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Executive Orders

EXECUTIVE ORDER DCT-80-5

WHEREAS, the Comprehensive Employment and Training Act of 1973 (Public Law 93-203) as amended, which is commonly referred to as "CETA", establishes a new decentralized federal, state and local system of manpower programs that provide job training, employment opportunities, education and other services for economically disadvantaged, unemployed and underemployed persons; and,

WHEREAS, CETA requires the Governor to coordinate the manpower policy, plans and services of the prime sponsor and the state agency, throughout the State of Louisiana; and,

WHEREAS, the term "manpower" includes training and education programs, and supportive services aimed at increasing the skills and employment opportunities for persons who are unemployed, underemployed and economically disadvantaged; and,

WHEREAS, manpower programs provide skill training, rehabilitation, transitional employment experience, job placement and related child care, social and health services; and,

WHEREAS, it is vital that state and local agencies closely coordinate their efforts in developing plans which meet the locally determined needs in recommending meaningful programs to alleviate employment problems, in reducing duplication and gaps in manpower services, and in effectively and economically utilizing state and federal manpower funds; and,

WHEREAS, employment and training programs should be integrated with all human services to serve better the trainable segment of our society; and,

WHEREAS, the Comprehensive Employment and Training Act of 1973 as amended, and the U.S. Secretary of Labor's Rules and Regulations as published in the Federal Register (Vol. 44 No. 65, Section 675.4) and any subsequent regulations thereto designate the Governor to act as the Prime Sponsor for planning and delivery of manpower and related services in those areas in the State not under the jurisdiction of other federally designated prime sponsors of the State;

NOW, THEREFORE, I, DAVID C. TREEN, Governor of the State of Louisiana, by virtue of the authority vested in me, by the Constitution and the laws of this State, do hereby order and direct the following:

1. The Louisiana Department of Labor, Office of Labor, under the direction of the Secretary of Labor, shall be designated as the administrator of all CETA programs for the Balance of State prime sponsorship.

2. The Louisiana Department of Labor, under the direction of the Secretary of Labor, shall be designated as the administrator for the CETA Governor's Special Grant programs.

3. The Secretary of Labor shall designate the contracting officer for all CETA grants, subgrants, contracts and subcontracts.

4. The Governor's State Employment and Training Council is created and established with its membership to be structured in accordance with the Federal Secretary of Labor's Rules and Regulations. The Council Chairman and its members will be appointed by the Governor.

5. The State Employment and Training Council shall meet at regular intervals and at other times it deems advisable. The Council shall be provided staff and support services through the Louisiana Department of Labor, Office of the Secretary. The Council staff will be under the direction of the Deputy Secretary of Labor, Office of the Secretary, or any other designee as authorized by the Secretary.

6. All state agencies and prime sponsors dealing with man-

power related programs shall cooperate in a coordination of planning process, identification of common goals and objectives, sharing of data, and allocation of resources toward these ends which shall be manifested in linkages with the State Employment and Training Council, other state agencies and prime sponsors.

7. All state agencies and prime sponsors dealing with manpower related programs shall support and aid the Governor's State Employment and Training Council in its manpower coordination initiatives, which shall include review of agency and prime sponsor plans. All state agencies and prime sponsors shall provide annual plans, requests for grants, and any modifications thereto to the Governor's State Employment and Training Council for review and comment.

8. Each state agency and prime sponsor responsible for manpower related programs shall exchange manpower program information and data among the state agencies and the CETA prime sponsors through this Council as well as coordinate and communicate with the State Council and all local manpower program advisory councils.

9. The Governor's State Employment and Training Council shall continuously review all manpower programs of each state agency and prime sponsor dealing with manpower or manpower related programs. The reviews conducted by the Council shall include an emphasis upon statewide and inter-prime sponsor issues of utilization and coordination of plans and operations in contiguous areas.

BE IT FURTHER RESOLVED that Executive Order No. 76-13 is hereby rescinded and recalled, and is null, void and of no effect.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 8th day of April, A.D., 1980.

David C. Treen
Governor of Louisiana

EXECUTIVE ORDER DCT 80-6

WHEREAS, United States military personnel have attempted to rescue the American hostages held prisoners in the country of Iran;

WHEREAS, eight members of the rescue team sustained fatal injuries and gave their lives trying to save their fellow countrymen; and

WHEREAS, the bodies of these eight men are on the way home to the United States; and

WHEREAS, the people of the State of Louisiana are proud of their efforts and want to show their appreciation; and

WHEREAS, the people of the State of Louisiana share the grief and sorrow of the families and loved ones whose lives were lost,

NOW, THEREFORE, by virtue of the powers vested in me as Governor of the State of Louisiana, and in order to show the respect of the people of the State of Louisiana for the gallant efforts of those military personnel on the rescue team who died in Iran, I, DAVID C. TREEN, acting as Governor and Commander-in-Chief, do hereby order the flag of the United States and the flag of the State of Louisiana to be flown at half-mast, until the bodies of the eight men rest again on American soil, over the State Capitol and the public departments and institutions of the state and over the Court . . .

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 5th day of May, A.D., 1980.

David C. Treen
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Board of Trustees for State Colleges and Universities

At its meeting on April 18, 1980, the Board of Trustees for State Colleges and Universities adopted the following rule, effective immediately.

"The Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities, Part VII, Section 7.2B is changed to read as follows:

B. Conversions of Basis - Nine to Twelve Months. Unclassified personnel whose employment is being changed from a nine-month to a twelve-month basis, without change in duties and responsibilities or a promotion, shall be increased in salary by one-third of their nine-month salary. Any such employee whose status changes from a twelve-month to a nine-month salary basis without a change in duties and responsibilities or a promotion shall be decreased in salary by one-fourth of his previous twelve-month salary. Unclassified personnel whose employment is being changed either from a nine-month to a twelve-month basis or from a twelve-month to a nine-month basis, with a change in duties and responsibilities or a promotion shall be paid a salary appropriate for the new duties and responsibilities.

This was taken as an emergency action in order to put it into effect immediately, as personnel actions of this nature are brought to the board at nearly every meeting. The Board wished to make its position clear on this matter. This action was taken in accordance with the emergency provisions of the Administrative Procedures Act and under the authority of Article VII, Section 6 of the 1974 Constitution.

Bill Junkin
Executive Director

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

In accordance with the provisions of Louisiana R.S. 40:29, the Department of Health and Human Resources, Office of Family Security, has implemented the following rule regarding Home Leave Days Covered by the Medical Assistance (Title XIX) Program:

Payment is made to reserve the bed of a resident of an Intermediate Care Facility for the Mentally Retarded (ICF/MR) for twenty-five days per calendar year for leave(s) of absence. For the year 1980, the Medical Assistance Program will consider extensions on an individual basis for any case in which a recipient has exhausted his twenty-five days covered leave, and denial of additional leave time is contrary to the goals of the active treatment plan for mental retardation.

This policy will allow the Medical Assistance Program to comply with the goal of emphasis on a treatment plan of normalization and preparation for the individual's return to the community effective January 1, 1980.

George A. Fischer, Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

In accordance with the provision of Louisiana R.S. 40:29, the Department of Health and Human Resources, Office of Family Security has implemented the following policy regarding Title XIX (Medicaid) payment for abortions:

Effective February 19, 1980, the Louisiana Medical Assistance Program will make payment for medically necessary abortions for eligible recipients. Abortions will be covered which are necessary in the professional judgment of the pregnant woman's attending physician, that judgment exercised in the light of all factors (physical, emotional, psychological, familial, and the woman's age) relevant to the health-related well-being of the pregnant woman. Claims for abortions must be accompanied by a written statement signed by the attending physician certifying that in his judgment the abortion was medically necessary because of those factors (as defined above) which would have adverse effect on the health-related well-being of the patient.

This action will allow the Medical Assistance Program to be in compliance with regulations issued in the recent Federal Court ruling which was issued effective February 19, 1980. Compliance with these regulations assures continued federal financial participation in Louisiana's Medical Assistance Program.

George A. Fischer, Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

In accordance with the provision of Louisiana R.S. 40:29, the Department of Health and Human Resources, Office of Family Security has adopted the following policy regarding Patient Transfer Procedure for Title XIX recipients in Long Term Care facilities:

Patient Transfer Procedure

A. Individual Recipient Transfers - Involuntary transfer of discharge of a nursing home Medical Assistance recipient may occur only for medical reasons, for the recipient's welfare or that of other residents, or for nonpayment of the facility fee. Except in an emergency, a recipient must be given reasonable advance notice to ensure orderly transfer and continuity of care. Orderly transfer takes into account the availability of suitable alternative facilities, sufficient time to afford the recipient a choice, if possible, in whether to move and where, a review by facility and agency staff of his medical/psychological condition, the availability of adequate appropriate transportation, sufficient appraisal of the receiving facility as to the recipient's condition.

1. Facility responsibility in assuring orderly transfer shall include:

a. Final update, with the transfer in mind, of the individual plan of care, including discharge plan, which has been reviewed and revised periodically since admission. Individual plan of care includes nursing and medical plans, a plan for any therapies required, a social care plan, an activity plan, and a dietary plan.

In addition, the facility shall propose specific plans for transfer including transportation arrangements and, when feasible, visits by the recipient to the proposed receiving facility.

b. Following a medical assessment of the resident as near as practicable to the date of transfer, and execution by the physician of a written statement that, based on the resident's current

physical condition, there are no medical contra-indications to transfer, preparation of a discharge/transfer plan containing all information pertinent to the recipient's present condition and need for continued care and submittal of same to Long Term Care Regional Office. Included in the discharge/transfer plan shall be nursing procedures required by the patient, rehabilitative needs, appropriate level of medical care, and any special medical arrangements necessary to alleviate adverse impacts on the patient.

Information regarding the following may be pertinent: patient's intellectual capacity, memory and orientation as to time, place, and person, the patient's social disturbance or maladjustment, length of the patient's residence in the facility and dependence on familiar surroundings and staff.

The facility shall have completed final update of individual plan of care and the discharge/transfer plan as required by sections A1 a and b, before notice of transfer is sent to a recipient and/or responsible person.

c. Written notification to recipient, responsible person, (attending physician) and Long Term Care Regional Office of proposed transfer and reason(s) as soon as possible and as far in advance as is necessary, but at least forty-eight hours prior to the discharge conference. Written notification shall contain the following:

1. Proposed date of transfer or discharge and reason(s) for same.
2. Discharge conference date, time and place.
3. Availability of nursing home personnel to assist in locating new nursing home facilities.
4. Right of the resident to be represented by a third party at all stages of the discharge or transfer process.
5. Right of the resident within three days from date of discharge conference to register a complaint concerning the transfer with the Regional Long Term Care Unit.

d. As soon in advance of the transfer as possible to insure an orderly transfer, but at least ten days in advance of the proposed date of transfer, but nursing home administrator and/or director of nursing and/or social worker shall meet with the resident and responsible party to discuss the transfer. The requirement that the resident be present is waivable upon a written statement from his physician detailing the medical contraindications to the resident's participation in such a meeting. The resident and the responsible party shall be notified at least forty-eight hours prior to the conference and invited to attend and participate, although it is not mandatory that the responsible party attend. Among those items discussed at this conference shall be those items enumerated in A1, b and c.

e. Provision of all pre-transfer services required in the final up-date of the individual plan of care and transfer/discharge plan.

f. Maintaining the recipient in the facility for as long as necessary, even beyond the proposed date of transfer when medical conditions warrant, in order to ensure orderly transfer as defined above.

g. Arranging for the transportation required in the recipient's transfer plan.

h. Referral, as appropriate, to parish office social service staff to locate another facility most suitable to the recipient's needs.

2. Regional Long Term Care Unit responsibility shall include:

a. Review of available medical/social data and discharge summary prior to transfer to assure medical certification for admission to receiving facility and to ensure that recipient is being transferred in accordance with the patient's bill of rights.

b. Evaluation and referral to State Office Medical Assistance Program of any violation of patient rights.

3. Parish Social Service Staff responsibility shall include:

a. Acceptance of request by recipient and/or responsible person

son for services in locating and arranging transfer to an appropriate facility or return to noninstitutional living arrangements.

b. Acceptance of referral by Long Term Care Regional Office for services in locating and arranging transfer to an appropriate facility or return to noninstitutional living arrangement.

c. Resolution of complaints filed by nursing home resident and/or responsible party.

4. State Office Medical Assistance Program responsibility shall include:

a. Notification to facility of any instance in which transfer of a recipient is contrary to patient rights.

b. Appropriate sanctions with respect to provider agreement.

c. Maintenance of statistical data regarding frequency of involuntary transfers statewide and by individual facility.

d. Receipt of complaint from the resident or responsible party and arranging for visit with the resident or responsible party prior to transfer to investigate said complaint and take appropriate action as required.

5. Licensing and Certification Division responsibility shall include:

a. Assurance that each participating facility has adequate written transfer policies and procedures.

b. Establishment of written criteria for monitoring transfers based on the Agency's patient transfer procedure.

c. Conducting reviews based on written criteria of the adequacy of facilities' transfer procedures and pre- and post-transfer care of recipients.

6. DHHR Appeals Section has responsibility for processing recipient requests for fair hearings in accordance with 42 CFR 431.200.

B. Mass Transfer of Recipients - The following provisions shall apply to any mass transfer, which is defined as the intended relocation of more than fifteen residents within a thirty day period.

When the Licensing and Certification Division determines that a facility no longer meets State and Federal Title XIX certification requirements, decertification action is taken, usually with an advance effective date unless patients are in immediate danger.

On the date the facility is notified of decertification, DHHR shall immediately begin notifying residents and responsible parties of the decertification and of the availability of the services listed below:

In situations in which a facility discontinues operations or participation in the Medical Assistance Program, recipients and/or their responsible persons shall be notified as far in advance of the effective date as possible to assure orderly transfer and continuity of care. If the facility is closing, plans must be made for transfer. If the facility is withdrawing from the program, the recipient has the option of remaining in the facility on a private-pay basis.

Payments may continue for Title XIX eligible patients not to exceed thirty days following the effective date of decertification. This applies to Title XIX applicants or recipients admitted prior to the notice of decertification and is permitted only if the facility cooperates completely in the orderly movement of patients to other Title XIX facilities or other placement arrangements of their choice. The facility shall not admit new medical assistance recipients after receipt of the decertification notice. There will be no payment approved for such an admittance.

The process of certification requires concentrated and prompt coordination between the Long Term Care Regional Office, Parish Office Assistance Payments and Social Services, and the facility in order to safeguard the protection of Medical Assistance recipients, to assist in the most appropriate placement for each recipient when such assistance is needed or requested by the patient and/or the responsible relative, and to close vendor payment timely upon the patient's discharge. The facility retains its usual responsibility to notify the parish office promptly of all changes in patient's status.

The Office of Human Development and the Office of Family Security shall designate at least two individuals to function as a

transfer team, and to be responsible for supervising transfer activities in the event of proposed facility decertification, or when the home voluntarily elects to terminate its participation in the Title XIX program. The following steps and procedures must be taken by, or under the supervision of, this team.

1. When a provider agreement is extended in accordance with 42 CFR 442.16, the transfer team shall immediately begin to identify appropriate receiving facilities for affected recipients. The team shall begin to plan for transfer of those recipients and will coordinate efforts with Long Term Care Regional Office who will evaluate the condition of affected recipients and make determinations of level of care appropriate for those recipients.

2. When payments are continued for up to thirty days under Title XIX pursuant to 42 CFR 441.11 following decertification, the following steps shall be taken:

a. Notification and Offer of Services - Immediately upon receipt of the written notification from the Medical Assistance Program, the parish office Assistance Payments staff assigned responsibility for the facility shall send a letter to each medical assistance recipient and/or responsible person, containing the following information:

1. Decertification of the facility to participate in the Medical Assistance Program because of deficiencies in certain standards which have not been corrected or because of voluntary withdrawal;

2. The last date for which vendor payment for care of the recipient can be made;

3. The offer of services to assist in making the most appropriate arrangements for the patient, providing the name of the state member assigned to contact immediately if such help is needed.

b. Provision of Services and Effecting Transfer - OHD parish office has responsibility to provide social services called for in the transfer/discharge plan or otherwise necessary to ensure orderly transfer in accordance with Title XX State Plan and to obtain services available under Title XIX. Communication between OHD, OFS parish office, and the Long Term Care Regional Office is essential to explore and define needs, appropriate resources and take appropriate action. The transfer planning team shall be responsible for maintaining this communication.

OFS parish office shall maintain a listing of individual patient status as authorization forms are submitted for closures and transfers. At the conclusion of the thirty day period, the transfer planning team shall submit a report of arrangements made for all recipients to State Office, Medical Assistance Program, with a copy to the Assistance Payments Program.

Within five days following the termination of a provider agreement, transfer planning team members shall meet with appropriate administrative and other personnel of the Home in order to discuss the transfer process. These transfer planning team members shall continue to meet periodically with nursing home personnel, as needed throughout the transfer planning process. In addition, the designated Agency representatives, in order to assure an orderly transfer planning process, shall identify any potential problems, monitor the home's compliance with transfer procedures, and resolve any dispute in the best interest of the patients. The transfer team shall encourage the home to take as active a role as possible in transfer planning. Failure of the nursing home to comply with instructions of the transfer planning team members regarding patient transfers may subject the home to denial of reimbursement for the thirty-day extension period.

C. Emergency Situations - A resident may be immediately transferred or discharged when a bona fide emergency exists, such as fire or contagious disease, or a severe threat to the safety and well-being of residents.

Such emergency transfers shall be closely monitored and reviewed by the State Office Medical Assistance Program. Approp-

iate sanctions shall be imposed on facilities that use emergency transfer provisions when no bona fide emergency situation exists.

D. Reservation of Patient Rights - Nothing in this plan shall be construed in derogation of the presently existing rights of patients.

E. Intelligent Waiver of Rights by Patient - A patient may knowingly and intelligently waive any of the provisions of these regulations, provided such waiver shall be in writing. The State Office Medical Assistance Program shall review all such waivers to ensure that they were made freely and intelligently, after the recipient and/or responsible party was fully informed of his or her rights under these transfer procedures. Appropriate sanctions shall be imposed on Facilities that obtain waivers by coercion, or without providing full information about residents rights.

This action will allow the Medical Assistance Program to be in compliance with the recent consent judgment by the U.S. District Court that was signed and became effective March 8, 1980.

George Fischer, Secretary

Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Natural Resources Environmental Control Commission

In accordance with the provisions of Louisiana Revised Statutes 48:953 (B), the Environmental Control Commission hereby gives notice that it has found that an imminent peril to the public health, safety and welfare requires the extension of its Interim Rules of Procedure as an emergency rule.

The Department of Natural Resources has received numerous letters and telephone calls alleging violations in various parts of the State on environmental matters and there is at present no mechanism to handle these complaints or to enforce applicable statutory and regulatory requirements concerning the environment. The Commission's Interim Rules of Procedure are specifically designed to deal with this problem.

The Interim Rules of Procedure adopted by the Environmental Control Commission on January 14, 1980 form the basis for all actions of the Commission in the administration of the Louisiana Environmental Affairs Act and the various environmental regulatory programs under this act. The expeditious enforcement of the Environmental Affairs Act and the existing substantive rules and regulations of the various environmental programs required the immediate adoption of the proposed Interim Rules of Procedure. The Commission has determined that the existing provisions of the Sanitary Code dealing with solid waste, the regulations of the Air Control Commission, the regulations of the Stream Control Commission, the regulations of the Nuclear Energy Division and the State's Hazardous Waste Program are not enforceable without such Rules of Procedure. Additionally, no action would be possible on numerous permit requests pending at the present time. Further delays in processing these permits could adversely affect the public welfare by possibly denying jobs to Louisiana citizens or restricting available sources of radiation for medical treatment. The inability of the State to administer or enforce these environmental programs clearly presents an imminent peril to the health, safety and welfare of the citizens of Louisiana.

Under the provisions of the Environmental Affairs Act, the Commission is authorized to delegate various aspects of its authority under the Act to the Assistant Secretary of the Office of Environmental Affairs. In the area of enforcement, this delegation of authority is crucial in order to allow prompt reaction to a violation which might endanger the public or the environment. The Commission's Interim Rules of Procedure accomplish this and other delegations of authority required for the proper and efficient administration of the Environmental Affairs Act. These Interim Rules of Procedure expire according to their terms on April 30, 1980. The Commission is presently in the process of adopting final

Rules of Procedure in accordance with the normal rulemaking provisions of the Louisiana Administrative Procedure Act. This rulemaking process will not be completed by the termination date of the Commission's Interim Rules of Procedure.

Without prompt action to extend the Interim Rules of Procedure for the Commission, Louisiana's existing environmental rules and regulations are not capable of being administered and enforced in a manner which will insure the protection of the public health, safety and welfare from hazards resulting from violations of the Environmental Affairs Act and existing rules and regulations. It is in recognition of this imminent peril to the public health, safety and welfare that the Environmental Control Commission proposes to extend its Interim Rules of Procedure as an emergency rule under Louisiana Revised Statutes 49:953 (B).

Interim Rules of Procedure Louisiana Environmental Control Commission

General 1.0 - 1.5

1.0 The object of these rules is to provide an interim procedural system governing the operation of the Environmental Control Commission and practice before the Commission in the administration and enforcement of the Louisiana Environmental Affairs Act from its effective date of January 1, 1980 unless repealed, amended, or readopted prior to that time, (LRS 30:1051-1147). These rules are designed to supplement certain provisions of the Louisiana Environmental Affairs Act and the Louisiana Administrative Procedures Act (LRS 49:951-964). Practices and procedures provided for in these two statutes which are not specifically included in these rules shall be applicable to the operations of the Commission and to all practice and appearances before the Commission. If any of the provisions of these rules should conflict with any provision of either the Louisiana Environmental Affairs Act, the Louisiana Administrative Procedures Act or applicable Federal law, the statutory provisions or law shall control.

1.1 All terms used in these rules, unless the context otherwise requires or unless specifically defined in the Louisiana Environmental Affairs Act, or in substantive regulations promulgated by the Environmental Control Commission or its predecessor, shall have their usual meaning.

1.2 Whenever these rules, existing rules and regulations of the predecessors of the Environmental Control Commission, or other rules of the Louisiana Environmental Control Commission or the Environmental Affairs Act permit or require the filing of any notice, petition, document, or other correspondence with the Environmental Control Commission or the Assistant Secretary of the Office of Environmental Affairs, such filing shall be addressed and mailed or delivered to the appropriate party at the following address: P. O. Box 44066, Baton Rouge, Louisiana 70804.

1.3 Notice for any hearing or other notification required by these rules, except subsections 2.11. and 2.12., the Louisiana Environmental Affairs Act, or the Louisiana Administrative Procedures Act shall be effective when postmarked for delivery by registered mail, return receipt requested and properly addressed to the appropriate party.

1.4 In computing any period of time prescribed or allowed in these or other rules of the Environmental Control Commission, existing rules and regulations of the predecessors of the Commission, the Louisiana Environmental Affairs Act, or the Louisiana Administrative Procedures Act, the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, a Sunday, or a legal holiday as provided in LRS 1:55 in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

1.5 These Interim Rules of Procedure shall become effective

upon approval by the Natural Resources Committees, meeting jointly. These Interim Rules of Procedure and all exemptions, implementation plans, rules and regulations formulated, issued or granted under them shall expire and cease to have effect at midnight, April 30, 1980, unless terminated earlier, amended or continued in force and effect under rules and regulations adopted by the Commission.

Environmental Control Commission 2.0 - 2.13.

2.0 The Environmental Control Commission shall be composed of the seven members specified in LRS 30:1062. As provided in LRS 30:1062, each member of the Commission may designate a representative to serve on the Commission in the absence of that member. Any such designation by a member shall be made in writing and a copy of such designation shall be placed in the record of each Commission meeting at which a designated representative serves in place of a member. The Attorney General or his designated representative shall be the legal counsel to the Commission and shall assist and advise the Commission in the discharge of its duties and responsibilities under the Louisiana Environmental Affairs Act.

2.1 Four members of the Commission or their duly designated representatives shall constitute a quorum for any meeting of the Commission for the transaction of business.

2.2 The Environmental Control Commission shall elect its Chairman and Vice Chairman from the membership of the Commission. The Chairman and Vice Chairman shall serve until April 30, 1980, or until their successors are elected. The Chairman, or in his absence, the Vice Chairman shall preside at all meetings of the Commission. In the absence of the Chairman and Vice Chairman, the Chairman's designated representative shall preside.

2.3 The Assistant Secretary of the Office of Environmental Affairs shall serve as the official custodian of all records of the Commission. All records of the Commission, meeting notices, Docket Agendas, and other documents relating to the Commission shall be maintained in a central location within the Offices of the Assistant Secretary. All such records shall be available for public inspection in accordance with the provisions of appropriate State or Federal law.

2.4 Regularly scheduled meetings of the Commission shall be held on the fourth Tuesday of each month, unless otherwise ordered by the Chairman. Unless otherwise stated in the notice of hearing, all hearings and meetings shall be held in Baton Rouge, Louisiana.

2.5 Special meetings of the Environmental Control Commission may be called at any time by the Chairman of the Commission. In addition, any interested person may petition the Commission to call and hold a public hearing in accordance with the provisions of Section 2.8 of these regulations.

2.6 Any interested person may petition the Commission to have a matter placed on the agenda of a scheduled meeting or have the Commission hold a hearing on a particular matter.

2.7 In the performance of those duties the authority for which was delegated by the Commission under Section 5.1 of these Rules of Procedure, the Assistant Secretary shall call and hold all hearings necessary for such purposes in accordance with applicable State or Federal laws and the Rules and Regulations adopted thereunder.

2.8 A petition for a special meeting of the Commission under Section 2.5 and a request for Commission action under Section 2.6 shall be made by filing in writing with the Assistant Secretary a plain and concise statement of the purpose of the request and the action requested of the Commission. The petition shall be accompanied by supporting affidavits or documentation. The Assistant Secretary shall send copies of the petition and attachments to all members of the Commission and its legal counsel within seven days of its receipt.

2.9 After reviewing the petition and any other factors it deems necessary, the Commission members shall decide at their next meeting scheduled after receipt of the request whether to call a public hearing and shall direct the Assistant Secretary to provide written notification of their decision and the reasons therefor, to the petitioner within twenty days of their decision on the petition.

2.10 As each hearing is called, the Assistant Secretary shall designate it by consecutive numbers, and shall keep a record which will show in convenient form the number of the hearing, the place and time of the hearing, the names of attorneys, the names of all parties to the hearing, the nature of the hearing and all subsequent proceedings in the matter with the dates thereof.

2.11 The Assistant Secretary shall maintain a mailing list of all persons who request personal notice of public hearings of the Commission or the Assistant Secretary. Any person requesting to be placed on such list shall be mailed notice of each public hearing as it is called at the address provided to the Assistant Secretary. This notice is in addition to the legal notice requirements of the Administrative Procedures Act for the purpose of encouraging public participation in the hearing process.

2.12 In addition to the Notice List provided for in Section 2.11 of these Rules of Procedure, a bulletin shall be issued periodically by the Commission and mailed to a subscription list including public officials, industries who operate under Commission permits, and any interested individuals and organizations who request that their name be on such list. The bulletin will contain information concerning permit applications, actions by the Commission or the Assistant Secretary on permits, licenses, variances, registrations, compliance schedules or enforcement actions, and other information of public interest concerning the State's environmental programs.

2.13 All rulemaking authority under the Environmental Affairs Act is vested in and shall be exercised by the Environmental Control Commission. In the exercise of this rulemaking authority, the Commission shall follow the procedures set forth in the Louisiana Administrative Procedures Act, LRS 49:951 et seq. unless preempted by applicable Federal law and regulations or LRS 30:1066 and LRS 30:1135. These procedures shall be followed for all rulemaking actions of the Commission including the amendment of existing rules and the adoption and amendment of these Rules of Procedure.

Investigations 3.0. - 3.8.

3.0 Any person may file with the Assistant Secretary of the Commission, a written complaint of a violation of the Environmental Affairs Act, the existing rules and regulations of the predecessors to the Commission, or applicable rules and regulations promulgated by the Commission under said Act. The complaint may be accompanied by supporting evidence, documentation and photographs, if any. The Assistant Secretary shall review all complaints within fifteen days of receipt and make a determination as to whether an investigation is warranted. Where the Assistant Secretary finds that no investigation is warranted, notice of that determination, with written reasons, shall be sent to the person filing the complaint. The complainant may appeal the determination to the Commission which shall take action it deems appropriate.

3.1 The Assistant Secretary may, at any time upon his own initiative or upon receipt of a written complaint under Section 3.0, or upon the direction of the Commission, investigate any suspected violation of the Environmental Affairs Act, the rules and regulations adopted by the Commission under said Act or the existing rules and regulations of the predecessors to the Commission. Upon initiation of an investigation, the Assistant Secretary shall notify the members of the Commission and the Commission's counsel in writing, of the fact and nature of the investigation and provide copies of the files.

