cement bond with variable density log (or similar cement evaluation tool) and a temperature log shall be run on all casings. The Office of Conservation may consider requests for allowances for wireline logging in large diameter casings or justifiable special conditions.

1. It shall be the duty of the well applicant, owner or operator to prove adequate cement isolation on all cemented casings. Remedial cementing shall be done before proceeding with further well construction, completion, or conversion if adequate cement isolation between the salt cavern well and other subsurface zones cannot be demonstrated.

2. A casing inspection log (or similar log) shall be run on the final cemented casing.

F. Hanging Strings. Without exception or variance to these rules and regulations, all salt cavern wells shall be completed with at least two hanging strings. One hanging string shall be for waste injection; the second hanging string shall be for displacing fluid out of the salt cavern from below the blanket material. Hanging strings shall be designed with a collapse, burst, and tensile strength rating conforming to all expected operating conditions, including flow induced vibrations. The design shall also consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the salt cavern.

G. Wellhead Components and Related Connections. All wellhead components, valves, flanges, fittings, flowlines, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. Selection and design criteria for components shall consider the physical and chemical characteristics of fluids placed into and/or withdrawn from the salt cavern under the specific range of operating conditions, including flow induced vibrations. The fluid withdrawal side of the wellhead (if applicable) shall be rated for the same pressure as the waste injection side. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:927 (June 2003).

§3121. Operating Requirements

A. Cavern Roof

1. Without exception or variance to these rules and regulations, no salt cavern shall be used for E&P waste disposal if the salt cavern roof has grown above the top of the salt stock. The operation of an already permitted salt

cavern shall cease and shall not be allowed to continue if information becomes available that shows this condition exist. The Office of Conservation may order the well and salt cavern closed according to an approved closure and post-closure plan.

2. The Office of Conservation may consider the use of a salt cavern for waste disposal if information exists that shows the salt cavern roof has grown vertically above the depth of the salt cavern well's deepest cemented casing seat. However, the salt cavern roof shall be below the top of the salt stock, the owner/operator shall meet the provisions for proving well/cavern mechanical integrity of §3129 and cavern configuration and capacity of §3131, and the owner/operator shall submit and carry out a plan for doing cavern roof monitoring. It shall be the duty of the well applicant or owner or operator to prove that operation of the salt cavern under this condition shall not endanger the environment, or the health, safety and welfare of the public.

B. Blanket Material. Before beginning waste disposal operations, a blanket material shall be placed into the salt cavern to prevent unwanted leaching of the cavern roof. The blanket material shall consist of crude oil, diesel, mineral oil, or other fluid possessing similar noncorrosive, nonsoluble, low-density properties. The blanket material shall be placed between the outermost hanging string and innermost cemented casing of the salt cavern and shall be of sufficient volume to coat the entire cavern roof. The cavern roof and level of the blanket material shall be monitored at least once every five years by running a density interface survey or using an alternative method approved by the Office of Conservation.

C. Remedial Work. No remedial work or repair work of any kind shall be done on the salt cavern well or salt cavern without prior authorization from the Office of Conservation. The provision for prior authorization shall also extend to doing mechanical integrity pressure and leak tests and sonar caliper surveys. The owner or operator or its agent shall submit a valid work permit request form (Form UIC-17 or successor). Before beginning well or cavern remedial work, the pressure in the salt cavern shall be relieved, as practicable, to zero pounds per square inch as measured at the surface.

D. Well Recompletion/Casing Repair. The following applies to salt cavern wells where remedial work results from well upgrade, casing wear, or similar condition. For each paragraph below, a casing inspection log shall be done on the entire length of the innermost cemented casing in the well before doing any casing upgrade or repair. Authorization from the Office of Conservation shall be obtained before beginning any well recompletion, repair, upgrade, or closure. A salt cavern well that cannot be repaired or upgraded shall be properly closed according to §3141.

1. Liner. A liner may be used to recomplete or repair a well with severe casing damage. The liner shall be run from the well surface to the base of the innermost cemented casing. The liner shall be cemented over its entire length and shall be successfully pressure tested.

2. Casing Patch. Internal casing patches shall not be used to repair severely corroded or damaged casing. Casing patches shall only be used for repairing or covering isolated pitting, corrosion, or similar localized damage. The casing

patch shall extend a minimum of 10 feet above and below the area being repaired. The entire casing shall be successfully pressure tested.

E. Multiple Well Caverns. No newly permitted well shall be drilled into an existing salt cavern until the cavern pressure has been relieved, as practicable, to zero pounds per square inch as measured at the surface.

F. Cavern Allowable Operating Pressure.

1. The maximum allowable salt cavern injection pressure shall be calculated at a depth referenced to the shallower of either the salt cavern roof or the well's deepest cemented casing seat. When measured at the surface and calculated with respect to the appropriate reference depth, the maximum allowable salt cavern injection pressure shall never exceed a pressure gradient of 0.80 PSI per foot of vertical depth.

2. The salt cavern shall never be operated at pressures over the maximum allowable injection pressure defined above, exceed the maximum allowable pressure as may be established by permit, or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods, including pressure pulsation peaks, abnormal operating conditions, well or cavern tests.

3. The maximum injection pressure for a salt cavern shall be determined after considering the properties of all injected fluids, the physical properties of the salt stock, well and cavern design, neighboring activities within and above the salt stock, etc.

4. Shut-in pressure at the surface on the fluid withdrawal string or any annulus shall not be greater than 200 PSIG.

G. Cavern Displaced Fluid Management. The operator shall maintain a strict accounting of the fluid volume displaced from the salt cavern. Fluid displaced from a salt cavern shall be managed in a way that is protective of the environment. Such methods may include subsurface disposal via a properly permitted Class II disposal well, onsite storage for recycling as a waste carrier fluid, or any other method approved by the appropriate regulatory authority.

H. Waste Storage. Without exception or variance to these rules and regulations, all E&P wastes shall be stored in aboveground storage tanks. Storing wastes in open pits, cells, or similar earthen or open structures is strictly prohibited. Storage tanks shall be constructed of fiberglass, metal, or other similar material. All waste storage areas shall be built on concrete slabs/pads, be enclosed by retaining walls of required construction, and possess a means for the collection of spilled fluids.

I. Time Limits for Onsite Waste Storage. E&P waste accepted for disposal shall not be held in storage at the facility for more than 14 consecutive days. The Office of Conservation may grant a waiver to this requirement for extenuating circumstances only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:928 (June 2003).

§3123. Safety

A. Emergency Action Plan. A plan outlining procedures for personnel at the facility to follow in case of an emergency shall be prepared and submitted as part of the

permit application. The plan shall contain emergency contact telephone numbers, procedures and specific information for facility personnel to respond to a release, upset, incident, accident, or other site emergency. A copy of the plan shall be kept at the facility and shall be reviewed and updated as needed.

B. Controlled Site Access. All operators of salt cavern waste disposal facilities shall install and maintain a chain link fence of at least six feet in height around the entire facility property. All points of entry into the facility shall be through by a lockable gate system. All gates of entry shall be locked except during hours of operation.

C. Facility Identification. An identification sign shall be placed at all gated entrances to the salt cavern waste disposal facility. All lettering on the sign shall be of at least one-inch dimensions and kept in a legible condition. The sign shall be of durable construction. Minimum information to include on the sign shall be the facility name, site address, daytime and nighttime telephone numbers, and shall be made applicable to the activity of the facility according to the following statement:

"This facility is authorized by the Office of Conservation, Injection and Mining Division to receive, store, treat, process, and/or dispose of E&P wastes into a salt cavern by means of subsurface injection. Improper operations, spills or violations at this facility should be reported to the Office of Conservation at (225) 342-5515."

D. Personnel. Trained and competent personnel shall be on duty and stationed as appropriate at the salt cavern waste disposal facility during all hours and phases of facility operation. Facility operation includes, but shall not be limited to, periods of waste acceptance, waste offloading, waste transfer, waste transport vehicle washing, waste storage, waste treatment, waste processing, and waste injection/disposal.

E. Wellhead Protection and Identification

1. A protective barrier shall be installed and maintained around wellheads, pipings, and above ground structures that may be vulnerable to physical or accidental damage by mobile equipment or trespassers.

2. An identifying sign shall be placed at the wellhead of each salt cavern well and shall include at a minimum the operators name, well/cavern name and number, well serial number, section-township-range, and any other information required by the Office of Conservation. The sign shall be of durable construction with all lettering kept in a legible condition.

F. Valves and Flowlines

1. All valves, flowlines, flanges, fittings, and related connections shall be manufactured of steel. All components shall be designed with a test pressure rating of at least 125 percent of the maximum pressure that could be exerted at the surface. All components and related connections shall be maintained in good working order and shall be periodically inspected by the operator.

2. All valves, flowlines for waste injection, fluid withdrawal, and any other flowlines shall be designed to prevent pressures over maximum operating pressure from being exerted on the salt cavern well and salt cavern and prevent backflow or escape of injected waste material. The fluid withdrawal side of the wellhead shall have the same pressure rating as the waste injection side.

3. All flowlines for injection and withdrawal connected to the wellhead of the salt cavern well shall be equipped with remotely operated shut-off valves and shall also have manually operated positive shut-off valves at the wellhead. All remotely operated shut-off valves shall be fail-safe and tested and inspected according to §3123.L.

G. Alarm Systems. Manual and automatically activated alarms shall be installed at all salt cavern waste disposal facilities. All alarms shall be audible and visible from any normal work location within the facility. The alarms shall always be maintained in proper working order. Automatic alarms designed to activate an audible and a visible signal shall be integrated with all pressure, flow, heat, fire, cavern overflow, leak sensors and detectors, emergency shutdown systems, or any other safety system. The circuitry shall be designed such that failure of a detector or sensor shall activate a warning.

H. Emergency Shutdown Valves. Manual and automatically actuated emergency shutdown valves shall be installed on all systems of salt cavern injection and withdrawal and any other flowline going into or out from each salt cavern wellhead. All emergency shutdown valves shall be fail-safe and shall be tested and inspected according to §3123.L.

1. Manual controls for emergency shutdown valves shall be designed for operation from a local control room, at the salt cavern well, any remote monitoring and control location, and at a location that is likely to be accessible to emergency response personnel.

2. Automatic emergency shutdown valves shall be designed to actuate on detection of abnormal pressuring of the waste injection system, abnormal increases in flow rates, responses to any heat, fire, cavern overflow, leak sensors and detectors, loss of pressure or power to the salt cavern well, salt cavern, or valves, or any abnormal operating condition.

I. Vapor Monitoring and Leak Detection. The operator shall develop a vapor monitoring and leak detection plan as required in §3125.C below to detect the presence of noxious vapors, combustible gases, or any potentially ignitable substances.

J. Gaseous Vapor Control. Where necessary, the operator shall install and maintain in good working order a system for managing the uncontrolled escape of noxious vapors, combustible gases, or any potentially ignitable substances within the salt cavern waste disposal facility. Any vapor control system shall be in use continuously during facility operation.

K. Fire Detection/Suppression. All salt cavern waste disposal facilities shall have a system or method of fire detection and fire control or suppression. Emphasis for fire detection shall be at waste transfer, waste storage, waste process areas, and any area where combustible materials or vapors might exist. The fire detection system shall be integrated into the automatic alarm and emergency shutdown systems of the facility.

L. Systems Test and Inspection

1. Safety Systems Test. The operator shall function-test all critical systems of control and safety at least once every six months. This includes testing of alarms, test tripping of emergency shutdown valves ensuring their closure times are within design specifications, and ensuring the integrity of all electrical, pneumatic, and/or hydraulic

circuits. Tests results shall be documented and keep onsite for inspection by an agent of the Office of Conservation.

2. Visual Facility Inspections. Visual inspections of the entire salt cavern waste disposal facility shall be conducted each day the facility is operating. At a minimum, this shall include inspections of the wellhead, flowlines, valves, waste transfer areas, waste storage areas, waste processing areas, signs, perimeter fencing, and all other areas of the facility. Problems discovered during the inspections shall be corrected timely.

M. Retaining Walls and Spill Containment

1. Retaining walls, curbs, or other spill containment systems shall be designed, built, and maintained around appropriate areas of the facility to collect, retain, and/or otherwise prevent the escape of wastes or other materials that may be released through facility upset or accidental spillage. Retaining walls shall be constructed of reinforced concrete. All retaining walls shall be built to a level that will provide sufficient capacity for holding at least 110 percent of the volume of each tank. All storage areas shall be kept free of debris, trash, or other materials that may constitute a fire hazard.

2. At a minimum, the following areas shall be protected by retaining walls and/or spill containment:

- a. waste acceptance areas;
- b. waste unloading and waste transfer areas;
- c. waste storage areas;
- d. waste transport vehicle and transport container decontamination/washout areas;
- e. waste treatment and waste processing areas;
- f. curbed area around the wellhead of each salt cavern well; and
- g. any other areas of the facility the Office of Conservation deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:929 (June 2003).

