

Rules

RULE

Department of Agriculture and Forestry Horticulture Commission

Licenses (LAC 7:XXIX.117)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Horticulture Commission, has amended regulations regarding the required standards of practice for the landscape architect license.

The Department of Agriculture and Forestry, Horticulture Commission has amended these rules and regulations for the purpose of amending the landscape architect license requirements.

This Rule is enabled by R.S. 3:3801.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§117. Required Standards of Practice

A. - B.4. ...

5. Continuing Education Requirements

a. Compliance with these continuing education requirements is necessary for a landscape architect, ("licensee"), to maintain a landscape architect license in this state.

b. The commission shall administer the continuing education requirements through a standing continuing education committee consisting of not more than two staff members and at least three licensed Louisiana landscape architects elected by mail ballot. The landscape architects on the committee will each serve a term of two years. The call for nominations and balloting for committee service will be conducted concurrent with annual balloting for members of the Louisiana Landscape Architects Selection Board.

c. A licensee shall attend, or complete an approved substitute for attendance, a minimum of 8 credit hours of continuing education within each calendar year. If more than 8 credit hours are obtained during a calendar year, a licensee may carry over a maximum of 4 credit hours from one calendar year to the next. Any credit hours carried over into a following calendar year shall apply to that year only and may not be carried forward into subsequent years. A credit hour must contain at least 50 minutes of actual instruction or education.

d. Activities that may be approved for continuing education credits must contain instructional or educational components. Such activities include annual professional meetings, lectures, seminars, workshops, conferences, university or college courses, in-house training, and self directed activities. The commission's staff shall make the initial determination as to whether an activity qualifies for continuing education credit. If the commission's staff determines that an activity may not qualify, that activity request will be automatically forwarded to the continuing

education committee for review and the committee's determination. Any licensee or other applicant for approval of an activity may appeal any committee rejection of an activity for continuing education credit to the commission. However, the commission retains the right to review and approve or disapprove any activity as a qualifying continuing education activity and the number of credit hours arising from such activity, even if there is no appeal. Any appeal from any decision of the commission shall be taken in accordance with the Administrative Procedure Act, (R.S. 49:950 et seq.).

e. A licensee shall keep all records showing attendance, or completions of an approved substitute for attendance, at continuing education activities for three years following the year in which attendance or completion was done.

f. Each licensee shall annually submit a written certification signed by the licensee that the licensee has, during that calendar year, attended, or completed an approved substitute for attendance, the number of credit hours stated in the certification. If credit hours carried over from the previous year are being used as a substitute for attendance then the certification shall state the number of carried over credit hours that are being used. The certifications shall be attached to the licensee's annual license renewal application. Any renewal application received without this certification shall not be processed for license renewal and the license fees submitted with the application shall be refunded to the licensee.

g. The commission shall cause an annual audit of licensees to be conducted. Licensees shall be selected for audit either by cross-section of licensees or by random audit. The provisions of this subsection notwithstanding, an investigation of a licensee for possible violation of these continuing education requirements may be conducted if there is reason to believe that a violation may have occurred. Licensees selected for audit will be required to provide documented proof of their having obtained the continuing education credits for the year being audited. A licensee's failure to provide documented proof of having attended, or completed an approved substitute for attendance, for each credit hours certified for the year being audited shall be a violation of this Part. In the event that a licensee provides documented proof of having attended, or undertaken an approved substitute for attendance, any credit hour certified for the year being audited and such credit hour is disallowed then the licensee shall have six months from date of notification of the disallowance to attend, or complete an approved substitute for attendance, a sufficient number of approved credit hours to make up for the disallowed credits. The credit hours attended to make up for any disallowed credit hours shall not count toward the minimum credit hours needed for any other year. Failure to timely make up for the disallowed credit hours shall be deemed a violation of this Part. An appeal from a disallowance of any credit hour may be taken as provided in Subparagraph d.

h. A licensee may submit a written request for an approved substitute for attendance or for a hardship exemption or extension of time in which to obtain the minimum credit hours for the year in which the request is made. The licensee must detail the reason for the request, such as the benefit of any substitution, any physical disability, illness, or extenuating circumstance, and a specification of the requested substitute for attendance, including number of credit hours, course of study, etc. The licensee must also provide any additional information asked for in consideration of the request.

C. - I.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3808 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 32:1010 (June 2006).

Bob Odom
Commissioner

0606#014

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Advisory Commission on Pesticides

Commercial Applicators Certification (LAC 7:XXIII.125)

Editor's Note: This Rule is being repromulgated to correct errors in codification. The original Rule may be viewed on page 794 of the May 20, 2006 edition of the *Louisiana Register*.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, adopts an existing regulation clarifying which commercial applicators may engage in antimicrobial pest control using restricted use pesticides. Confusion has arisen as to whether pest control operators licensed by the Structural Pest Control Commission are commercial applicators who may engage in antimicrobial pest control. The department has determined that these Rules are necessary to alleviate the confusion and to ensure that there are sufficient licensed commercial applicators to help reduce the health risk to the citizens of this state. The presence of adequate numbers of commercial applicators, including pest control operators, licensed by this state will help ensure that citizens requiring antimicrobial pest control will receive such services from reputable persons answerable to a state regulatory body. The presence of licensed commercial applicators will also help reduce the risk of Louisiana citizens being "ripped off" by sham operators, thereby reducing further economic loss to citizens who can least afford further economic loss.