3.2 In connection with the investigation of a possible violation

of the rules and regulations, the Assistant Secretary may authorize, at his discretion, that any public hearing held be conducted in accordance with the rules applicable to adjudication proceedings.

3.3 The Assistant Secretary has the power to develop facts by either staff investigatory procedures or through formal investigatory hearings.

3.4 Investigations shall be for the purpose of determining such questions as whether a violation exists, the scope of the violation, and the persons or parties involved.

3.5 To the extent practicable, investigatory hearings shall be held in accordance with the provisions of Section 4. of these Rules of Procedure, provided that all interested persons shall be afforded a reasonable opportunity at any such hearing to submit data, views or arguments orally or in writing. In addition to such investigatory hearings, the Assistant Secretary may utilize such informal investigative procedures as he deems appropriate, including, but not limited to, prehearing conferences, the taking of depositions, submission of written interrogatories, interview of witnesses, and site inspections.

3.6 When the Assistant Secretary determines that there has been a violation of the Act, the existing rules and regulations of the predecessors of the Commission, or of any of the rules and regulations of the Environmental Control Commission under the Environmental Affairs Act, appropriate action shall be taken by the Assistant Secretary or the Commission, which may include the initiation of adjudicatory proceedings for enforcement purposes, or the institution of appropriate judicial proceedings.

3.7 All enforcement actions taken by the Commission or the Assistant Secretary shall be conducted in accordance with the provisions of LRS 30:1073. All hearings held pursuant to LRS 30:1073 E shall be adjudicative. All orders, compliance orders, emergency cease and desist orders, and notices of violation shall be issued in writing and notice given to the violator by registered mail, return receipt requested, with a copy sent to the Commission's counsel and the Commission members.

3.8 If an adjudicatory hearing is held, any person may appear and testify. Only parties, as defined in Section 4.4, may cross-examine witnesses, object to evidentiary offers or testimony or otherwise participate in the adjudicatory procedures described in these rules. Reasonable restrictions may be imposed on public testimony as may be appropriate.

Adjudication, Notice, Hearing, Records 4.0. - 4.13.

4.0 All meetings of the Commission and hearings conducted by it shall be public and shall be conducted by the Commission Chairman or a presiding officer designated by the Chairman to conduct the hearings.

4.1 All hearings held by the Assistant Secretary shall be public and shall be conducted by the Assistant Secretary or Hearing Officer designated by him. The Assistant Secretary shall give written notice to the Commission and interested persons of all hearings which he conducts. This notice shall include the time, place and date of the hearing and the matters to be considered.

4.2 The time and place for all hearings shall be fixed by the Commission or the Assistant Secretary. All hearings shall be held in a convenient place, accessible to the public, in the City of Baton Rouge except when it is deemed that the interests of the Commission, Assistant Secretary or any person or party, or the location of the parties or witnesses, or the ends of justice require otherwise. In such event the hearing may be held in any other convenient place of public accessibility within the State.

4.3 Any hearing may, for valid cause, be continued by the Assistant Secretary or the presiding officer, for a period not to exceed ninety days.

4.4 Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the State of Louisiana, or be associated in the hearings with such duly licensed counsel.

a. In an adjudicatory hearing the person under investigation and the Office of Environmental Affairs shall be parties entitled to cross-examine witnesses, object to evidentiary offers or testimony or otherwise participate in an adjudicatory role.

b. The complainant or any other person who has a substantial interest in the outcome of the adjudication may be permitted to intervene as parties. Intervention shall be freely granted provided the proper petition for intervention is filed at least fifteen days prior to the hearing and such intervention is not likely to create an undue broadening of the issue or otherwise unduly impede the resolution of the matter.

4.5 In an adjudication, all parties who do not waive the rights shall be afforded an opportunity for hearing after such notice as is required by the appropriate State or Federal law or regulation.

4.6 The notice for all hearings will include:

- a. A statement of the time, place and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A short and simple statement of the matters asserted.
- e. The date on which any person who may support or object to the matters asserted must present to the Secretary a written statement. A written statement shall contain a short and simple statement of the basis of the objection or support expressed.

4.7 If the Commission or Assistant Secretary is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application or request, a more definite and detailed statement shall be furnished.

4.8 Opportunity will be afforded to all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

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

4.10 The record in a case of adjudication shall include:

1. All pleadings, motions and intermediate rulings.
2. All evidence received or considered, or a resume thereof if not transcribed.
3. A statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose.
4. Offers of proof, objections and rulings thereon.
5. Proposed findings and conclusions and exceptions thereto.
6. Any decision, opinion or report by the officer presiding at the hearing.
7. The record in any case of adjudication may be left open for the receipt of additional evidence and such evidence shall be made a part of the record of that case.

4.11 The Assistant Secretary shall make full transcript of all proceedings before the Commission and of hearings conducted by him and shall, at the request of any party or person, furnish said party or person with a copy of the transcript or any party thereof upon payment of the cost thereof.

4.12 Findings of fact will be based exclusively on the evidence and on matters officially noticed, all in accordance with the State Administrative Procedures Act and other applicable law.

4.13 A. Should any party fail to file briefs or memoranda, or fail to appear at any prehearing conference, as provided for in Section 6.3. of these rules, without good cause shown, that party shall not be permitted to introduce evidence, cross-examine witnesses or otherwise participate in the adjudicatory hearing as a party.

B. Should any party fail to appear at the hearing on the appeal, disposition of that appeal shall be made as follows:

1. If appellant fails to appear, the Commission may at its discretion dismiss the appeal, continue it to a later date or proceed with the hearing and render its decision based upon the evidence admitted at the hearing.

2. If appellee fails to appear, the Commission may at its discretion continue the hearing to a later date or proceed with the hearing and render its decision based upon the evidence admitted at the hearing.

3. If any other party fails to appear, the Commission shall proceed with the hearing and render its decision based upon the evidence admitted at the hearing.

4. The Commission may, for good cause shown, upon a two-thirds vote of the membership present rehear an appeal to permit an absent party to take part.

C. The Commission, on its own motion, or upon written motions of a party after an adversary hearing, may summarily dispose of an appeal if it finds that:

1. The person bringing the appeal has no legal right to appeal,
2. The appeal is not timely, or
3. The appeal is moot.

Delegations of Authority

5.0-5.4

5.0 In accordance with the authority granted the Commission by the provision of RS 30:1066(4) and 30:1073, and in recognition of the resulting benefit of prompt administration and enforcement of the Environmental Affairs Act, for the term of these interim, emergency rules and authority to perform the actions specified below is hereby delegated to the Assistant Secretary of the Office of Environmental Affairs.

5.1 A. Subject to the provisions of Section 5.2. below and the provisions of the Environmental Affairs Act, the following authority is specifically retained by the Environmental Control Commission:

1. Authority for formulating and implementing environmental policy for the State of Louisiana.
2. Authority to adopt, amend, or repeal all rules and regulations for the protection of the environment for the State of Louisiana.
3. Authority to hear appeals in accordance with the provisions of R.S. 30:1072.
4. Authority to bring and settle all civil actions necessary for the enforcement of the Environmental Affairs Act or the rules and regulations adopted thereunder.
5. Authority to suspend, or revoke any permit, compliance order, license, or variance which had been issued to a person, under rules and regulations in effect on January 1, 1980, who has failed to take timely corrective action in response to a compliance order or an emergency cease and desist order.
6. Authority to conduct any studies or investigations that the Commission considers necessary to fulfill its duties under the Environmental Affairs Act.
7. Authority to issue such orders including cease and desist orders, and determinations as may be necessary to effectuate the purposes of the Environmental Affairs Act, which authority is shared by delegation with the Assistant Secretary.
8. The assessment of civil penalties under RS 30:1073 E (1).

B. Subject to the provisions of Section 5.2 below, the supervision of the Commission, and the provisions of the Environmental Affairs Act, the following authority vested in the Commission is hereby delegated to the Assistant Secretary, for purposes of these emergency rules and regulations. The authority delegated by the Commission to the Assistant Secretary hereunder shall include:

1. The issuance of emergency cease and desist orders under RS 30:1073 C (1).
2. The issuance of notices of violation and compliance orders and the commencement of suit under RS 30:1073 C (2).
3. To conduct studies and investigations pursuant to these rules, necessary to fulfill duties under the Environmental Affairs Act.

5.2 The delegations made in Section 5.1 B. of these Rules shall in no way limit the authority of the Commission to expand or restrict other delegations to the Assistant Secretary on specific permits, licenses, registrations, or variances as contemplated by RS 30:1065, et al.

5.3 The Assistant Secretary may defer to the Environmental Control Commission for the performance of any act or acts the authority for which has been delegated by Section 5.2 whenever it appears to the Assistant Secretary that it is appropriate for the Commission to act on a particular matter.

5.4 In accordance with the provisions of RS 30:1072, any order, refusal or ruling issued by the Assistant Secretary concerning a permit, license, registration, rule, rules non-compliance, or variance shall become final unless the person or persons named therein apply in writing within thirty days after the order is served or the sending of bulletin provided for in Section 2.12, whichever is later, asking the Commission to review the action of the Assistant Secretary. Upon the timely filing of such a petition, the Commission shall schedule a meeting to review the actions of the Assistant Secretary and either support modified or reverse the action taken by the Assistant Secretary on the matter in question. Any other aggrieved or adversely affected person may also appeal any such order, refusal or ruling of the Assistant Secretary to the Commission pursuant to the above procedures, which person shall be a party to the hearing. This procedure is in addition to rights and remedies provided persons or parties in the State Administrative Procedures Act, RS 49:951-968.

The petition of appeal must be filed in quadruplicate and set forth the application number, the date of decision, the decision, and the grounds for appeal. Appellant must specify the grounds for appeal, with appropriate citations to the rules, the Act and/or prior decisions. The petition must be signed by the appellant or his attorney.

The Commission, at its discretion, may authorize that any hearing on appeal be adjudicative.

Rules of Evidence, Official Notice, Oaths and
Affirmations, Subpoenas,
Deposition and Discovery

6.0-6.5

6.0 In adjudication proceedings: The Assistant Secretary or presiding officer will admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs, and will give effect to the rules and privileges recognized by law. The Assistant Secretary or presiding officer will exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

6.1 All evidence, including records and documents in the possession of the Assistant Secretary of which he desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be made available for examination by the parties before being received in evidence.

6.2 Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Assistant Secretary or the presiding officer's specialized knowledge. Parties will be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material to be noticed, including any staff memoranda or data, and they will be afforded an opportunity to contest the admissibility of the material to be noticed. The Commission staff's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

6.3 The Assistant Secretary or the presiding officer conducting a proceeding subject to these rules and regulations shall have the power to administer oaths and affirmations, regulate the course of the hearings, and the time and place of continued hearings, fix the time for filing of briefs and other documents, and to direct the parties to appear and confer to consider simplification of the issues and to mutually exchange any and all information regarding witnesses, evidence to be introduced, and the basis for each party's position on the issue.

6.4 The Assistant Secretary or the presiding officer shall have the power to sign and issue subpoenas in the name of the Commission requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence. No subpoena will be issued until the party who wishes to subpoena the witness first deposits with the Assistant Secretary a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to RS 13:3661 and 3671. Witnesses subpoenaed to testify before the Secretary only to an opinion founded on special study or experience in any branch of science, or to make a scientific or professional examination and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the Assistant Secretary with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned under this section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Assistant Secretary may apply to the Judge of the District Court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. The provisions of this part shall not be applicable as to the deposit of sums sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to RS 13:3661 and 3671 when the party requesting production complies with the provisions of the Louisiana Code of Civil Procedure applicable to the waiver of costs for indigents (Article 5181 through 5188).

6.5 The presiding officer or the Assistant Secretary, or any party to a proceeding before the Commission, may take the depositions of witnesses, within or without the State of Louisiana, in the same manner as provided by law for the taking or depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by these rules or the Administrative Procedures Act. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from evidence by the presiding officer in accordance with the rules of evidence provided in these Rules of Procedure.

Decision and Orders
7.0

7.0 Any final decision or order will be in writing or will be stated in the record. A final decision will include findings of fact and conclusions of law. If findings of fact are set forth in statutory language, they will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A party may submit proposed findings of fact and conclusions of law, and, in that event, the decision shall include a ruling upon each proposed finding and conclusion. Parties will be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order will be delivered or mailed forthwith to each party and to his attorney of record. By written stipulation, the parties may waive, and in the event that there is no contest, the Secretary may eliminate, compliance with this section.

Rehearings
8.0 - 8.2

8.0 A decision or order in a case of adjudication shall be subject to rehearing, reopening or reconsideration within ten days from

the date of its entry. The grounds for such action shall be either that:

1. The decision or order is clearly contrary to the law and the evidence;
2. The party has discovered, since the hearing, evidence important to the issues which he could not with the due diligence have obtained before or during the hearing;
3. There is a showing that issues not previously considered ought to be examined in order to dispose of the matter; or
4. There is other good ground for further consideration of the issues and the evidence in the public interest.

8.1 The petition of a party for rehearing, reconsideration or review should set forth the grounds which justify such action. Nothing in this section will prevent rehearing, reopening or reconsideration of a matter by the Assistant Secretary or the Commission in accordance with other statutory proceedings applicable to it, or at any time, on the grounds of fraud practiced by the prevailing party or procurement of the order by perjured testimony or fictitious evidence. On reconsideration, the hearing will be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is filed timely, the period within which judicial review, under the applicable statute, must be sought shall run from the final disposition of such application.

8.2 In addition to any request for rehearing under Section 8.1 of these rules, any order of the Assistant Secretary is also subject to appeal to the Commission under Section 5.4 of these rules.

Construction and Effect 9.0. - 9.2.

9.0 Nothing in these rules and regulations shall be held to diminish the constitutional rights of any person, or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise provided by law, all requirements or privileges relating to evidence or procedure shall apply equally to the Commission, Assistant Secretary, and all persons.

9.1 If any provision of these rules and regulations shall be found to be in conflict with Federal requirements, such conflicting provision of these rules and regulations is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remaining provisions of these rules and regulations in their application to the functions of the Commission or the Assistant Secretary.

9.2 If any provision of these rules and regulations or the application thereof is held to be invalid, the remaining provisions of these rules and regulations or other application thereof shall not be affected, so long as they can be given effect without the invalid provision, and to this end the provisions of these rules and regulations are declared to be severable.

Frank A. Ashby, Jr., Chairman,
Environmental Control Commission

DECLARATION OF EMERGENCY

Department of Public Safety Office of State Fire Protection

The Department of Public Safety, Office of State Fire Protection, has exercised those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953B, to adopt the following amendments to LAC 17-4:9, Hospital Fire Lanes, and LAC 17-4:10, Shopping Centers--Fire Lanes. This action has been taken to protect the health and welfare of the citizens of the State of Louisiana from the imminent danger caused by the disregard (flagrant and otherwise) of the prohibition of parking in fire lanes. Therefore, in an effort to counteract this threat to the citizens, the following emergency rules are promulgated:

LAC 17-4:9 Hospital Fire Lanes

9.3 The Fire Marshal, his certified local authorities, or local law enforcement officials shall remove any vehicle parked in any fire lane in the State of Louisiana by any means necessary and shall assess the cost of removal against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

9.4 Owners and occupants of the property on which fire lanes are located are hereby charged with the responsibility of notifying the Fire Marshal, his certified local authorities, or local law enforcement officials of the existence of any vehicles parked in those fire lanes; and in the event that they are unable to contact the Fire Marshal, his certified local authorities, or local law officials, the owner and occupant are hereby charged with the responsibility of and are hereby authorized to remove any vehicle parked in those fire lanes by any means necessary and to assess the cost of same against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

LAC 17-4:10 Shopping Centers--Fire Lanes

10.4 The Fire Marshal, his certified local authorities, or local law enforcement officials shall remove any vehicle parked in any fire lane in the State of Louisiana by any means necessary and shall assess the cost of removal against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

10.5 Owners and occupants of the property on which fire lanes are located are hereby charged with the responsibility of notifying the Fire Marshal, his certified local authorities, or local law enforcement officials of the existence of any vehicles parked in those fire lanes; and in the event that they are unable to contact the Fire Marshal, his certified local authorities, or local law officials, the owner and occupant are hereby charged with the responsibility of and are hereby authorized to remove any vehicle parked in those fire lanes by any means necessary and to assess the cost of same against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by owner.

Daniel L. Kelly
State Fire Marshal

DECLARATION OF EMERGENCY

Department of Transportation & Development Office of Aviation & Public Transportation

Title 2 of the Louisiana Revised Statutes of 1950 provides for the regulation of aeronautics in Louisiana by the Louisiana Department of Transportation and Development (formerly the Department of Public Works). Section 2.8 of the Title provides that "all proposed airports and landing fields shall first be approved by the Office of Aviation and Public Transportation (OAPT) before they are so used or operated, and that no airport or landing field, excepting those constructed and operated prior to July 28, 1936, shall be used or operated without the approval of the Department." Section G of the Statute provides that the Department may prescribe such reasonable rules and regulations as it deems necessary and advisable for the public safety and for the promotion of aeronautics governing the designing, laying out, location, building, equipping, operation, and use of all airports, landing fields, or landing strips, and for the safety of those engaged in aeronautics. It is to insure this safety that these emergency provisions are promulgated.

Landing Area Registration Procedures

Pursuant to these statutory provisions, all landing area propo-

nents will provide the Louisiana Department of Transportation and Development, Office of Aviation and Public Transportation with the following information prior to use of the area for landing or take-off of aircraft:

1. Completed Environmental Questionnaire - OAPT FORM 500A. This form addresses general environmental considerations.
2. Completed Landing Area Location Sketch - OAPT FORM 500B. This sketch shows the relationship of the proposed site to other prominent centers of activity within an area of several miles.
3. Completed Landing Area Immediate Vicinity Sketch - OAPT FORM 500C. This sketch shows the relationship of the proposed site to structures within the immediate vicinity.
4. A location drawing of the proposed landing area on the United States Geological Survey topographic quadrangle series map covering your location. These can usually be obtained at blueprint supply companies, or one can be sent to you upon request if none are available from commercial sources.
5. One copy of the Form 7480-1 which you submitted to the Federal Aviation Administration showing your intention to establish a landing area.
6. One copy of the Federal Aviation Administration's notification to you of its favorable or unfavorable airspace findings. Instructions for registration along with copies of all appropriate forms are combined in OAPT Information Publication Number 5000, a copy of which may be obtained at no charge from: Louisiana Department of Transportation & Development, Office of Aviation & Public Transportation, Box 44245, Baton Rouge, Louisiana 70804, Attention: Director of Safety and Information Systems.

Classifications of Louisiana Airports, Seaplane Bases & Heliports

The classification of airports is necessary to assure an orderly method of administration by establishing a coded identity for each airport which relates to the role it plays in the Louisiana Airport System Plan (LASP), what guidelines should be followed in its development, and what special funds may be available for scheduled improvements.

Airports - The airports in the LASP are classified according to a simplified version of the Federal Aviation Administration's National Airports System Plan (NASP) classification system. Essentially this involves identifying the airport according to the type of aircraft which it will principally serve. Although the LASP classification is less complicated than that of the FAA NASP, there is no conflict between the NASP classification of an airport and the LASP classification. The classification of each publicly-owned airport is listed on the individual airport data sheets in Volume Two of the State Plan. Additional classifications were necessary to complete the System Plan: 1) Landing Strip, 2) Seaplane Base, and 3) Heliport. The letter codes used are as follows:

LS-Landing Strip - Air strips to be used as emergency, recreational, agricultural or other private business operations at the pilots own risk. Will accommodate about 75% of the propeller airplanes under 12,500 pounds gross weight. No special activity criterion for this type airport, and the facility cannot be approved as "open to the public."

BU-Basic Utility - THE DISTINCTION BETWEEN STAGES 1 AND II HAS BEEN ELIMINATED. This type of facility will accommodate about 95% of the general aviation propeller fleet under 12,500 pounds. There is no special activity criterion required for this type of airport. However, it is primarily intended to serve as the basic airport development unit open for use by the public.

GU-General Utility - This type of airport accommodates substantially all general aviation propeller aircraft under 12,500 pounds. It is primarily intended to serve the majority of a city's aeronautical needs (other than a metropolitan area) for other than business-jet aircraft.

BT-Basic Transport - These airports accommodate all general

aviation aircraft up to 60,000 pounds maximum gross weight (MGW), including propeller transport and business or executive jets.

GT-General Transport - These airports generally accommodate transport category aircraft between 60,000 pounds and 175,000 pounds MGW. Generally, the GT airport serves scheduled jet air carrier operators.

Seaplane Bases - These facilities can be either natural waterways, or man-made seaways used on a regular basis for take-off and landing of amphibious aircraft.

CU-Seaplane Utility - Based upon level of commercial activity.

CT-Seaplane Transport - Based upon level of commercial activity.

Helicopter Landing Site - A location used for helicopter takeoffs and landings on a one-time, temporary, or infrequent basis, which have not been specifically prepared for helicopter operations. A Helicopter Landing Site is typically an area used for emergency evacuation, or a rural site used in agricultural spraying operations. Helicopter Landing Sites need not be registered with the State.

Heliport - Any area of land, water, or structure used or intended to be used for the landing and takeoff of helicopters, which has been specifically prepared for use by helicopters, any area for use by helicopters which is "open to the public", or any area, other than those used for agricultural operations, which may have three or more takeoffs or landings in a thirty-day period. All heliports must be registered with the State in accordance with the Department of Transportation and Development, Office of Aviation and Public Transportation Information Publication No. OAPT 5000, "Registration Procedures for Landing Areas in Louisiana."

Heliport Service Facilities - Those facilities such as major maintenance facilities, or fueling facilities which may be used in conjunction with a heliport. Such facilities must receive approval from the Office of Aviation and Public Transportation prior to their construction or use. Registration of a heliport is not to be understood as approval for Heliport Service Facilities.

Interim Standards

The following facility standards will be utilized by the Louisiana Department of Transportation and Development when reviewing registration information supplied by proponents. (See drawings pages 165 - 172.)

Review of Landing Area Proposals

Upon receipt of the required information, the Office of Aviation and Public Transportation, following a reasonable period for review will provide the proponents with a statement of its findings and issue a notice of no objection to the establishment and use of the proposed landing area, if such is appropriate. The review may include:

1. Review of site in comparison with FAA and/or state minimum safety standards as appropriate to the type of use intended.
2. The solicitation of comments by the local governing bodies and local residents.
3. The holding of formal public hearings, or informal gatherings of concerned interests.
4. Site inspections, or any other lawful means of gathering needed information.

Administrative Remedy For Rejection of Application

Section 13 of the statute (Title 2) provides that where the Department rejects an application for permission to operate or establish an airport or landing field or in any case where the Department shall issue any order requiring certain things to be done, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given or such order modified or changed. In any case where the Department

**FAA GENERAL AVIATION AIRPORT STANDARDS
LOUISIANA ACCEPTABLE RANGE**

ITEM	Landing Strip (LS)	Basic Utility (BU)	General Utility (GU)	Basic Transport (BT)	General Transport (GT)	ILS
R/W and T/W Slopes:						
Shoulder - R/W	3%-5% for 10 ft. then 1.5%-5% to edge of safety area					
- T/W	3%-5% for first 10 ft. then engineering design for grading and drainage will dictate					
Longitudinal	0%-2%					
Transverse	1%-2%					
Taxiway:						
C _L to Bldg. Line	50 ft. for primary T/W, 37.5 ft. (for T/W between Hangars)			50-75	100	200
C _L to Parallel T/W C _L	50	50	50	150	200	300
C _L to Obstruction	50	50	50	50-75	100	200
C _L to Aircraft Tiedowns	75	75	75	75-100	175	250
Safety Area Beyond Runway End:	200	200	200	200	200	200
Apron Slope	1%-2%	1.5% is optimum considering both drainage and aircraft operations				
Radius of Fillet	50-100					
Landing Area (acres)	27	35	53	64		
Approach Area (acres)***	21	21	25	25		
Building Area (acres)	8	12	24	24		
Total Area (acres)	56	68	102	113		

*** Note: Acreage assumes rectangular land acquisition

1/ Runway minimum length calculated for the weight group of the probable using aircraft for each airport type based on the State average normal maximum temperature (°F) in the hottest month of the year.

() = Louisiana Minimum

**FAA GENERAL AVIATION AIRPORT STANDARDS
LOUISIANA ACCEPTABLE RANGE**

ITEM	Landing Strip (LS)	Basic Utility (BU)	General Utility (GU)	Basic Transport (BT)	General Transport (GT)	ILS
Clear Zones						
Visual	250x450 x 1000 @20:1	250x450 x 1000 @ 20:1	250x450 x 1000 @ 20:1	500x700 x 1000 @ 20:1	500x700 x 1000 @ 20:1	
Trapezoid Size	= 8 acres	= 8 acres	= 8 acres	= 14 acres	= 14 acres	
	Non-prec.	Non-prec.	Non-prec.	Non-prec. + 3/4 mile	Non-prec. + 3/4 mile	Prec.
Instrument	500x800 x 1000 @ 20:1	500x800 x 1000 @ 20:1	500x800 x 1000 @ 20:1	1000x1510 x 1700 @ 34:1	500x1010 x 1700 @ 34:1	1000x1700 x 2500 @ 50:1
	= 15 acres	= 15 acres	= 15 acres	= 49 acres	= 30 acres	= 79 acres
Transitional Surfaces	3:1	3:1	7:1	7:1	7:1	7:1

- Note: 1) Practicalities of land acquisition may dictate rectangular configuration
 2) Length of Approach Zones for Utility Runways and Visual Approaches equal distance to obtain 50 ft. vertical clearance.
 3) 3:1 Transitional Surfaces recommended in accordance with proposed revision to FAR Part 77 as submitted by NASAO to the FAA October 14, 1974

**FAA GENERAL AVIATION AIRPORT STANDARDS
LOUISIANA ACCEPTABLE RANGE**

ITEM	Landing Strip (LS)	Basic Utility (BU)	General Utility (GU)	Basic Transport (BT)	General Transport (GT)	ILS
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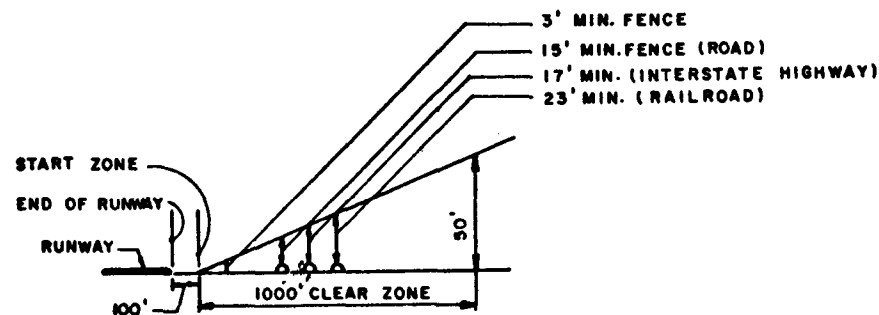
Obstacle Removal

All objects except for frangible-mounted air navigational aids which, because of their function, must be located near the runway should be cleared to ground level within the area 125 ft. laterally either side of the runway centerline and extending 200 feet beyond the runway ends. (100 feet min.)

Part 77 Clearances

- 17 ft. for interstate highway
- 15 ft. for any other public roadway
- 10 ft. or the height of the highest mobile object that would normally traverse the road whichever is greater for a private road
- 23 ft. for a railroad and for a waterway or any other traverse way not previously mentioned, or amount equal to the highest mobile object that would normally traverse it.