§3125. Monitoring Requirements

A. Pressure Gauges, Pressure Sensors, Flow Sensors

1. Pressure gauges that show pressure on the fluid injection string, fluid withdrawal string, and any annulus of the well, including the blanket material annulus, shall be installed at each wellhead. Gauges shall be designed to read in 10 PSI increments. All gauges shall be properly calibrated and shall always be maintained in good working order. The pressure valves onto which the pressure gauges are affixed shall have one-half inch female fittings.

2. Pressure sensors designed to automatically close all emergency shutdown valves in response to a preset pressure (high/low) shall be installed and properly maintained for all fluid injection and fluid withdrawal strings, and blanket material annulus.

3. Flow sensors designed to automatically close all emergency shutdown valves in response to abnormal increases in cavern injection and withdrawal flow rates shall be installed and properly maintained on each salt cavern well.

B. Continuous Recording Instruments. Continuous recording instrumentation shall be installed and properly maintained for each salt cavern well. Continuous recordings

may consist of circular charts, digital recordings, or similar type. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure or any other parameter being monitored. The chart shall be scaled such that the parameter being recorded is 30 percent to 70 percent of full scale. Instruments shall be housed in weatherproof enclosures when located in areas exposed to climatic conditions. All fluid volumes shall be determined by metering or an alternate method approved by the Office of Conservation. Minimum data recorded shall include the following:

- 1. wellhead pressures on both the fluid injection and fluid withdrawal strings;
- 2. wellhead pressure on the blanket material annulus;
- 3. volume and flow rate of waste injected;
- 4. volume of fluid withdrawn;
- 5. salinity of injected material including the carrier fluid; and
- 6. density of injected material.

C. Vapor Monitoring and Leak Detection

1. Without exception or variance to these rules and regulations, the operator shall develop a monitoring plan designed to detect the presence of a buildup of noxious vapors, combustible gases, or any potentially ignitable substances in the atmosphere resulting from the storage, treatment, processing, and disposal of waste at the facility. Variations in topography, atmospheric conditions typical to the area, characteristics of the wastes, nearness of the facility to homes, schools, commercial establishments, etc. shall be considered in developing the monitoring plan. The plan shall be submitted as part of the permit application and should include provisions for the strategic placement of detection devices at various areas of the facility such as:

- a. waste transfer, waste storage, and waste process areas;
- b. salt cavern wellhead(s). An exception may be allowed for salt cavern wells in close proximity to each other, thus, the monitoring plan may include installation of detection devices around the perimeter of the well field; and
- c. any other areas of the facility where may be appropriate.

2. All detection devices or systems identified in the monitoring plan shall include their integration into the facility's automatic alarm system. Activation of a detection device or system alarm shall cause a cessation of all waste acceptance, waste transfer, waste processing, and waste injection until the reason for the alarm activation has been determined and corrected.

D. Subsidence Monitoring. The owner or operator shall prepare and carry out a plan to monitor ground subsidence at and in the vicinity of the waste disposal cavern(s). Frequency of subsidence monitoring shall be scheduled to occur annually during the same period. A monitoring report shall be prepared and submitted to the Office of Conservation after completion of each monitoring event.

E. Wind Sock. At least one wind sock shall be installed at all salt cavern waste disposal facilities. The wind sock shall be visible from any normal work location within the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:931 (June 2003).

§3127. Pre-Operating Requirements C Completion Report

A. The operator of a salt cavern waste disposal facility shall not accept, store, treat, process, or otherwise initiate waste disposal operations until all required information has been submitted to the Office of Conservation and the operator has received written authorization from the Office of Conservation clearly stating waste disposal operations may begin.

B. The operator shall submit a report to the Office of Conservation that describes, in detail, the work performed resulting from any approved permitted activity. A report shall include all information relating to the work and information that documents compliance with these rules and the approved permitted activity. The report shall be prepared and submitted for any approved work relating to the construction, installation and completion of the surface portion of the facility and information on the construction, conversion, or workover of the salt cavern well or salt cavern.

C. Where applicable to the approved permitted activity, information in a completion report shall include:

1. all required state reporting forms containing original signatures;
2. revisions to any operation or construction plans since approval of the permit application;
3. as-built schematics of the layout of the surface portion of the facility;
4. as-built piping and instrumentation diagram(s);
5. copies of applicable records associated with drilling, completing, working over, or converting the salt cavern well and/or salt cavern including a daily chronology of such activities;
6. revised certified location plat of the salt cavern well if the actual location of the well differs from the location plat submitted with the salt cavern well application;
7. as-built subsurface diagram of the salt cavern well and salt cavern labeled with appropriate construction, completion, or conversion information, i.e., depth and diameter of all tubulars, depths of top of cap rock and salt, and top and bottom of the cavern;
8. as-built diagram of the surface wellhead labeled with appropriate construction, completion, or conversion information, i.e., valves, gauges, and flowlines;
9. results of any core sampling and testing;
10. results of well or cavern tests such as casing and casing seat tests, well/cavern mechanical integrity pressure and leak tests;
11. copies of any wireline logging such as open hole and/or cased hole logs, cavern sonar survey;
12. any additional data documenting the work performed for the permitted activity, information requested by the Office of Conservation, or any additional reporting requirements imposed by the approved permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:932 (June 2003).

§3129. Well and Salt Cavern Mechanical Integrity Pressure and Leak Tests

A. The operator of the salt cavern well and cavern shall have the burden of meeting the requirements for well and cavern mechanical integrity. The Office of Conservation shall be notified in writing at least seven days before any scheduled mechanical integrity test. The test may be witnessed by Office of Conservation personnel but must be witnessed by a qualified third party.

B. Frequency of Tests. Without exception or variance to these rules and regulations, all salt cavern wells and salt caverns shall be tested for and satisfactorily prove mechanical integrity before being placed into initial waste disposal service. After the initial test for well and cavern mechanical integrity, all subsequent tests shall occur at least once every five years. Additionally, mechanical integrity testing shall be done for the following reasons regardless of test frequency:

1. after any alteration to any cemented casing or cemented liner;
2. after performing any remedial work to reestablish well or cavern integrity;
3. before suspending salt cavern waste disposal operations for reasons other than a lack of well/cavern mechanical integrity if it has been more than three years since the last mechanical integrity test;
4. before well/cavern closure; or
5. whenever the Office of Conservation believes a test is warranted.

C. Test Method

1. All mechanical integrity pressure and leak tests shall demonstrate no significant leak in the salt cavern, wellbore, casing seat, and wellhead. Test schedules and methods shall consider neighboring activities occurring at the salt dome to reduce any influences those neighboring activities may have on the salt cavern being tested.

2. Tests shall be conducted using the nitrogen-brine interface method with density interface and temperature logging. An alternative test method may be used if the alternative test can reliably demonstrate well/cavern mechanical integrity and with prior written approval from the Office of Conservation.

3. The salt cavern pressure shall be stabilized before beginning the test. Stabilization shall be reached when the rate of cavern pressure change is no more than 10 PSIG during 24 hours.

4. The stabilized test pressure applied at the surface shall be a minimum of 125 percent of the maximum cavern surface operating pressure or 500 PSIG whichever is greater. However, at no time shall the test pressure calculated with respect to the shallowest occurrence of either the cavern roof or deepest cemented casing seat and as measured at the surface exceed a pressure gradient of 0.80 PSI per foot of vertical depth. The salt cavern well or salt cavern shall never be subjected to pressures over the maximum allowable operating pressure or exceed the rated burst or collapse pressure of all well tubulars (cemented or hanging strings) even for short periods during testing.

5. A mechanical integrity pressure and leak test shall be run for at least 24 hours after cavern pressure stabilization and must be of sufficient time duration to ensure a sensitive

test. All pressures shall be monitored and recorded continuously throughout the test. Continuous pressure recordings may be achieved through mechanical charts or may be recorded digitally. Mechanical charts shall not exceed a clock period of 24-hour duration. The chart shall be scaled such that the test pressure is 30 percent to 70 percent of full scale. All charts shall be selected such that its scaling is of sufficient sensitivity to record all fluctuations of pressure, temperature, or any other monitored parameter.

D. Submission of Pressure and Leak Test Results. One complete copy of the mechanical integrity pressure and leak test results shall be submitted to the Office of Conservation within 30 days of test completion. The report shall include the following minimum information:

1. current well and cavern completion data;
2. description of the test procedure including pretest preparation;
3. copies of all wireline logs performed during testing;
4. tabulation of measurements for pressure, volume, temperature, etc.;
5. interpreted test results showing all calculations including error analysis and calculated leak rates; and
6. any information the owner or operator of the salt cavern determines is relevant to explain the test procedure or results.

E. Mechanical Integrity Test Failure

1. Without exception or variance to these rules and regulations, a salt cavern well or salt cavern that fails a test for mechanical integrity shall be immediately taken out of waste disposal service. The failure shall be reported to the Office of Conservation according to the Notification Requirements of §3109.H. The owner or operator shall investigate the reason for the failure and shall take appropriate steps to return the salt cavern well or salt cavern to a full state of mechanical integrity. A salt cavern well or salt cavern is considered to have failed a test for mechanical integrity for the following reasons:

- a. failure to maintain a change in test pressure of no more than 10 PSIG over a 24-hour period;
- b. not maintaining nitrogen-brine interface levels according to standards applied in the salt cavern storage industry; or
- c. fluids are determined to have escaped from the salt cavern well or salt cavern during waste disposal operations.

2. Written procedures for rehabilitation of the salt cavern well or salt cavern, extended salt cavern monitoring, or abandonment (closure and post-closure) of the salt cavern well or salt cavern shall be submitted to the Office of Conservation within 30 days of mechanical integrity test failure.

3. Upon reestablishment of mechanical integrity of the salt cavern well or salt cavern and before returning either to waste disposal service, a new mechanical integrity pressure and leak test shall be performed that demonstrates mechanical integrity of the salt cavern well or salt cavern. The owner or operator shall submit the new test results to the Office of Conservation for written approval before resuming waste disposal operations.

4. If a salt cavern well or salt cavern fails to demonstrate mechanical integrity and where mechanical integrity cannot be reestablished, the Office of Conservation

may require the owner or operator to begin closure of the well or cavern within six months according to an approved closure and post-closure plan.

5. If a salt cavern fails mechanical integrity and where rehabilitation cannot be accomplished within six months, the Office of Conservation may waive the six-month closure requirement if the owner or operator is engaged in a salt cavern remediation study and implements an interim salt cavern monitoring plan. The owner or operator must seek written approval from the Office of Conservation before implementing a salt cavern monitoring program. The basis for the Office of Conservation's approval shall be that any waiver granted shall not endanger the environment, or the health, safety and welfare of the public. The Office of Conservation may establish a time schedule for salt cavern rehabilitation, cessation of interim salt cavern monitoring, and eventual salt cavern closure and post-closure activities.

F. Prohibition of Waste Acceptance During Mechanical Integrity Failure

1. Salt cavern waste disposal facilities with a single cavern are prohibited from accepting E&P wastes at the facility until mechanical integrity of the salt cavern well or salt cavern is documented to the satisfaction of the Office of Conservation.

2. Salt cavern waste disposal facilities with multiple salt caverns may continue accepting E&P wastes if the other cavern(s) at the facility exhibit mechanical integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:932 (June 2003).

§3131. Cavern Configuration and Capacity Measurements

A. Sonar caliper surveys shall be performed on all salt caverns. With prior approval of the Office of Conservation, the operator may use another similar proven technology designed to determine cavern configuration and measure cavern capacity as a substitute for a sonar survey.

B. Frequency of Surveys. A sonar caliper survey shall be performed and submitted as part of the salt cavern waste disposal permit application. All subsequent surveys shall occur at least once every five years. Additional surveys shall be done for any of the following reasons regardless of frequency:

1. before commencing salt cavern closure operations;
2. whenever leakage into or out of the salt cavern is suspected;
3. after performing any remedial work to reestablish salt cavern well or salt cavern integrity; or
4. whenever the Office of Conservation believes a survey is warranted.

C. Submission of Survey Results. One complete copy of each survey shall be submitted to the Office of Conservation within 30 days of survey completion.

1. Survey readings shall be taken a minimum of every 10 feet of vertical depth. Sonar reports shall contain the following minimum information and presentations:

- a. tabulation of incremental and total salt cavern volume for every survey reading;
- b. tabulation of the salt cavern radii at various azimuths for every survey reading;

- c. tabulation of the maximum salt cavern radii at various azimuths;
- d. graphical plot of Cavern Depth versus Volume;
- e. graphical plot of the maximum salt cavern radii;
- f. vertical cross sections of the salt cavern at various azimuths drawn to an appropriate horizontal and vertical scale;
- g. vertical cross section overlays comparing results of current survey and previous surveys;
- h. (optional)-isometric or 3-D shade profile of the salt cavern at various azimuths and rotations.

2. The information submitted resulting from use of an approved alternative survey method to determine cavern configuration and measure cavern capacity shall be determined based on the method or type of survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:933 (June 2003).