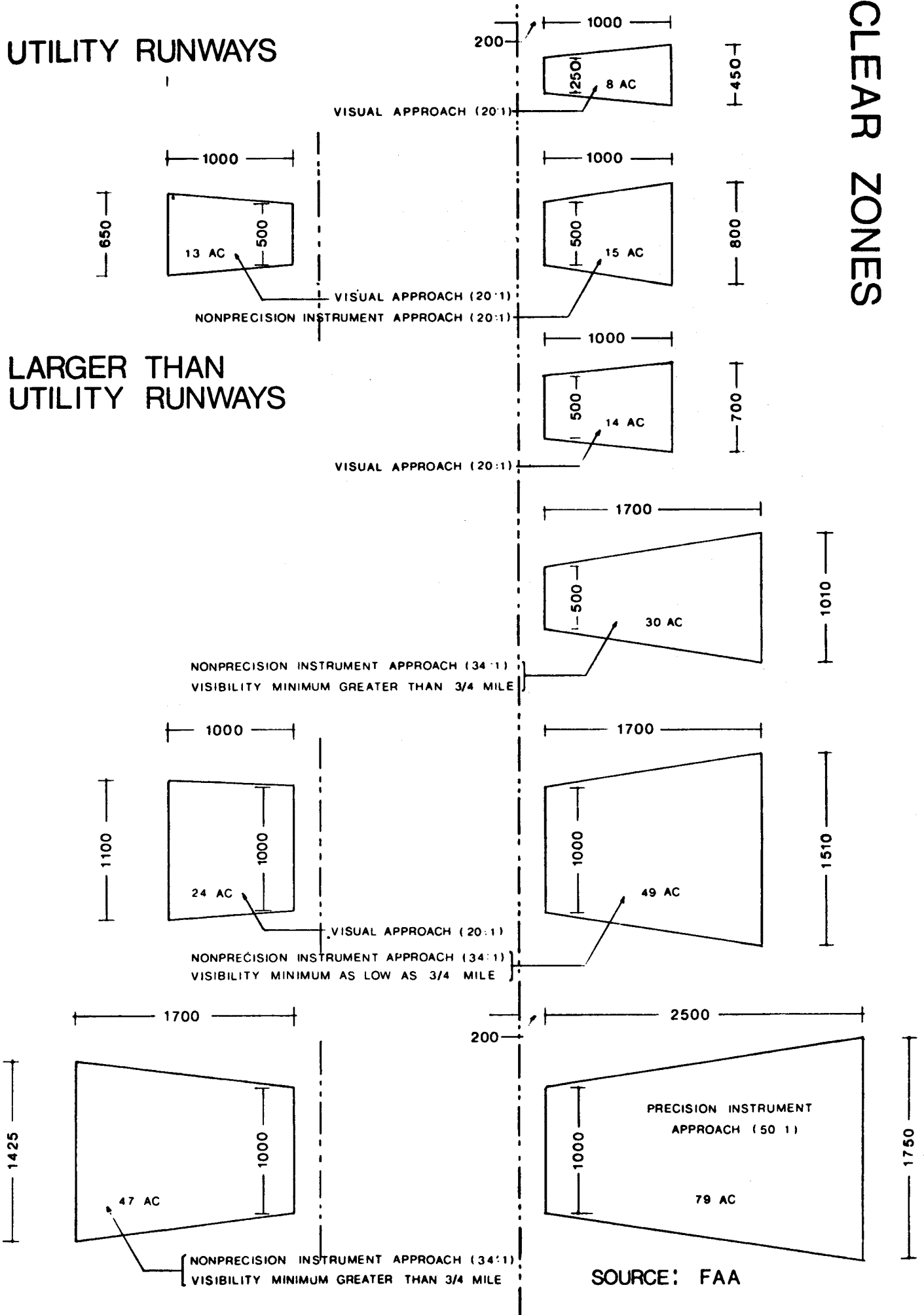
These dimensions measured from nearest existing or planned pavement edge.



UTILITY RUNWAYS

CLEAR ZONES

LARGER THAN UTILITY RUNWAYS



SOURCE: FAA

STATE OF LOUISIANA

RECOMMENDED HELIPORT DESIGN STANDARDS

GEOMETRIC CRITERIA	DESIGN CRITERIA	COMMENTS
Length of Landing Area Class I (Private) Class II (Public) <u>1/</u>	1.5 times overall helicopter length 1.5 times overall helicopter length (FAA current Design Guide recommended 2x - for Class II)	To preclude premature obsolescence, the size of future aircraft must be considered and planned for. Special consideration must be given elevated heliports.
Width of Landing Area Class I Class II	1.5 times overall helicopter length 1.5 times overall helicopter length	Note: At some sites the areas available can be less than the recommended dimensions.
Touchdown Pad <u>2/</u> Class I Class II	1.5 times the tread and 1.5 times the wheel base (or skid/float contact length)	Same as above
Length and Width of Touchdown Area Class I Class II	One rotor diameter One rotor diameter	Same as above
Width of Peripheral Area Class I Class II	.25 times overall helicopter length 10 ft. minimum .25 times overall helicopter length 10 ft. minimum	This area constitutes a safety zone related to the landing area. Any fencing should be on the outside edge of the peripheral area. Also, no aircraft should be parked here.
Taxiway Width Class I Class II	20 feet 20 feet	Hover taxiing may eliminate the need for a taxiway at Class I heliports.

1/ FAA Class III has been eliminated

2/ Not in present FAA Design Guide

NOTE: FAA Heliport Design Guide to be revised to incorporate above notes.

STATE OF LOUISIANA

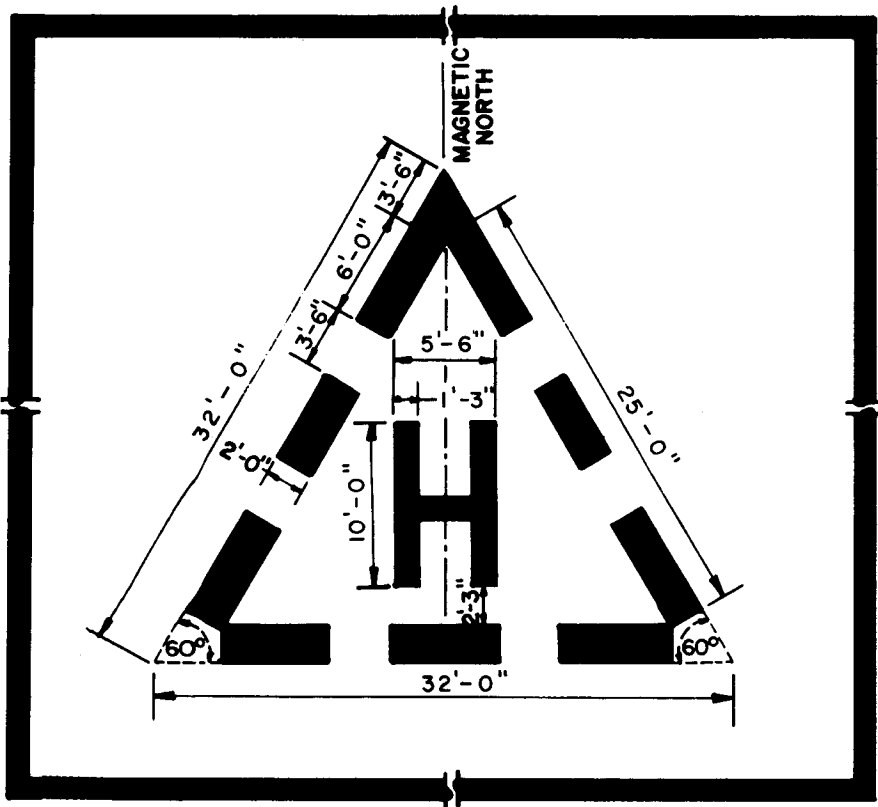
RECOMMENDED HELIPORT DESIGN STANDARDS (Continued)

GEOMETRIC CRITERIA	DESIGN CRITERIA	COMMENTS
Pavement Slopes	2.0 percent maximum	
Shoulder Slope	5.0 percent maximum for 1st 10 ft. 3.0 percent thereafter	These are preferred slopes.
Radius of Pavement Fillet	25 feet, minimum	Fillets may be omitted at Class I heliports
Shoulder Width for Touchdown Area		
Class I	Varies	
Class II	10 feet	
Shoulder Width for Taxiways and Aprons		
Class I	Varies	
Class II	10 feet	

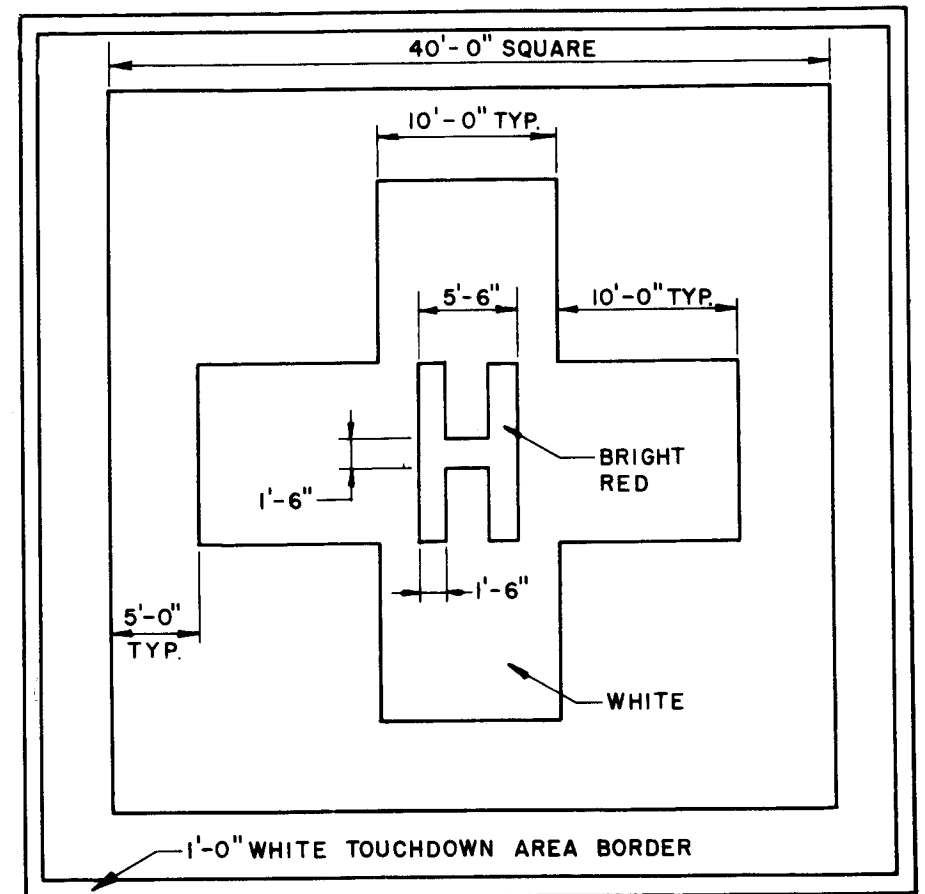
NOTE: Rooftop heliports require special engineering and architectural considerations of structural design strength requirements, static loading and dynamic loading.

HELIPORT MARKING

The triangular marker should be placed in the approximate center of the touchdown area. The letter "H" shall be centered in the triangle as shown. The triangle should be oriented so that solid apex is pointed to magnetic north. All marking should be white. Where necessary or desirable to confine the actual touchdown area of the helicopter landing area to a comparatively small area, as on roof tops, or specific portions of landing areas, the touchdown area should be clearly defined by a solid or segmented border at least one foot wide.



HOSPITAL HELIPORT MARKING



**STATE OF LOUISIANA
RECOMMENDED SEAPLANE FACILITY STANDARDS**

Classification	Lane length in ft. at Sea Level	Lane width in ft. Constructed/Natural	Depth in ft.	Turning Basin in ft.-Diameter	Remarks
Seaplane Utility	3,000	100/200	3	None	Minimum for limited small float plane operation. Approaches should be 20:1 or flatter for a distance of at least 2 miles on natural sites.
Seaplane Utility	3,500	150/200	4	None	Minimum for limited commercial operation. Approaches should be 40:1 or flatter for a distance of at least 2 miles.
Seaplane Transport	5,000	150/250	10	1,000	Minimum for extensive commercial operation. Approaches should be 40:1 or flatter for a distance of at least 2 miles.
Seaplane Transport	8,000	200/350	12	1,000	Unlimited. Approaches should be 40:1 or flatter for a distance of 2 miles.

- Notes:**
- 1) Approach clearances stated in Remarks apply to natural sites - constructed sites have same clear zone criteria as land airports.
 - 2) Above widths are single lane no water taxiways.
 - 3) The recommended lengths indicated above are for glassy water, no wind, sea level conditions at standard temperature of 59 degrees Fahrenheit.
 - 4) Utility classification refers to limited commercial operation. Transport classifications refers to extensive commercial operation.

may deem it necessary it may order the closing of any airport or landing field until it shall have complied with the requirements laid down by the Department. To carry out the provisions of this Chapter the Secretary of the DOTD or any person designated by him and any officers, state, parish, or municipal, charged with the duty of enforcing this Chapter, may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where such airports or landing fields are operated. Any order made by the Department pursuant to this Chapter shall serve upon the interested person by registered mail or in person before such order shall become effective.

Failure to Comply

Failure to properly comply with appropriate directives of the Louisiana Department of Transportation and Development may result in penalties. State Law (2:12) provides that the Department, its members and employees, and every state, parish, and municipal officer charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of this Chapter. The Department is further authorized in the name of the "State of Louisiana" to enforce the provision of this Chapter by injunction in the district courts of this State.

David L. Blackshear, Asst. Sec.
Office of Aviation & Public Transportation

Rules

RULE

Department of Commerce Racing Commission

The Louisiana State Racing Commission does hereby adopt the following rules, Rules LAC 11-6:53.11 and LAC 11-6:54.

Rule - LAC 11-6:53.11

53.11 Full use of modern therapeutic measures for the improvement and protection of the health of a horse is authorized, however, no such medication will be used on the day of the race except as may be provided in LAC 11-6:54.

Rule - LAC 11-6:54 Permitted Medication

54.1 The use of Arquel, and/or Lasix is permitted upon a race horse within a licensed racing enclosure or an auxiliary (off-track) stable area, subject to compliance with the following:

A. Only a veterinarian may prescribe, dispense, and administer Arquel and/or Lasix, except a trainer may administer Arquel if it is an ingestible or is topically applied.

B. Lasix may be administered the day of the race upon approval of the State Veterinarian. Lasix will not be administered to any horse racing in the state of Louisiana, except under the following conditions:

1. The subject horse must be known to bleed by either the Louisiana State Veterinarian or one of the association veterinarians, and will be considered a known bleeder.

B. When the subject horse is observed bleeding, it will not be accepted in the entries for a period of fourteen days, and then, only with the written consent of the Louisiana State Veterinarian. A known bleeder must remain on the lasix list for a minimum of ninety days.

3. The Louisiana State Veterinarian at each track will keep an up to date list of horses placed on the lasix or bleeders list and shall notify the other tracks that are racing in Louisiana.

4. Horses shipping in from other states, that intend to race in Louisiana, in order to qualify under this rule as known bleeders, must have filed in its behalf a statement to this effect from either the state veterinarian or a licensed racing association veterinarian of that respective state. This statement must be filed with the Louisiana State Racing Commission Veterinarian at the appropriate Louisiana track.

C. Daily reports of the administration of Lasix must be given to the State Veterinarian by 12:00 noon. They must be signed by the attending veterinarian and cosigned by the State Veterinarian, and must contain the following:

1. Date of the race.
2. Number of the race in which the horse is to run.
3. Name of the horse and its tattoo identification number.
4. Name of permissive medication or medications administered.
5. Hour and date that all permitted medications was administered to the horse.

D. Prior to or at the time of its entry in a race at each race meeting, a trainer shall report to the State Veterinarian each horse under his care by name, including the tattoo identification number, which shall run on Arquel. Once a horse is reported to be on a Arquel program, it shall be deemed to be continued on the program unless removed in accordance with the provisions of Section 54.1F.

E. Whenever bleeder medication, or Arquel, is to be administered to a horse entered for racing, that information will be posted for public information in the Daily Racing Form, and the Daily Racing Program.

F. Any horse on a Arquel program that races well and "lights the board" must be treated each time he races. A horse that races poorly, or is pronounced cured, or is not responding to Arquel therapy, may be taken off the treatment upon the recommendation of the treating veterinarian, subject to the approval of the State Veterinarian or, where a trainer administered the Arquel upon the recommendation of any veterinarian, subject to the approval of the State Veterinarian. Once a horse is taken off a Arquel program, it shall not be placed back on Arquel for thirty days.

G. To insure that the use of Arquel is consistent and the reporting is accurate, the Commission reserves the right to pre-race blood tests or post-race urine tests, or both, whenever it is deemed necessary.

H. Notwithstanding anything herein contained to the contrary, Arquel shall not be prescribed, dispensed, or administered to a two-year-old horse.

54.2 As used in this rule, "veterinarian" shall mean a person who is licensed to practice veterinary medicine in Louisiana, and who is in good standing and is licensed by the Commission.

54.3 Any person found to have violated the provisions of this rule may be punishable by fine, and/or suspension, and/or revocation of license.

Albert M. Stall, Chairman
Racing Commission

RULE

Board of Elementary and Secondary Education

Rule 3.00.14

The Board adopted as policy Adoption and Revision of State Department of Education Bulletins and Regulations.

Rule 4.02.01

(Replaces present policy) The Board adopted the Amended Annual Program Plan for Special Education for 1981-1983.

Rule 3.01.70u(14)

The Board adopted the Crime and Disruptive Behavior Module for those entering teacher education programs in the 1980 fall semester.

Rule 7.02.00

The Board adopted Bulletin 1508, *Pupil Appraisal Handbook*, and the *Addendum-Talented*.

James V. Soileau
Executive Director

RULE

Board of Trustees for State Colleges and Universities

The Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities, Part VII, Section 7.7 is changed to read as follows:

Section 7.7 Patent Policy

A. General Policy — The Board of Trustees for State Colleges and Universities System of the State of Louisiana, hereinafter referred to as the Board of Trustees System, expects and encourages creative productivity on the part of employees of the Board of Trustees System. The Board of Trustees System recognizes its responsibility to assist and protect the developer, to assist the universities under its jurisdiction in matters pertaining to patents, to

protect the interests of the public, and to protect the interests of financial sponsors of the project other than the Board of Trustees System.

B. Patents — Inventions resulting from work carried on by, or under the direction of, University System personnel, supported, in whole or in part, by funds under control of the System, or involving University System facilities should be used and controlled to produce the greatest benefit to the Board of Trustees System and the public. The Board of Trustees System reserves the right to acquire and retain legal title to any such inventions, and any employee responsible for such invention shall, upon the request of the Board of Trustees System assign all rights, title and interest to the Board of Trustees System. The Board of Trustees System may apply for a patent in its own name or the evaluation of invention and application for patents may be made by contractual arrangement or assignment, as approved by the Board of Trustees System. If the Board of Trustees System declines to pursue a patent application, it may release its rights to the inventor. The Board of trustees System respects and recognizes the right of sponsors of research and development to the title of such invention as may arise from projects sponsored by them in conformance with the policy, explicitly stated contractual agreements covering such sponsorship, and applicable law.

C. Shared Royalties — In the event royalties are generated by any patent assigned to the Board of Trustees System, an appropriate share of such royalties shall be paid to the inventor. The inventor's share shall be determined by the following.

1. In cases where the Board of Trustees System assigns such patent rights to the Research Corporation, the share of royalties to be paid to the inventor shall be governed by the terms of the contract between the Board of Trustees System and the Research Corporation.
2. In cases where the invention is covered by a contractual agreement with a sponsoring agency, the financial arrangements shall be in accordance with that contractual agreement. In cases of sponsorship by federal agencies, compliance with the appropriate federal regulations shall be affected in ultimate agreement.
3. In cases where the Board of Trustees System obtains ownership of a patent directly and expends funds to develop and market the invention, any royalties generated will be first used to cover the expenses of obtaining and exploiting the patent. After this outlay, the inventor's share shall be 33-1/3% of the net royalties with the remaining share going to the Board of Trustees System.
4. Net royalties on patents available to the Board of Trustees System shall be used for research, development and other scholarly activities and allocated one hundred percent (100%) to the university campus where the patent originated.

D. Administration — The Board of Trustees System authorizes each university to establish a university patent committee appointed by the President and assigned tasks relating to patent matters as determined by the university administration.

E. Assignment — As an alternative to licensing, an outright assignment of a patent in return for a specified consideration, lump sum or deferred, may be considered.

Bill Junkin
Executive Director

RULE

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has adopted the following policy regarding Title XIX (Medicaid) Nonemergency Medical Transportation:

Providers, participating in the Title XIX (Medicaid) Nonemergency Medical Transportation Program, who intend to provide service to more than five recipients per month, must furnish verification of the following items when application is made to provide nonemergency medical transportation:

1. Valid driver's license.
2. Current vehicle registration.
3. Safety inspection certification (brake tag).
4. Certification of liability insurance.

These items may be confirmed by mail.

George A. Fischer, Secretary
Department of Health and Human Resources

RULE

**Department of Health and Human Resources
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has adopted a rule expanding the list of drugs for which Maximum Allowable Costs (MAC) are required by Federal Regulations. Effective March 31, 1980, the following drugs have been added to the MAC:

Hydralazine HC1 25 mg	\$0.0279 per tablet
Hydralazine HC1 50 mg0384 per tablet

In no case may a recipient be required to provide payment for any difference in a prescription price that may occur with the implementation of MAC, nor may our office use a cost which exceeds the established maximums except as follows. HEW's regulations provide that when a physician certifies that a specific brand is medically necessary for a particular patient, then the MAC limitations for that medication will not apply. In this case their specific guidelines provide that:

1. The certification must be in the physician's handwriting.
2. The certification may be written directly on the prescription, or on a separate sheet which is attached to the prescription.
3. A standard phrase written on the prescription, such as "brand necessary" will be acceptable.
4. A printed box on the prescription blank that could be checked by the physician to indicate brand necessity is unacceptable.
5. A handwritten statement transferred to a rubber stamp and then stamped on the prescription blank is unacceptable.

George A. Fischer, Secretary
Department of Health and Human Resources

RULE

**Department of Natural Resources
Office of Conservation**

The Office of Conservation has adopted the NGPA Rules-Practice and Procedure for All Applications and Proceedings for Determination of Well Categories under Natural Gas Policy Act 1978. The forms for the filings discussed below are available upon request at the Office of the Commissioner of Conservation.

NGPA Rules

Pursuant to authority delegated under the laws of the State of Louisiana and the United States and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, and the Natural Gas Policy Act of 1978, following a public hearing held under Docket No. NGPA 80-845 in Baton Rouge, Louisiana, on April 15, 1980, these rules and regulations are issued and promulgated by the Commissioner of Conservation as being reasonably necessary to govern, control and administer the authority contained in the Natural Gas Policy Act of 1978 and, in general, to carry out the

provisions of the laws of this State and the United States. These rules are designed to implement and clarify applicable Federal Energy Regulatory Commission regulations as they apply to Louisiana and provide for the minimum possible imposition of regulatory burden.

Rule 1 — Definitions

a. Unless the context specifically requires otherwise, any special word, term, or phrase used herein is used as defined in the Natural Gas Policy Act of 1978, applicable Federal Energy Regulatory Commission rules and regulations pertaining thereto, or applicable meaning given in Title 30 of the Louisiana Revised Statutes of 1950.

b. "Commissioner" shall mean the Commissioner of Conservation, State of Louisiana.

c. "FERC" shall mean the Federal Energy Regulatory Commission.

d. "NGPA" shall mean the Natural Gas Policy Act of 1978.

e. "Sections 102, 103, 107 and 108" shall mean those sections of the Natural Gas Policy Act of 1978 (NGPA).

f. "District Office" shall mean one of the district offices of the Office of Conservation, State of Louisiana.

Rule 2 — Applications

2.1 Any interested person requesting the classification of a well pursuant to the authority granted to the Commissioner by Section 503 of the NGPA in order to determine the applicable category for any such well pursuant to Title 1 of said NGPA shall file a written application made upon forms prescribed by the Office of Conservation, Department of Natural Resources, State of Louisiana. The original and two copies of such application shall be filed with the Commissioner at the District Office for the district in which the subject well is located. Each application must be completed in conformance with the Commissioner's rules and regulations as well as the rules and regulations of the FERC before the application will be considered by the Commissioner. An application may be amended, supplemented or withdrawn by the applicant at any time prior to the Commissioner's determination.

2.2 An individual application shall be completed as to each well for which a status determination is being requested, and if more than one status determination is being requested as to a single well then all forms and information required for each requested determination shall be submitted jointly under one application with notice to the Commissioner that multiple determinations for subject well are being sought under the application.

2.3 If the person filing the application is an individual, the filing shall be signed by such individual, or in the case of a minor or other legally disabled person, his duly qualified legal representative. If the person making such filing is a corporation, partnership, or trust, the filing shall be signed by a responsible official of the corporation, a general partner of the partnership, or the trustee of the trust. In the case of any other legal entity, the operator of the well may sign the application.

2.4 Applicant shall certify that he has delivered or mailed a copy of the completed FERC Form No. 121 to the purchaser(s), if any, pursuant to Section 274.201(d) of the FERC regulations.

2.5 Applicant shall certify that all owner(s), if any, have been given notice that an application for well status determination has been filed. Since all natural gas produced from a well is of the same classification, the Commissioner of Conservation will not process an application for well status determination for any well from more than one interested person.

2.6 Applicant shall include a filing fee of \$100.00 per application to cover administrative costs.

2.7 Upon receipt of an application for well status determination, the Commissioner shall notify the applicant of the receipt of the application and, should the application be incomplete in any respect, indicate the items to be filed which would make the application complete. Upon receipt of a complete application, the Commissioner shall assign a docket number to the application and notify the applicant of the hearing date and docket number.

Rule 3 — Documents Supporting Application

3.1 Each application must contain, prior to hearing, all data, information, forms, affidavits, plats, exhibits and such other evidence as may be required by the rules and regulations of the FERC and the Louisiana Office of Conservation. However, in the event the application is for the recognition of the new onshore reservoir category wherein the limits of the reservoir have not been subject to a prior office of Conservation unitization hearing, then the applicant may submit the geological and engineering evidence in support of the application at the public hearing which will be scheduled pursuant to Rules 4.1 and 4.2 hereof.

3.2 The form prescribed by the Commissioner shall prescribe for documents sufficient to comply with the minimum requirements imposed by the FERC. Additional support may be required by the Commissioner by giving notice of such to the applicant prior to the hearing, at the hearing itself, or by other means.

Rule 4 — Notice; Hearing

4.1 Upon receipt by the Commissioner of a complete application and after assigning a docket number to the application, the Commissioner shall set a reasonable time and place for a hearing on the application and shall cause a notice of the application to be published in the official journal of the State of Louisiana. Such notice shall be published at least ten days before the hearing and shall include:

- a. A statement of the time, place and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A short and plain statement of the matters asserted.

4.2 An application involving recognition of the new onshore reservoir category wherein the limits of the reservoir have not been subject to a prior Office of Conservation unitization hearing will be considered only by public hearing, at which time the applicant will be required to present the geological and engineering evidence in support of his application. Further, an application involving recognition of the new onshore reservoir category shall not be considered prior to a hearing for unitization of the subject reservoir scheduled pursuant to the Rules of Procedure for Conducting Hearings before the Commissioner of Conservation of the State of Louisiana, effective September 1, 1971. However, if at such hearing the applicant should present evidence which indicates that unitization is not required because:

- a. The limits of the reservoir underlie a single lease from both a working interest and a royalty interest standpoint,
- b. The limits of the reservoir underlie a voluntary unit,
- c. All working interest owners and royalty owners affected by the production from the reservoir agree that they do not desire unitization, or
- d. Such other appropriate reasons,

then the Commissioner of Conservation may waive said unitization requirement if the applicant so requests.

4.3 Except with regard to an application involving recognition of the new onshore reservoir category wherein the limits of the reservoir have not been subject to an Office of Conservation unitization hearing, an application may be considered and determined by the Commissioner by informal disposition on the basis of all data, information, forms, affidavits, plats, exhibits, and such other evidence properly filed before the Commissioner, which matters shall comprise the transcript of the hearing on which the determination is based. Each applicant requesting an informal disposition, as such, shall file with the Commissioner an affidavit agreeing that the determination can be made by the Commissioner without the necessity of an appearance. However, in any event the Commissioner may, upon his own motion, require an evidentiary hearing with sworn testimony and in such cases shall notify the applicant prior to the hearing date of his decision to do so.

4.4 An applicant who is required to present evidence and testimony at a public hearing held for well status determination pursuant to the NGPA will be required to purchase one copy of the transcript of the hearing for each well involved from the applicable court reporting service. Such copy will be mailed directly to the Commissioner from the applicable court reporting service and will be made a part of the application to be forwarded to the FERC.

4.5 Any interested person shall have the right to protest to the Commissioner with respect to a determination sought by any applicant. Each protest shall include:

- a. An identification of the determination protested.
- b. The name and address of the person filing the protest.
- c. A statement of the effect the determination will have on the protestor.
- d. A statement of the precise grounds for the protest and all supporting documents or references to any information relied on in connection with the protest.

After filing the protest as provided for herein, the person filing such protest shall have the right to be heard at the hearing and to present witnesses and other evidence, whether or not represented by legal counsel or technical assistants, on all issues of fact involved and argument of all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

If such a protest is received by the Commissioner prior to the date set for the hearing, then a copy of same shall be delivered by the Commissioner to the applicant by mail, postage prepaid.

4.6 If an interested person files a protest at the hearing on the application, then the Commissioner shall continue the hearing on the application until a date determined by him and shall notify the protestant and the applicant of the new hearing date. Further, the Commissioner shall send the applicant a copy of the protest which has been filed. Failure to appear at such continued hearing will be deemed a withdrawal by the protestant.

4.7 The Commissioner shall mail a notice of his determination to the applicant and to all persons appearing at the hearing.

Rule 5 — Rehearings

5.1 Upon determination by the Commissioner, any interested person may file a motion for rehearing within ten days after the date of determination. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. The grounds for such action shall be either that:

- a. The decision is clearly contrary to the law and the evidence;
- b. The person has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;
- c. There is a showing that issues not previously considered ought to be examined in order to dispose properly of the matter;
- d. There is other good ground for further consideration of the issues and the evidence in the public interest.