§3133. Cavern Capacity Limits

A. The waste volume permitted for disposal into a salt cavern may not exceed 90 percent of the salt cavern volume measured from the sonar caliper survey submitted as part of the permit application. Upon reaching the permitted waste volume, the owner or operator shall remove the salt cavern from further waste disposal service and within seven days notify the Office of Conservation of such. Due to the potential for salt cavern enlargement resulting from disposal of undersaturated fluids, the operator may request a modification to the permit to allow for a continued waste disposal based on the findings of a new cavern capacity survey. If the Office of Conservation denies the request for permit modification, the operator shall begin preparations for salt cavern closure per approved updated closure and post-closure plan. The operator shall maintain a strict accounting of the waste volume disposed into the salt cavern, the fluid volume displaced from the salt cavern, and the salt cavern volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

§3135. Inactive Caverns

A. The operator shall comply with the following minimum requirements when there has been no disposal of waste into a salt cavern for 30 consecutive days or more, regardless of the reason:

- 1. notify the Office of Conservation as per the requirements of §3109.H.3;
- 2. disconnect all flowlines for injection to the salt cavern well;
- 3. maintain continuous monitoring of salt cavern pressure, fluid withdrawal, and other parameters required by the permit;
- 4. maintain and demonstrate salt cavern well and salt cavern mechanical integrity if disposal operations were suspended for reasons other than a lack of mechanical integrity;
- 5. maintain compliance with financial responsibility requirements of these rules and regulations;

6. any additional requirements of the Office of Conservation to document the salt cavern well and salt cavern shall not endanger the environment, or the health, safety and welfare of the public during the period of salt cavern inactivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

§3137. Monthly Operating Reports

A. The operator shall submit monthly waste receipts and operation reports to the Office of Conservation. Monthly reports are due no later than 15 days following the end of the reporting month.

B. The operator shall have the option of submitting monthly reports by any of the following methods:

- 1. the appropriate Office of Conservation supplied form;
- 2. an operator generated form of the same format and containing the same data fields as the Office of Conservation's form; or
- 3. electronically in a format meeting the Office of Conservation's requirements for electronic data submission.

C. Monthly reports shall contain the following minimum information:

- 1. name and location of the salt cavern waste disposal facility;
- 2. source and type of waste disposed;
- 3. wellhead pressures (PSIG) on all injection and withdrawal hanging strings;
- 4. wellhead pressure (PSIG) on the blanket material annulus;
- 5. density in pounds per gallon (PPG) of injected material;
- 6. volume in barrels (BBLs) and flow rate in barrels per minute (BPM) of injected material;
- 7. volume (BBLs) and disposition of all fluids withdrawn or displaced from the salt cavern;
- 8. chloride concentration in milligrams per liter (Mg/L) of injected materials including the carrier fluid;
- 9. changes in the blanket material fluid volume;
- 10. results of any monitoring program required by permit or compliance action;
- 11. summary of any test of the salt cavern well or salt cavern;
- 12. summary of any workover performed during the month including minor well maintenance;
- 13. description of any event which triggers an alarm or shutdown device and the response taken;
- 14. description of any event that exceeds operating parameters for annulus pressure or injection pressure as may be specified in the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

§3139. Record Retention

A. The owner or operator shall retain copies of all records, data, and information concerning the design, permitting, construction, and operation of the salt cavern well, salt cavern, and related surface facility. Records shall

be retained throughout the operating life of the salt cavern waste disposal facility and for five years following conclusion of any post-closure care requirements. Records, data, and information shall include, but shall not be limited to the permit application, cementing (primary and remedial), wireline logs, drill records, casing records, casing pressure tests, well recompletion records, well/cavern mechanical integrity tests, cavern capacity and configuration surveys, surface construction, sources of wastes disposed, waste manifests, waste testing results, post-closure activities, corrective action, etc. All documents relating to any waste accepted and rejected for disposal shall be kept at the facility and shall be available for inspection by agents of the Office of Conservation at any time.

B. Should there be a change in the owner or operator of the salt cavern waste disposal facility, copies of all records identified in the previous paragraph shall be transferred to the new owner or operator. The new owner or operator shall then have the responsibility of maintaining such records.

C. The Office of Conservation may require the owner or operator to deliver the records to the Office of Conservation at the conclusion of the retention period. If so, the records shall be retained at a location designated by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:934 (June 2003).

§3141. Closure and Post-Closure

A. Closure. The owner or operator shall close the salt cavern well, salt cavern, surface facility or parts thereof as approved by the Office of Conservation. Closure shall not begin without written authorization from the Office of Conservation.

1. Closure Plan. Plans for closure of the salt cavern well, salt cavern, and related surface facility shall be submitted as part of the permit application. The closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the closure plan survives the termination of a permit or the cessation of salt cavern waste disposal operations or related activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a closure plan where necessary.

2. Closure Plan Requirements. The owner or operator shall review the closure plan annually to determine if the conditions for closure are still applicable to the actual conditions of the salt cavern well, salt cavern, or surface facility. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a closure plan shall address the following:

a. assurance of financial responsibility as required in §3109.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate closure of the entire salt cavern waste disposal facility (salt cavern well, salt cavern, surface appurtenances, etc.) shall be prepared by a qualified, independent third party and

submitted to the Office of Conservation by the date specified in the permit;

ii. the closure plan and cost estimate shall include provisions for closure acceptable to the Office of Conservation and shall reflect the costs for the Office of Conservation to complete the approved closure of the facility;

iii. after reviewing the closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed shall be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of funds guaranteed by the financial instrument and suspend or revoke the operating permit. Permit suspensions shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. a prediction of the pressure build-up in the salt cavern following closure;

c. an analysis of potential pathways for leakage from the salt cavern, cemented casing shoe, and wellbore. Consideration shall be given to site specific elements of geology, waste characteristics, salt cavern geometry and depth, salt cavern pressure build-up over time due to salt creep and other factors inherent to the salt stock and/or salt dome;

d. procedures for determining the mechanical integrity of the salt cavern well and salt cavern before closure;

e. removal and proper disposal of any waste or other materials remaining at the facility;

f. closing, dismantling, and removing all equipment and structures located at the surface (including site restoration) if such equipment and structures will not be used for another purpose at the same disposal facility;

g. the type, number, and placement of each wellbore or salt cavern plug including the elevation of the top and bottom of each plug and the method of placement of the plugs;

h. the type, grade, and quantity of material to be used in plugging;

i. a description of the amount, size, and location (by depth) of casing and any other well construction materials to be left in the salt cavern well;

j. any proposed test or measurement to be made before or during closure.

3. Notice of Intent to Close

a. The operator shall review the closure plan before seeking authorization to begin closure activities to determine if the conditions for closure are still relevant to the actual conditions of the salt cavern well, salt cavern, or surface facility. Revisions to the method of closure reflected in the plan shall be submitted to the Office of Conservation for approval no later than the date on which the notice of closure is required to be submitted as shown in the subparagraph below.

b. The operator shall notify the Office of Conservation in writing at least 30 days before the expected closure of a salt cavern well, salt cavern, or surface facility.

Notification shall be by submission of a request for a work permit. At the discretion of the Office of Conservation, a shorter notice period may be allowed.

4. Standards for Closure. The following are minimum standards for closing the salt cavern well or salt cavern. The Office of Conservation may require additional standards prior to actual closure.

a. After permanently concluding waste disposal operations into the salt cavern but before closing the salt cavern well or salt cavern, the owner or operator shall:

i. observe and accurately record the shut-in salt cavern pressures and salt cavern fluid volume for an appropriate time or a time specified by the Office of Conservation to provide information regarding the salt cavern's natural closure characteristics and any resulting pressure buildup;

ii. using actual pre-closure monitoring data, show and provide predictions that closing the salt cavern well or salt cavern as described in the closure plan will not result in any pressure buildup within the salt cavern that could adversely effect the integrity of the salt cavern well, salt cavern, or any seal of the system.

b. Before closure, the owner or operator shall do mechanical integrity pressure and leak tests to ensure the integrity of both the salt cavern well and salt cavern.

c. Before closure, the owner or operator shall remove and properly dispose of any free oil or blanket material remaining in the salt cavern well or salt cavern.

d. Upon permanent closure, the owner or operator shall plug the salt cavern well with cement in a way that will not allow the movement of fluids into or between underground sources of drinking water or outside the salt stock. Placement of cement plugs shall be accomplished by using standard petroleum industry practices for downhole well abandonment. Each plug shall be appropriately tagged and pressure tested for seal and stability before closure is completed.

e. Upon successful completion of the closure, the owner or operator shall identify the surface location of the abandoned well with a permanent marker inscribed with the operator's name, well name and number, serial number, section-township-range, date plugged and abandoned, and acknowledgment that the well and salt cavern were used for disposal of E&P waste.

5. Closure Report. The owner or operator shall submit a closure report to the Office of Conservation within 30 days after closure of the salt cavern well, salt cavern, surface facility, or part thereof. The report shall be certified as accurate by the owner or operator and by the person charged with overseeing the closure operation (if other than the owner or operator). The report shall contain the following information:

a. detailed procedures of the closure operation. Where actual closure differed from the plan previously approved, the report shall include a written statement specifying the differences between the previous plan and the actual closure;

b. all state regulatory reporting forms relating to the closure activity; and

c. any information pertinent to the closure activity including test or monitoring data.

B. Post-Closure. Plans for post-closure care of the salt cavern well, salt cavern, and related surface facility shall be submitted as part of the permit application. The post-closure plan shall meet the requirements of these rules and regulations and be acceptable to the Office of Conservation. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of salt cavern waste disposal operations or related activities. The requirement to maintain and implement an approved post-closure plan is directly enforceable regardless of whether the requirement is a condition of the permit. The Office of Conservation may modify a post-closure plan where necessary.

1. The owner or operator shall review the post-closure plan annually to determine if the conditions for post-closure are still applicable to actual conditions. Any revision to the plan shall be submitted to the Office of Conservation for approval. At a minimum, a post-closure plan shall address the following:

a. assurance of financial responsibility as required in §3109.B.1. All instruments of financial responsibility shall be reviewed each year before its renewal date according to the following process:

i. a detailed cost estimate for adequate post-closure care of the entire salt cavern waste disposal facility shall be prepared by a qualified, independent third party and submitted to the Office of Conservation by the date specified in the permit;

ii. the post-closure care plan and cost estimate shall include provisions acceptable to the Office of Conservation and shall reflect the costs for the Office of Conservation to complete the approved post-closure care of the facility;

iii. after reviewing the post-closure cost estimate, the Office of Conservation may increase, decrease or allow the amount to remain the same;

iv. documentation from the operator showing that the required financial instrument has been renewed must be received each year by the date specified in the permit. When an operator is delinquent in submitting documentation of financial instrument renewal, the Office of Conservation shall initiate procedures to take possession of the funds guaranteed by the financial instrument and suspend or revoke the operating permit. Any permit suspension shall remain in effect until renewal documentation is received and accepted by the Office of Conservation;

b. any plans for monitoring, corrective action, site remediation, site restoration, etc., as may be necessary.

2. Where necessary and as an ongoing part of post-closure care, the owner or operator shall continue the following activities:

a. complete any corrective action or site remediation resulting from the operation of a salt cavern waste disposal facility;

b. conduct any groundwater monitoring or subsidence monitoring required by the permit until pressure in the salt cavern displays a trend of behavior that can be shown to pose no threat to salt cavern integrity, underground sources of drinking water, or other natural resources of the state;

c. complete any site restoration.

3. The owner or operator shall retain all records as required in §3139 for five years following conclusion of post-closure requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:935 (June 2003).

**Part XIX. Office of Conservation
Subpart 1. Statewide Order No. 29-B**

Chapter 5. Off-site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

NOTE: Onsite disposal requirements are listed in LAC 43:XIX, Chapter 3.

§501. Definitions

Exploration and Production Waste (E&P Waste) Drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells and which is not regulated by the provisions of, and, therefore, exempt from the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended. E&P Wastes include, but are not limited to the following.

| Waste Type | E&P Waste Description |
|------------|---|
| 01 | Salt water (produced brine or produced water), except for salt water whose intended and actual use is in drilling, workover or completion fluids or in enhanced mineral recovery operations, process fluids generated by approved salvage oil operators who only receive oil (BS&W) from oil and gas leases, and nonhazardous natural gas plant processing waste fluid which is or may be commingled with produced formation water. |
| 02 | Oil-base drilling wastes (mud, fluids and cuttings) |
| 03 | Water-base drilling wastes (mud, fluids and cuttings) |
| 04 | Completion, workover and stimulation fluids |
| 05 | Production pit sludges |
| 06 | Storage tank sludge from production operations, onsite and commercial saltwater disposal facilities, DNR permitted salvage oil facilities (that only receive waste oil [B, S, & W] from oil and gas leases), and sludges generated by service company and commercial facility or transfer station wash water systems |
| 07 | Produced oily sands and solids |
| 08 | Produced formation fresh water |
| 09 | Rainwater from firewalls, ring levees and pits at drilling and production facilities |
| 10 | Washout water and residual solids generated from the cleaning of containers that transport E&P Waste and are not contaminated by hazardous waste or material; washout water and solids (E&P Waste Type 10) is or may be generated at a commercial facility or transfer station by the cleaning of a container holding a residual amount (no more than 1 barrel) of E&P Waste |
| 11 | Washout pit water and residual solids from oilfield related carriers and service companies that are not permitted to haul hazardous waste or material |
| 12 | Nonhazardous Natural gas plant processing waste solids. |
| 13 | (Reserved) |
| 14 | Pipeline test water which does not meet discharge limitations established by the appropriate state agency, or pipeline pigging waste, i.e., waste fluids/solids generated from the cleaning of a pipeline |
| 15 | E&P Wastes that are transported from permitted commercial facilities and transfer stations to permitted commercial treatment and disposal facilities, except those E&P Wastes defined as Waste Types 01 and 06 |

| | |
|----|---|
| 16 | Crude oil spill clean-up waste |
| 50 | Salvageable hydrocarbons bound for permitted salvage oil operators |
| 99 | Other E&P Waste not described above (shipment to a commercial facility or transfer station must be pre-approved prior to transport) |

Salt Cavern Waste Disposal Facility Any public, private, or commercial property, including surface and subsurface lands and appurtenances thereto, used for receiving, storing, and/or processing oil and gas exploration and production waste for disposal into a solution-mined salt cavern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000), amended LR 27:1898 (November 2001), LR 29:937 (June 2003).