Upon such application the Commissioner shall have power to grant or deny rehearing. Unless the Commissioner acts upon the application for rehearing within thirty days after it is filed, such application is deemed to have been denied.

Rule 6 — Notice of Determination

6.1 Within five days after the last day for filing a motion for rehearing, or if such a motion is filed, within fifteen days after it is denied or overruled by operation of law, the Commissioner shall give written notice to the FERC of his determination in accordance with the FERC rules and regulations.

Rule 7 — Confidentiality

7.1 No data, information, forms, affidavits, plats, exhibits, and such other evidence filed as part of an application for well status determination pursuant to the Natural Gas Policy Act of 1978 will be accorded confidential treatment by the Office of Conservation.

These rules of practice and procedure shall be effective on and after May 20, 1980.

R. T. Sutton
Commissioner of Conservation

RULE

Department of Natural Resources Office of Conservation

The following are amendments to rules adopted by the Department of Natural Resources, Office of Conservation pursuant to a hearing held in Shreveport on November 14, 1979, which were published in Volume 5, Number 12 of the Louisiana Register on December 20, 1979. The following sections of those rules are amended to read as follows:

§100.4 Responsibility.

(a) The Commissioner is responsible for exercising the authority delegated to him under the Act, including the following:

(1) Designation of lands as unsuitable for all or certain types of surface coal mining operations under 922 of the Act.

§100.5 Definitions.

(9) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles and coal refuse piles eliminated; permanent water impoundments may be permitted where the Commissioner determines that they are in compliance with Sections 216.49, 216.56 and 216.133 of these regulations.

(15) "Coal mining operations" means the business of developing, producing, preparing and loading bituminous coal, sub-bituminous coal, or lignite, or of reclaiming the areas upon which such activities occur. This term applies solely to Part 105 of these regulations.

(22) (a) "Development operations" means all or any part of the process of removing, by power earth moving equipment, coal or overburden for the purpose of determining coal quality or quantity or coal mining feasibility; provided, that if more than twenty-five thousand tons of coal or ten acres of overburden will be removed then such operations will be considered surface coal mining operations.

(37) "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

(46) "Historic lands" means historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups, or sites for which historic designation is pending.

(58) "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Office.

(a) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery

crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) Grazingland. Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or hay occasional production. Land used for facilities in support of ranching operations which are adjacent to or in integral part of these operations is also included.

(d) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) Residential. Includes single- and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) Industrial/Commercial. Land used for —

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(g) Recreation. Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) Developed water resources. Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(59) Deleted.

(75) "Permittee" means a person holding a permit or persons required to have a permit.

(78) "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

(93) "Road" means a surface right-of-way for the purposes of travel by land vehicles used in coal exploration, development operations, or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, struc-

tures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, development operations, or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a Class I, Class II, or Class III road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(a) Class I Road means a road that is utilized for transportation of coal.

(b) Class II Road means any road, other than a Class I Road, planned to be used over a 6-month period or longer.

(c) Class III Road means any road, other than a Class I Road, planned to be used over a period of less than 6-months.

(108) "Substantial legal and financial commitments" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place of the right to mine it without any existing mine, as described in the above example, alone, are not sufficient to constitute substantial legal and financial commitments.

(111) Deleted.

(116) "Temporary diversion" means a diversion of a stream or overland flow or surface mining and reclamation operations and not approved by the Office of Conservation to remain after reclamation as part of the approved post-mining land use.

(127) "Existing structures" means a structure or a facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program or implementation of a federal program or federal lands program, whichever occurs first.

(128) "Substantially disturb" means, for purposes of coal exploration or development operations, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(129) "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holdings in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, immovable property and other financial relationships.

(130) "Complete applications" means an application for exploration or development operations approval or permit, which contains all information required under the Act or these regulations.

(131) "Collateral bond" means an indemnity agreement in a sum certain payable to the Office of Conservation executed by the permittee and which is supported by the deposit with the Office of Conservation of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized or authorized to transact business in the U.S.

(132) "Common size comparative balance sheet" means item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side by side in a single statement followed by common size percentages whereby: (1) the asset total is assigned a value of 100%; (2) the total of liabilities and owner equity is also assigned a value of 100%; and (3) each

individual asset, liability and owner equity item is shown as a fraction of one of the 100% totals.

(133) "Common size comparative income statement" means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by a common size percentages whereby net sales are assigned a 100% value, and then each statement item is shown as a percentage of net sales.

(134) "Retained earnings" means stockholder's equity that has arisen from retained assets from earnings in the business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

(135) "Working capital" means the excess of the operator's current assets over its current liabilities.

(136) "Assets" means cash and current assets that are reasonably expected to be realized in cash or sold or consumed within one year.

(137) "Acid test ratio" means the relation of quick assets to current liabilities.

(138) "Quick assets" means cash and current assets that can be quickly turned into cash.

(139) "Cash" means (a) all cash items except cash (1) restricted by an agreement, or (2) described as earmarked for a particular purpose; and (b) short term investments such as stocks, bonds, notes, and certificates of deposit where the intent and ability to sell them in the near future is established by the operator.

(140) "Liquidity ratio" means the relation of cash to current liabilities.

(141) "Asset ratio" means the relation of total assets to total liabilities.

(142) "Return on investment" means the relation of net profit for the last yearly period to ending net worth.

(143) "Net worth" means preferred and common stock, all surplus accounts, and retained earnings.

(144) "Net profit" means the bottom line of the income statement after taxes, including taxes based on income, adjustments, all extraordinary income and expense, but before preferred and common stock dividends.

(145) "Capital assets" means those assets such as lands, buildings, and equipment held for use in the production and sale of other assets and services.

(146) Valid existing rights. For haul roads, valid existing rights means:

(a) A recorded right-of-way, recorded easement, servitude, or a permit for a coal haul road recorded as of August 3, 1977, or

(b) Any other road in existence as of August 3, 1977.

(147) "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. For the purposes of Part 107, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this Chapter.

(148) "Chapter" means this Statewide Order 29-0-1 unless otherwise specifically referenced to another source in the particular context of a regulation.

(149) "Data gathering activities" means the field gathering of:
(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques; or
(b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of these regulations; provided, however, that data gathering activities shall not include those activities defined as exploration operations or development operations as those terms are defined under the Act or these regulations.

(150) "Current liabilities" means debts or other obligations that must be paid or liquidated within a short period of time, usually a year. This shall also include dividends payable on preferred stock within one year.

(151) "Current ratio" means the relation of current assets to current liabilities.

(152) "Monitoring", as used in Part 195, means the collection of environmental data by either continuous or periodic sampling methods.

(153) "Probable cumulative impacts", as used in Part 195, means the expected total qualitative, and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

(154) "Probable hydrologic consequence", as used in Part 195, means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on the permit area and other affected areas.

§100.11 Applicability.

This order applies to all coal exploration, development operations, and surface coal mining and reclamation operations, except—

§100.11

(b) The extraction of coal for commercial purposes where the surface coal mining and reclamation operation affects two acres or less, but not any such operation by a person who affects or intends to affect more than two acres at physically related sites.

(c) (1) Each structure used in connection with or to facilitate a coal exploration, development, or surface coal mining and reclamation operation shall comply with the performance standards and design requirements of these regulations.

§100.12 Petitions to Initiate Rulemaking.

(a) Any person may petition the Commissioner to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the central office of the Office of Conservation in Baton Rouge.

(b) The petition shall be a concise statement of facts, technical justification, and the law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Commissioner shall determine if the petition sets forth facts, technical justification or law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the Commissioner determines that he has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. The Commissioner may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Commissioner shall issue a written decision either granting or denying the petition. The decision shall constitute the final decision for the Office.

(1) If the petition is granted, the Commissioner shall initiate a rulemaking proceeding in accordance with Louisiana law.

(2) If the petition is denied, the Commissioner shall notify the petitioner in writing, setting forth the reasons for denial.

§101.11

(c) (1) Each structure used in connection with or to facilitate a coal exploration, development, or surface coal mining and reclamation operations shall comply with the performance standards

and the design requirements of these regulations.

(i) An existing structure which meets the performance standards of these regulations but does not meet the design requirements of these regulations may be exempted from meeting those design requirements by the Office. The Office may grant this exemption on non-Indian and non-Federal lands only as part of the permit application process after obtaining the information required by §180.12 and after making the findings required in §186.21.

(ii) An existing structure which meets the performance standards of Subchapter B of 30 CFR Chapter VII which are at least as stringent as the comparable standard of Subchapter K of these regulations, may be exempted by the Office from meeting the design requirements of these regulations. The Office may grant this exemption on non-Indian and non-Federal lands only as part of the permit application process after obtaining the information required by §180.12 and after making the findings required in §186.21.

(iii) An existing structure which meets a performance standard of Subchapter B of 30 CFR Chapter VII which is less stringent than the comparable performance standards of Subchapter K of these regulations, or which does not meet a performance standard of Subchapter K for which there was no equivalent performance standard in Subchapter B shall be modified or reconstructed to meet the design standard of these regulations pursuant to a compliance plan approved by the office on non-Indian and non-Federal lands only as part of the permit application as required in §180.12 and according to the findings required by §186.21.

(iv) An existing structure which does not meet the performance standards of Subchapter B of 30 CFR Chapter VII and which the applicant proposes to use in connection with or to facilitate exploration, development, or surface coal mining and reclamation operations shall be modified or reconstructed to meet the design standards of these regulations prior to issuance of the permit.

§105.4

(a) (2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in any surface coal mining operation or underground mining operation;

§105.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on forms as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operations or underground mining operations except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

§105.19

(b) Actions to be taken by the Governor:

§161.4

(b) Determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by Section 522(e) of the Federal Act (30 U.S.C. §1272 (e), §922 of the Act, and this Part.

§161.11

(c) On any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State or local agency with jurisdiction over the park or places;

§161.12

(f) (1) Where the proposed surface coal mining operation may adversely affect any public park or any places included on the National Register of Historic Places, the Office shall transmit to the Federal, State or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

§161.12

(g) If the Office determines that the proposed surface coal mining operation is not prohibited under Section 922 D of the LSMRA and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Parts 162 or 164.

§161.12

(h) A determination of the Office that a person holds or does not hold a valid existing right for haul roads, which determination affects the rights of any party under this Part, shall be subject to administrative and judicial review under Sections 187.11(b) and 187.12(b)(1).

§164.11 Procedures: General process requirements.

The Office shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and requirements listed in Section 164.13-164.25.

§164.13

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Office to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

§164.23

(a) Make the information and data base system developed under Section 164.21 available to the public for inspection free of charge and for copying at reasonable cost, subject to confidentiality requirements of Section 176.16(b).

§164.25

(b) The Office shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

§171.13 Continued operation under interim permits.

(a) In the event of final disapproval of the Louisiana program under 30 CFR 732, including judicial review of the disapproval, and prior to the promulgation of a complete Federal program for Louisiana under 30 CFR 736.11(a), existing surface coal mining and reclamation operations may continue pursuant to the provisions of Section 502 of the Federal Act and Subchapter B of 30 CFR Chapter VII. During this period, no new permits for surface coal mining and reclamation operations shall be issued by Louisiana. Permits which lapse during this period may continue in full force and effect within the specified permit area, until promulgation of a Federal program for Louisiana.

(b) A person conducting surface coal mining operations under a permit issued or amended by the Office in accordance with the requirements of Section 502 of the Act, may conduct these operations beyond the period prescribed in Section 171.11, if —

(1) Timely and complete application for a permit under the permanent regulatory program has been made to the Office in accordance with the provisions of the Act, this Subchapter, and the regulatory program;

(2) The Office has not yet rendered an initial decision with respect to such application; and

(3) The operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Act, Subchapter B of 30 CFR Chapter VII, and applicable State statutes and regulations.

§171.21

(b) Renewal of valid permits. An application for renewal of a permit shall be filed with the Office at least one hundred and eighty days before the expiration of the permit involved.

§171.23

(d) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils geology, vegetation, fish and wildlife quantity and quality, air quality, and archeological, cultural, and historic features.

§176.3 General requirements: Coal Development Operations

Any operator proposing to undertake development operations which involve the removal of substantial quantities of overburden with explosives or power earthmoving equipment to determine quality, boiler design criteria, the feasibility of removing lignite or coal, and other testing purposes, shall submit an application for a development operations permit to the Commissioner prior to commencing any such operations. A permit fee of seventy-five (\$75.00) dollars shall accompany each application.

§176.5 General requirements: Data gathering activities of 250 tons or less

(a) Any person who intends to conduct data gathering activities during which less than 250 tons of coal will be removed in the area in which gathering activities will take place shall, prior to conducting the data gathering activities, file with the Office a written notice of intention to undertake data gathering activities.

(b) The notice shall include —

(1) The name, address, and telephone number of the person seeking to undertake data gathering activities;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the data gathering activities;

(3) A precise description and map, at a scale of 1:24000 or larger, of the data gathering area;

(4) A statement of the period of intended data gathering activities;

(5) If the surface is owned by a person other than the person who intends to undertake data gathering activities, a description of the basis upon which the person who will undertake data gathering activities claims the right to enter such area for the purpose of conducting the data gathering activities and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the data gathering activities.

(c) Any person who conducts data gathering activities pursuant to this Section which will substantially disturb the natural land surface shall comply with Section 215.

(d) The office shall place notices on public file and make them available for public inspection and copying.

§176.6 General requirements: Data gathering activities of more than 250 tons.

Any person who intends to undertake data gathering activities in which more than 250 tons of coal will be removed shall be required to obtain a development operations permit in accordance with Section 176.12 and all data gathering activities shall be undertaken in accordance with the provisions of the regulations applicable thereto.

§176.11

(b) Any person who conducts coal development activities pursuant to this Section which substantially disturb the natural land surface shall comply with §915 of the Act and these regulations.

§176.13

(a) The Commissioner shall initiate action upon a completed application for approval within 15 days after the close of the comment period as prescribed by Section 176.12(b).

(b) (1) Will be conducted in accordance with the Act, these regulations, and the program approved by the Secretary of the Interior.

(c) Terms of approval. Each approval issued by the Commissioner shall contain conditions necessary to ensure that the development and reclamation will be in compliance with the Act, these regulations and the program approved by the Secretary of the Interior.

§178.15

(b) Where the private mineral estate has been severed from the private surface estate, where such severance is authorized under Louisiana law, the application shall also provide for lands within the permit area —

(1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or

(2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that, under the applicable State law, the applicant has the legal authority to extract the coal by these methods.

§178.15

(b) becomes §178.15(c)

§180.25

(f) If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under Paragraphs (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

§180.31 Protection of public parks and historic places.

For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Office and other agencies as required in §161.12(f).

§180.33 Relocation or use of public roads.

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 §161.12(d), the applicant seeks to have the Office approve —

§185.13

(e) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the Office and the Director of OSM. The permit application shall contain appropriate descriptions, maps and plans which show:

§185.13

(e) (5) (i) Insure the collection and analysis of sufficient and reliable data to enable the Office and the Director of OSM to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

§185.13

(h) No permit authorizing an experimental practice shall be issued, unless the Office and the Director of OSM first find, in writing, upon the basis of a complete application filed in accordance with the requirements of this Section that;

§185.13

(h) (3) The experimental practice has been specifically approved, in writing, by the Office and the Director of OSM, based on findings that all of the requirements of paragraphs (e)(1) through (e)(5) of this Section will be met; and

§185.13

(h) (4) (i) Limit the experimental practice authorized to that granted by the Office and the Director of OSM.

§185.13

(h) (4) (iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the Office and the Director of OSM may require.

§185.13

(i) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every 3 years by the Office and the Director of OSM, or at least once prior to the middle of the permit term. After review, the Office and the Director of OSM shall require by order, supported by written findings, any reasonable revision or modification of a permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Any person who is or may be adversely affected by the order shall be provided with an opportunity for a hearing as established in the Act, these regulations, or the program approved by the Secretary of the Interior.

§185.22 In situ processing activities.

(a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this Section shall be made according to all requirements of this Subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Part 228, including —

(1) Delineation of proposed holes and wells and production zone approval of the Office;

(2) Specification of drill holes and casings proposed to be used;

(3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and ground water and air quality, as required by the Office.

(c) No permit shall be issued for operations covered by this Section, unless the Office first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this Section, that the operation will be conducted in compliance with all requirements of this Subchapter relating to Part 228.

§186.17

(c) If the Office determines from either the schedule submitted as part of the application under §178.14(c), or from other available information, that any surface or underground mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection, or of any

provision of the Act, the Office shall require the application before the issuance of the permit, to either —

§186.19

(d) The proposed permit area is:

(1) Not included within an area designated unsuitable for surface coal mining operations under §164; or

(2) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under §164, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or

§186.19

(d) (3) Not on any lands subject to the prohibitions or limitations of §161.11(a), (b), (f) or (g); or

(d) (4) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in §161.12(d); or

(d) (5) Not within 300 feet from any occupied dwelling, except as provided for in §161.12(e).

§186.19

(e) The proposed operations will not adversely affect any publicly-owned parks or places included on the National Register of Historic Places, except as provided for in §161.11(c).

§186.19 (f) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, where such severance is authorized under Louisiana law, the applicant has submitted to the regulatory authority the documentation required under §178.15(b).

§186.19(f) becomes §186.19(g)

§186.19(g) becomes §186.19(h) and the words “otherwise applicable” are deleted therefrom.

§186.19(h) becomes §186.19(i)

§186.19(i) becomes §186.19(j)

§186.19(j) becomes §86.19(k)

§186.19(k) becomes §186.19(l)

§186.19(l) becomes §186.19(m)

§186.19(m) becomes §186.19(n)

§186.19(n) becomes §186.19(o)

§186.21 Criteria for permit approval or denial: Existing structures.

(a) No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the Office finds, in writing, on the basis of information set forth in the complete application that —

(1) If the applicant proposed to use an existing structure in accordance with the exemption provided in Section 101.11(c)(1)(i) —

(i) The structure meets the performance standards of the Act and Subchapter K of this Chapter; and

(ii) No significant harm to the environment or public health or safety will result from use of the structure.

(2) (i) If the applicant proposes to use an existing structure in accordance with the exemption provided in 101.11(c)(1)(ii),

(A) The structure meets the performance standards of the Act and Subchapter B of 30 CFR Chapter VII;

(B) No significant harm to the environment or public health or safety will result from use of the structure; and

(C) The performance standards of Subchapter B of 30 CFR

Chapter VII are at least as stringent as the performance standards of Subchapter K of this Chapter.

(ii) If the Office finds that the structure meets the criteria of Paragraphs (b)(1)(i) and (ii) of this Section, but does not meet the criteria of Paragraph (b)(1)(iii) of this Section, the Office shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that —

(A) The modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of Subchapter K of this Chapter as soon as possible, but not later than six months after issuance of the permit;

(B) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(C) The applicant will monitor the structure to determine compliance with the performance standards of Subchapter K of this Chapter.

(b) Should the Office find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory program permit. Abandonment of the structure shall proceed on a schedule approved by the Office, in compliance with Section 216.132.

§186.23

(b) (1) Except as provided for in paragraph (b)(3) of this Section, a complete application submitted to the Office shall be processed by the Office, so that an application is approved or denied within the following times:

§186.25

(c) Permits may be suspended, revoked, or modified by the Office, in accordance with §§185.13, 185.15, 185.16, 188.11 and Parts 242, 243, and 245.

§187.11

(a) Within 30 days after the applicant or permittee is notified of the final decision of the Office concerning the application for the permit, revision or renewal thereof, permit, application for transfer, sale, or assignment of rights, or concerning an exploration or development operations under §176.14, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this Section.

§187.11

(a) (4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant, and each person who participated in the hearing, with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

§188.12

(a) (1) For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. Significant departures would include any change in permit area, mining method or reclamation procedure, which would, in the opinion of the Commissioner significantly change the effect the mining operation would have on either those persons impacted by the permitted operation or on the environment.

§188.12

(b) (1) The permittee shall submit the application to the Office within the time provided for by §171.21(3);

§188.12

(b) (2) The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be as provided in the particular regulatory program. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under §§ 178, 179, 180, or 185 or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of §§ 186 and 187.

§188.12

(c) The Office shall approve or disapprove the complete application for revision, in accordance with the requirements of §186, within 15 days after the close of the comment period prescribed therein.

§188.13

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on the lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the mine plan area described in the application for the existing permit, shall be obtained in accordance with Section 188.14(b)(2).

§188.14 Permit renewals: Completed applications.

(a) Contents. Complete applications for renewals of a permit shall be made within the time prescribed by §171.21(b). Renewal applications shall be in a form and with contents required by the Office and in accordance with paragraph (b)(2) of this Section, including, at a minimum, the following:

§188.16

(a) The Office shall, upon the basis of a complete application for renewal, and completion of all procedures required under Sections 188.14 - 188.15, issue a renewal of a permit within 120 days of the filing of the application for renewal, unless it is established and written findings are made by the Office that

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal. If the Office, prior to the issuance of a renewal in accordance with Section 188.16(a), determines that a condition exists which will prevent issuance of a permit renewal, the Office shall immediately provide the applicant with notice of such condition and provide the applicant an opportunity prior to the expiration of the original permit to initiate action to correct the condition. A violation of the Act, these regulations, or a permit condition shall not be cause for denial of a permit renewal if the Office determines, prior to the expiration of the existing permit, that the violation

(i) Has been corrected; or

(ii) Is in the process of being corrected; or

(iii) The applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation.

Part 195 - Small Operator Assistance

§195.1 - Reserved.

§195.2 - Reserved.

§195.3 - Authority

The Commissioner shall provide financial and other assistance under §907C of the Act to the extent funds are appropriated by the legislature specifically for this program.

§195.4 - Responsibilities.

General. The Office of Conservation shall -

(a) review requests for assistance and determine qualified operators;

(b) develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;

(c) conduct periodic on-site evaluations of the Louisiana Surface Mining Program activities with the appropriate small operator; and

(d) participate with the Office of Surface Mining in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions.

§195.5 - Reserved.

§195.11 - Reserved.

§195.12 - Program services.

To the extent possible with available funds, the Office shall for qualified small operators who request assistance -

(a) select and pay a qualified laboratory to -

(1) determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with Section 195.16.

(2) prepare a statement of the results of test borings or core samples in accordance with §195.16.

(b) collect and provide general hydrologic information on the basin or sub-basin areas in which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or sub-basin hydrology to the hydrology of the proposed permit area.

§195.13 - Eligibility for assistance.

An applicant is eligible for assistance if he -

(a) intends to apply for a permit pursuant to the Act; and

(b) established that the probable, total, actual or attributed production of the applicant for each year of the permit will not exceed 100,000 tons. Production from the following operations shall be attributed to the permittee -

(1) all coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner whatsoever, by the applicant.

(2) pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a five percent interest.

(3) all coal produced by persons who own more than five percent of the applicant or who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever.

(4) the pro rata share of coal produced by operations owned or controlled by the person who owns and controls the applicant.

§195.14 - Filing for assistance.

Each applicant shall submit the following information to the Office at any time after initiation of the small operator assistance program within the State -

(a) a statement of intent to file permit applications;

(b) the names and addresses of -

(1) the potential permit applicant;

(2) the potential operator if different from the applicant.

(c) a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under §195.13. The schedule shall include for each location -

(1) the name under which coal is or will be mined;

(2) the Permit Number and Mining Enforcement and Safety Administration Identification Number;

(3) the actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and

(4) the estimated coal production for each year of the proposed permit and that portion attributed to the applicant.

(d) a description of -

(1) the method of surface coal mining operations proposed;

(2) the anticipated starting and termination date of mining operations;

(3) the number of acres of land to be affected by the proposed mining; and

(4) a general statement of the probable depth and thickness of the coal resource.

(e) a U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows -

(1) the area of land to be affected the natural drainage above and below the affected area;

(2) the names of property owners in the area to be affected and of adjacent lands;

(3) the location of existing structures and developed water sources within the area to be affected and on adjacent lands;

(4) the location of existing and proposed test boring or core sampling; and

(5) the location and extent of known working of any underground mines.

(f) copies of documents which show that -

(1) the applicant has a legal right to enter and commence mining within the permit area; and

(2) a legal right of entry has been obtained for the Office of Surface Mining, the Office of Conservation, and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

§195.15 - Application approval and notice.

(a) If the Office finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall -

(1) determine the minimal data requirements necessary to meet the provisions of §195.16.

(2) Select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report shall be provided to the applicant.

(b) The Office shall inform the applicant in writing if the application is denied and shall state the reasons for denial.

(c) The granting of assistance under this part shall not be a factor in decisions by the Office on a subsequent permit application.

§195.16 - Data requirements.

(a) General. This section describes the minimal requirements for the collection of data to meet the objective of the program. The Office shall determine the data collection requirements for each application or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator. The data requirements will be based on -

(1) The extent of currently available hydrologic and core analysis data for the applicable area provided by the Office; and

(2) The data collection and analysis guidelines developed and provided by the Office of Surface Mining.

(b) Specific provisions.

(1) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site, shall be made by a qualified laboratory. The data for this determination shall include -

(i) the existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The Office shall specify duration and return frequencies to be used in the determination.

(ii) the existing and projected seasonal quality of the surface ground water regime. This shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality

parameters specified by the Office.

(2) A statement of the result of test borings or core samplings from the proposed permit area, including -

(i) Logs from any drill holes including identification of each stratum and water level penetrated;

(ii) The coal seam thickness and its chemical analysis including sulfur content;

(iii) The chemical analysis of potentially acid or toxic forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.

(c) Exemptions. The statement by a qualified laboratory under paragraph (b)(2) of this section may be waived by the Office by a written determination that such requirements are unnecessary with respect to the specific permit application.

(d) Data Availability. Data collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

§195.17 - Qualified laboratories.

(a) General.

(1) As used in this section, qualified laboratory means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under this Program.

(2) The Office of Surface Mining shall establish and periodically publish in the FEDERAL REGISTER a list of qualified laboratories which may be used by regulatory authorities under the procedures of this section. The Office may designate qualified laboratories under procedures included in the program.

(3) Persons who desire to be included in the list of qualified laboratories established by the Office of Surface Mining shall apply to the Office of Surface Mining and provide such information as is necessary to establish the qualifications required by paragraph (b) of this section.

(b) Basic Qualifications.

(1) To qualify for designation, the laboratory shall demonstrate that it -

(i) Is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed.

(ii) Is capable of collecting necessary field data and samples.

(iii) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, storage, and space to accommodate periods of peak work loads.

(iv) Meets the requirements of the Occupational Safety and Health Act or the equivalent State safety and health program.

(v) Has the financial capability and business organization necessary to perform the work required.

(vi) Has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in -

(A) Standard Methods for the Examination of Water and Waste Water, 14th Edition, 1953. This publication is available from the American Public Health Association, 1015 18th Street NW, Washington, DC 20036.

(B) Methods for Chemical Analysis of Water and Wastes, 1974. This publication is available from the Office of Technology Transfer, U.S. Environmental Research Laboratory, Cincinnati, Ohio 45268. These standards are hereby incorporated by reference.

(vii) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the Office of Surface Mining or other Federal or State agencies.

(2) The qualified laboratory shall be capable of performing

either the determination or statement under paragraphs §195.16(b)(1) or (b)(2). Suncontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the Office of Surface Mining.

§195.18 - Assistance funding.

(a) Use of funds. Funds authorized for this Program shall not be used to cover State administrative costs or the costs of test boring or core sampling.

(b) Allocation of funds. The Office shall to the extent practicable establish a formula for allocating funds among eligible small operators if available funds are less than those required to provide the services pursuant to this Part. This formula shall include such factors as the applicant's -

(1) Anticipated date of filing a permit application;

(2) Anticipated date for commencing mining; and

(3) Performance history.

§195.19 - Applicant liability.

(a) The applicant shall reimburse the Office for the cost of the laboratory services performed pursuant to this Part if that applicant

(1) Submits false information;

(2) Fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report;

(3) Fails to mine after obtaining a permit; or

(4) If the Office finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons during any year of mining under the permit for which the assistance is provided.

(b) The Office may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith. The incorporations by reference in this part were approved by the Director, Office of the Federal Register on November 11, 1977, and are on file in the Federal Register Library.

§205.13 - Deleted.

§206.11 - Form of the performance bond.

(a) The form for the performance bond shall be prescribed by the Office in accordance with this Section. The Office shall allow for either:

(1) A surety bond, or

(2) A collateral bond.

(b) The Office may accept a selfbond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process in the State where the surface coal mining operation is located.

(2) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, has a net worth, certified by a certified public accountant, of no less than six times the total amount of selfbond obligations on all permits issued to the applicant in the united states for surface coal mining and reclamation operations.

(3) The applicant grants the Office a mortgage in immovable or movable property located in the state which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.

(4) The instrument creating such mortgage shall grant to the Office all of the rights possible under Louisiana law, including, but not limited to, executory process, and rights of sequestration available under Louisiana law.

The immovable property subject to the mortgage may not be subject to any conflicting or prior mortgages, liens or encumbrances. The instrument creating the mortgage shall be recorded in the public records of the proper parish in the State.