§503. General Requirement for Generators

A. - F.2. ...

3. Prior to shipment and disposal at commercial land treatment facilities, natural gas plant processing waste solids (gas plant waste - Waste Type 12) must be analyzed for the chemical compound benzene (C₆H₆). Testing must be performed by a DEQ certified laboratory in accordance with procedures presented in the *Laboratory Manual for the Analysis of E&P Waste* (Department of Natural Resources, August 9, 1988, or latest revision).

F.4. - H.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1900 (November 2001), LR 29:937 (June 2003).

§505. General Requirements for Commercial Facilities and Transfer Stations

A. ...

B. Commercial land treatment facilities may not receive, store, treat or dispose of natural gas plant processing waste solids (Waste Type 12) that exceed the MPC criteria of §549.C.7.a for total benzene (3198 mg/kg) unless the company has demonstrated to the commissioner that Waste Type 12 can be pretreated to below the applicable MPC prior to land treatment. Such demonstration shall be considered a major modification of any existing permit and will require compliance with the permitting procedures of §§519, 527, and 529, including the submission of an application and public participation. The E&P waste management and operations plan required in §515 shall clearly indicate how the E&P Waste storage and treatment system will minimize the release of benzene (e.g., enclosed tanks, enclosed treatment equipment, vapor recovery systems, etc.). Such demonstration shall also include proof of solicitation from DEQ regarding applicable required air permitting for the existing and amended land treatment system.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1900 (November 2001), LR 29:937 (June 2003).

§507. Location Criteria

A. Commercial facilities and transfer stations may not be located in any area:

1. within one-quarter mile of a public water supply water well or within 1,000 feet of a private water supply well for facilities permitted after January 1, 2002;

2. - 5. ...

6. where such area, or any portion thereof, has been designated as wetlands by the U.S. Corps of Engineers during, or prior to, initial facility application review, unless the applicable wetland and DNR Coastal Management Division coastal use permits are obtained;

A.7 - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000), amended LR 27:1902 (November 2001), LR 29:938 (June 2003).

§511. Financial Responsibility

A. - E.1. ...

2. The insurer further certifies the following with respect to the insurance described in LAC 43:XIX.511.E.1.

E.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1903 (November 2001), LR 29:938 (June 2003).

§519. Permit Application Requirements for Commercial Facilities

A. - C.4.c. ...

d. all public supply water wells and private water supply wells within one mile of the proposed facility;

5. - 6.d. ...

7. documentation of compliance with the applicable location criteria of §507.A.5 and 6, with regard to flood zones and wetland areas;

8. - 21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000), amended LR 27:1905 (November 2001), LR 29:938 (June 2003).

§523. Permit Application Requirements for Land Treatment Systems

A. - C.5. ...

D. An explanation of the proposed E&P Waste management and operations plan with reference to the following topics:

D.1. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2816 (December 2000), amended LR 27:1906 (November 2001), LR 29:938 (June 2003).

§525. Permit Application Requirements for Other Treatment and Disposal Options

A. - C.5. ...

D. An explanation of the proposed E&P Waste management and operations plan with reference to the following topics:

D.1. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1907 (November 2001), amended LR 29:938 (June 2003).

§535. Notification Requirements

A. - F. ...

G. The operator of a commercial salt cavern E&P waste storage well and facility shall provide a corrective action plan to address any unauthorized escape, discharge or release of any material, fluids, or E&P waste from the well or facility, or part thereof. The plan shall address the cause, delineate the extent, and determine the overall effects on the environment resulting from the escape, discharge or release. The Office of Conservation shall require the operator to formulate a plan to remediate the escaped, discharged or released material, fluids or E&P waste if the material, fluids, or E&P waste is thought to have entered or has the possibility of entering an underground source of drinking water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1909 (November 2001), LR 29:938 (June 2003).

§547. Commercial Exploration and Production Waste Treatment and Disposal Options

A. - A.5. ...

6. Cavern Disposal. The utilization of a solution-mined salt cavern for the disposal of E&P waste fluids and solids. Applicants for permits and operators of commercial E&P waste salt cavern disposal wells must comply with the requirements of this Chapter (LAC 43:XIX.501 et seq.) and the applicable requirements of Statewide Order No. 29-M-2, LAC 43:XVII, 3101 et seq. (see §555).

A.7. - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1910 (November 2001), LR 29:938 (June 2003).

§555. Requirements for Cavern Disposal

A. Applicants for new commercial solution-mined salt cavern facilities to receive and dispose of E&P waste and operators of such existing facilities must comply with the administrative and technical criteria of LAC 43:XIX, Subpart 1, Chapter 5 (§501 et seq.) as well as the applicable definitions, administrative criteria and technical criteria of LAC 43:XVII, Subpart 4, Chapter 31 (§3101 et seq., Disposal of Exploration and Production Waste in Solution-Mined Salt Caverns).

B. The application for a new commercial salt cavern for the disposal of E&P waste shall include, but may not limited to the following information:

1. The general provisions of LAC 43:XVII.3103;

2. An application shall contain the information required in LAC 43:XVII.3107, as follows:

a. §3107.BCAdministrative Information;

- b. §3107.CCMaps and Related Information;
 - c. §3107.DCArea of Review;
 - d. §3107.ECTechnical Information.
3. The legal permit conditions required in LAC 43:XVII, 3109, as follows:
- a. §3109.ACSignatories;
 - b. §3109.CCDuty to Comply;
 - c. §3109.DCDuty to Halt or Reduce Activity;
 - d. §3109.ECDuty to Mitigate;
 - e. §3109.FC Proper Operation and Maintenance;
 - f. §3109.GC Inspection and Entry;
 - g. §3109.H. 3, 4, 7b, 8, 9 and 10CNotification Requirements;
 - h. §3109.ICDuration of Permits;
 - i. §3109.JCCompliance Review;
 - j. §3109.KCAdditional Conditions.
4. The location criteria of Statewide Order No. 29-M-2, LAC 43:XVII.3113.
5. The site assessment requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3115.
6. The cavern and surface facility design requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3117.
7. The well construction and completion requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3119.
8. The operating requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3121.
9. The safety requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3123.
10. The monitoring requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3125.
11. The pre-operating and completion report requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3127.
12. The well and salt cavern mechanical integrity pressure and leak test requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3129.
13. The requirements for determining cavern configuration and measuring cavern capacity in Statewide Order No. 29-M-2, LAC 43:XVII.3131.
15. The limits on cavern capacity in Statewide Order No. 29-M-2, LAC 43:XVII.3133.
16. The requirements for inactive caverns in Statewide Order No. 29-M-2, LAC 43:XVII.3135.
17. The monthly reporting requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3137.
18. The record retention requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3139.
19. The applicable closure and post-closure requirements of Statewide Order No. 29-M-2, LAC 43:XVII.3141.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:938 (June 2003).

§565. Resource Conservation and Recovery of Exploration and Production Waste

A. - E.4.b. ...

F. Testing Criteria for Reusable Material

* E&P Waste when chemically treated (fixated) shall, in addition to the criteria set forth be acceptable as reusable material with a pH range of 6.5 to 12 and an electrical conductivity of up to 50 mmhos/cm, provided such reusable

material passes leachate testing requirements for chlorides in §565.F above and leachate tests for metals in §565.F above.

** The leachate testing method for TPH, chlorides and metals is included in the *Laboratory Manual for the Analysis of E&P Waste* (Department of Natural Resources, August 9, 1988, or latest revision).

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1916 (November 2001), LR 29:939 (June 2003).

James H. Welsh
Commissioner

0306#013

RULE

**Department of Natural Resources
Office of Conservation**

Surface Mining

(LAC 43:XV.105, 1105-1109, 2111, 2113, 2311, 2323, 2731, 2733, 3103, 3115, 3705, 5423, 5424, and 5425)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation has amended LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations, governing valid existing rights and revegetation success standards for post-mining land uses of pastureland and wildlife habitat.

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement, under the provisions of 30 CFR 732.17(d), has notified the Louisiana Office of Conservation, Injection and Mining Division of changes in Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and the federal regulations promulgated pursuant to SMCRA which make it necessary for Louisiana to modify its Surface Mining Regulatory Program to remain consistent with all federal regulations. The director of the Office of Surface Mining Reclamation and Enforcement approved the amendments in *Federal Register*, Vol. 67, No. 38, February 26, 2002, pp. 8717-8719 and Vol. 67, No. 221, November 15, 2002, pp. 69123-69129.

Title 43

NATURAL RESOURCES

Part XV. Office of Conservation - Surface Mining

Subpart 1. General Information

Chapter 1. General

§105. Definitions

A. ...

*Valid Existing Rights*Ca set of circumstances under which a person may, subject to office approval, conduct surface coal mining operations on lands where §922.D of the Act and §1105 of these regulations would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §1105 of these regulations or §922.D of the Act. A person seeking to

exercise valid existing rights must comply with all other pertinent requirements of the act and the regulatory program.

a. **Property Rights Demonstration.** Except as provided in §105.*Valid Existing Rights.c*, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §922.D of the Act or §1105 of these regulations. Applicable state law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in §105.*Valid Existing Rights.c*, a person claiming valid existing rights also must demonstrate compliance with one of the following standards.

i. **Good Faith/All Permits Standard.** All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. At a minimum, an application must have been submitted for any permit required under Subpart 3 of these regulations.

ii. **Needed for and Adjacent Standard.** The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §922.D of the Act or §1105 of these regulations. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §922.D of the Act or §1105 of these regulations when the office approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the office may consider factors such as:

(a). the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §922.D of the Act or §1105 of these regulations depend upon use of that land for surface coal mining operations;

(b). the extent to which plans used to obtain financing for the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations;

(c). the extent to which investments in the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations; and

(d). whether the land lies within the area identified on the life-of-mine map submitted under §2535.A.3 before the land came under the protection of §1105.

a. **Roads.** A person who claims valid existing rights to use or construct a road across the surface of lands protected by §1105 of these regulations or §922.D of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of surface coal mining operations in §105:

i. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the person has a legal right to use the road for surface coal mining operations;

ii. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

iii. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act; or

iv. *valid existing rights* exist under §105.*Valid Existing Rights.a* and b.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR 29:939 (June 2003).

Subpart 2. Areas Unsuitable for Mining

Chapter 11. Areas Designated by Act of Congress

§1105. Areas Where Mining Is Prohibited or Limited

A. No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under §2323, or qualifies for the exception for existing operations under §1109.

1. - 4.a. ...

b. where the office allows the public road to be relocated or the area affected to be within 100 feet of such road, after public notice and opportunity for a public hearing in accordance with §1107.D, and after making a written finding that the interests of the affected public and landowners will be protected;

5. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:940 (June 2003).

§1107. Procedures

A. ...

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under §1105 unless:

1. the site qualifies for the exception for existing operations under §1109;

2. a person has valid existing rights for the land, as determined under §2323;

3. the applicant obtains a waiver or exception from the prohibitions of §1105 in accordance with §1107.D or E; or

4. for lands protected by §1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with §1107.F.

C. If the office is unable to determine whether the proposed operation includes land within an area specified in §1105.A.1 or is located closer than the limits provided in §1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state or local government agency with jurisdiction over the protected land, structure or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

D. §1107.D does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that join a public road, as described in §1105.A.4.b. Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in §1105.A.4.b) or where the applicant proposes to relocate or close any public road, the office or public road authority designated by the office shall:

1. require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

2. provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

3. if a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

4. make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the office or public road authority determines that the interests of the public and affected landowners will be protected.

E.1. Subsection 1107.E does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that connect with an existing public road on the side of the public road

opposite the dwelling, as provided in §1105.A.5. Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver prior to August 3, 1977 from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

3.a. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

b. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public-property records pursuant to state laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

F.1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this Paragraph unless all affected agencies jointly approve.

2. Subsection 1107.F does not apply to lands for which a person has valid existing rights, as determined under §2323 or lands within the scope of the exception for existing operations in §1109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:940 (June 2003).

§1109. Exception for Existing Operations

A. The prohibitions and limitations of §1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of these regulations, exists when the land comes under the protection of §1105. This exception applies only to lands within the permit area as it exists when the land comes under the protection of §1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:941 (June 2003).

Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems

Chapter 21. Coal Exploration and Development

§2111. General Requirements: Development Operations Involving Removal of More Than 250 Tons

A. - A.7. ...

8. for any lands listed in §1105, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §1105, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

§2113. Applications: Approval or Disapproval of Development of More Than 250 Tons

A. - B.3 ...

4. will, with respect to exploration activities on any lands protected under §1105, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105, to comment on whether the finding is appropriate.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

§2311. Relationship to Areas Designated Unsuitable for Mining

A. ...

B. If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by §1107.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:942 (June 2003).

§2323. Valid Existing Rights Determination

A. OSM is responsible for determining valid existing rights for federal lands listed at §1105. The office is responsible for determining valid existing rights for all non-Federal lands listed at §1105. The provisions of this Section apply when the office is responsible for determining valid existing rights.

B. A request for a valid existing rights determination must be submitted if surface coal mining operations will be conducted on the basis of valid existing rights under §1105. This request may be submitted before submitting an application for a permit or boundary revision.

1. Requirements for property rights demonstration. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the applicant must provide a property rights demonstration under §105. *Valid Existing Rights*.a. This demonstration must include the following items:

a. a legal description of the land to which the request pertains;

b. complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which your request pertains;

c. a complete chain of title for the surface and mineral estates of the land to which the request pertains;

d. a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Louisiana property law;

f. complete documentation of the nature and ownership, as of the date that the land came under the protection §1105, of all property rights for the surface and mineral estates of the land to which the request pertains;

g. names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

h. if the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims;

i. any comments that the applicant received in response to the notification provided under §2323.B.1.h.

2. Requirements for Good Faith/All Permits Standard. If the request relies upon the good faith/all permits standard in §105. *Valid Existing Rights*.b.i, the applicant must submit the information required under §2323.B.1. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

a. approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §1105;

b. application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §1105;

c. an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §1105.

3. Requirements for Needed for and Adjacent Standard. If the request relies upon the needed for and adjacent standard in §105. *Valid Existing Rights*.b.ii, the applicant must submit the information required under §2323.B.1. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §1105.

4. Roads. If the request relies upon one of the standards for roads in §105. *Valid Existing Rights*.c.i-iii, documentation must show that:

a. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the applicant has a legal right to use the road for surface coal mining operations;

b. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

c. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act.

C. Initial Review of Request

1. The office shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of §2323.B. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of §2323.B, the office shall notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of §2323.B, the office shall implement the notice and comment requirements of §2323.D.

4. If the information requested under §2323.C.2 is not provided within the time specified or as subsequently extended, the office shall issue a determination that valid existing rights have not been demonstrated, as provided in §2323.E.4.

D. Notice and Comment Requirements and Procedures

1. When the request satisfies the completeness requirements of §2323.C, the applicant must publish a public

notice in accordance with §3103.A. This notice must invite comment on the merits of the request. The notice shall contain, at a minimum:

a. the location of the land to which the request pertains;

b. a description of the type of surface coal mining operations planned;

c. a reference to and brief description of the applicable standards under the definition of valid existing rights in §105;

i. if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the notice also must include a description of the property rights claimed and the basis for that claim;

ii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.i, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

iii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.ii, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

d. if the request relies upon one or more of the standards in §105. *Valid Existing Rights*.b, c.i, and c.ii, a statement that the office will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by §2323.D.3, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

e. a description of the procedures that the office will follow in processing the request;

f. the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

g. a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

h. the name and address of the office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The office shall promptly provide a copy of the notice required under §2323.D.1 to:

a. all reasonably locatable owners of surface and mineral estates in the land included in the request; and

b. the owner of the feature causing the land to come under the protection of §1105, and, when applicable, the

agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §1105.

3. The letter transmitting the notice required under §2323.D.2 must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

E. How a Decision Will Be Made

1. The office must review the materials submitted under §2323.B, comments received under §2323.D, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the office must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the office deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the office must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in §105. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of Property Rights Disagreements. This Paragraph applies only when the request relies upon one or more of the standards in §105.*Valid Existing Rights*.b, c.i, and c.ii.

a. The office must issue a determination that the applicant has not demonstrated valid existing rights if property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The office will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This Paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under §§2323.D.1 or D.3.

b. If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the office must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under §105.*Valid Existing Rights*.a, c.i, or c.ii, as appropriate. The office must then proceed with the decision process under §2323.E.2.

4. The office must issue a determination that the applicant has not demonstrated valid existing rights if information that the office requests under §§2323.C.2 or E.1 is not submitted within the time specified or as subsequently extended. The office will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the office must:

a. provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the

determination applies, to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105; and

b. publish notice of the determination in a newspaper of general circulation in the parish in which the land is located.

F. Administrative and Judicial Review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under §§3301 and 3303.

G. Availability of Records. The office must make a copy of that request available to the public in the same manner as the office must make permit applications available to the public under §2119. In addition, the office must make records associated with that request, and any subsequent determination under §2323.E, available to the public in accordance with the requirements and procedures of §6311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:942 (June 2003).

Chapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan

§2731. Protection of Public Parks and Historic Places

A. - A.1. ...

2. if valid existing rights exist or joint agency approval is to be obtained under §1107.F, to minimize adverse impacts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

§2733. Relocation or Use of Public Roads

A. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §1107.D, the applicant seeks to have the office approve conduction of the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or seeks approval for relocating a public road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions

§3103. Public Notices of Filing of Permit Applications

A. - A.4. ...

5. if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §1107.D, a concise

statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

A.6. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:944 (June 2003).

§3115. Criteria for Permit Approval or Denial

A. - A.4.b. ...

c. not on any lands subject to the prohibitions or limitations of §1105; or

4.d. - 16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:945 (June 2003).

Chapter 37. Small Operator Assistance

§3705. Eligibility for Assistance

A. - A.1. ...

2. establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

a. the pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

b. the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

A.2.c. - A.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:945 (June 2003).

Subpart 5. Permanent Program Performance Standards

Chapter 53. Permanent Program Performance Standards: Surface Mining Activities

§5423. Revegetation: Standards for Success

A. - B.1.d.iv. ...

e. The criteria and procedures for determining ground cover and production success are found at §5424.

2. - 8. ...

a. The criteria and procedures for determining ground cover and stocking success are found at §5425.

B.9. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 21:1082 (October 1995), LR 29:945 (June 2003).

§5424. Revegetation: Standards for Success

Post-Mining Land Use of Pastureland

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

2. Pursuant to §5423, ground cover and production success on pastureland must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover density; and

c. production.

3. The permittee is responsible for determining and measuring ground cover and production and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it is at least 90 percent of the approved success standard at a 90 percent statistical confidence level for any two of the last four years of the five-year responsibility period. The success standard for ground cover shall be 90 percent.

i. Ground cover must be measured over each noncontiguous area that is proposed for release. The aggregate of areas with less than 90 percent ground cover must not exceed 5 percent of the release area. These areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of 90 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of 90 percent. Refer to sampling technique for ground cover in §5424.C.2.a.

b. Ground cover shall consist of the species mixture approved in the original permit or an approved acceptable species mixture as recommended by the USDA/Natural Resources Conservation Service (NRCS) for use in that area. No more than 15 percent of the stand can be approved species not listed in the permit.

c. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a .10 alpha error). Whenever ground cover is equal to or exceeds the success standard, the statistical confidence interval test does not have to be determined.

d. Ground cover success and forage production success need not be met during the same year.

e. Ground cover shall be sampled once per year during any two of the last four years of the five-year responsibility period to verify cover data.

2. Forage Production

a. The success standard for production of hay on pastureland shall be 90 percent of an approved reference area, if a reference area is established, or 90 percent of the estimated yield found in the Soil Conservation Service (now Natural Resources Conservation Service (NRCS)) parish soil survey. The estimated yields are those expected under a high level of management and were determined by the NRCS based on records of farmers, conservationists and extension agents.

b. Production shall be sampled for at least two separate years. Any two of the last four years of the five-year responsibility period may be selected.

3. Reference Area Requirements

a. Reference areas must be representative of soils, slope, aspect, and vegetation in the premined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area as herein described, yields must be adjusted.

b. Reference area pastureland must be under the same management as pastureland in the reclaimed area. This means that it must:

- i. consist of similar plant species and diversity as approved in the permit;
- ii. be currently managed under the same land use designation as the proposed mined release area;
- iii. consist of soils in the same land capability class;
- iv. be located in the general vicinity of the mined test area to minimize the impact of differing weather;
- v. use the same fertilizer and pest management techniques;
- vi. use fertilizer rates based on the same yield goal;
- vii. be mowed at the same time to the same height as the reclaimed area;
- viii. use identical harvest dates and plant populations; and
- ix. use any other commonly used management techniques not listed above such as adequate weed and insect control, provided the pastureland area and the reference plot are treated identically.

c. Reference areas shall consist of a single plot (whole plot) at least four acres in size. Either statistically adequate subsampling or whole plot harvesting may be used to determine yields.

d. Reference plot forage yields must be at a level that is reasonably comparable to the parish average for the given crop. Reference plot yields that are less than 80 percent of the parish average are highly suspect and may be rejected.

e. Reference areas may be located on undisturbed acreage within permitted areas. If not so located, the permittee must obtain from the landowner(s) a written agreement allowing use of the property as a reference area and allowing right of entry for regulatory personnel.

f. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and
- iii. sufficient samples to represent the true mean of the vegetation characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area

and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, at least one ground cover sample point must be measured in each noncontiguous unit, if the release area does not consist of a single unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows.

| Acceptable | Unacceptable |
|---|-----------------------------------|
| Vegetation approved in permit | Vegetation not approved in permit |
| Dead vegetation or litter from acceptable species | Rock or bare ground |
| Acceptable | Not approved in permit |

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Productivity

i. When evaluating productivity, two components that may potentially influence the end results of production yields are time of harvest and moisture content.

(a). Time of Harvest. Herbaceous species must be harvested at times and frequencies appropriate to the plant species (i.e., cool-season species should be sampled in the winter or spring; warm-season species should be sampled in the summer or fall). Sampling should be timed to coincide with seed ripeness or the mature stage of the target vegetative species. Plant communities that are comprised of both cool- and warm-season species should be sampled when the overall plant community production is at a peak. If

an area has not had herbaceous biomass removed (i.e., mowing, baling, grazing) since the last sampling, then sampling must not be conducted until the vegetation is removed and regrowth has taken place.

(b). Moisture Content. The moisture content of harvested herbaceous biomass and other vegetative components must be standardized, in order to eliminate weight variations due to moisture content. The weight of harvested vegetation is to be standardized by oven-drying at 60° C for 24 hours or until the weight stabilizes.

ii. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Productivity is estimated from only the current season's growth. There are two methods that can be used to evaluate production: using sampling frames for harvesting plots or whole-field harvests.

(a). Sampling Frames. A sampling frame shall be an enclosure, of known dimension appropriate for sampling pasture lands, capable of enclosing the sample location. A sample location shall be established at each of the randomly chosen sites, such that the center of the sampling frame is the random point. The permittee shall clip the biomass 2 inches above ground level within the frame. The biomass to be clipped shall be from all plant species growth whose base lies within the sampling frame. This biomass shall then be weighed and recorded. As each frame is clipped and weighed, the biomass shall be put into a bag for oven drying. Samples shall be oven-dried to a constant weight and reweighed to determine dried weight. All data collected from the clippings within the sampling frame shall be recorded and analyzed.

(b). Whole Area Harvesting. If whole release area harvesting is chosen as the method for data collection, the entire area shall be harvested and the data recorded and analyzed.

iii. If truckloads of bales are weighed for hay production when a whole area is harvested, at least three truckloads from each 100 acres are weighed. Each truckload should have at least three large round bales or 20 square bales. A sample will consist of the average bale weight per truckload. A statistically adequate sample size must be obtained. Multiply the number of hay bales per area by the average bale weight to obtain total production for that area. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

iv. If performing statistical comparisons for hay production when a whole field is harvested, the weights of either 10 percent or 15 bales, whichever is greater, are converted to pounds per acre (lbs/ac) by taking their average weight and multiplying that figure by the total number of bales, divided by the number of acres harvested. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

v. To determine which bales to weigh, randomly select a number from one to ten then count and weigh every tenth bale thereafter until the minimum number or 10 percent of the bales have been weighed. The first and last bale of any noncontiguous field or site should not be

weighed. The bales shall be counted, but if the random number falls on either of the two bales mentioned, either advance one bale or select the bale immediately previous to the last bale produced.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples is equal to or less than the initial minimum number, the initial sampling will satisfy the sampling requirements. If the number of samples needed is greater than the initial minimum number, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Productivity Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or production for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or production value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and average forage production was insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the production was acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

3. Raw yield data from reclaimed areas and raw data from reference areas must first be oven dried to remove moisture, then adjusted by the parish soil survey average yields before statistical comparisons can be made.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of and reference plots;
- b. the location of each sample point;
- c. the area covered by the sampling; and
- d. all permit boundaries.