The instrument creating the mortgage or pledge in movable property shall be recorded in accordance with and otherwise conform to the requirements of the applicable laws of Louisiana. In order for the Office to evaluate the adequacy of the property

offered to satisfy this requirement, the applicant shall submit a schedule of the immovable or movable property which will be pledged to secure the obligations under the indemnity agreement. The schedule shall include —

(i) A description of the property;

(ii) The value of the property. The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the Office. The appraisal shall be expeditiously made, and a copy thereof furnished to the Office and the permittee. The reasonable expense of the appraisal shall be borne by the permittee; and

(iii) Proof of the mortgagor's possession of and title to the unencumbered immovable property within the state which is offered to secure the obligations under the bond. Such proof shall include —

(A) If the interest arises under a Federal or State lease, a status report prepared by an attorney, satisfactory to the Office as disinterested and competent to so evaluate the asset, and an affidavit from the owner in full title establishing that the leasehold could be transferred to the Office upon forfeiture;

(B) If title is complete, a title opinion prepared by an attorney licensed to practice in Louisiana and acceptable to the Office.

(C) The property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands the bonds for which have been released. In addition, any land used as security shall not be mined while it is security.

(iv) Proof the person granting the mortgage holds possession of and title to property within the State which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in that form satisfactory to the Office. The movable property offer shall not include —

(A) Property in which a mortgage is held by any person;

(B) Goods which the operator sells in the ordinary course of his business;

(C) Fixtures;

(D) Securities which are not negotiable bonds of the U.S. Government or general revenue bonds of the State;

(E) Certificates of Deposit which are not federally insured or where the depository is unacceptable to the Office.

(5) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the Office a history of financial solvency and continuous operation as a business entity for ten years prior to filing the application. For purposes of this paragraph, such demonstration shall include a financial statement in sufficient detail to allow the Office to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operations. Such statement shall include at the minimum —

(i) Identification of operator by —

(A) For corporations, name, address, telephone number, state of incorporation, principal place of business, principal office in the state where the operations is located, the name, title and authority of persons signing the application, and a statement of authority to do business in Louisiana; and

(B) For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application, and principal office in Louisiana;

(ii) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with Part 205, and the estimated maximum liability likely to be required during the life of the mine;

(iii) History of other bonds procured by operator for mining

operations in any State, including —

(A) Names of sureties, if any, for outstanding bonds;

(B) Amounts of outstanding bonds;

(C) Name of any surety which denied any bond; and

(D) Unsatisfied claims against any bond;

(iv) Brief chronological history of business operations conducted within the last 10 years including information showing —

(A) Continuous operations; and

(B) The jurisdiction within which each such operation has been conducted;

(v) A financial statement, including —

(A) Audited financial statements prepared and certified by a disinterested independent Certified Public Accountant. All statements shall be prepared following generally accepted principles of accounting and shall include —

(1) A common-size comparative balance sheet which shows assets, liabilities, and owner's equity for ten years. The Office shall have the discretion to increase this length of time to any period which is necessary to show financial solvency and continuous operation.

The common-size comparative balance sheet must be detailed with regard to owner's equity, especially retained earnings, so as to set forth a series of retained earning statements showing the changes that have occurred in retained earnings during the required period of time;

(2) A common-size comparative income statement which shows all revenues and expenses for ten years or for such longer time as is required for the common-size comparative balance sheet; and

(3) A statement of the operator's working capital and an analysis of assets and liabilities which shall include the following calculated for each year covered by the common-size comparative balance sheet and income statement —

(i) A schedule showing the percentage of each classification of current assets to total current assets;

(ii) The current ratio;

(iii) The acid-test ratio;

(iv) The liquidity ratio;

(v) The asset ratio; and

(vi) The return on investment.

(4) In addition to the above, all ratios must be calculated with the bond amount added to the operator's current or total liabilities;

(5) A ratio of the operator's capital assets subject to a mortgage or security interest to those liabilities to which the assets are subject. If the offer of immovable property or collateral for the bond will alter this ratio, this must be illustrated.

(B) A satisfactory basis to compare all ratios submitted pursuant to (A) above.

§206.11(b)(5)(v)(A) becomes §206.11(b)(5)(v)(C)

§206.11(b)(5)(v)(B) becomes §206.11(b)(5)(v)(D)

§206.11(b)(5)(v)(C) becomes §206.11(b)(5)(v)(E)

§206.11(c) deleted

§206.12(f) becomes §206.12(e)(5).

§206.12 (g) becomes 206.12 (f).

§206.12(f)(5) the Office shall require the banks issuing these certificates to waive all rights of set off or liens which it has or might have against those certificates.

§206.12(h) becomes §206.12(g).

§206.14(d)

The Office may accept from the applicant in lieu of a certificate for public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements.

This subsection will become effective only upon the promulgation of regulations by the Office or other appropriate State agency regarding self-insurance requirements of the State of Louisiana and approval for these regulations by Secretary of the Interior.

§207.11

(a) Bond release application and contents. The permittee or any person authorized to act on his behalf, may file an application with the Office for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 207.12(e) of the Part has been completed on the entire permit area or on an area approved pursuant to Section 200.11(b)(2) for the incremental filing and release of bond liability.

§207.11

(e) (5) The Office shall, in response to a specific request therefor, arrange with the applicant for reasonable public access to the area which forms the subject of the conference. Such access shall be made available at a specific date and time at least one week before the date of the conference. The specific information regarding access shall be included with the notice of informed conference. Any member of the public who enters upon the subject are in accordance with this section shall comply with all State and federal laws and regulations regarding health and safety on a minesite including, but not limited to, regulations promulgated by the Office of Conservation, the Office of Surface Mining, the Mine Safety and Health Administration and the Occupational Health and Safety Administration. The applicant will have available, in various sizes, any special equipment to be worn under the foregoing laws and regulations including, but not limited to, mandated types of headgear, footgear and eyewear.

§207.12

(e) (2)(ii) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of Section 915B(10) of Title 30, La. Revised Statutes, Subchapter K of these regulations or the permit; and

§208.12

(c) The Office may forfeit any or all bond deposited for an entire permit area, in order to satisfy Sections 208.11-208.14. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation shall extend to the entire permit area.

§210.2 Authority.

The Commissioner shall promulgate minimum coal exploration, development operations and surface mining and reclamation operations performance standards and design requirements.

§210.4

(b) Each person conducting coal exploration, development operations or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements.

PART 215 — PERMANENT PROGRAM PERFORMANCE STANDARDS — COAL EXPLORATION AND DEVELOPMENT OPERATIONS

§215.11

(a) Each person who conducts coal exploration or development which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall apply for a permit required under Section 176.2 and 176.11 and shall comply with Section 215.15 of this Part.

§215.15

(c) (2) Any new road in the exploration or development area which is used less than 6 months shall comply with the provision of Section 216.70. If the road will be used longer than 6 months, it shall comply with the provisions of Sections 216.150-216.166.

§216.11

(f) (2) Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by Section 216.65(c).

§216.14 Casing and sealing of drilled holes: Temporary.

Each exploration or development hole, other than drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Office. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

§216.25 Topsoil: Nutrients and soil amendments.

Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of Sections 216.111-216.117. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Office.

(a) (7) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

Effluent limitations, in milligrams per liter (mg/l) except for pH

Effluent characteristics ¹	Maximum allowable ²	Average of daily values for 30 consecutive discharge days ²
Iron, total ⁵	7.0	3.5
Manganese, total ³	4.0	2.0
Total suspended solids	70.0	35.0
pH ⁴	Within range of 6.0 to 9.0	

§216.43

(g) Diversions shall not be constructed or operated to divert water into underground mines without approval of the Office under Section 216.55.

§216.55 Hydrologic balance: Discharge of water into an underground mine.

Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the Office that this will —

(a) Abate water pollution or otherwise eliminate public hazards resulting from surface mining activities; and

(b) Be discharged as a controlled flow, meeting the effluent limitations of Section 216.42 for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the Office, and is limited to —

- (1) Coal processing waste;
- (2) Fly ash from a coal-fired facility;
- (3) Sludge from an acid mine drainage treatment facility;
- (4) Flue gas desulfurization sludge;

- (5) Inert materials used for stabilizing underground mines; or
- (6) Underground mine development wastes:
- (c) In any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;
- (d) Minimizes disturbance to the hydrologic balance; and
- (e) Meets with the approval of the Mine Safety and Health Administration.

§216.72

(b) (4) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

§216.72

(c) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the Office, in lifts no greater than 4 feet or less if required by the Office to —

- (1) achieve the densities designed to ensure mass stability;
- (2) Prevent mass movement;
- (3) Avoid contamination of the rock underdrain or rock core; and
- (4) Prevent formation of voids.

§216.72

(d) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the Office. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Section 216.43(f).

§216.72

(e) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:2h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

§216.72

(f) Drainage shall not be directed over the outslope of the fill.

§216.72

(g) The outslope of the fill shall not exceed 1v:2h (50 percent). The Office may require a flatter slope.

§216.79 Protection of underground mining.

(a) No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that —

(1) The nature, timing, and sequence of the operations are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of mine workers; and

(2) The activities result in improved resource recovery abatement of water pollution, or elimination of hazards to the health and safety of the public.

(b) Surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities.

§216.88 Coal processing waste: Return to underground workings.

(a) Coal processing waste may be returned to underground mine workings only in accordance with the following requirements:

(1) Each mining plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Office and the Mine Safety and

Health Administration.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of Paragraphs (a), (b), (c), and (d) of this Section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the Office from requirements specifying hydrologic monitoring.

§216.116

(b) (1) Ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to the standards in other technical guides approved by the Commissioner. The period of extended responsibility under the performance bond requirements of Subchapter J initiates after the last year of augmented seeding, fertilizing, irrigation or other work which insures success and continues for not less than five years. Ground cover and productivity shall equal the approved standard for at least two consecutive years of the responsibility.

§216.153

(c) Culverts and bridges. (1)(i) Culverts with an end area of 35 square feet or less shall be designed to safely pass the 10-year, 24-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than 35 square feet and bridges with spans of 30 feet or less, shall be designed to safely pass the 20-year, 24-hour precipitation event. Bridges with spans of more than thirty feet shall be designed to safely pass the 100-year, 24-hour precipitation event or a larger event as specified by the Office.

§216.53

(c) (iii) Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures.

PART 228 — SPECIAL PERMANENT PROGRAM
PERFORMANCE STANDARDS
IN SITU PROCESSING

§228.1 Reserved.

§228.2 Reserved.

§228.11 In situ processing: Performance standards.

(a) The person who conducts in situ processing activities shall comply with Section 216 of this Section.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) Avoiding discharge of fluids into holes or wells, other than as approved by the Office;

(2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Office;

(3) Avoiding annual injection between the wall of the drill hole and the casing; and

(4) Preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under Section 185.22, and follow after approval, a plan that ensures that

all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) Horizontally beyond the affected area identified in the permit; and

(2) Vertically into overlying or underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the mine plan and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

§228.12 In situ processing: Monitoring.

(a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Office under Section 216.52, to measure changes in the quantity and quality of water in surface and ground water systems in the mine plan and in adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the Office as necessary according to appropriate Federal and State air and water quality standards.

§242.16

(a) (2) Information not required to be made available under Sections 176.2(c)(3), 176.16, or 186.15.

PART 244 — SPECIAL RULES APPLICABLE TO SURFACE COAL MINING REVIEW HEARINGS AND APPEALS

§244.1 Parties.

(a) All persons indicated in the Act as parties to administrative review proceedings under the Act shall be considered statutory parties. Such statutory parties include —

(1) In a civil penalty proceeding the Office as represented by the Commissioner and any person against whom a proposed assessment is made who files a petition;

(2) In a review proceeding the Office as represented by the Commissioner, and —

(i) If a permittee files an application for review, the permittee; and

(ii) If any other person having an interest which is or may be adversely affected files an application for review, the permittee and the person filing such application;

(3) In a proceeding to suspend or revoke a permit, and the permittee who is ordered to show cause why the permit should not be suspended or revoked; and

(b) Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition to do so as available under this Chapter.

(c) If any person has a right to participate as a full party in a proceeding under the Act and fails to exercise that right by participating in each stage of the proceeding, that person may become a participant with the rights of a party by order of the Commissioner or his authorized representative.

§244.2 Hearing sites.

Unless the Act requires otherwise, hearings shall be held in a location established by the Commissioner or his authorized representative; however, the Commissioner or his authorized representative shall give due regard to the convenience of the parties or their representatives and witnesses.

§244.3 Filing of documents.

(a) Any pleadings in a proceeding to be conducted or being conducted under these rules shall be filed by hand or by mail, with the Office of Conservation, Surface Mining Division, State Land and Natural Resources Building, Baton Rouge, Louisiana.

(b) Any person filing pleadings or a notice of appeal with the Commissioner shall furnish an original and one copy.

(c) Any person who has initiated a proceeding under these rules or filed a notice of appeal with the Commissioner shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgment by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.

(d) The effective filing date for documents shall be the date the document is received in the Office of Conservation, Surface Mining Division, Baton Rouge, Louisiana.

§244.4 Form of documents.

(a) Any document filed with the Commissioner in any proceeding brought under the Act shall be captioned with —

(1) The names of the parties;

(2) The name of the mine to which the document relates; and

(3) If review is being sought under section 925 of the act, identification by number of any notice or order sought to be reviewed.

(b) After a docket number has been assigned to the proceeding by the Office, the caption shall contain such docket number.

(c) The caption may include other information appropriate for identification of the proceeding, including the permit number.

(d) Each document shall contain a title that identifies the contents of the document following the caption.

(e) The original of any document filed shall be signed by the person submitting the document or by that person's attorney.

(f) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.

§244.5 Service.

(a) Any party initiating a proceeding under the Act shall serve copies of the initiating documents on the Commissioner at the Office of Conservation, Surface Mining Division, State Land and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana. Any party or other person shall serve any other documents being filed subsequently with the Commissioner on all other parties and all other persons participating in the proceeding.

(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.

(c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service, or, if service is by mail, upon mailing.

(d) Whenever an attorney has entered an appearance for a party in a proceeding before the Commissioner or his authorized representative, service thereafter shall be made upon the attorney.

§244.6 Intervention.

(a) Any person, including a State, the Office or OSM may petition for leave to intervene at any stage of a proceeding under the Act.

(b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.

(c) The Commissioner or his authorized representative shall grant intervention where the petitioner —

(1) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(2) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(d) If neither paragraph (c)(1) nor (c)(2) of this section apply, the Commissioner or his authorized representative shall consider the following in determining whether intervention is appropriate —

(1) The nature of the issues;

(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(3) The ability of the petitioner to present relevant evidence and argument; and

(4) The effect of intervention on the agency's implementation of its statutory mandate.

(e) Any person, including a State, the Office or OSM granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the Commissioner or his authorized representative.

§244.7 Voluntary dismissal.

Any party who initiated a proceeding before the Commissioner may seek to withdraw by moving to dismiss at any stage of a proceeding and the Commissioner or his authorized representative may grant such a motion.

§244.8 Motions.

(a) Except for oral motions made in proceedings on the record, or where the Commissioner or his authorized representative otherwise directs, each motion shall —

(1) Be in writing; and

(2) Contain a concise statement of supporting grounds.

(b) Unless the Commissioner or his authorized representative orders otherwise, any party to A PROCEEDING IN WHICH A MOTION IS FILED UNDER PARAGRAPH (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) The Commissioner or his authorized representative shall rule on all motions as expeditiously as possible.

§244.9 Consolidation of proceedings.

When proceedings involving a common question of law or fact are pending before the Commissioner or his authorized representatives, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the Commissioner or his authorized representatives.

§244.10 Advancement of proceedings.

(a) Except in expedited review proceedings under §244.53, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.

(b) Except as otherwise directed by the Commissioner or his authorized representatives, any party filing a motion under this section shall —

(1) Make the motion in writing;

(2) Describe the exigent circumstances justifying advancement;

(3) Describe the irreparable harm that would result if the motion is not granted; and

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.

(d) Unless otherwise directed by the Commissioner or his authorized representatives, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the Commissioner or his authorized representatives of statements in response to the motion, the Commissioner or his authorized representatives may schedule a hearing regarding the motion. If the motion is granted, the Commissioner or his authorized representatives may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate: Provided, a hearing on the merits shall not be scheduled with less than 5 working days notice to the parties, unless all parties consent to an earlier hearing.

§244.11 Waiver of right to hearing.

Any person entitled to a hearing before the Commissioner or his authorized representatives under the Act may waive such right in writing. Where parties are directed by any rule in these regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

§244.12 Statutes of notices of violation and orders of cessation pending review.

Except where temporary relief is granted pursuant to 925(c) or section 926(c) of the Act, notices of violation and orders of cessation issued under the Act shall remain in effect during the pendency of review before the Commissioner or his authorized representatives.

Evidentiary Hearings

§244.13 Presiding officers.

The Commissioner or his authorized representatives shall preside over any hearing required by the Act to be conducted pursuant to the Act or to the Louisiana Administrative Procedure Act.

§244.14 Powers of the Commissioner or his authorized representatives.

(a) Under the regulations of this part, the Commissioner or his authorized representatives may —

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Issue appropriate orders relating to discovery;

(4) Rule on procedural requests or similar matters;

(5) Hold conferences for settlement or simplification of the issues;

(6) Regulate the course of the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Take other actions authorized by this part, by the Louisiana Administrative Procedures Act, or by the act; and

(9) Make or recommend decision in accordance with the Louisiana Administrative Procedures Act.

(b) The Commissioner or his authorized representatives may order a prehearing conference —

(1) To simplify and clarify issues;

(2) To receive stipulations and admissions;

(3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(4) For such other purposes as may be appropriate.

§244.15 Notice of hearing.

(a) The Commissioner or his authorized representatives shall give notice to the parties of the time, place and nature of any hearing.

(b) Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this section shall be in writing.

(c) In an expedited proceeding when there is only opportunity to give oral notice, the Commissioner or his authorized representatives shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

§244.16 Summary decision.

(a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case.

(b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(c) The Commissioner or his authorized representatives may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that —

(1) There is no disputed issue as to any material fact; and

(2) The moving party is entitled to summary decision as a matter of law.

(d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the Commissioner or his authorized representatives, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

§244.17 Proposed findings of fact and conclusions of law.

The Commissioner or his authorized representatives shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the Commissioner or his authorized representative.

§244.18 Initial orders and decisions.

An initial order or decision disposing of a case shall incorporate —

(a) Findings of fact and conclusions of law and the basis and reasons therefor on all the material issues of fact, law, and discretion presented on the record; and

(b) An order granting or denying relief.

§244.19 Effect of initial order or decision.

An initial order or decision shall become final if that order or decision is not timely appealed.

§244.20 Certification of record.

Except in expedited review proceedings, within 5 days after the initial decision has been rendered, the Commissioner or his authorized representatives shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Office of Conservation, Surface Mining Division, Baton Rouge, Louisiana.

Discovery

§244.21 Discovery methods.

Parties may obtain discovery by one or more of the following methods —

(a) Depositions upon oral examination or upon written interrogatories;

(b) Written interrogatories;

(c) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission.

§244.22 Time for discovery.

Following the initiation of a proceeding, the parties may initiate discovery at any time as long as it does not interfere with the conduct of the hearing.

§244.23 Scope of discovery.

(a) Unless otherwise limited by order of the Commissioner or his authorized representative in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged,

which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(d) Upon motion by the party or the person from whom discovery is sought, and for good cause shown, the Commissioner or his authorized representative may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following —

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the Commissioner or his authorized representative; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

§244.24 Sequence and timing of discovery.

Unless the Commissioner or his authorized representative upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

§244.25 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows —

(a) A party is under a duty to supplement timely his response with respect to any question directly addressed to —

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

(b) A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which —

(1) He knows the response was incorrect when made; or

(2) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order

of the Commissioner or his authorized representative or agreement of the parties.

§244.26 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the Commissioner or his authorized representative for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth —

(1) The nature of the questions or request;

(2) The response or objection of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the Commissioner or his authorized representative may make such a protective order as he is authorized to make on a motion.

§244.27 Failure to comply with orders compelling discovery.

If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the Commissioner or his authorized representative before whom the action is pending may make such orders in regard to the failure as are just including but not limited to the following —

(a) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

§244.28 Depositions upon oral examination or upon written questions.

(a) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the Commissioner or his authorized representative, give reasonable notice in writing to every other party, to the person to be examined and to the Commissioner or his authorized representative of —

(1) The proposed time and place of taking the deposition;

(2) The name and address of each person to be examined, if known, a general description sufficient to identify him or the particular group or class to which he belongs;

(3) The matter upon which each person will be examined; and

(4) The name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) A deposition may be taken before any officer authorized to administer oaths by the laws of the State of Louisiana or of the place where the examination is held.

(c) The actual taking of the deposition shall proceed as follows —

(1) The deposition shall be on the record;

(2) The officer before whom the deposition is to be taken shall put the witness on oath or affirmation;

(3) Examination and cross-examination shall proceed as at a hearing;

(4) All objections made at the time of the examination shall be noted by the officer upon the deposition;

(5) The officer shall not rule on objections to the evidence, but

evidence objected to shall be taken subject to the objections.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(e) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the State, to be paid by the party at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

§244.29 Use of depositions.

At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions —

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or

(c) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the Commissioner or his authorized representative finds that —

(1) The witness is dead;

(2) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the State, unless it appears that the absence of the witness was procured by the party offering the deposition;

(3) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(4) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

§244.30 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the Commissioner or his authorized representative and upon all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the Commissioner or his authorized representative may allow.

(c) Interrogatories may relate to any matters which can be inquired into under §244.23. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Commissioner or his authorized representative may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference or other later time.

§244.31 Production of documents and things and entry upon land for inspection and other purposes.

(a) Any party may serve on any other party a request to —

(1) Produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things within the scope of §244.23 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of §244.23.

(b) The request may be served on any party without leave of the Commissioner or his authorized representative.

(c) The request shall —

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category —

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

§244.32 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the Commissioner or his authorized representative may allow, the party to whom the request is directed serves on the requesting party —

(1) A sworn statement denying specifically the relevant matters of which an admission is requested.

(2) A sworn statement setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states

that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(d) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Commissioner or his authorized representative determines that an objection is justified, he shall order that an answer be served. If the Commissioner or his authorized representative determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The Commissioner or his authorized representative may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(e) Any matter admitted under this section is conclusively established unless the Commissioner or his authorized representative on motion permits withdrawal or amendment of the admission.

(f) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him for any other purpose not may it be used against him in any other proceeding.

Petitions for Review of Proposed Assessments of Civil Penalties

§244.33 Who may file.

Any person charged with a civil penalty may file a petition for review of a proposed assessment of that penalty with the Commissioner.

§244.34 Time for filing.

(a) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment; or

(b) If a timely request for a conference has been made, a petition for review must be filed within 15 days from service of notice by the conference officer that the conference is deemed completed.

§244.35 Contents of petition; payment required.

(a) The petition shall include —

(1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

(3) Identification by number of all violations being contested;

(4) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(5) A request for a hearing site.

(b) The petition shall be accompanied by —

(1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to Commissioner of Conservation, State of Louisiana — to be placed in an escrow account pending final determination of the assessment; and

(2) On the face of the payment an identification by number of the violations for which payment is being tendered.

(c) As required by section 918(c) of the Act, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

§244.36 Answer.

The Office shall have 30 days from receipt of a copy of the petition within which to file an answer to the petition with the Commissioner.

§244.37 Review of waiver determination.

(a) Within 10 days of the filing of a petition under this part, petitioner may move the Commissioner or his authorized representative to review the granting or denial of a waiver of the civil penalty formula.

(b) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of the waiver;

(c) Review shall be limited to the written determination of the Commissioner granting or denying the waiver, the motion and responses to the motion. The standard of review shall be abuse of discretion.

§244.38 Burden of proof in civil penalty proceedings.

In civil penalty proceedings the Office shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

§244.39 Summary disposition.

(a) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of the Commissioner or his authorized representative, the Commissioner or his authorized representative shall issue an order to show cause why —

(1) That person would not be deemed to have waived his right to a hearing; and

(2) The proceedings should not be dismissed.

(b) If the order to show cause is not satisfied as required, the Commissioner or his authorized representative shall order the proceedings summarily dismissed and shall refer the case to the Office who shall enter the assessment as the final order of the Commissioner.

(c) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the Commissioner or his authorized representative may assume for purposes of the assessment —

(1) That each violation listed in the notice of violation or order occurred; and

(2) The truth of any facts alleged in such notice or order.

(d) In order to issue an initial decision assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, the Commissioner or his authorized representative shall either conduct an ex parte hearing or require the Office to furnish proposed findings of fact and conclusions of law.

(e) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed of his opportunity to have the Office prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

§244.40 Determination by the Commissioner.

(a) The Commissioner or his authorized representative shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in §244.13(b) and conclusions of law.

(b) If the Commissioner or his authorized representative finds that —

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of penalty, but in so doing, he shall adhere to the point system and conversion table contained in §244.12 and 244.13 and except that the Commissioner or his authorized representative may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the Commissioner or his authorized representative shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument

that a reduction in the proposed assessment could be used to abate other violations of the Act; or

(2) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

(c) If the Commissioner or his authorized representative makes a finding that no violation occurred or if the Commissioner or his authorized representative reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed, the Office shall have 30 days from the expiration of the date for filing a petition if no petition is filed, or 30 days from the date the Commissioner refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent.

(d) If the Commissioner or his authorized representative increases the amount of the civil penalty above that of the proposed assessment, the Commissioner or his authorized representative shall order payment of the appropriate amount within 30 days of receipt of the decision.

§244.41 Appeals.

Any party may petition the Commissioner to review the decision of the Commissioner or his authorized representative concerning an assessment according to the procedures set forth in §244.51.

Review of Section 921 Notices of Violation and Orders of Cessation

§244.42 Scope.

These regulations govern applications for review of —

(a) Notices of violation or the modification, vacation, or termination of a notice of violation under Section 921(a)(3) of the Act; and

(b) Orders of cessation which are not subject to expedited review under §244.53 or the modification, vacation, or termination of such an order of cessation under Section 921(A)(2) or Section 921(A)(3).

§244.43 Who may file.

A permittee issued a notice or order by the Secretary pursuant to the provisions of Section 921(A)(2) or Section 921(A)(3) of the Act or any person having an interest which is or may be adversely affected by a notice or order subject to review under §244.42 may file an application for review with the Commissioner.

§244.44 Time for filing.

Any person filing an application for review under §244.42 shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

§244.45 Effect of failure to file.

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of violation during a civil penalty proceeding.

§244.46 Contents of application.

Any person filing an application for review shall incorporate in that application regarding each claim for relief —

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of any notice or order sought to be reviewed;

(d) A statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Any other relevant information.

§244.47 Answer.

(a) Where an application for review is filed by a permittee, the

Office as well as any other person granted leave to intervene pursuant to §244.6 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application —

- (1) The Office;
- (2) The permittee; or
- (3) Any other person granted leave to intervene pursuant to §244.6.

§244.49 Notice of hearing.

Pursuant to Section 925(a)(2) of the Act, the applicant and other interested persons shall be given written notice of the time and place of the hearing at least 5 working days prior thereto.

§244.50 Amendments to pleadings.

(a) An application for review may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the Commissioner or his authorized representative upon proper motion.

(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the Commissioner or his authorized representative shall issue an order setting a time for filing an amended answer if the Commissioner or his authorized representative determines that such an answer is appropriate.

§244.51 Failure to state a claim.

Upon proper motion or after the issuance of an order to show cause, the Commissioner or his authorized representative may dismiss at any time an application for review which fails to state a claim upon which administrative relief may be granted.

§244.52 Related notices or orders.

(a) An applicant for review shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.

(b) An applicant for review of a notice shall file a copy of an order of cessation for failure timely to abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

(d) Applications for review of related notices or orders are subject to consolidation.

§244.53 Burden of proof in review of Section 921 notices or orders.

(a) In review of Section 921 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review, the Office shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.

(b) The ultimate burden of persuasion shall rest with the applicant for review.

Expedited Review of Section 921(A)(3)
Or 921(A)(3) Orders of Cessation

§244.54 Who may file.

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under Section 925(C) or Section 926(C) of the Act, by —

- (1) A permittee who has been issued an order of cessation under Section 921(A)(2) or Section 921(A)(3) of the Act; or
- (2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under Section 921(A)(2) or Section 921(A)(3) of the Act.

(b) A permittee or any person having an interest which is or may be adversely affected by a Section 921(A)(2) or Section

921(A)(3) order of cessation waives his right to expedited review upon being granted temporary relief pursuant to Section 925(C) or Section 926(C) of the Act.

§244.55 Where to file.

The application shall be filed with the Commissioner.

(a) Any person intending to file an application for expedited review under Section 925(B) of the Act shall notify the Office within 15 days of receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

(b) Any person filing an application for review under §244.56 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

§244.56 Contents of application.

(a) Any person filing an application for expedited review under Section 925(B) of the Act shall incorporate in that application regarding each claim for relief —

- (1) A statement of facts entitling that person to administrative relief;
- (2) A request for specific relief;
- (3) A specific statement which delineates each issue to be addressed by the applicant during the expedited proceeding;
- (4) A copy of the order sought to be reviewed;
- (5) A list identifying each of applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;
- (6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and
- (7) Any other relevant information.

(b) If any applicant fails to comply with all the requirements of §244.56(a), the Commissioner or his authorized representative may find that the applicant has waived the 30-day decision requirement or the Commissioner or his authorized representative shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until perfected. Failure to timely comply with the Commissioner's or his authorized representative's order shall constitute a waiver of the 30-day decision.

§244.57 Computation of time for decision.

In computing the 30-day time period for administrative decision, intermediate Saturdays, Sundays, State legal holidays, and other nonbusiness days shall be excluded in the computation.

§244.58 Waiver of the 30-day decision requirement.

(a) Any person qualified to receive a 30-day decision may waive that right —

- (1) By filing an application pursuant to §244.42-§244.52;
- (2) By failing to comply with all the requirements of §244.56(a); or

(3) In accordance with §244.59.

(b) Any person qualified to receive a 30-day decision shall waive that right —

- (1) By obtaining temporary relief pursuant to Section 925(C) or Section 926(C) of the Act;
- (2) By failing to perfect an application pursuant to §244.56; or
- (3) In accordance with §244.59(i).

§244.59 Procedure if 30-day decision requirement is not waived.

If the applicant does not waive the 30-day decision requirement of Section 925(B) of the Act, the following special rules shall apply —

(a) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with

the Commissioner. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the Commissioner or his authorized representative by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the Commissioner or his authorized representative.

(b) Any party desiring to file a response to the application for review shall file a written response within 5 working days of service of the application.

(c) If the applicant has requested a hearing, the Commissioner or his authorized representative shall immediately upon receipt of the application notify the parties of the time and place of the hearing at least 5 days prior to the hearing date.

(d) The Commissioner or his authorized representative may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing.

(e) The Commissioner or his authorized representative shall make an initial decision. He shall either rule from the bench or the application, orally stating the reasons for his decision or he shall issue a written decision. If the Commissioner or his authorized representative makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the Commissioner or his authorized representative must be issued within 15 days of the filing of the perfected application under §244.56.

(f) If any party desires to appeal to the Commissioner, such party shall —

(1) If the Commissioner or his authorized representative makes an oral ruling, make an oral statement, within a time period as directed by the Commissioner or his authorized representative, that decision is being appealed and request that the Commissioner or his authorized representative certify the record; or

(2) If the Commissioner or his authorized representative issues a written decision after the close of the hearing, file a notice of appeal with the Commissioner or his authorized representative within 2 working days of receipt of the Commissioner's or his authorized representative's decision.

(g) If the decision of the Commissioner or his authorized representative is appealed, the Commissioner or his authorized representative shall act immediately to issue an expedited briefing schedule, and the Commissioner or his authorized representative shall act expeditiously to review the record and issue its decision. The decision of the Commissioner or his authorized representative must be issued within 30 days of the date the perfected application is filed.

(h) If all parties waive the opportunity for a hearing and the Commissioner or his authorized representative determines that a hearing is not necessary, but the applicant does not waive the 30-day decision requirement, the Commissioner or his authorized representative shall issue an initial decision on the application within 15 days of receipt of the application. The decision shall contain findings of fact and an order disposing of the application. The decision shall be served upon all the parties and the parties shall have 2 working days from receipt of such decision within which to appeal to the Commissioner. The Commissioner shall issue its decision within 30 days of the date the perfected application is filed.

(i) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of §244.59, such action shall constitute a waiver of the 30-day requirement of Section 925(B) of the Act.

(j) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of §244.56, upon

objection by an opposing party to such offer, the Commissioner or his authorized representative may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise uncover any additional prejudice which may result to such party. The Commissioner or his authorized representative may rule that the running of the 30-day time for decision is stayed for the the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to the 30-day decision.

Proceeding for Suspension or Revocation of Permits Under Section 921(A)(4) of the Act

§244.60 Initiation of proceedings.

(a) A proceeding on a show cause order issued by the Office pursuant to Section 921(A)(4) of the Act shall be initiated by the Commissioner or his authorized representative filing a copy of such an order with the Commissioner at the same time the order is issued to the permittee.

(b) A show cause order filed with the Commissioner or his authorized representative shall set forth —

(1) A list of the unwarranted or willful violations which contribute to a pattern of violations;

(2) A copy of each order or notice which contains one or more of the violations listed as contributing to a pattern of violations;

(3) The basis for determining the existence of a pattern or violations; and

(4) Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

§244.61 Answer.

The permittee shall have 30 days from receipt of the order within which to file an answer with the Commissioner.

§244.62 Contents of answer.

The permittee's answer to a show cause order shall contain a statement setting forth —

(a) The reasons in detail why a pattern of violations, as described in §243.13(a)(3) does not exist or has not existed, including all reasons for contesting —

(1) The fact of any of the violations alleged by the Office as constituting a pattern of violations;

(2) The willfulness of such violations; or

(3) Whether such violations were caused by the unwarranted failure of the permittee;

(b) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Any other alleged relevant facts; and

(d) Whether a hearing on the show cause order is desired.

§244.63 Burden of proof in suspension of revocation proceedings.

In proceedings to suspend or revoke a permit, the Office shall have the burden of going forward to establish a prima facie case for suspension of revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

§244.64 Determination by the Commissioner or his authorized representative.

(a) Upon a determination by the Commissioner or his authorized representative that a pattern of violations exists or has existed, pursuant to §243.13(a)(3), the Commissioner or his authorized representative shall order the permit either suspended or revoked. In making such a determination, the Commissioner or his authorized representative need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the minimum suspension period shall be 3 working days unless the Commissioner or his authorized representative finds that imposition of the minimum suspension period would not further the purposes of the Act. Also, the Commissioner or his authorized representative may impose preconditions to be satisfied prior to the suspension being lifted.

(c) The decision of the Commissioner or his authorized representative shall be issued within 20 days following the date the hearing record is closed by the Commissioner or his authorized representative or within 20 days of receipt of the answer, if no hearing is requested by any party and the Commissioner or his authorized representative determines that no hearing is necessary.

(d) At any stage of a suspension or revocation proceeding being conducted by the Commissioner or his authorized representative, the parties may enter into a settlement, subject to the approval of the Commissioner or his authorized representative.

§244.65 Summary disposition.

(a) In a proceeding under this section where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the Commissioner or his authorized representative may assume for purposes of the proceeding that —

- (1) Each violation listed in the order occurred;
- (2) Such violations were caused by the permittee's unwarranted failure or were willfully caused; and
- (3) A pattern of violations exists.

(b) In order to issue an initial decision concerning suspension or revocation of the permit when the permittee fails to appear at the hearing, the Commissioner or his authorized representative shall either conduct an ex parte hearing or require the Office to furnish proposed findings of fact and conclusions of law.

§244.66 Appeals.

Any party desiring to appeal the decision of the Commissioner or his authorized representative shall be 5 days from receipt of the Commissioner's or his authorized representative's decision within which to file a notice of appeal with the Commissioner. The Commissioner shall act immediately to issue an expedited briefing schedule. The decision of the Commissioner shall be issued within 60 days of the date the hearing record is closed by the Commissioner or his authorized representative or, if no hearing is held, within 60 days of the date the answer is filed.

Appeals to the Commissioner

§244.67 Petition for discretionary review of a proposed civil penalty.

(a) Any party may petition the Commissioner to review an order or decision disposing of a civil penalty proceeding under §244.33.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

(c) A petitioner under this section shall list the alleged errors of the Commissioner or his authorized representative and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Commissioner a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition under this Section, the Commissioner shall grant or deny the petition in whole or in part.

(f) If the petition is granted, the rules in Sections 244.70-73 are applicable and the Commissioner shall use the point system and conversion table contained in Part 245 in recalculating assessments; however, the Commissioner shall have authority to waive the civil penalty formula granted in §244.40(b)(1). If the petition is denied the decision shall be final.

§244.68 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision disposing of a proceeding under this subpart, except a civil penalty proceeding under §244.33.

(b) Except in an expedited review proceeding under §244.53, or in a suspension or revocation proceeding under §244.59, a notice of appeal shall be filed with the Commissioner on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

§244.69 Briefs.

(a) Unless the Commissioner orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice by the appellant that the Commissioner has agreed to exercise discretionary review authority pursuant to §244.67 or a notice of appeal is filed.

(b) If any appellate fails to file a timely brief, an appeal under this part may be subject to summary dismissal.

(c) An appellate shall state specifically the rulings to which there is an objection, the reasons for such objections, and the relief requested. The failure to specify a ruling as objectionable may be deemed by the Commissioner as a waiver of objection.

(d) Unless the Commissioner orders otherwise, within 20 days after service of appellant's brief, any other party to the proceedings may file a brief.

(e) If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the Commissioner need not consider the arguments.

(f) Further briefing may take place by permission of the Commissioner.

(g) Unless the Commissioner provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellee's BRIEF SHALL NOT EXCEED 25 TYPED PAGES.

§244.70 Remand.

The Commissioner may remand cases if further proceedings are required.

§244.71 Final decisions.

The Commissioner may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order.

Part 246 - Petitions for Award of Costs and Expenses Under Section 925(E) of the Act

§246.1 Who may file.

(a) Any person may file a petition for award of costs and expenses including attorney's fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in —

- (1) A final order being issued by the Commissioner.

§246.2 Where to file; time for filing.

The petition for an award of costs and expenses including attorneys' fees must be filed with the Commissioner within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

§246.3 Contents of petition.

(a) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition —

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding.

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

§246.4 Answer.

Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

§246.5 Who may receive an award.

Appropriate costs and expenses including attorneys' fees may be awarded —

(a) To any person from the permittee, if —

(1) The person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the Commissioner determines that the person made a substantial contribution to the full and fair determination of the issues.

(b) To any person other than a permittee or his representative from the Office, if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(c) To a permittee from the Office when the permittee demonstrates that the Office issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under §925 of the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(e) To the Office where it demonstrates that any person applied for review pursuant to §925 of the Act or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the Government.

§246.6 Awards.

An award under these sections may include —

(a) All costs and expenses including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

(b) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.

§246.7 Appeal.

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under this Act may appeal such award to a court of competent jurisdiction in the State.

These rules shall be effective as of May 20, 1980.

R. T. Sutton, Commissioner
Office of Conservation

RULE

Department of Transportation & Development

Gasoline

Louisiana approved gasolines shall meet all the foregoing specifications, and in addition thereto, shall have on all retain pumps a posted $\frac{R+M}{2}$ octane value as specified by the Department of Energy. The gasoline product shall have a $\frac{R+M}{2}$ octane rating equal to the octane value required to be posted.

Unleaded Gasoline

Louisiana approved unleaded gasoline shall conform to the minimum specifications that this petroleum product contains no more than 0.05 gram of lead per gallon.

Specifications for Gasohol

General description — This specification covers a mixture of unleaded gasoline and ethyl alcohol in a 90-10 volume mixture for use in automotive internal combustion engines. A green dye shall be used in this mixture to color it so as to differentiate it from normal gasolines, when the gasohol qualifies for Louisiana tax exemption.

Detailed requirements — Gasohol shall conform to the following detailed requirements:

Property	
Ethyl Alcohol, %	9.2-13.0
Unleaded Gasoline, %	87-91.8
Flash Point, °F, max.	110°F
Suspended Matter	None
Water, %	0.30
Sulfur, %, max.	0.25
Reid Vapor Pressure, lbs., max.	13.5
Octane Number, $\frac{R+M}{2}$	As posted
Distillation Data	
Percent Distilled (0-167) °F, min.	10
Percent Distilled (168-284) °F, min.	50
Percent Distilled (285-392) °F, min.	90
Residue, %, max.	2
Recovery, %, min.	95
End Point, °F, max.	437
Purity	
Ethyl Alcohol, %, min.	95.0
Effects on seals, gaskets, packing	None
Effects on human flesh	None
Chemicals used to denature alcohol, %, max.	5.0
Water, %, max.	1.0

Labelling of Gasohol Pumps on each face of the pump with the word Gasohol using black letters at least one inch in height on a yellow background is required.

Methods of blending at jobber top-loading rack: Loading arms must be equipped with the drop pipes and flow deflectors. Fill the tank truck compartment 10% of the compartment's volume with unleaded gasoline. Complete the filling of the compartment with 10% ethyl alcohol. Due to the slow loading rate of jobbers' racks, it is recommended that the alcohol and the gasoline be at approximately the same temperature.

Methods of blending at bottom-load terminals: Fill the transport compartment 10% of compartment's volume with alcohol. Bottom-load to the compartment's capacity with gasoline. The difference in products' temperatures is not as critical here as in tank wagon top-loading.

Storage stability in previously used gasoline tanks — The alcohol in gasohol will remove, very efficiently, varnish, oxidized gasoline, and rust from the inside walls of previously used gasoline tanks. Because of this fact, any tank must be RESTED FOR TWENTY FOUR HOURS AND THE BOTTOM THIEFED before gasohol can be dispensed. Due to the vapor pressure of gasohol, it is recommended that a P-V vent be placed on all tanks which have a slow product withdrawal rate in order to protect and maintain the octane number. It is a #548A 2 inch thread 16-ounce pressure 1-ounce vacuum #6 mesh screen. The standard vapor recovery P-V vent is not applicable for gasohol service.

Storage stability in new gasoline tanks — Any new tank must be graded down three inches to the fill stack at the "A" end of the tank. This is so that the water bottom can be thiefed out. The suction stub should not be any further than three inches from the

bottom of the tank. Under no circumstances should a fill stack be placed in the center of a tank unless an opening is provided to thief the tank at the low ("A") end. Due to the high vapor pressure of alcohol blending stocks, a P-V vent should be placed on the vent riser discharge. All fill stacks must have interior drop tubes. All gasohol storage tanks over 1,500 gallons must also have drop tubes.

Paul J. Hardy, Secretary
Department of Transportation & Development

RULE

Board of Trustees State Employees Group Benefits Program

The Board of Trustees of the State Employees Group Benefit Program has adopted the following rules and regulations relative to the election of members to the Board of Trustees and otherwise to provide with respect thereto.

I. General Information

Organizational Description: Purpose of Agency — The Board of Trustees of the State Employees Group Benefits Program was created within the Department of the Treasury by Act 745 of 1979. This Board, domiciled in Baton Rouge, Louisiana, is responsible for the general administration of all aspects of programs constituting the State Employees Group Benefits Program, as provided in Part I and Part II of Chapter 12 of Title 42 of the Louisiana Revised Statutes of 1950.

II. Entrance Into Program

A. Pursuant to R.S. 42:821 and R.S. 42:851, the Board of Trustees of the State Employees Group Benefits Program may accept specific agencies and political subdivisions into the State Employees Group Benefits Program. Such groups seeking admission into the program must submit the following information and agree to the following conditions:

1. Completed adoption instrument, which instrument must be received by the Executive Director at least sixty days prior to the proposed effective date of coverage.

2. Complete list of employees providing name, social security number, sex, date of birth, date of employment, dependency class, salary, and indication of prior coverage. One such list for active employees, and another for retired employees receiving retirement income under an approved state retirement program.

3. A statement of experience providing total premiums paid, claims paid, incurred claim reserve for their own plan for each of the past two years.

4. A copy of the board resolution or authority to enter into negotiations for coverage.

5. Agreement to pay over to the program any terminal reserves or refunds that might be available now or in the future from their present plan.

6. Acknowledgment that before benefits become effective that the enrollment of employees must be completed with at least 75% of such eligible employees. And, must be further understood, that in order to maintain coverage that the 75% participation rules must continue to be met in subsequent years. However, in computing this 75% participation requirement of eligible dependents, the following classifications shall not be counted:

a. Employee whose dependents are covered by any other Group type Major Medical coverage.

b. Dependents of active or retired Military personnel covered by Military Medical Benefits.

c. Dependents covered by Medicaid or Medicare.

d. Dependents whose coverage is declined based on religious convictions.

7. Acceptance by the new group of the whole plan of benefits, including the full schedule of life insurance benefits and the

maintenance of 75% participation for the full life insurance program.

B. For the purpose of determining eligibility to participate in the State Employees Group Benefits Program the term "retiree" shall refer only:

1. To those persons who, prior to retirement, were participating in the State Employees Group Benefits Program and who, at the date of retirement, were not subject to either the three month/one year, or one year/two year preexisting condition provisions of the plan and who, upon retirement,

a. Were immediately eligible to receive a retirement stipend from the retirement system of a political subdivision or agency whose active members are eligible to participate in the State Employees Group Benefits Program, or

b. Were not actually eligible to participate in said retirement system but have completed ten years of service and have attained at least 65 years of age.

2. To such other persons now retired who, on the effective date of this Resolution, are eligible participants in the retirement system of a political subdivision or agency whose active members are eligible to participate in the State Employees Group Benefits Program.

III. School Systems

A. Those school groups who were participating in the State Employees Group Benefits Program prior to September 1, 1979, and who wish to be considered "state employees" for the purposes of the State Employees Group Benefits Program, must agree to the following conditions:

1. Complete a new Adoption Instrument, which instrument must be received by the Executive Director no later than sixty days prior to the proposed effective date.

2. Provide a complete list of employees giving name, Social Security number, sex, date of birth, date of employment, dependency class and salary (salary at date of retirement for eligible retired employees). One such list for active employees and another for retired employees receiving retirement income under an approved state retirement program.

3. A copy of the board resolution or authority to enter into the negotiations for coverage.

4. Acceptance of an effective date as outlined in their Adoption Instrument, at which time such plan will be administered exactly as if the employees were State employees.

5. Acknowledgment that the enrollment of active and retired employees not now covered, must be completed with medical coverage for overdue active employees and dependents subject to the one year/two year preexisting condition rule. Evidence of insurability will be waived on the life insurance.

The definition of retired employees shall include:

a. All retired employees and their eligible dependents and eligible surviving spouses.

b. Such retired employees or surviving spouses must be receiving retirement disability, or survivor's benefits from one of the State retirement plans.

c. The offering of such coverage shall be made at a time at least sixty days after receipt of a completed new Adoption Instrument on a one-time offering basis. No retired employee will be allowed thereafter to participate who does not make application when first eligible.

B. Those school boards having a local group policy or program in effect for school board employees and retirees prior to September 1, 1979, and who are seeking approval of said program to be eligible for a partial reimbursement of premiums must submit the following nonexclusive documentation and consent to the following nonexclusive certifications prior to approval:

1. The school system must provide the State Employees Group Benefits Program with a complete copy of the present insurance policy or policies and premium rate structure for each.

2. The effective date of said insurance plan must be prior to

September 1, 1979. The Superintendent of the local school board must certify, before an officer qualified to administer oaths, that the submitted policy or policies were in effect prior to September 1, 1979.

3. The present school board seeking approval of the policy or policies must present proper data relative to covered employees and the amount of said coverage.

4. All retirees and surviving spouses of retired employees of said school system must be offered coverage in the submitted insurance policy or policies on an equal basis with active employees.

5. The local school board seeking acceptance of the policy or policies must agree, in writing, to an annual audit of their insurance program by the State Employees Group Benefits Program or its designee.

6. The local school board seeking approval of its policy or policies must agree to provide the State Employees Group Benefits Program with a monthly breakdown of changes in coverage of employees. Such a breakdown shall include, but not be limited to, the total number of changes within any classification in the names and social security numbers of employees affected.

IV. Election Rules and Regulations

A. Composition of Board of Trustees — An election will be held to elect one Board member from the ranks of, and to represent:

1. The Department of Transportation and Development for a term of one year.

2. The Department of Health and Human Resources for a term of two years.

3. The Office of the Governor and the Division of Administration for a term of three years.

4. The personnel of the public institutions of higher education for a term of three years.

5. The teachers and other personnel of the elementary and secondary education system of the State for a term of four years.

6. A retired State employee to represent the State retirees for a term of two years.

7. All other employees participating in the Program (at large candidates) that are not teachers and other personnel of the elementary and secondary education system, personnel of the public institutions of higher education, personnel of the Department of Health and Human Resources, the Office of the Governor and the Division of Administration, or a retired State employee, for a term of four years.

B. Candidate Eligibility.

1. A candidate for a position on the Board of Trustees must be a participant in the Program as of the specified membership date.

2. If elected, the Board member must continue to be a participant in the Program during his tenure on the Board.

C. Petitions for Candidacy.

1. To become a candidate, a person must be nominated by petition of twenty-five or more participants in the State Employees Group Benefits Program from the ranks of the employees they will represent.

2. The petitioning participants' signature must be accompanied by their Social Security Number.

3. Each Petition for Candidacy must be signed by the appropriate agency head or his designated representative from a candidate's agency certifying that each candidate and each petitioner is a plan participant from the ranks of employees they will be representing, and an active plan member on the specified membership date.

4. Petitions for Candidacy must be in the office of the State Employees Group Benefits Program on or before the date indicated.

D. Ballot Preparation and Distribution.

1. Ballot positions of candidates will be determined by a drawing.

2. All candidates will be notified of the time and place of the drawing.

3. All candidates or his/her representative may attend the drawing.

4. Except for State retirees, ballots and information sheets on candidates will be distributed to each assigned Group Benefits Invoice Coordinator (agency contact) for distribution.

E. Balloting Procedure.

1. All participants enrolled in the Group Benefits Program on the specified membership date are eligible to vote.

2. A ballot will be distributed to all eligible Group plan participants by the Group Benefits Invoice Coordinator, except State retirees.

3. Each eligible plan member may cast only one vote for any candidate listed on the ballot.

4. Ballots must be returned in envelope provided.

a. Signature of the voting member must appear on the official ballot envelope for comparison with the records of the system.

b. Envelopes containing more than one ballot will not be accepted.

c. Ballots must be received in the office of the State Employees Group Benefits Program on, or before, the date indicated.

d. The sealed, postmarked or stamped-received envelope will be placed in the ballot file for opening by the Ballot Counting Committee, thus assuring that only members vote and an absolute secret ballot is maintained.

F. Ballot Counting.

1. The Ballots will be counted by the Ballot Counting Committee.

2. The Ballot Counting Committee shall be composed of employees of the State Employees Group Benefits Program, appointed by the Executive Director.

3. The Ballot Counting Committee and all candidates will be notified at the time and date fixed for tallying the ballots.

4. The Ballot Counting Committee will be responsible for the opening, preparation, and counting of the ballots.

5. All candidates or his/her representative may observe the ballot counting procedure.

G. Election Results.

1. The Executive Director will certify the election results to the Board of Trustees.

2. The Board of Trustees will announce the election results at the first regularly scheduled Board meeting following the election.

3. The Board of Trustees will notify the successful candidates of their election.

4. The Board of Trustees will certify the election results to the Secretary of State.

H. Severability — If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules which can be given effect without the invalidated provisions, items, or applications and to this end the provisions of these rules are hereby declared severable.

V. Life and Health Insurance Plan Document

The payment of benefits and the collection of premiums will be governed by the following plan.

**BASIC AND SUPPLEMENTAL EMPLOYEE
LIFE INSURANCE SCHEDULES**

Annual Earnings		Maximum Insurance	Monthly Premium Rate	RATE—July 1 age 65*
Basic Life:	65 and over	\$ 1,000	\$ 1.10	\$ 1.02
	Under age 65	2,000	2.20	2.04
\$ 0-	\$ 666.66	3,000	3.30	3.06
666.67-	1,333.33	4,000	4.40	4.08
1,333.34-	2,000.00	5,000	5.50	5.10
2,000.01-	2,666.66	6,000	6.60	6.12
2,666.67-	3,333.33	7,000	7.70	7.14
3,333.34-	4,000.00	8,000	8.80	8.16
4,444.01-	4,666.66	9,000	9.90	9.18
4,666.67-	5,333.33	10,000	11.00	10.20
5,333.34-	6,000.00	11,000	12.10	11.22
6,000.01-	6,666.66	12,000	13.20	12.24
6,666.67-	7,333.33	13,000	14.30	13.26
7,333.34-	8,000.00	14,000	15.40	14.28
8,000.01-	8,666.66	15,000	16.50	15.30
8,666.67-	9,333.33	16,000	17.60	16.32
9,333.34-	10,000.00	17,000	18.70	17.34
10,000.01-	10,666.66	18,000	19.80	18.36
10,666.67-	11,333.33	19,000	20.90	19.38
11,333.34-	13,333.33	20,000	22.00	20.40
13,333.34-	14,000.00	21,000	23.10	21.42
14,000.01-	14,666.66	22,000	24.20	22.44
14,666.67-	15,333.33	23,000	25.30	23.46
15,333.34-	16,000.00	24,000	26.40	24.48
16,000.01-	16,666.66	25,000	27.50	25.50
16,666.67-	17,333.33	26,000	28.60	26.52
17,333.34-	18,000.00	27,000	29.70	27.54
18,000.01-	18,666.66	28,000	30.80	28.56
18,666.67-	19,333.33	29,000	31.90	29.58
19,333.34-	20,000.00	30,000	33.00	30.60
20,000.01-	20,666.66	31,000	34.10	31.62
20,666.67-	21,333.34	32,000	35.20	32.64
21,333.34-	22,000.00	33,000	36.30	33.66
22,000.01-	22,666.66	34,000	37.40	34.68
22,666.67-	23,333.33	35,000	38.50	35.70
23,333.34-	24,000.00	36,000	39.60	36.72
24,000.01-	24,666.66	37,000	40.70	37.74
24,666.67-	25,333.33	38,000	41.80	38.76
25,333.34-	26,000.00	39,000	42.90	39.78
26,000.01 & Over		40,000	44.00	40.80

*To find the correct rate on the July 1 coinciding with or next following age 65, move up the rate schedule until it corresponds with the new reduced amount of insurance. Example: \$20,000, costing \$22.00 monthly, is reduced by one-half to \$10,000 and the new monthly premium is \$10.20.

DEPENDENT LIFE INSURANCE SCHEDULE

Monthly Premium

Basic (\$1,000 Unit)\$.90
 Supplemental (\$2,000 Unit) 1.80

In the event a husband and wife are both eligible for coverage under the policy as employees, the husband may enroll his wife as a dependent provided she is not insured as an employee.

The husband will enroll any eligible children as his dependents. If the husband is 65 years-of-age or older and his wife is eligible as an employee and is under 65 years-of-age, then the wife may enroll any eligible dependent children.

MEDICAL BENEFIT MONTHLY PREMIUMS

Type of Coverage	Employee Share	State Share	Total Monthly Premium	
MEDICAL CLASS II (Single)				
Employee Only	\$10.80	\$10.80	\$21.60	
Employee Only with Medicare	3.42	3.42	6.84	
MEDICAL CLASS III (Two Party)				
Employee and One Dependent	23.04	23.04	46.08	
Employee and One Dependent with One on Medicare	15.66	15.66	31.32	
Employee and One Dependent Both on Medicare	6.86	6.86	13.72	
MEDICAL CLASS IV (Maternity)				
Employee and Family	29.36	29.36	58.72	
Employee and Family with One on Medicare	21.98	21.98	43.96	
Employee and Family with Two on Medicare	13.18	13.18	16.36	
CATASTROPHIC ILLNESS BENEFIT (CIE)				
Employee	\$5,000	2.20	-0-	2.20
Employee	\$10,000	4.40	-0-	4.40
Family	\$ 5,000	4.40	-0-	4.40
Family	\$10,000	8.80	-0-	8.80

**SCHEDULE OF BENEFITS
MEDICAL CARE COVERAGE**

BASIC BENEFITS

Hospital Benefits

Hospital Daily Room and Board Rate (up to 120 days), Average Semi-Private, up to	\$ 45.00
Hospital Miscellaneous	600.00

Surgical Benefits (per schedule), up to 500.00

Maternity Benefits (All-Inclusive Hospital and Surgical)

Normal Delivery, up to	400.00
Caesarean Section or Ectopic Pregnancy	500.00
Miscarriage	300.00

In-Hospital Medical Benefits

Daily Rate, up to	5.00
Maximum, up to	600.00

Supplementary Emergency Accident Benefits

500.00

Diagnostic Laboratory and X-Ray Benefits

Each Accident, up to	75.00
All Sickness, per calendar year	75.00

MAJOR MEDICAL BENEFITS

Deductible Amount (each calendar year)	100.00
Percentage payable (each calendar year)*	
First \$5,000.00 of Eligible Expenses	80%/50%
Eligible Expenses in excess of \$5,000.00	100%/50%
Maximum Amount Payable (Effective 1/1/76)**	
Class A — Under Age 65	50,000.00
Class B — Age 65 or Over	25,000.00

Room and Board Limitation Average semi-private accommodation, not in excess of \$50.00.

*Percentage payable for treatment of alcoholism or nervous or mental disability while not hospital confined is limited to 50 percent with an additional limitation of physician's charge to 50 visits per calendar year, one visit per day, with a maximum reimbursement of \$12.50 per visit.