F. Mitigation Plan

1. Ground cover and forage productivity must equal or exceed the standards for reclamation phase III liability release for at least two sampling years during the second through the fifth years following completion of the last augmented seeding. If productivity is not achieved by these dates, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal farming practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new phase III release proposal.

2. If renovation, soil substitution or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:945 (June 2003).

§5425. Revegetation: Standards for SuccessC Post-Mining Land Use of Wildlife Habitat

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

2. Pursuant to §5423, ground cover and stocking success on wildlife habitat must be determined on the basis of the following conditions:

- a. general revegetation requirements of the approved permit;
- b. ground cover; and
- c. tree or shrub stocking and survival.

3. The permittee is responsible for measuring and determining ground cover and stocking and submitting this

data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it has at least 70 percent density with a 90 percent statistical confidence for the last year of the five year responsibility period.

b. The aggregate of areas with less than 70 percent ground cover must not exceed five percent of the release area. These individual areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of not less than 70 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of not less than 70 percent.

c. No more than 35 percent of the stand can consist of approved species not listed in the permit.

2. Tree and Shrub Stocking Rate

a. The stocking rate for trees and shrubs shall be determined on a permit-specific basis after consultation and approval by the Louisiana Department of Wildlife and Fisheries. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. When this requirement is met and acceptable ground cover is achieved, the five-year responsibility period shall begin.

b. Tree and shrub stocking rate shall be sampled once during the last year of the five-year responsibility period. The woody plants established on the revegetated site must be equal to or greater than 90 percent of the stocking rate approved in the permit with 90 percent statistical confidence. Trees and shrubs counted shall be healthy and in place for not less than two growing seasons. At the time of final bond release at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The permittee must provide documentation of this in the form of paid receipts, reclamation status reports, and normal correspondence.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites,
- ii. a sampling technique unaffected by the sampler's preference, and
- iii. sufficient samples to represent the true mean of the vegetative characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, if the release area does not consist of a single unit, at least one sample point must be measured in each noncontiguous unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to

allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows:

| Acceptable | Unacceptable |
|---|-----------------------------------|
| Vegetation approved in permit | Vegetation not approved in permit |
| Dead vegetation or litter from acceptable species | Rock or bare ground |
| Acceptable | Not approved in permit |

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Sampling Circles (Trees/Shrubs)

i. A sampling circle shall be a round area of known radius. The permittee shall establish a sampling circle at each randomly selected sampling point such that the center of the sampling circle is the random point. Permittee may draw the circle by attaching a string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake. The permittee shall count all living trees and shrubs within each of the sampling circles. In more mature tree/shrub areas, the stakes may need to be extended to elevate the string above the growth.

ii. To count as a living tree or shrub, the tree or shrub must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent must have been in place for three years.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial

minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Sampling Circles (Trees/Shrubs) Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t² = squared t-value from the T-Table;

s² = initial estimate of the variance of the release (or reference) area; and

(0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or stocking for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or stocking value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and/or tree and shrub average stocking density is insufficient, but close to the standards, the permittee may submit the data to the Commissioner to determine if the revegetation is acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of each transect and sampling circle location,
- b. the area covered by the sampling, and
- c. all permit boundaries.

F. Mitigation Plan

1. Ground cover must be greater than or equal to 70 percent coverage and tree and shrub stocking must achieve the revegetation standards by the fifth year of the five-year responsibility period. If these standards are not achieved by this date, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal agronomic practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution, or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:948 (June 2003).

James H. Welsh
Commissioner

0306#032

RULE

**Department of Revenue
Office of the Secretary**

Penalty Waiver (LAC 61:III.2101)

Under the authority of R.S. 47:1603 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary, amends LAC 61:III.2101 pertaining to a penalty waiver for delinquent filing or delinquent payment.

The purpose of this Rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. Title 47 Section 1603 provides that if the failure to file on time or the failure to timely remit the full amount due is not due to the negligence of the taxpayer, but is due to other causes set forth in written form and considered reasonable, the secretary may waive the penalty in whole or in part. When the penalty exceeds \$5,000, the waiver must be approved by the Board of Tax Appeals.

Title 61

REVENUE AND TAXATION

Part III. Department of Revenue; Administrative Provisions and Miscellaneous

Chapter 21. Interest and Penalties

§2101. Penalty Waiver

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a Request for Waiver of Penalties for Delinquency Form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the Request for Waiver of Penalties for Delinquency Form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The Request for Waiver of Penalties for Delinquency Form must be accompanied by any supporting documentation.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:866 (June 2001), amended LR 29:950 (June 2003).

Cynthia Bridges
Secretary

0306#015

RULE

**Department of Revenue
Policy Services Division**

Natural Resources: Severance Tax
Definition of Payout
(LAC 61:1.2903)

Under the authority of R.S. 47:633, 47:648.3, and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:1.2903.A to clarify the definition of *payout*.

Revised Statute 47:633(7)(c)(iii), 47:633(9)(d)(v), and 47:648.3 allow severance tax suspensions for horizontal, deep, and new discovery wells. The suspensions are limited to 24 months or until payout of the well cost, whichever comes first. Payout occurs when gross revenue from the well less royalties and operating costs directly attributable to the well equal the well cost as approved by the Office of Conservation. Because payout of the well cost triggers the end of the severance tax suspension, the computation should be uniform for all taxpayers. This amendment clarifies that operating costs do not include any costs that were included in the well cost approved by the Office of Conservation.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 29. Natural Resources: Severance Tax

**§2903. Severance Taxes on Oil; Distillate, Condensate
or Similar Natural Resources; Natural Gasoline
or Casinghead Gasoline; Liquefied Petroleum
Gases and Other Natural Gas Liquids; and Gas**

A. Definitions

* * *

Payout the payout of the well cost for a horizontal well as referred to in R.S. 47:633(7)(c)(iii), a deep well as referred to in R.S. 47:633(9)(d)(v), and a new discovery well as referred to in R.S. 47:648.3 occurs when gross revenue from the well, less royalties and operating costs directly attributable to the well, equals the well cost as approved by the Office of Conservation. Operating costs are limited to those costs directly attributable to the operation of the exempt well, such as direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that can be directly attributed to the operation of the well. Operating costs do not include any costs that were included in the well cost approved by the Office of Conservation.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633, 47:648.3, and 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue, Severance Tax Division, August 1974, amended and promulgated LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended LR 23:1167 (September 1997), LR 24:2321 (December 1998), LR 29:951 (June 2003).

Cynthia Bridges
Secretary

0306#014

RULE

**Department of State
Office of the Secretary of State
Division of Archives**

Records Management Policies and Practices
(LAC 4:XVII.Chapters 1-15)

The Department of State, Division of Archives, Records Management and History, in accordance with R.S. 44:405, and with the Administrative Procedure Act R.S. 49:950 et seq., has adopted LAC Title 4, Part XVII Records Management Policies and Practices. This text is being inserted to provide official guidance for state agencies in establishing and maintaining an active records management program as required by R.S. 44:410 et seq.

Title 4

ADMINISTRATION

Part XVII. Records Management Policies and Practices

**Chapter 1. Agency Records Management Officer
Designation**

§101. Designation

A. In compliance with R.S. 44:411, on or before July 1 of each state fiscal year, the chief executive officer of each agency, as defined by R.S. 44:402 shall designate a records management officer to act as liaison between the division and the agency on all matters related to records management for the term of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

§103. Process

A. Each agency shall communicate their records management officer designation by completing form SS ARC 940 Records Management Officer Designation Form, (including signature of the chief executive officer and the date the designation was signed) and submitting the completed form to the state archivist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

**§105. Responsibilities of an Agency Records
Management Officer**

A. Each agency should select a records management officer who:

1. can communicate effectively with agency personnel and with the division's personnel;
2. has adequate knowledge of how your agency is organized and its operations;
3. has the ability to work with the agency's information services section on records management issues related to electronic records created and maintained by the agency;
4. has the authority to oversee the records management program of the agency, including:
 - a. the development and implementation of an agency retention schedule;

b. the compliance with Division and legal requirements for agency records;

c. the temporary storage of records at the State Records Center (if necessary) or the transfer of records for permanent storage with the State Archives (if required or requested);

d. and the processing of disposal requests and destruction of agency records as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:951 (June 2003).

§107. Changes in Records Management Officer Designees

A. Agencies wishing to change their agency's designee before their designation period has expired, must notify the State Archivist within 30 days of such a change by completing form SS ARC 940 and noting "AMENDMENT" on top of the page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

Chapter 3. Retention Schedule Development

§301. Definitions

A. Unless otherwise defined in this Chapter, the definitions for key terms in this chapter are provided in R.S. 44:402.

*Approved Retention Schedule*Ca retention schedule which has been approved by the state archivist or his designee.

*Records Series*Ca group of related or similar records, regardless of medium, that may be filed together as a unit, used in a similar manner, and typically are evaluated as a unit for determining retention periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

§303. Records Inventory

A. To facilitate the development of agency retention schedules in compliance with R.S. 44:411, each agency shall:

1. review the functions and activities of their agency;
2. develop a list of records produced, received and maintained by the agency;
3. identify the inclusive dates, the medium and volume of records maintained for each record series held by the agency. This provision may be facilitated by agencies completing a records Management Inventory Form (SS ARC 960) for each record series to document their decision process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

§305. Writing the Retention Schedule

A. Each agency shall submit a draft retention schedule to the State Archives for review and approval. In developing the draft, each agency will:

1. conduct adequate research to determine the length of time each record series needs to be maintained based on their administrative, legal, fiscal, and any historical/informational value. Legal citations should be included if statutes or rules exist, on either the state or federal level, the retention of certain records series;

2. develop specific retention and disposition instructions for each records series, including transference of inactive records to an appropriate records storage facility, the maintenance of long-term or permanent records within the agency, and/or transfer of custody of permanent records to the State Archives control.

3. develop a draft retention schedule, using form number SS ARC 932, providing a brief description of the records series, suggested retention periods for each records series, recommended disposition instructions for non-permanent records, a notation for any records series that contains confidential information at the time of its creation in the remarks section and any citations used to formulate the retention value, if applicable. In the event that a subset of records are "declared" confidential due to pending investigation or similar event, a list of the records series involved should be transmitted to the State Archives within 30 days of the declaration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

§307. Retention Schedule Maintenance

A. Each agency shall review its retention schedule annually to identify any record series requiring an addition, amendment or deletion to the agency's approved schedule. Each agency shall submit an amended SS ARC 932 noting any changes to its existing retention schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

§309. Retention Schedule Renewal

A. An agency schedule, once approved by the State Archives will be valid for five years from the date of approval. Ninety days prior to the five year anniversary of a schedule's approval, each agency shall submit their schedule for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

Chapter 5. Storage of Records in State Records Center

§501. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Approved Records Center Box*Ca box that is 1.2 cubic feet in size, with dimensions of 15"x12"x10" and having no lids (fan fold tops only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:952 (June 2003).

§503. Eligibility

A. In accordance with R.S. 44:408, the State Records Center may accept records from state agencies when they meet the following criteria.

1. The records are scheduled on an approved Records Retention Schedule.

2. The records belong to an office of the State Executive or Legislative branches of Louisiana government.

3. The records are considered inactive (not from current operational year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§505. Packing Instructions

A. Each box containing eligible records (as listed above) must comply with the following requirements.

1. The records are boxed in an approved records center box.

2. The records in each box are from the same records series with the same retention value.

3. The records should be packed in the same order as they are filed in the agency.

4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. Approximately 1 inch of space should be left in each box to facilitate retrieval.

6. Records should not be placed on top of other records in the box.

7. The approximate weight of each box should not exceed 35 pounds.

8. Packing tape is discouraged. If utilized, it may only be used to reinforce the bottom of the box.

9. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

10. Boxes should not contain hanging file folders, three ring binders or binder clips.

11. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§507. Labeling Instructions

A. Each agency must assign a unique agency box number to each box to be transferred by affixing the number to the upper right hand corner of the narrow end of the box (the end of the box) and may include a brief descriptor for the records (i.e., 1997, FY2002, A-F, #1001-2500, etc.) to the left of the agency box number. This box number (and descriptor) must correspond to an entry made on the agency's transmittal forms submitted for the box.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§509. Disposal Date Cycles

A. Records stored in the State Records Center must be assigned one of two disposal cycles. Assignment should be made based on the following criteria:

1. July Cycle. Records that are retained based on fiscal year retention periods or meet their retention period between January 1 and June 30 during a given year.

2. January Cycle. Records that are retained based on calendar year retention periods or meet their retention period between July 1 and December 31 during a given year.

AUTHORITY NOTE: Promulgated in accordance with RS. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§511. Records Transmittal

A. Prior to the delivery of records to the State Records Center for storage, an agency must provide the Records Center with completed Records Transmittal and Receipt forms (SS ARC 103), which will serve as an inventory sufficiently detailed to enable the Records Center to retrieve any record needed by the agency for reference.

1. A separate transmittal form (SS ARC 103) should be completed for each disposal date (i.e., January or July of a given year).

2. For each box, the agency should include the minimum information on their transmittal forms:

a. agency box number;

b. beginning and ending dates for the records in the box;

c. a brief meaningful description of the contents of the box (i.e., Employees A-E, Batch 151-210);

d. a notation if the records are on a media other than paper;

e. a notation if any of the records contain confidential information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§513. Arranging Transfer

A. After completing the transmittal forms for the boxes to be stored at the State Records Center, the agency shall mail or fax the transmittals to the State Records Center at least two weeks prior to the date of transfer the agency is requesting. The State Records Center will contact the agency's records officer to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§515. Delivery of Records

A. In general, delivery dates will be set on a first-come, first-serve basis. The State Records Center reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the State Records Center staff or the Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:953 (June 2003).

§517. Ownership and Access

A. Records stored at the State Records Center remain property of the agency depositing them at the State Records Center. Only the depositing agency's designated employees and to a limited extent, State Records Center personnel will be provided access to records stored in the State Records Center. Any requests to see an agency's records from non-authorized parties will be forwarded to the agency for written approval. A written approval must include the name of the person, the Records Center box number for the records being requested and the signature of the agency's records officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§519. Requesting Stored Records

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Records Center by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the Records Center box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-serve basis. In the event that an agency has a true emergency, the State Records Center will try to accommodate a request for expedited service.

3. The State Records Center will contact the agency's Records Officer when the records in question are ready for review or pick-up. Upon arrival to the State Records Center, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Records Center belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§521. Disposal of Records

A. Twice a year the State Records Center will generate disposal requests for agency records that have met their retention periods. Such disposal requests will be forwarded to the agency records officer for agency disposal approval. The agency will have 45 days to respond to the request. The State Records Center reserves the right to return to the agency any records listed on the disposal request after the allotted 45 days has lapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§523. Agency Disposal Approval

A. Once the agency receives the disposal request, the agency records officer must ascertain if any of the records listed on the request require further retention or are required for pending or on-going litigation. The records officer should consult with the agency's legal counsel if there are any legal holds that require the records being retained for a longer duration.

1. If the records are not needed for any legal or administrative need, the agency records management officer shall sign the statement indicating that in consultation with the agency's legal counsel the records are no longer needed by the agency and may be destroyed.

2. If any record is still required by the agency, they may designate the records to be retained by noting the new disposal date requested and the reason for the extended retention. The agency may request the records be transferred back to their custody if they do not wish the records to remain in the State Records Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§525. Archival Review

A. Prior to the destruction of any records in the State Records Center, the State Archives will review each disposal request for possible archival records. In the event that the State Archives wishes to retain some records for archival review, the State Archives will notify the agency which agency records they are transferring to the Archives acquisition section for processing. Once transferred to the State Archives the ownership of the record will transfer from the agency to the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

Chapter 7. Transferring Records for Inclusion in Archives Collection

§701. General

A. In accordance with R.S. 44:411, agency shall secure written approval from the state archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§703. Eligibility

A. In accordance with R.S. 44:401, the State Archives may accept records from state agencies according to the following criteria:

1. the records are scheduled on an approved Records Retention Schedule;

2. the records have been determined to be of historical value or mandated by law to be kept as permanent records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:954 (June 2003).

§705. Packing Instructions

A. For records that easily fit into archive box, each box containing eligible records as listed in §703 must comply with the following requirements.

1. The records are boxed in an approved archival box.
2. The records in each box are from the same records series with the same retention value.
3. The records should be packed in the same order as they are filed in the agency.
4. Boxes should not contain mixed media (i.e., microfiche with paper records).
5. The approximate weight of each box should not exceed 35 pounds.
6. Taping of printed descriptions to the box and use of packing tape is prohibited.
7. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.
8. Boxes should not contain hanging file folders, three ring binders or binder clips;
9. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§707. Non-Standard Sized Packing Instructions

A. Prior to sending records that exceed 8 1/2" x 14", the submitting agency should contact the Archives Acquisitions Section for further instructions on how to pack such records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§709. Labeling Instructions

A. For boxes donated or sent to the State Archives for permanent storage:

1. the agency must assign a unique agency number to each box to be transferred by affixing the number on one of the long sides of the box;
2. a brief descriptor for the records (i.e., Dept of State, Correspondence 6/1/00C12/31/00; Bd of Ethics Campaign Finance Reports #98-04 through #98-100) under the box number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§711. Archives Transmittal Form Required

A. Prior to the delivery to the State Archives, the submitting agency must provide completed Archives Transmittal Forms, which will serve as an inventory,

sufficiently detailed, to enable Archives staff to retrieve records as they are needed.

1. On each transmittal form, the agency shall include:
 - a. name and address of agency;
 - b. the records officer name and official title within the agency;
 - c. contact information (phone and e-mail address) for the records officer;
 - d. any restrictions that exist for the records included on the particular form;
 - e. the total number of boxes/items to be transferred;
 - f. signature of transmitting records officer and date signed by officer;
 - g. page number and total number of pages of transmittal (i.e., Page 1 of 5).

2. For each box or item, agency shall include on the transmittal:
 - a. title of records series as it appears on the agency's approved retention schedule;
 - b. more than one box may be listed on an Archival Transmittal Form.

3. Submission and the acceptance of an Archives Transmittal Form from an agency or donor by the State Archives constitutes an Act of Donation to the State Archives by the agency or donor, and transfers all rights and ownership of the records to the State Archives.

4. The State Archives will return a signed copy of the Archival Transmittal form signed by the receiving archivist after the transmittal has been processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§713. Arranging Transfer

A. After completing the Archival Transmittal forms for the items to be transferred to the State Archives, the agency or donor shall transmit the forms at least one week prior to the date of transfer requested by the agency or donor. The State Archives, after reviewing the forms, will contact the agency's or donor's contact listed on the transmittal to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§715. Delivery of Records

A. In general, delivery dates will be set on a first-come, first-served basis. The State Archives reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the Archives staff or Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§717. Long Term Records Storage

A. Records transferred to the State Archives for permanent or long-term storage remain property of the agency depositing them with the State Archives. Only the depositing agency's designated employees and to a limited

extent, Archives staff, will be provided access to records stored with the State Archives. Any requests to see an agency's records from non-authorized parties (including public records requests) will be forwarded to the owner agency for written approval. Written approval must include the name of the person authorizing the access, the person access is being granted and the archives storage box number(s) in which the record(s) is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:955 (June 2003).

§719. Requesting Stored Records

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Archives by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the agency box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Archives will try to accommodate a request for expedited service.

3. The State Archives will contact the agency's records officer when the records in question are ready for review or pick-up. Upon arrival to the State Archives, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Archives belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

Chapter 9. Destruction of Public Records

§901. General

A. In accordance with R.S. 44:411, agency shall secure written approval from the State Archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

§903. Scheduled Records

A. Agencies wishing to dispose of records listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records). Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

§905. Non-Scheduled Records

A. Agencies wishing to dispose of records not listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records) and a completed Records Management Inventory Form for each non-scheduled series listed on the disposal request. Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

§907. Destruction Authorization

A. Once a disposal request has been received by the State Archivist (or his designee), the agency will be notified within 30 days of receipt that:

1. their disposal request has been approved;

2. their disposal request has been denied along with an explanation why approval was not granted;

3. their disposal request contains records that should be transferred to the State Archives for possible inclusion in the State Archives; or

4. their disposal request requires more research and requires an additional 30 days to issue a response to the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

§909. Legal Hold Policy

A. Each agency is required to develop and implement an internal process for placing legal holds on records that are involved in state or federal investigations and/or litigation. Agencies should submit their policy within 30 days of creation to the State Archives. The policy should address:

1. the agency's internal disposal approval process;

2. which employees are notified of a legal hold, when they are told and how they are told;

3. who is responsible for contacting possible third party vendors who may house records or data covered under a legal hold;

4. what steps should be taken by notified employees to safeguard records or data covered under a legal hold;

5. the agency's legal hold forms (including file level notice sheets) and instructions for any legal hold form/release forms created by the agency to implement the plan;

6. who within the agency has legal authority to lift the legal hold once the litigation or investigation has concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:956 (June 2003).

§911. Disposal Methods

A. Once approval for disposal has been granted, an agency should dispose of the agency records in a manner acceptable to the level of confidentiality the record requires.

1. If a records series contains no information considered confidential in nature, an agency may use any acceptable disposal method including:

- a. landfill;
- b. recycling;
- c. shredding;
- d. incineration;
- e. maceration;
- f. pulverization.

2. If a records series contains information considered confidential in nature, an agency may use any of the following disposal methods:

- a. shredding;
- b. incineration;
- c. maceration;
- d. pulverization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

§913. Certificate of Destruction

A. Agencies shall document the destruction of their records by maintaining a Certificate of Destruction for all records requiring destruction approval from the State Archives. Such Destruction Certificate shall consist of either:

1. the current State Archives Certificate of Destruction form (SS ARC 933) along with the approved destruction request from the State Archives; or

2. an equivalent document that records the date the records were destroyed, the method of destruction, the approved Authority to Dispose of Records Form and the signature of at least one witness to the destruction or removal of the records. In the event that a recycling company is used for destruction, the date the records are transferred to the recycler for destruction will constitute the destruction date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

Chapter 13. Electronic Records

Subchapter A. Agency Responsibilities

§1301. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Agency Record*Ca record as defined by R.S. 44:402.

*Electronic Mail (E-mail)*Ca system that enables an agency to compose, transmit, receive and manage text and/or graphic electronic messages and images across networks and through gateways connecting other local area networks.

*Long-Term Record*Ca record with a total retention requirement of over 10 years but less than permanent.

*Permanent*Ca record with a total retention of life of the agency and/or the state and intended to be maintained in perpetuity.

*Short-Term Record*Ca record with a total retention requirement of 10 years or less.

*Transitory*Transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

§1303. General

A. The head of each agency must ensure:

1. that a program is established for the management of state records created, received, retained, used, transmitted, or disposed of on electronic media;

2. that the management of electronic state records are integrated with other records and information management records management programs of the agency;

3. that electronic records management objectives, responsibilities and authorities are incorporated into pertinent agency directives and policies;

4. that procedures are established for addressing records management requirements, including, retention, access and disposition requirements;

5. that training is provided for users of electronic records systems, in the operation, care, and handling of the information, equipment, software and media used in the systems;

6. that documentation is developed and maintained about all electronic state records in a manner adequate for retaining, reading, or processing the records and ensuring their timely, authorized disposition; and

7. that a security program for electronic state records is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

Subchapter B. State Archives Imaging Policy

§1305. Imaging System Survey; Compliance

A. In accordance with R.S. 44:413, each agency shall complete a State Archives Imaging System Survey and provide any amendments to their survey in a timely manner when original information provided is no longer accurate.

1. Survey Information. Each agency shall provide the following information to the State Archives:

a. a listing of all records series maintained/managed by the system being surveyed;

b. the hardware and software being used (including model and version numbers) including total storage capacity;

c. the type and density of media being used by the system (magnetic, WORM, etc.);

d. the type and resolution of images being produced (TIFF class 3 or 4, and dpi);

e. the agency's quality control procedures for image production and maintenance;

f. the agency's back up procedures for the system and where (on-site, off-site) and how many sets of images exist;

g. the agency's migration plan for purging images from the system that have met their retention period.

2. Initial Survey Implementation. Any agency with an imaging system in operation before June 1, 2003 shall submit their survey response to the State Archives by no later than July 31, 2003.

3. New Systems. In addition to completing the Imaging System Survey, any agency implementing an imaging system on or after June 1, 2003, must contact the State Archives prior to implementation to ensure that a retention schedule, approved by the State Archives, is in place and that the system can comply with their schedule's requirements.

4. Amending Imaging Survey Response. In the event that any changes in the initial information providing on an agency's Imaging Survey response, the agency shall submit an amendment to their survey response within 90 days of the change occurring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:957 (June 2003).

§1307. Acceptable Means of Records Preservation

A. In accordance with R.S. 44:410, electronic digitizing (imaging) is an acceptable means for records preservation for the maintenance of short-term agency records, as defined in LAC 4:XVII.1301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

§1309. Short-Term Records

A. Agencies utilizing imaging for the creation and maintenance of short term records, may use imaging without maintaining the original or a microfilm copy of the original provided that:

1. the records series has been included on the agency's retention schedule submitted to and approved by the State Archivist or his designee;

2. a quality control inspection of the images is conducted prior to the destruction of the original source documents to ensure the visibility and accessibility;

3. the proper approval has been secured from the State Archives prior to the destruction of the original source documents;

4. the records series maintained on imaging systems are stored in such a manner as to comply with the retention requirements (i.e., like retentions on the same optical disk or subdirectory).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

§1311. Long-Term and Permanent Records

A. In accordance with R.S. 44:410, agencies utilizing imaging for the creation and maintenance of long term and/or archival records, may use imaging for administrative purposes provided that for preservation purposes the agency either:

1. maintain the original source documents for the retention period listed on the agency's retention schedule; or

2. produce a microfilm back up of the records and store the microfilm with the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

Subchapter C. Electronic Mail (E-mail) Guidelines

§1321. Series Retention of E-mail

A. E-mail should be retained based on content not on media type or storage limitations. Agencies should not encourage employees to unilaterally discard E-mail because of artificial limits on E-mail box capacities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

§1323. E-Mail is Not a Records Series

A. E-mail should not be treated as a single record series for retention scheduling purposes. E-mail should be incorporated into existing records series maintained by an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

§1325. Types of E-Mail

A. There are two broad categories of E-mail: record and non-record, based on their administrative and retention requirements.