**The Maximum Benefit was increased to the new levels effective January 1, 1976, and is the only Benefit *not* subject to the "at work" or "not disabled" rules. Therefore, \$25,000 was added to the Covered Medical Expense Limit for active Employees and their eligible Dependents or \$12,500 additional for all such Employees or Dependents 65-years-of-age or more.

Even though the maximum is stated as a Maximum Benefit during the Lifetime of the Covered Person, the full Maximum Amount Payable may be reinstated at any time by submission of acceptable Evidence of Insurability.

The maximum also is automatically subject to restoration on January 1 of each year in the amount of \$2,000 for those less than 65-years-of-age and \$1,000 for those older.

ELIGIBILITY EFFECTIVE DATE

The benefits specified herein took effect May 1, 1976 (unless otherwise noted). In the case of certain Political Subdivisions the Effective Date is as stated in the Adoption Instrument.

EFFECTIVE DATE OF INDIVIDUAL COVERAGE

Employees and Retirees, and their eligible Dependents, enrolled immediately prior to the Effective Date under the Predecessor Contracts and agreements, shall become eligible immediately for the benefits of the individual Plan described herein on the Effective Date, provided such Employee is actively at work on that date and such Retiree or Dependent is not hospital-confined or disabled on that date.

If, on the Effective Date, an enrolled Employee is not actively at work, or if an enrolled Retiree or Dependent is hospital-confined or disabled, benefits will be in accordance with the schedule of benefits in effect under the Predecessor Contracts and agreements so long as they do not exceed benefits of this Program. For Employees and Dependents not covered under such Predecessor Contracts the effective date of coverage will be deferred under the following circumstances:

1. If an Employee is absent from active full-time work on account of accidental bodily injury or sickness when his coverage would otherwise take effect, the coverage shall take effect on the date he returns to active work for one full day at his customary duties and place of employment;

2. If a Dependent, other than a newborn child, is hospital confined or disabled on account of accidental bodily injury or sickness when his coverage would otherwise take effect, the coverage shall take effect on the date the hospital confinement terminates (or disability ends), whichever is later.

3. The coverage of a newborn dependent child will take effect on its date of birth whether or not it is hospital-confined or disabled, provided, however, that hospital benefits will not be paid for such child if the hospital confinement is caused solely by reason of the maternity confinement of the child's mother. In the event the child is hospital-confined due to premature birth, accidental bodily injury or sickness, or a congenital defect, regular hospital benefits will be provided for the child as stated in the Schedule of Benefits.

Subsequent to May 1, 1976, all new and other full-time Employees and Retirees other than temporary Employees, and their eligible Dependents become eligible for coverage on the first of the month coinciding with, or next following completion of one month of service, provided written application for coverage is made within one month after employment.

If written application is not made within one month after an employee's first day of full-time work, the Employee will be required to submit, at his own expense, "evidence of good health" on behalf of himself and his dependents with coverage becoming effective on the first of the month coinciding with, or next following, the date of approval by the authorized representative of the Program of such evidence of good health.

Benefits for such Employees and Dependents, whose medical coverage is based on this submission of "evidence of good health", will be subject to the "Pre-Existing Conditions" limitations as specified herein.

No coverage shall become effective for an eligible Employee, Retiree or Dependent unless the Employee has first executed an enrollment card authorizing deductions for his share of premium contributions for himself and/or his dependents.

ELIGIBILITY

All full-time Employees and Retired Employees and their eligible dependents who qualify under the Eligibility Rules established by the Employer are eligible. A full-time Employee is one who works at least thirty (30) hours per week or whose occupation normally requires less than (30) hours per week. Retired employees and their Dependents of Political Subdivisions not covered under Predecessor Contracts will not be eligible.

DEPENDENTS

The term "Dependent" as used herein means any of the following persons who are enrolled for coverage as Dependents, provided they are not also covered as an Employee:

1. The Covered Employee's legal spouse;
2. Any unmarried children under 19 years of age depending upon the employee for their support;
3. Any unmarried children 19 years of age, but under 24 years of age, who are enrolled as full-time students and who depend upon the employee for their support;
4. Any dependent parent of an employee's legal spouse; if living in the same household and if fully-dependent upon the employee or upon the employee's legal spouse and claimed as a dependent for Federal Income Tax purposes and applied on or after May 1976, will be enrolled only if such parent has resided with the Covered Employee for a period of 12 consecutive months immediately prior to the date of such enrollment (*see change of Classification Section for application requirements*);

In the event a husband and wife are both eligible for coverage under the Program as employees, all eligible dependent children will be enrolled as dependents of the husband only, and the husband also may enroll his wife as a dependent. In no event,

however, may any person be enrolled simultaneously as an employee and as a dependent under the program.

If the covered wife (spouse) chooses at a later date to be covered separately from her husband, and is eligible for coverage, as an employee, she can be covered effective on the first day of the month after such election. In no event shall this change in coverage increase the benefits to the employee or dependent.

The definition of children as used in this section is:

1. Any natural or legally adopted children of the Employee and/or Spouse dependent upon the Employee for their support, and;
2. Such other children for which the Employee has legal custody, who live in the household of the Employee and are included on the Federal Income Tax return as a Dependent of the Employee and;
3. Grandchildren dependent on the Employee for their support, who live in the household of the Employee and are included on the Federal Income Tax return as a Dependent of the Employee.

CONTINUED COVERAGE

If an unmarried dependent child who is incapable of self-sustaining employment by reason of mental retardation or physical handicap, became so incapable prior to attainment of the termination age for children stated above, and is chiefly dependent upon the Covered Employee for support and maintenance, and, if the Program receives due proof of such incapacity, the coverage of such dependent child **may be continued** under the plan, at the option of the Covered Employee, for so long as the coverage of the Employee remains in force and the dependent child remains in such condition. The Program may request proof of the continued existence of such incapacity from time to time as it may reasonably require;

Employees may retain coverage by continuing their contributions during disability leave, although any period of leave without pay would require the Employee to pay the entire premium (not extending beyond one year in any case); however,

Employees who have applied for and been granted **waiver-of-premium** under their Basic or Supplemental Life Insurance coverage of the Program may continue health coverage for the continuance of such waiver, but with no further increases in the coverage. The Employee will pay the entire premium unless he is receiving a Disability Retirement Income from a state or local governmental Retirement Plan in which case the Agency will pay its share.

PRE-EXISTING CONDITIONS

Medical benefits for State Employees and Dependents, Employees of Political Subdivisions and their Dependents whose coverage is based on evidence of good health, will be subject to one of these limitations for Pre-Existing Conditions.

A Pre-Existing Condition is defined as a physical injury or sickness for which a Person received treatment or prescribed drugs during the specified period immediately preceding the Effective Date of coverage.

The following Pre-Existing Condition limitation will apply to Employees of political subdivisions and their Dependents except overdue applications.

A physical injury or sickness will be considered to be a Pre-Existing Condition if treatment was received, or if drugs were prescribed or taken, during the three-month period immediately preceding the effective date of coverage; and no benefits will be payable for the Pre-Existing Condition until the Covered Person has been a Participant in this Plan for 12 consecutive months.

The following provision will apply to all overdue applications:

A physical injury or sickness will be considered a Pre-Existing

condition if treatment was received or if drugs were prescribed or taken, during the 12-consecutive-month period immediately preceding the effective date of coverage. No benefits will be payable for a Pre-Existing Condition until the Covered Person has been a Participant in the Plan for 24 consecutive months.

There will be no Pre-Existing Condition limitations for Employees of the State and their Dependents if enrollment takes place within one month of employment or within one month for newly-eligible Dependents.

CHANGE OF CLASSIFICATION

When, by reason of change of classification the amount of benefits of the Covered Person is subject to change, taking effect on the first day of the month following notice to the Program of such change and shall be applicable only to claims commencing thereafter (provided the Employee is at work full-time, or the Retiree or Dependent **is not** hospital-confined or disabled).

Any change in the amount of benefits occasioned by the Employee or Dependent attaining age 65 shall become effective on the following July 1. If a dependent parent, as defined, is to be covered, application must be made one year prior to the effective date. All conditions of eligibility must continue to be met.

If notice is not given to the Program within one month after the date of a change in classification which increases benefits, the Program will require evidence of good health satisfactory to it before accepting such change on the Life Insurance coverage. Any change in Medical coverages will be based on the Pre-Existing Condition Rule.

It is the responsibility of the Employee to notify the Program of any change or error in classification of coverage or any other error affecting his premium amount. Any such failure later determined shall be corrected on the first of the following month. All Refunds of premium shall be limited to 12 months.

INDIVIDUAL TERMINATION

The benefits of a Covered Person shall terminate under the plan on the earliest of the following dates:

1. On the date the Program is terminated or terminated for a specific agency or Political Subdivision;
2. On the premium-due date if the Employer fails to pay the required premium for the Covered Person, except when resulting from clerical or other inadvertent error;
3. On the last day of the month in which the Covered Employee leaves or is dismissed from the employment of the Employer, provided, authorized retirement under a State or State Governmental Agency Retirement Plan shall not be considered as a reason for termination of coverage. If not actually eligible for participation in such a Plan, coverage may be continued if the Employee has 10 years of service and has reached age 65; or
4. On the last day of the calendar month the Covered Person, if a Dependent ceases to be an eligible Dependent as defined herein.

Benefits for Covered Dependents of a deceased Covered Employee shall terminate at the end of the calendar month in which death occurred, provided, the surviving Covered Dependents may elect to continue coverage, at their own expense, as follows:

1. The Surviving Spouse of an Active or Retired Employee may continue coverage under the Spouse is eligible for coverage by any other employer-sponsored medical plan, or until remarriage, whichever occurs first; or,
2. The Surviving Children of an Active or Retired Employee may continue coverage until they are eligible for coverage by any other employer-sponsored medical plan, or until attainment of the termination date for children, whichever occurs first.

DEFINITIONS

(A) **Hospital**, as used herein, means an institution which meets all of the following requirements: (1) Holds a license as a hospital (if licensing is required in the state); (2) Operates primarily for the reception, care and treatment of sick, ailing or injured persons as in-patients; (3) Provides 24-hour-a-day nursing service by registered or graduate nurses; (4) Has a staff of one or more licensed physicians available at all times; (5) Provides organized facilities for diagnosis; (6) Operates for compensation from its patients for the services provided; and (7) is not, other than incidentally, a nursing home, or a place for rest, the aged, drug addicts, alcoholics or the treatment of pulmonary tuberculosis.

(B) **Physician** as used herein, means the following: A duly licensed Medical Doctor (M.D.), Doctor of Dental Surgery (D.D.S.), (D.M.D.), Doctor of Osteopathy (D.O.), licensed Podiatrist, licensed Psychologist meeting the requirements of the National Register of Health Service Providers in Psychology or licensed Chiropractor, legally entitled to practice their specialties in the state in which the service is performed. Such persons must be engaged in private practice, and render a charge to the Covered Person for his professional services.

The term **Physician** does not include any intern, resident, fellow or other enrolled in a residency training program regardless of any other title by which he is designated or his position on the medical staff of the 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. Provided, however, that, effective 10/1/77, charges made by a Physician, as defined herein, who is on the faculty of a State medical school, or on the staff of a State hospital, will be considered as covered expenses if such charges are made in connection with treatment of an injury or sickness covered under this Plan and further provided that such Physician would have charged a fee for such services in the absence of this provision.

It is the specific intent and purpose of the Program to exclude reimbursement to the Covered Person for services rendered by an intern, resident, fellow or others enrolled in a residency training program regardless of whether the intern, resident, fellow or other was under the supervision of a physician or regardless of the circumstances under which services were rendered.

The term **Physician** does not include a practicing medical doctor in the capacity of supervising interns, residents, senior-residents, fellows or others enrolled in a training program, and further, who does not personally perform a surgical procedure or medical treatment to the Covered Person.

(C) **Reasonable Expense**, as used herein, means the usual, necessary, reasonable and customary fee or charge for the services rendered and the supplies furnished, in the area where such services are rendered or such supplies are furnished, provided such services or supplies are recommended and approved by a Physician, other than the Covered Person.

(D) **Calendar Year**, as used herein, means that period commencing at 12:01 A.M., Standard Time, at the address of the Employer, on 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 Employer, on the next following January 1. Each successive "Calendar Year" shall be the period from 12:01 A.M., Standard Time, at the address of the Employer, on January 1, to 12:01 A.M., Standard Time, at the address of the Employer, on the next following January 1.

(E) **Disability**, as used herein, means that the covered person, if an Employee, is prevented, solely because of a non-occupational accident or sickness, 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 non-occupational accident or sickness, from engaging in substan-

tially all of the normal activities of a person of like age and sex in good health.

(F) **Annual Earnings**, for the purpose of determining Life Insurance benefits, are defined as follows:

1. **For Academic Employees** - The employee's annual contract compensation for the regular school term, exclusive of earnings for summer school services; and

2. **For All Other Employees** - Annualized compensation based on the employee's basic rate of pay, exclusive of overtime or other extraordinary earnings, as of the first day of the month.

The amount of benefit will be determined and verified upon notice of death and in no event will the benefit exceed the lesser of:

1. The benefit for which the employee was eligible, based on his annual earnings, or

2. The benefit for which the employee has made application and was making contributions.

(G) **Program**, as used herein, means the State of Louisiana Employees Uniform Group Benefit Program as administered by the State Division of Administration for the benefit of employees and their eligible dependents. Some of the various plans offered to employees are insured by insurance companies selected by bids.

The Medical Benefits Plan is self-funded using a contractual arrangement with an insurance company to actually examine the medical bills for reasonableness and to process the claims.

To assure the soundness of each Plan, qualified independent actuarial consultants and claim auditors are engaged.

(H) **Plan**, means any one of the many plans offered to employees by the Employees Uniform Group Benefits Program. The plans outlined in this booklet are,

Employee Life Insurance — Basic and Supplemental Schedules,

Dependent Life,

Employee Accidental Death and Dismemberment,

Employee and Dependent Basic and Major Medical Coverage,

Employee and Dependent Catastrophic Medical Coverage, and

Employee and Dependent Optional Life Insurance Program.

(I) **Claim Review Committee**, is a committee which meets once each month with the Director of the Program as Chairman. This committee is responsible for the interpretation of the Plan as well as reviewing and determining coverage on problem claims. Any such claim problems should be referred to the Director for consideration by the committee.

(J) **Advisory Committee**, is a committee which meets periodically to review administrative problems and made recommendations relative to policies of the Program as well as benefit levels.

(K) **Adoption Instrument**, as used herein means the agreement between a Political Subdivision and the State of Louisiana Employees Uniform Group Benefits Program. The conditions of original (and possible termination of) coverage are contained in this separate document.

UNIFORM PROVISIONS

The Plan document and the individual application, if any, of the Covered Employee constitutes the entire contract between the parties, and any statements made by the Employer or by any Covered Employee shall, in the absence of fraud, be deemed representations and not warranties, and such statements made for the purpose of effecting coverage may be used to avoid such coverage or reduce benefits only if contained in a written instrument signed by the Group Benefits Section or the Covered Employee.

Written notice of physical injury or sickness upon which claim may be based must be given to the State of Louisiana, Division of Administration, Group Benefit Section within six (6) months after the end of the benefit year in which medical expenses were incurred.

The Program, upon receipt of the notice as required, will furnish

to the claimant such forms as usually are furnished by it for filing proof of loss. If such forms are not so furnished within 15 days after the Program receives such notice, the claimant shall be deemed to have complied with the requirements of the plan as to proof of loss upon submitting, within the time fixed for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

Written proof of loss must be furnished to the Program in case of continuing loss within 90 days after termination of the period for which the Program is liable and in case of claim for any other loss within 90 days after the date of such loss.

Failure to furnish notice or proof within the time provided shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such notice of proof, and that such notice or proof was furnished as soon as was reasonably possible.

Benefits payable under the plan for other than continuing loss will be paid immediately upon receipt of due proof of such loss and subject to such proof all accrued indemnities for continuing loss will be paid each two weeks during any period for which the Program is liable and any balance remaining unpaid will be paid immediately upon receipt of due proof.

In the event that the claim of any person to all or any part of any payment or benefit under this program shall be denied, the Program shall provide upon request to the claimant a written notice setting forth, in a manner calculated to be understood by the claimant:

- A. The specific reason or reasons for the denial;
- B. Specific references to the pertinent Program provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and explanation as to why such material or information is necessary; and
- D. An explanation of the Program's claim procedure.

If any indemnity of the Plan shall be payable to a Covered Person who is a minor or otherwise not competent to give a valid release, the Program may pay such indemnity up to an amount not to exceed \$1,500.00 to any relative by blood or connection by marriage of the Covered Person who is deemed by the Program to be equitably entitled thereto. Any payment made by the Program in good faith and pursuant to this provision shall fully discharge the Program to the extent of such payment.

The Program, through its physician, shall have the right and opportunity to examine the Covered Person, whose injury or sickness is the basis of claim, when and as often as it may reasonably require during pendency of the claim under the Plan.

No action at law or in equity shall be brought to recover on the plan prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of the plan, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the plan.

If any time limitation of the plan with respect to giving notice, filing proof of loss or commencing any action at law or in equity is less than that permitted by the laws of the state in which the Covered Person resided at the time the coverage is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

The Covered Person shall have the sole right to select his own physician, surgeon, and hospital and a physician-patient relationship shall be maintained.

The Program is not in lieu of and does not affect any requirements of coverage by Workmen's Compensation Insurance.

RIGHT TO RECEIVE AND RELEASE INFORMATION

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 this provision, or like terms of any Plan, or to determine how, or if, they apply. Any claimant under this Plan shall furnish to the Program such information as may be necessary to implement this provision.

FACILITY OF PAYMENT

If payments which should have been made under this Plan as stated in this provision have been made under any other Plan or Plans, the Program may, at its option, pay to any organizations making such other payments any amounts which it determines will satisfy the intent of this provision. Amounts so paid shall be deemed benefits paid under this Plan and, to the extent of such payments the Program shall be fully discharged from liability under this Plan.

RIGHT OF RECOVERY

If the total payments made by the Program as to Allowable Expenses at any time are more than the maximum payment then necessary to satisfy the intent of this provision, the Program shall have the right to recover such payments to the extent of such excess, from one or more of the following, as the Program shall determine: any persons to, or for, or with respect to whom such payments were made, any insurance companies, and any other organization.

No benefits shall be paid (whether reduced or not) under this provision, to the extent that it would be inconsistent with any definition, limitation, condition, exception or other provision applying to this Plan. Nothing contained in this provision shall be held to alter or affect any of the terms of the plan other than as herein specifically stated.

The Plan Document is in the possession of the Division of Administration and may be inspected by the Covered Person at any time during business hours at the office of the Group Benefit Section.

THE MEDICAL PROGRAM

BASIC BENEFITS

HOSPITAL BENEFITS

When accidental bodily injury or sickness requires the Covered Person to be confined within a hospital as a resident patient, such confinement commencing while this coverage is in force, the Program will pay the reasonable expense actually incurred for the following hospital services when consistent with the diagnosis and treatment of the condition for which hospitalization is required, but only when such services are furnished and charged for by said hospital and administered and used during such confinement.

(1) Hospital Room and Board Expense for accommodations in the hospital's average semi-private room, but not to exceed the maximum amount payable per day nor the number of days for any one period of confinement stated in the Schedule of Benefits.

(2) Hospital Miscellaneous expense for services and supplies furnished by the hospital which are not included in the room and board charge, during the period for which the daily room and board rate is payable, but not to exceed the Maximum Amount Payable stated in the Schedule of Benefits for any one period of confinement. This benefit will include (1) charges for administration of anesthesia either by a hospital employee or a professional anesthesiologist, and (2) ambulance service to and from the hospital but not in excess of \$30.00 for round trip. Specifically excluded are personal convenience or comfort items or other services not necessary to the treatment of the patient.

Benefits will be payable up to the Hospital Miscellaneous maximum stated in the Schedule of Benefits for hospital expenses incurred by a Covered Person, as the result of an accidental bodily injury or sickness, which are provided in connection with a surgical procedure on a hospital basis.

As used in this benefit, "hospital confinement" means a stay or series of stays in a hospital totaling the first 120 days of such stays and shall be deemed to be continuous and to constitute a single period of confinement if discharge and readmission to a hospital occurs within a 90-day period, provided, however, a Covered Employee shall automatically become eligible for another 120 days of in-hospital care whenever he returns to work for at least one full day following discharge from a hospital. In determining the number of days of confinement, the day of admission and the day of discharge shall be counted together as one day. If the Covered Person is admitted and discharged on the same day, it shall also be counted as one day.

These Hospital Benefits do not cover any loss caused by pregnancy, including resulting childbirth or complications therefrom. **NOTE: Please refer to Hospital and Surgical Maternity Benefits.**

SURGICAL BENEFITS

When accidental bodily injury or sickness requires the Covered Person to undergo any surgical procedure listed in the "Schedule of Surgical Procedures," and such procedure is performed by a Physician while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for such surgical procedure, including usual pre- and post-operative care, but not to exceed the maximum amount payable for the operation performed as indicated in such Schedule, nor to exceed the Maximum Amount Payable for Surgical Benefits, as stated in the Schedule of Benefits, for any and all surgical services necessitated by the same cause during the continuance of the policy.

If two or more surgical procedures are performed at different times in the same period of hospitalization, payment will be made by the Program for the operation performed for which the largest amount is allowed as indicated in the Schedule with an additional payment of 50 percent for the next largest amount in the Schedule, but, in no event, shall the total payment by the Program exceed the Maximum Amount Payable stated in the Schedule of Benefits.

If two or more surgical procedures are performed at the same time or in immediate succession or under one anesthetic, the maximum payment by the Program will be the largest one of the amounts allowable for the individual operation so performed.

Surgical procedures may be performed in the home, hospital, physician's office or elsewhere.

These Surgical Benefits and the Schedule of Surgical Procedures do not cover any loss caused by pregnancy, including resulting childbirth or complications therefrom.

SCHEDULE OF SURGICAL PROCEDURES MAXIMUM SURGICAL BENEFIT: \$500

Accidental laceration of skin structures, suture of face, neck, genitalia, and hands, all lacerations combined:	
1 inch or less	\$ 25.00
More than 1 inch up to 2 inches	35.00
Other body areas, all lacerations combined:	
1 inch or less	12.50
More than 1 inch up to 2 inches	16.50
Bronchoscopy:	
Diagnostic, with or without biopsy	75.00

Operative removal of tumors or foreign bodies	125.00
Cystoscopy — Diagnostic, with or without biopsy	
Without ureteral catheterization	40.00
With ureteral catheterization	60.00
Operative Transurethral resection of bladder neck or bladder tumors or crushing bladder stones	185.00
Fulguration of bladder tumors or removal of bladder stones without crushing	85.00
Cysts, excision of—	
Pilonidal cyst	150.00
Sebaceous cyst	25.00
Mammary Glands:	
Excision of benign tumors or cysts—	
Unilateral	85.00
Bilateral	125.00
Mastectomy —Total	165.00
Radical, with axillary node dissection	335.00
Skin abscess, superficial, incision and drainage—	
One	12.50
Each additional	6.50
Maximum	40.00
Thyroid Gland:	
Thyroidectomy, Total or Subtotal	290.00
Thyroid lobectomy, hemithyroidectomy	250.00
Excision of thyroid adenoma or cyst	210.00
Tumors, benign, superficial	
Excision from face, neck, genitalia, hands, or feet—	
One	35.00
Each additional	16.50
Excision from other body areas	
One	16.50
Each additional	8.50
Electrocauterization or fulguration, with or without curettage per day of such treatment—	
One Tumor, except plantar wart	8.50
More than one tumor, or each plantar wart	16.50

ABDOMEN

Appendectomy, with or without incision and drainage of appendiceal abscess	185.00
Cholecystectomy, with or without exploration of common duct	290.00
Colon resection—	
Partial, with or without colostomy	415.00
Total	500.00
Gastrectomy, with or without vagotomy—	
Partial	415.00
Total	500.00
Hemiotomy, inguinal or femoral	
Single	185.00
Bilateral	250.00

PROCTOLOGY AND UROLOGY

Fistulectomy or fistulotomy—	
Single	110.00
Multiple	150.00
Fistulectomy or fistulotomy (single or multiple) with incision and drainage of ischiorectal abscess	150.00
Hemorrhoidectomy, by incision, internal only or both internal, and external—	
Without fistulectomy	135.00
With fistulectomy	165.00
Hydrocele or varicocele, excision of—	
Unilateral	125.00
Bilateral	165.00
Isochiorectal abscess, incision and drainage	60.00
Nephrectomy or heminephrectomy	375.00
Proctectomy, complete, combined abdominal—	
Perineal procedure, one or more stages	500.00

Prostatectomy—	
Suprapubic, one or more stages	415.00
Transurethral, one or more stages including control of post-operative bleeding	335.00

GYNECOLOGY

Conization of cervix	50.00
Cystocele, repair of	165.00
Rectocele, repair of	125.00
Dilation of cervix and curettage of uterus non-puerperal, with or without electrocauterization, conization or polypectomy	65.00
Electrocauterization of cervix, non-puerperal	25.00
Cystocele and rectocele, repair of	235.00
Hysterectomy, with or without dilation and curettage:	
Complete (Pan-hysterectomy), with or without adnexa	300.00
Subtotal or supracervical, with or without adnexa	250.00
Radical, for malignancy	415.00
Salpingectomy, or oophorectomy, or both, unilateral or bilateral	210.00
Uterus, suspension of any type, with or without dilation and curettage or surgery on tubes or ovaries	210.00

NEUROSURGERY

Craniotomy (other than trephination only)—	
Decompression, unilateral or bilateral	290.00

Excision of brain cyst, neoplasm, or abscess	500.00
Lumbar sympathectomy—	
Unilateral	250.00
Bilateral	375.00
Trephination:	
Drainage of subdural, epidural or brain abscess or hematoma—	
Initial trephination	250.00
Subsequent needling	50.00
Pneumoventriculography	165.00

MUSCULOSKELETAL

Amputations:	
Finger, thumb, or toe (one or more phalanges)—	
One	40.00
Each additional	25.00
Thigh, through femur	250.00

	Closed Reductions	Open Reductions
Dislocations:		
Elbow	65.00	165.00
Shoulder	60.00	210.00
Fractures, simple or compound:		
Ankle		
Malleolus of tibia or fibula	85.00	165.00
Bimalleolar (Potts)	100.00	250.00
Clavical	50.00	165.00
Elbow, distal end of humerus or proximal end of radius or ulna, one or more bones	100.00	250.00
Femur, (except knee)	200.00	400.00
Fibula (except ankle)	65.00	135.00
Finger, thumb or toe:		
One	35.00	65.00
Each additional	16.50	35.00
Humerus (except elbow)	125.00	250.00
Knee, distal end of femur or proximal end of tibia, one or both bones	125.00	250.00
Radius, including Colles (except elbow)	85.00	165.00
Radius and ulna (except elbow)	115.00	235.00
Ribs, one or more	35.00	
Tibia (except ankle and knee)	125.00	250.00
Ulna (except elbow)	65.00	165.00

Closed Reduction is correction of displacement by manipulation without incision including application of casts or traction and including debridement at fracture site. For closed reduction of a

fracture with skeletal pinning and external fixation, the maximum amount is 1½ times the maximum amount for a closed reduction.

Open Reduction is the correction of displacement by manipulation and incision with or without skeletal traction or metallic fixation.

Intervertebral disc, excision of—
 Without spinal fusion 375.00
 With spinal fusion 500.00

Tendons — Excision of ganglion 65.00

Suture of tendon laceration—
 One 85.00
 Each 40.00

EYE, EAR, NOSE AND THROAT

Extraction of lens for cataract 335.00

Strabismus, operation for—
 One eye 225.00
 Both eyes 290.00
 Each additional operation,
 one or both eyes 125.00

Fenestration, operation for—
 Otosclerosis 500.00
 Myringotomy or tympanotomy 25.00

Nasal polyps, removal of one or more,
 one or more stages:
 Unilateral 25.00
 Bilateral 40.00

Nasal septum, submucous resection of 165.00

Tonsillectomy with or without adeniodectomy 65.00

HEART AND BLOOD VESSELS

Commissurotomy or valvotomy 500.00

Saphenous vein, long, ligation with or
 without retrograde injection or
 distal interruptions:
 Without stripping—
 Unilateral 125.00
 Bilateral 185.00
 With stripping on same or
 successive days—
 Unilateral 165.00
 Bilateral 250.00

CHEST

Lobectomy—
 Total, subtotal or segmental 500.00
 Wedge resection 375.00

Thoractomy, for drainage of empyema—
 Without rib resection 85.00
 With rib resection 165.00

The Program will determine an amount consistent with the amounts listed for surgical procedure not listed in the foregoing Schedule — such determination, in each case, to take into account the nature and complexity of the procedure involved and the exclusions and other restrictions applicable.

**SCHEDULE OF ORAL
 SURGICAL PROCEDURES**

Incision & Drainage of	
Abscess, Intraoral	\$ 28.00
Abscess, Extraoral	120.00
Alveolectomy, per quadrant	20.00
Removal of Ankylosed Tooth	40.00
Apicoectomy	60.00
Cysts of the Jaw (Mandible or Maxilla) excision of	
Involving area of one or two teeth	60.00
Involving area of three or four teeth	120.00
Involving area of 5 or more teeth	180.00
Fibroma, Epulis, excision of	28.00
Excisional or Incisional Biopsy	20.00
Impacted Tooth, Excision of(per tooth)	45.00
Mandibular Tori (per side)	75.00
Torus Palatinus, excision	85.00
Tuberosity Reduction	
Soft Tissue	36.00
Bony	48.00

ORAL SURGICAL BENEFITS

When accidental bodily injury or sickness requires the Covered Person to undergo any oral surgical procedure listed in the preceding "Schedule of Oral Surgical Procedures," and such procedure is performed by a Doctor of Dental Surgery (D.D.S.) (D.M.D.) while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for such surgical procedure, including the usual pre- and post-operative care, but not to exceed the maximum amount payable for the operation performed as indicated in such Schedule, for any and all surgical services necessitated by the same cause during the continuance of the plan.

If two or more listed oral surgical procedures are performed at different times in the same period of hospitalization, payment will be made by the Program for the operation performed for which the largest amount is allowed in the Schedule with an additional payment of 50 per cent of the amount allowed for the next largest listed procedure performed.

If two or more oral surgical procedures are performed at the same time or in immediate succession or under one anesthetic, the maximum payment by the Program will be the largest one of the amounts allowable for the individual operation so performed.

No procedures other than those listed above are covered.

This benefit shall include, **but is limited to**, the Oral Surgical procedures indicated in the Schedule of Oral Surgical Procedures provided such surgical care is rendered by a Doctor of Dental Surgery (D.D.S.) (D.M.D.) licensed to practice in the State in which the service is performed. No oral surgical procedures, except those listed in the Schedule, will be provided under this benefit.

Surgical procedures may be performed in the home, hospital, surgeon's office or elsewhere.

HOSPITAL AND SURGICAL MATERNITY BENEFITS

When pregnancy, including resulting childbirth or complications therefrom, requires the Covered Person to incur expense for operation or treatment by a Physician or for necessary hospital service while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for such operation, treatment or service on account of any one pregnancy, but not to exceed in the aggregate for such hospital and surgical services the following maximum amounts:

Miscarriage	\$300.00
Normal Delivery	\$400.00
Caesarean or Ectopic Pregnancy	\$500.00

Hospital and Surgical Maternity Benefits are payable only if the pregnancy commences on or after the effective date of the Covered Person's coverage under the Plan or the predecessor contracts, and if such person is enrolled for maternity benefits, provided, however, if such person is entitled to extended maternity benefits under the predecessor contracts no benefit shall be payable for that one pregnancy under the plan.

These Hospital and Surgical Maternity Benefits are available **only** for a Covered Employee or married Covered Dependent spouse. These benefits will be provided **only** if such employee is enrolled for "Family Coverage", under the plan.

IN-HOSPITAL MEDICAL BENEFITS

When accidental bodily injury or sickness requires the Covered Person to be confined within a hospital as a resident patient, and such confinement commences while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for treatment by a Physician during the period for which hospital room and board benefits are payable under the plan, beginning with the first day of hospital confinement, but not to exceed: (1) one treatment per day; (2) the In-Hospital Medical Benefits Daily Rate; or (3) the maximum number of treatments during any one period of hospital confinement.

In the event In-Hospital Medical treatment is rendered concurrently with Surgical, the Covered Person shall be entitled to either benefits for the In-Hospital Medical Benefits or benefits as indicated in the Schedule of Surgical Procedures, whichever is larger.

These In-Hospital Medical Benefits shall not be payable for treatment rendered in connection with pregnancy, including resulting childbirth or complications therefrom, or treatment in connection with surgery, including pre- and post-operative care, provided, however, benefits shall be payable under this benefit for post-operative treatment by a Physician other than the operating Physician.

DIAGNOSTIC X-RAY AND LABORATORY BENEFITS

When accidental bodily injury or sickness requires the Covered Person to incur expense for X-Ray or Laboratory Examination for diagnosis of a covered injury or sickness, or routine Pap Smear, and such person is not confined in a hospital as a resident patient at the time such expense is incurred, the Program will pay the reasonable expense actually incurred for X-Ray or Laboratory procedures made or recommended by a Physician while this coverage is in force as to such person, but not to exceed: (1) \$75.00 for all such expenses incurred in connection with any one injury; or (2) \$75.00 for all such expenses incurred in connection with all sicknesses during any one calendar year.

The benefits provided under this provision may be performed in a Physician's office, clinic or in the out-patient department of a hospital.

These Diagnostic X-Ray and Laboratory Benefits do not cover

any expense incurred for dental examinations (unless required in connection with an accidental bodily injury, or required in connection with an oral surgical procedure listed in the "Schedule of Oral Surgical Procedures"), routine physical examinations and check-ups, or examinations in connection with pregnancy, including resulting childbirth or complications therefrom.

SUPPLEMENTARY EMERGENCY ACCIDENT BENEFITS

When accidental bodily injury requires the Covered Person to incur initial expense for medical or hospital charges, including professional ambulance service used locally, within 72 hours after the accident, and services or treatments as a result of such accidental bodily injury are furnished by or at the direction of a Physician while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred, but not to exceed the maximum amount payable stated in the Schedule of Benefits as the result of any one accidental bodily injury. In no case will expenses incurred more than 90 days after the accident be covered.

These Supplementary Emergency Accident Benefits will be provided for expenses actually incurred which are in excess of the amounts otherwise payable for such accidental bodily injury under all other benefit sections of these Basic Benefits.

EXCEPTIONS AND EXCLUSIONS FOR BASIC BENEFITS

No benefits are provided under Basic Benefits for:

1. Cases covered in whole or part by Workmen's Compensation Insurance;
2. Services or supplies furnished by the Veterans Administration;
3. Services or supplies furnished under the laws of the United States or any state or political subdivision thereof, provided, however, that benefits otherwise payable under the plan will be payable if the Covered Person is rendered services for which he is charged in a publicly owned charity hospital in the State of Louisiana.
4. Convalescent, custodial or sanitarium care or rest cures;
5. Procurement or use of special braces, special appliances or special equipment;
6. Services rendered for drug addiction and/or conditions resulting therefrom;
7. Intentional self-inflicted injuries, injuries sustained while in an aggressor role, or any attempt at suicide;
8. Any medical expense incident with or caused by any attempt at a felony or misdemeanor; and,
9. Expenses incurred in connection with cosmetic surgery unless necessary for the prompt repair of a **non-occupational** injury or sickness which occurs while coverage is in force.

MEDICARE PROVISION

Benefits for services and supplies otherwise payable under the policy, will be reduced by any amounts paid or payable through any present or future laws enacted by the Congress of the United States including but not limited to Public Law 89-97, known and described as **Medicare**, and including any amendments to such laws. This Medicare Provision shall apply to all covered Persons.

COVERAGE AFTER TERMINATION OF BASIC BENEFITS

Hospital, Medical and Surgical Benefits otherwise payable under the plan will also be paid as specified herein when the Covered Person shall suffer loss occurring within three months

after the termination of employment, if from the date of such termination of coverage to the date of the loss the Covered Person has been wholly and continuously disabled due to the same injury or sickness causing the loss.

Hospital and Surgical Maternity Benefits otherwise payable under the plan will also be paid as specified herein when the Covered Person shall suffer loss occurring within nine months after the termination of employment, if the Covered Person was pregnant at the time of such termination and the loss results from such pregnancy, including a resulting childbirth or complications therefrom, and if the Covered Person was otherwise eligible for such benefits at the time of such termination.

If termination of coverage is caused by the withdrawal of a covered unit (Department, Political Subdivision, Agency, etc.) from the Program, Hospital, Medical, Surgical or Maternity Benefits, otherwise payable under the Plan, will be paid only during the continuation of a Hospital confinement (at time of termination) but not longer than three months after such termination of coverage.

CONVERSION PRIVILEGE

If a Covered Employee's Basic Benefits coverage is terminated for any reason, other than the withdrawal of a covered unit or if a Dependent no longer qualifies as a Covered Dependent, as defined herein, such Employee or Dependent shall be entitled to convert his or her coverage without medical examination, within 31 days after the date of termination of coverage, to the individual policy then customarily being written by CNA Insurance, by making application and paying the applicable premium.

MAJOR MEDICAL BENEFITS

Definitions

The general definitions previously indicated in the section of this certificate entitled "Definitions" also are applicable to this Major Medical section. Additionally, the following definitions shall only apply to this section:

Deductible Amount, as used herein, means that amount indicated in the Schedule of Benefits plus any amounts that are payable under the Basic Benefits section of the plan. Such Deductible Amount must be satisfied each Calendar Year by each Covered Person by the application of Eligible Expenses incurred as hereinafter defined, before the excess of any such Eligible Expenses will be payable under these Major Medical Benefits, provided in no event shall any Family Unit be required to satisfy more than three individual Deductible Amounts during any one Calendar Year regardless of the number of individuals involved. **Family Unit** shall mean a Covered Employee and all of his Covered Dependents.

In the event more than one Covered Person in a Family Unit are injured in a common accident, only one (1) Deductible Amount will be required to be satisfied during the Calendar Year in which the accident occurs and the next following Calendar Year, with respect to the total Eligible Expenses incurred as a result of the same accident by all such Covered Persons involved.

Expenses incurred toward satisfaction of a Covered Person's Deductible Amount during the last three (3) months of a Calendar Year (Oct. 1-Dec. 31) will be carried over as a credit toward the succeeding Calendar Year's Deductible Amount.

In the event a Covered Person enrolled on April 30, 1976, under the predecessor contracts and agreements, and had accumulated Eligible Expenses during the first four (4) months of the Calendar Year 1976, which were credited toward the satisfaction of the Deductible Amount for that year, under the predecessor contracts and agreements, but such Deductible Amount was not

fully satisfied and no payment was made or was eligible to be made under such predecessor contracts and agreements during such four (4) months period, such Covered Person shall be entitled to a credit of such accumulated Eligible Expenses to be applied toward the Deductible Amount required under the plan for the Calendar Year 1976.

A Covered Person enrolled on April 30, 1976 under the predecessor contracts and agreements who had satisfied his Deductible Amount for 1976 under such contracts and agreements will not be required to satisfy a new Deductible Amount for this plan.

A similar provision may be applicable to covered persons employed by an Agency or Political Subdivision becoming covered under the Program after April 30, 1976. Such coalitions of coverage are as provided for in the specific unit's Adoption Instrument.

Maximum Amount Payable, as used herein, means the aggregate maximum amount of Eligible Expenses which the Program will pay as a result of all accidental bodily injuries and sicknesses combined during the Covered Person's lifetime. Any Major Medical Benefits that were paid to a Covered Person under the prior contracts and agreements will be included in the calculation of this Maximum Amount Payable.

The Maximum Amount Payable under the Major Medical Benefits of this plan, combined with the Major Medical Benefits that were paid to a Covered Person under the prior contracts and agreements, shall not exceed \$50,000.00. However, the Maximum Amount Payable will be reduced on the July 1 coinciding with or next following a Covered Person's attainment of age 65 or 50 per cent of the remaining Maximum Amount Payable as of the date immediately preceding such July 1. Should the Covered Person be hospital-confined on such July 1, the reduction in the Maximum Amount Payable will be deferred until the date such hospital confinement terminates.

The Maximum Amount Payable is subject to partial and full restoration as indicated in the section entitled "Restoration and Reinstatement of Lifetime Major Medical Benefits" of this certificate.

BENEFITS

When accidental bodily injury or sickness, as a result of other than alcoholism or a mental or nervous disorder, requires the Covered Person to incur expense for any of the Eligible Expenses defined herein, and such service or treatment is performed or prescribed by a Physician while this coverage is in force as to such person, the Program will pay, after the Deductible Amount has been satisfied:

80 per cent of the first \$5,000.00 of Eligible Expenses, plus 100 per cent of Eligible Expenses in excess of \$5,000.00 for the remainder of the calendar year, but payment will not exceed the applicable Maximum Amount Payable during the covered person's lifetime (if the 100-per-cent level of payment is reached during the last three months of a Calendar Year, then, after satisfaction of the proper Deductible Amount, such 100-per-cent level of payment will continue for the succeeding Calendar Year, with respect to the total Eligible Expenses of the Covered Person).

If the Covered Person is treated for alcoholism or a mental or nervous disorder while not confined in a hospital as a resident patient, payment by the Program shall be limited to 50 per cent of the reasonable eligible expenses incurred, provided, the maximum reimbursement for physician's charges shall not exceed \$12.50 per visit and no payment will be made for:

1. More than one visit per day; and,
2. More than 50 visits per calendar year.

ELIGIBLE EXPENSES

The following shall be considered Eligible Expenses under Major Medical Benefits:

1. The hospital's average semi-private accommodation, not in excess of \$50.00;
2. Anesthetics and the administration thereof;
3. Surgical dressings, plaster casts and ordinary splints;
4. Diagnostic studies, X-ray examinations and therapy, laboratory examinations, basal metabolism tests, electrocardiograms;
5. Radium therapy, radium isotopes, blood and blood plasma, shock therapy, electroencephalogram, prescription drugs and medicines listed by the U.S. Pharmacopoeia and the National Formulary purchased for use in or outside a hospital;
6. Oxygen and its administration;
7. Medical and surgical supplies;
8. Intravenous injections and solutions;
9. Services of a physician, except for examinations for prescription or fitting of eye glasses or hearing aids (unless necessary to correct hearing or eye damage suffered as the result of injury not covered by Workmen's Compensation; or for cataract surgery which occurs while the coverage is in force);
10. Services of a physiotherapist duly licensed under the laws of the state where the service is rendered;
11. Services of a registered professional nurse (R.N.) and of a licensed practical nurse (L.P.N.) duly licensed under the laws of the state where the service is rendered, provided they are not related to the Covered Person by blood, marriage, or adoption;
12. Services rendered by a Doctor of Dentistry duly-licensed under the laws of the state where the service is rendered, only for treatment of accidental injuries to sound natural teeth of a Covered Person commencing within 90 days of such injuries;
13. Rental or purchase of iron lung or other supportive or corrective equipment such as a wheel chair, hospital-type bed, trusses and braces required for the treatment of an injury or illness;
14. Prosthetic appliances required as a result of conditions caused only by accidental injury or illness occurring after the Covered Person's effective date of coverage under the policy; and,
15. Professional ambulance service when used to transport the Covered Person from the place where he is injured by an accident or stricken by a disease to the first hospital where treatment is given — but no other charges for transportation or travel. In no case will more than \$30.00 less any amount paid under Basic Benefits be considered as Covered Medical Expense.

Benefits are not provided under Major Medical Benefits for expenses incurred in connection with pregnancy, including resulting childbirth or complications therefrom; however, benefits **will be provided** for services performed or prescribed by a physician, or surgical operations **for**; extrauterine pregnancy, pernicious vomiting, toxemia or complications requiring intra-abdominal surgery after termination of pregnancy. A Deductible Amount will not apply before these benefits are payable.

ALCOHOLISM

When alcoholism requires the Covered Person to incur expenses while not confined in a hospital as a resident patient, or to be confined as a resident patient in a facility which meets the definitions of Hospital as contained in the section of this certificate entitled **Definitions**, the Plan will pay benefits in accordance with the Basic Benefits and Major Medical Benefits sections of this certificate.

When alcoholism requires the Covered Person to be confined as a resident patient in a facility licensed by the Joint Commission on Accreditation of Hospitals, but which **does not otherwise** meet the definitions of Hospital as contained in the section of this certificate entitled **Definitions**, the Program will pay Room and Board and Diagnostic X-Ray and Laboratory benefits as specified in the Basic Benefits section of this certificate.

Charges for room and board and diagnostic X-Ray and laboratory in excess of the amount covered in the Basic Benefit described

in the preceding paragraph and all other covered expenses, including those of a physician, in connection with a confinement due to alcoholism will be payable at a rate of 50 per cent of such eligible expenses, following satisfaction by the Covered Person of a separate \$100.00 calendar year deductible for this benefit (which will be in addition to any deductible required under other provisions of this Plan).

Eligible Expenses shall not include:

1. Room and Board charges in excess of \$50.00 per day;
2. Charges for transportation; and,
3. Charges for educational and rehabilitation materials and supplies.

Benefits provided under this provision shall be in lieu of any other benefit of the Program.

EXCEPTIONS AND EXCLUSIONS FOR MAJOR MEDICAL BENEFITS

All of the definitions, procedures, conditions, limitations, and exclusions of the Basic Benefits section of the Plan are deemed to be applicable to the coverage under these Major Medical Benefits unless they are in conflict with express provisions of these Major Medical Benefits, in which case the provisions as stated under Major Medical Benefits will be deemed controlling for purposes of interpretation.

COVERAGE AFTER TERMINATION OF MAJOR MEDICAL BENEFITS

If injury is sustained or sickness commences as to a Covered Person prior to termination of employment, benefits otherwise payable under the Plan will be paid for any expenses incurred after such termination of coverage of the Covered Person, **if** from the date of such termination of coverage to the date such expenses are incurred, the Covered Person is **wholly and continuously** disabled by reason of such injury or sickness. Such benefits shall be payable only during the continuance of such disability but not beyond the remainder of the Calendar Year.

If termination of coverage is caused by the withdrawal of a covered unit (Department, Political Subdivision, Agency, etc.) from the Program; Major Medical Benefits otherwise payable under the Plan will be paid only during the continuation of a Hospital Confinement (at time of termination) but not longer than three months after such termination or the end of the Calendar Year of such termination, whichever occurs first.

RESTORATION AND REINSTATEMENT OF LIFETIME MAJOR MEDICAL BENEFITS

Whenever benefits to the extent of \$2,000.00 or more, become payable to a Covered Employee or Covered Dependent under age 65, or \$1,000.00 or more become payable to a Covered Employee or Covered Dependent age 65 or over, under these Major Medical Benefits, the full Maximum Amount Payable may be reinstated as to such Covered Person by such person furnishing, at his own expense, such evidence of good health as may be satisfactory to the Program. If such satisfactory evidence of good health is furnished, the full Maximum Amount Payable shall be reinstated as to such Covered Person effective as of the date that the Program gives written approval thereof. If all of the conditions to have the Maximum Amount Payable reinstated, as provided above, are satisfied, the reinstatement shall be applied to such Covered Person as though no benefits had become payable to such person under the plan prior to the date of the reinstatement is effected.

Whenever benefits have become payable to a Covered Person under the plan and the full Maximum Amount Payable has not been fully reinstated as to such person at the end of any Calendar

Year, in accordance with the provisions of the foregoing paragraph, an automatic restoration, which will not require submission of evidence of good health, shall be provided. This automatic restoration shall be equal to the lesser of \$2,000.00 for a Covered Employee or Covered Dependent less than age 65, and \$1,000.00 for a Covered Employee or Covered Dependent age 65 or more, and the Maximum Amount Payable which has not previously been reinstated. Such amount so reinstated shall be effective on the first day of the next following Calendar Year.

In no event will the Maximum Amount Payable under the plan for a Covered Employee or a Covered Dependent exceed the Maximum Amount Payable stated in the Schedule of Benefits at any time.

CATASTROPHIC ILLNESS BENEFITS

(OPTIONAL AT THE ELECTION OF THE EMPLOYEE)

The Definitions indicated in the Section entitled "Definitions" of this plan are also applicable to these Catastrophic Illness Benefits. These Catastrophic Illness Benefits are paid prior to the benefits which might otherwise be available under Basic Benefits and Major Medical Benefits.

This is an optional or elective benefit and will be provided only for those persons who enroll for this coverage and agree to pay the additional premium therefor. All Employees and Dependents who are covered for Basic Benefits and Major Medical Benefits under the plan, except only those persons indicated in item no. 4 of the Section entitled DEPENDENTS, are eligible for enrollment. An Employee or Dependent may select coverage under this benefit within one month of the date of employment without evidence of good health. If the option is not made within this one-month period, the Employee or Dependent must furnish, without expense to the Program, satisfactory evidence of good health before his or her coverage will become effective. The effective date of such optional benefits will be determined by the Program at the time of approval of the evidence of good health submitted.

DISEASES INCLUDED

Benefits will be payable under this provision if, on, or after, the effective date of the Covered Person's coverage under the policy such person contracts one of the following diseases:

(1) Cancer, (2) Poliomyelitis, (3) Leukemia, (4) Diphtheria, (5) Small Pox, (6) Scarlet Fever, (7) Tetanus, (8) Spinal Meningitis (Meningococcal), (9) Encephalitis (Sleeping Sickness), (10) Tularemia, (11) Rabies, (12) Sickle Cell Anemia.

CANCER LIMITATION

No benefits will be provided hereunder due to, or as a result of, Cancer if: (1) the Covered Person has ever had Cancer before the effective date of his coverage under this provision; or (2) until after pathological diagnosis thereof as Cancer.

MAXIMUM AMOUNTS PAYABLE AND BENEFIT PERIODS

With respect to all diseases listed above, except Cancer:

The maximum liability of the Program under (a) below will be 70 per cent of the applicable Maximum Amount Payable stated in the Schedule of Benefits for any one disease, and the maximum liability of the Program under (b) below will be 30 per cent of the applicable Maximum Amount Payable stated in the Schedule of Benefits for any one disease. Benefits shall be available for expenses incurred during the three-year period immediately follow-

ing diagnosis of any of the named diseases, and not thereafter. In the event a Covered Person has received the maximum amount payable described herein for any one disease, such person shall become eligible for benefits under the Basic Benefits and Major Medical Benefits sections of the plan, if any.

With respect only to Cancer:

The maximum liability of the Program under (a) below will be 70 per cent of the applicable Maximum Amount Payable stated in the Schedule of Benefits during the lifetime of the Covered Person, and the maximum liability of the Program under (b) below will be 30 per cent of the applicable Maximum Amount Payable stated in the Schedule of Benefits during the lifetime of the Covered Person. In the event a Covered Person has received the maximum amount payable described herein for Cancer, such person shall become eligible for benefits under the Basic Benefits and Major Medical Benefits sections of the plan, if any.

BENEFITS

(a) When a Covered Person receives care and treatment in a hospital for any of the diseases indicated above, and such care and treatment is rendered at the direction of the attending Physician while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for any of the following listed expenses, but not to exceed the Maximum Amount Payable or Benefit Period indicated in the Schedule of Benefits:

1. Hospital service, including room, board, all services of regular hospital attendants, and any hospital apparatus used in the treatment of such disease;

2. Group or Special Nursing Services — Attendance by not more than three Registered Nurses per day, and on the basis of the usual charge (relatives or members of the Covered Person's family excluded);

3. Use of the Iron Lung, or similar mechanical apparatus used in treatment;

4. Blood transfusions — All charges for blood or plasma and transfusion services;

5. Drugs and Medicines — All expenses incurred for medicines used in the treatment of the disease;

6. X-Ray and Physiotherapy — All such services required for diagnosis and treatment;

Physiotherapy — All charges for such services rendered by physicians or physiotherapists who are members of or eligible for membership in the American Physical Therapy Association; and,

X-Ray — All charges for such services required for diagnosis and treatment and rendered by physicians.

(b) When a Covered Person receives care and treatment for any of the diseases indicated above, and such care and treatment is rendered at the direction of the attending Physician while this coverage is in force as to such person, the Program will pay the reasonable expense actually incurred for any of the following listed expenses, but not to exceed the Maximum Amount Payable or Benefit Period indicated in the Schedule of Benefits:

1. Professional fees of the attending physician, consulting physicians and specialists;

2. Professional fees of Anesthesiologists not employed by a hospital;

3. Special Nursing Services — Attendance at the patient's home by not more than three Registered Nurses per day and on the basis of the usual charge (relatives or members of the Covered Person's family excluded);

4. Drugs and Medicines — All expenses incurred for medicines used in the treatment of the disease, outside the hospital;

5. Transportation — The fare for conveyance of the Covered Person and one attendant by ambulance, rail, air or other public carrier to any hospital when the attending Physician considers such trip and mode of travel necessary to the proper treatment of the

disease; and,

6. Orthopedic Appliances — The cost of braces, crutches, and one manually-operated wheelchair.

COORDINATION OF BENEFITS

All benefits provided under the medical program, are subject to this provision.

This provision is applicable when the total benefits that would be payable in the absence of any Co-ordination of Benefits provision under this Plan, and under all other Plans covering an individual, exceed the Allowable Expenses incurred during a Claim Determination Period.

One of the two or more plans involved is the Primary Plan and the other plans are Secondary Plans. The Primary Plan pays benefits first and without consideration of the other plans. The Secondary Plans then make up the difference up to the total Allowable Expenses. No plan will pay more than it would have paid without this special provision. If one plan has no Co-ordination of Benefits provision, it is automatically Primary.

A plan may be Primary if it covers the individual as an Employee and Secondary if it covers the individual as a Dependent. However, if the individual is covered as a Dependent under two or more plans, the plan which covers such individual as a Dependent of a male person is Primary. Also, if the conditions do not apply, a plan may be Primary if it covers the individual the longer period of time and Secondary if it covers the individual the shorter period of time.

DEFINITIONS FOR THIS PROVISION

(1) **PLAN** means any plan providing benefits or services for or by reason of medical, dental, or vision care or treatment, or healing, under: (a) group insurance, (b) group practice, group Blue Cross, group Blue Shield, individual practice offered on a group basis, or other group prepayment coverage, (c) labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, or (d) governmental programs, or coverage required or provided by any statute.

The term "Plan" shall be construed separately as to each policy, contract, or other arrangement for benefits or services, and separately as to any part of a Plan which may consider benefits or services of other Plans in determining its benefits and any part which does not.

(2) **ALLOWABLE EXPENSE** means any necessary, reasonable and customary item of expense, at least a part of which is covered under one of the Plans covering the person for whom claim is made.

(3) **COMBINING PERIOD** means calendar year, but if a person is not eligible for benefits under this Plan during all of the calendar year, then the Combining Period of such person as to that year shall be the total period thereof during which he was eligible for benefits.

(4) **PROGRAM** means the State of Louisiana Employees Uniform Group Benefits Program.

EFFECT ON BENEFITS

(1) If the Allowable Expenses incurred during any Combining Period for a person covered under this Plan are less than the sum of the benefits of this Plan that would be payable (except for this provision), plus the benefits that would be payable under all other Plans (ignoring their provisions similar in purpose to this provision), then this Plan's benefits shall be reduced so that its reduced benefits, plus all benefits payable under all other Plans for those same Expenses, *equal the total of those Expenses*. Benefits

payable under another Plan include benefits which would have been payable if claim had been properly made.

(2) Benefits of another Plan will not affect this Plan's benefits if, as to the applicable Combining Period, that Plan has a provision coordinating its benefits with those of this Plan and would, under its rules, determine its benefits after this Plan's benefits have been determined, and the rules in item (3) below would require this Plan to determine its benefits before such other Plan.

(3) Plan benefits covering the person for whom claim is made, (a) other than as a Dependent, shall be determined before Plan benefits covering as a Dependent; and (b) as a Dependent of a male shall be determined before Plan benefits covering as a Dependent of a female.

Whenever (a) and (b) above do not establish which benefits are to be determined first, Plan benefits covering such person for the longer time shall be determined before Plan benefits covering for a shorter time.

(4) When this provision reduces the total of this Plan's benefits, each benefit that would be payable in the absence of this provision may be (a) reduced proportionately and such reduced amount charged against any applicable benefit limits of this Plan, or (b) reduced and charged as otherwise equitably determined by the Program.

EMPLOYEES GROUP LIFE INSURANCE PROGRAM AND ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS

UNDERWRITTEN BY CONTINENTAL ASSURANCE COMPANY

(Herein called the Company)
Underwriters for

THE STATE OF LOUISIANA EMPLOYEES' UNIFORM GROUP LIFE INSURANCE PROGRAM

Baton Rouge, Louisiana
(Herein called the Employer)

HEREBY CERTIFIED that the employee (herein individually called the Insured Employee), and his dependents, if any, (herein individually called the Insured Dependent), whose names are on file as being eligible for insurance with the Employer and for whom the required premium has been paid, as subject to all the exceptions, limitations and provisions of said policy for the benefits described in this Certificate of Insurance.

The term "Insured Person" wherever used in this certificate means either the Insured Employee or the Insured Dependent.

The term "Schedule of Benefits" wherever used in this certificate means the schedule appearing herein.

EFFECTIVE DATE OF INDIVIDUAL INSURANCE

On May 1, 1976, Employees and Retirees, and their eligible Dependents, enrolled on April 30, 1976 under the predecessor contracts and agreements became immediately eligible for the benefits described herein on May 1, 1976 provided, such Employee was actively at work on that date and such Retiree or Dependent was not hospital-confined or disabled on that date.

Subsequent to May 1, 1976, all new and other full-time Employees and Retirees, other than temporary Employees, and their eligible Dependents will become eligible for coverage on the first of the month coinciding with, or next following completion of one month of service, provided written application for coverage is made within 30 days after employment.