1. Transitory. Transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

a. Examples. Transitory information can include the following: unsolicited and junk e-mails not related to agency work, listserv and other e-mail broadcast lists that require subscription (including newspapers), reminders for meetings and events (i.e. cake in the conference room, staff meeting moved from 2 p.m. to 3 p.m.), personal non-work related e-mails received by employees.

b. Retention. There is no retention requirement for transitory messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval from the State Archives.

2. Record. Electronic mail records are records that have administrative value to the agency or are required to be maintained under state or federal law for a specified amount of time.

a. Retention. The retention requirement for e-mail records must follow suit with records with similar content found in other media (i.e., paper, film, electronic image). In the event that the content of the message does not fit into an existing record series on an approved retention schedule, the e-mail should be maintained in a manner consistent with R.S. 44:36 and should added to the agency's approved retention schedule if the series is expected to remain active.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:958 (June 2003).

§1327. Maintenance of Electronic Mail

A. Records created using an e-mail system may be saved for their approved retention period by one of the following.

1. Print message and file in appropriate hard copy file.
2. Place in folders and save on personal network drive or C: drive.
3. Save to removable disk (including CD-ROM). 3.5" disks are not recommended for retention periods of more than one year due to the instability of this medium.
4. Transfer to an automated records management software application.
5. Managed at the server by an automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

§1329. User Responsibilities

A. It is the responsibility of the user of the e-mail system, to manage e-mail messages according to their agency's retention schedule.

1. It is the responsibility of the sender of e-mail messages within the agency's e-mail system and recipients of messages from outside the agency to retain the messages for the approved retention period.

2. Names of sender, recipient, date/time of the message, as well as any attachments must be retained with the message. Except for listserv mailing services, distribution lists must be able to identify the sender and recipient of the message.

3. User responsibilities may be mitigated by the use of a server level automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

§1331. Agency Responsibilities

A. Each agency should adopt and disseminate to their employees an agency Electronic Mail (E-mail) Proper Use Policy. The policy should include:

1. defining official use and set limits on personal use of electronic messaging (similar to limitations that exist for telephone, fax, and personal mail);
2. prohibiting the use of electronic messaging system to promote the discrimination (on the basis of race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference), promotion of sexual harassment, or to promote personal, political, or religious business or beliefs;
3. prohibiting employees from sending electronic messages under another employee's name without authorization;
4. prohibiting the altering of electronic messages, including any attachments;
5. agency process for storing and maintaining electronic messages for the duration of the message's retention period;
6. notice that users of an agency's electronic messaging system should not expect a right of privacy and that electronic messages may be monitored for compliance and abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

§1333. Use of Records Management Application (RMA) Software

A. Agencies may use records management application (RMA) software to manage records in digital form. RMA software categorizes and locates records and identifies records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository. Agencies should use RMA software that complies with DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Software Applications," as issued by the U.S. Department of Defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

Chapter 15. Microfilm Policy

§1501. General

A. This policy applies to the microfilming of any agency record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a security copy of an agency record. This policy does not apply to convenience film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

§1503. Definitions

A. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the R.S. 44:402.

Aperture Card Ccard with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

Batch Ca quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

CAD (Computer Assisted Design) Ca method of creating microimages by computer-driven laser.

Convenience Film Cmicrofilm copies of records created only for convenience of use and considered non records under R.S. 44:1.

Declaration by the Camera Operator CA target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

Diazo Ca photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.

*Duplicate Microfilm*Ca microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

*Essential Record*Any agency record necessary to resume or continue an agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.

*Microfilm*Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

*Microfilm Container*Cgeneric term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

*Microfilming*Cthe methods, procedures, and processes used to produce microfilm.

*Original Microfilm*Cfirst generation of film produced when records are filmed.

*Silver Original*Cfirst generation silver-gelatin film or other archival quality film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:959 (June 2003).

§1505. Access to Referenced Standards and Practices

A. The copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and Image Management (AIIM) listed in this chapter are considered best practice and each agency should strive to meet their minimum requirements for all microfilming of state records. A copy of each of the standards mentioned in this rule will be on file upon adoption of this rule and available for public inspection by appointment, during regular working hours at the Louisiana State Archives Building, 3851 Essen Lane, Baton Rouge, LA 70809. The standards are distributed by and available from the Association for Information and Image Management (AIIM), Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1507. Retention Schedule Compliance

A. Microfilming of records must be in compliance with an approved agency retention schedule except, if an agency does not have an approved retention schedule, a microfilming needs assessment must be completed by the State Archives to determine if filming is justified.

1. For microfilm maintained as roll film, no more than one record series is permitted on each roll of microfilm.

2. Original records that have been microfilmed may be destroyed or source documents that have been filmed prior to the expiration of their retention periods if the microfilm complies with this policy and in accordance with R.S. 44:36 and R.S. 44:39.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1509. Use of Original Microfilm

A. After the completion of production tests and quality inspection, original microfilm must not be unwound and used for any purpose except:

1. to produce duplicate copies of the film;
2. to carry out periodic inspection of stored original film;
3. to expunge records required by law;
4. to destroy records when retention period has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1511. Annual Report Requirement

A. All agency microfilm produced in house by an agency or by an outside vendor shall make an annual report to the State Archives in the form of letter or report and shall include:

1. equipment used by agency or vendor;
2. records series annually filmed by agency;
3. total number of:
 - a. 100' 16 mm reels;
 - b. 215' 16 mm, reels;
 - c. 35 mm reels;
 - d. microfiche;
 - e. jackets;
 - f. aperture cards;
 - g. images filmed;
 - h. duplicate reels produced.
4. the method(s) and/or vendor used to process agency microfilm;
5. the location of the original film produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1513. State Centralized Microfilm Unit

A. In accordance with R.S. 44:415, all agencies shall contract with the State Archives for microfilming services. If the State Archives is unable to meet the agency's needs, the State Archives can grant permission for the agency to contract with a private vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1515. Film Requirement

A. Film with a polyester base must be used for records having a retention period of 10 years or more. Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:960 (June 2003).

§1517. Film Production

A. The records to be filmed must be arranged, identified, and indexed for filming so an individual document or series of documents can be located on the film. In instances where records are not self-indexing (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1519. Image Marking

A. Any use of image marking should comply with standard ANSI/AIIM MS8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1521. Targets

A. Whenever possible, targets must all face the same direction as the records being microfilmed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1523. Image Sequence

A. Image sequence on roll microfilm must be at a minimum:

1. leaders with a minimum of 3 feet (36 inches) of blank film;
2. density target and resolution target;
3. title page (including agency of record);
4. records series identification page;
5. records on film;
6. declaration by camera operator;
7. density target and resolution target;
8. trailer with a minimum of 3 feet (36 inches) of blank film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1525. Retake Sequence

A. Filming sequence for retakes and additions on all microfilm must be:

1. title target identifying the retake or addition records;
2. the retake or addition records; and
3. declaration of the camera operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1527. Splices

A. Retakes and additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes and additions can be on another roll of film if cross-indexed to the original roll on the title target and the container label of the retake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1529. Inspection

A. Original processed microfilm must be visually inspected according to the following procedures.

1. A visual inspection of microfilm within two weeks of creation must be completed to verify legibility.
2. Film of essential records or records having a retention period of 10 years or more must be inspected image by image.
3. Film of non-essential records having a retention period of less than 10 years must be inspected at least every 10 feet of each roll or every third microfiche.
4. Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1531. Cameras and Ancillary Equipment

A. It is recommended that camera equipment be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1533. Storage of Original Microfilm

A. Original film should be stored in a separate building from where duplicate copies or the original record are housed. In addition, films of different generic types, such as silver-gelatin, diazo, and vesicular films, should not be stored in the same storage room/vault or in rooms sharing common ventilation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1535. Storage of Original Microfilm at State Archives

A. Original film of original records at the State Archives must be placed in an Archives vault on a different floor than the original records or duplicate film. Films of different generic types, should not be stored in the same vault.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1537. Storage Environment

A. Original microfilm must be stored in a storage room or vault that:

1. offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;
2. is equipped with a fire alarm and fire suppression system;
3. has adequate temperature and humidity controls;

a. for original film of records with a retention of 10 years or more, temperature must not exceed 72 degrees Fahrenheit, and a constant relative humidity of 45 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period;

b. for original film of records with a retention period of 10 years or less, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20 percent and 60 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:961 (June 2003).

§1539. Containers and Storage Housing

A. Storage housing materials must be noncombustible and non-corrosive. Microfilm containers for original microfilm must:

1. be used for processed microfilm to protect the film and facilitate identification and handling.

2. be chemically stable materials such as non-corrodible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper to ensure no degradation is caused to the images.

3. stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

§1341. Container Labels

A. Labels must include:

1. whether the film is original microfilm or a duplicate, including generation number if known;

2. identification number;

3. name of agency;

4. records series title;

5. inclusive dates of records;

6. the beginning and ending records; and

7. retakes/additions, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

§1541. Inspection of Stored Original Microfilm

A. Inspection of stored original microfilm may be conducted in accordance with the following standards:

1. ANSI IT9.11;

2. ANSI/AIIM MS45; and

3. ANSI/NAPM IT9.1.

B. When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.), whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

C. Inspection must be conducted every five years. Microfilm that has been stored under temperature and/or

humidity conditions other than those specified in this policy must be inspected every two years.

D. Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

E. Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

F. If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

G. Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

§1543. Computer Output Microfilm (COM)

A. All policies for COM are the same as other microfilm formats, except:

1. The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.

2. The following standards for production, testing, and inspection of COM are recommended:

a. ANSI/AIIM MS1;

b. ANSI/AIIM MS5;

c. ANSI/AIIM MS28;

d. ANSI/AIIM MS39;

e. ANSI/AIIM MS43; and

f. ANSI/NAPM IT9.17.

B. If bar coding is used, the procedures in technical report AIIM TR12 should be followed.

C. The COM original must be visually inspected every 10 feet.

D. Eye-legible titling information must include the following:

1. name of agency;

2. records series title;

3. date(s) of records; and

4. starting and/or ending indexing information.

E. A reduction ratio not exceeding 48:1 must be used.

F. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

§1545. Jacketing

A. All policies for jacketed microfilm are the same as other microfilm formats, except:

1. original microfilm may be placed in a jacket, if there is a security copy stored in the same fashion as original microfilm;

2. jacket header information should include a record identifier (name, number). If no security copy exists, the following must be included in the jacket header information:

a. name of agency;

b. records series title;

c. date(s) of records; and

d. starting and/or ending indexing information.

B. Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

C. Microfilm jackets should comply with ANSI/AIIM MS11.

D. The procedures in AIIM TR11 are recommended for the jacketing of film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:962 (June 2003).

§1547. Aperture Card/CAD Systems

A. Film produced by aperture card/CAD systems are the same as other microfilm formats, except:

1. original microfilm and enclosure should pass the photographic activity test criteria outlined in the standard ANSI IT9.2;

2. a density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

3. aperture cards must have the following information on label headings:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. unique identifier.

B. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

§1549. Expungements

A. Such action must comply with statutory law.

1. If roll film is spliced, the following information must be inserted in place of the expunged record(s):

- a. a start of expungement target;
- b. replacement documents for documents that were expunged (if necessary);
- c. an expungement certificate containing the following information:
 - d. the number of the district court ordering the expungement;
 - e. the signature, printed name, and title of the custodian of expunged records;
 - f. the date of expungement.

B. Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

§1551. Destruction of Microfilmed Records

A. Microfilmed records must be destroyed only in accordance with R.S. 44:411(A)(2). Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information. Destruction of records on a roll of microfilm containing multiple records series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

1. the records series title and the inclusive dates of the records;
2. the signature and printed name of the agency records management officer (RMO) approving deletion of the records;
3. the date of the deletion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

§1553. Documentation and Record Keeping

A. Microfilm Production

1. Agency records management officer (RMO) must require documentation to be maintained that identifies titles of records filmed, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

B.1. The following information must be recorded for each inspection of stored microfilm:

- a. the quantity and identification of microfilm inspected;
- b. the condition of the microfilm, including description of any deterioration;
- c. any corrective action required;
- d. the date(s) of inspection and signed certification of inspector; and
- e. the date any corrective action was completed.

2. The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

C. Agency microfilm programs must be reviewed yearly by the agency records management officer (RMO) for compliance with R.S. 44, Chapter 5, and this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:963 (June 2003).

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