This Rule complies with and is enabled by R.S. 3:3203.

Title 7 AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter F. Certification

§125. Certification of Commercial Applicators

A. - B.2.h.iv. ...

v. Antimicrobial Pest Control (Subcategory 8e).

This Subcategory is for commercial applicators, including those in Subcategory 7(a) found at LAC 7:XXIII.125.B.2.g.i, engaged in antimicrobial pest control using restricted use pesticides.

B.2.h.vi. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006), LR 32:1011 (June 2006).

Bob Odom
Commissioner

0606#008

RULE

Department of Agriculture and Forestry Office of the Commissioner

Meat and Poultry Inspections (LAC 7:XXXIII.Chapter 1)

The Commissioner of the Department of Agriculture and Forestry has amended regulations regarding the Meat and Poultry Inspection Program, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The changes remove all references to the word *permit* and replace such references with the word *license*, and remove references to "USDA Handbook 191." The Rule change is a general cleanup of the existing Rules which corrects citation errors, redundancy and replaces references to Title 40 with Title 3.

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

Title 7 AGRICULTURE AND ANIMALS

Part XXXIII. Meat and Poultry Inspections

Chapter 1. Meat and Poultry Inspection Program

§101. Applicability of Federal Laws and Regulations

A. Notwithstanding any other provision of this Chapter to the contrary no provision of any regulation in this Chapter shall exempt any person subject to the Louisiana Meat and Poultry Inspection Law, (R.S. 3:4201 et seq.), or participating in the Louisiana Cooperative Federal/State Meat and Poultry Inspections Program from any applicable

federal law or regulation, including but not limited to the following:

1. the Federal Food, Drug, and Cosmetic Act, (21 U.S.C. §301 et seq.), and regulations promulgated in the Code of Federal Regulations pursuant to the Act;

2. the Federal Meat Inspection Act, (21 U. S. C. §601 et seq.), and regulations promulgated in the Code of Federal Regulations pursuant to the Act;

3. the Federal Poultry Products Inspection Act, (21 U.S.C. §451 et seq.), and regulations promulgated in the Code of Federal Regulations pursuant to the Act;

4. the Federal Humane Methods of Livestock Slaughter Act, (7 U.S.C. §1901 et seq.) and regulations promulgated in the Code of Federal Regulations pursuant to the Act.

B. In respect to intrastate operations and commerce, notwithstanding any other provision of this Chapter to the contrary, no provision of any regulation in this Chapter shall be construed or interpreted as imposing, or requiring the enforcement of, any standards that are less than those imposed and enforced under the Federal Meat Inspection Act and the Federal Poultry Products Inspections Act and regulations promulgated pursuant to those Acts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:708 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 30:196 (February 2004), LR 32:1011 (June 2006).

§103. Definitions

A. As used in this Chapter, the words and terms defined in R.S. 3:4201 and the following words and terms shall have the meanings given to them except where the context expressly indicates otherwise.

Combination Custom Slaughterer and Processor—a person which provides both slaughter and processing services solely for the owners of animals.

Commissioner—Commissioner of Agriculture and Forestry.

Custom Processor—any person which prepares, processes, and/or transports intrastate the meat of animals slaughtered for the owners of such animals.

Custom Slaughterer—any person which offers to the public the service of slaughtering cattle, sheep, poultry, swine, goats, horses, mules or other equines for the owners thereof.

Department—the Louisiana Department of Agriculture and Forestry, Office of Animal Health Services, Division of Meat and Poultry Inspection, Grading and Certification.

Establishment—each place of business of a licensee, registrant, or a person whose business is subject to inspection.

Meat Jobber—a person engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of cattle, sheep, poultry, swine, goats, horses, mules or other equines at the wholesale level, but who does not subsequently change the form of the product in any manner.

Meat Processor—any person engaged in the business of buying or selling carcasses, parts of carcasses, meat or meat food products of cattle, sheep, poultry, swine, goats, horses or other equines at the wholesale level; who receives the

product in tact, and who changes the form of the product before shipping out again.

Normal Retail Quantities—sales to a single customer not exceeding the amounts shown below (see also 9 CFR 303.1.d.2.ii, Federal Meat and Poultry Inspection Regulations):

- a. cattle, 300 pounds;
- b. calves, 37.5 pounds;
- c. sheep, 27.5 pounds;
- d. swine, 100 pounds;
- e. goats, 25 pounds.

Person—an individual, company, corporation limited liability company, or firm as defined in R.S. 3:4201(2) and any other legal entity or other form of organization.

Prepared—slaughtered, canned, salted, rendered, boned, cut up or otherwise manufactured or processed.

Primal Cut—the first or main cut.

Restaurant—any place of business:

a. where products are prepared solely for sale or service, as meals or entrees, directly to individual consumers at such establishments; and

b. where only federally or state inspected and passed products or products prepared in a retail store or outlet are used.

Retail Outlet—any place of business operated in the traditional or usual manner of operation or a retail store, with sales across-the-counter only in normal retail quantities. The term *retail outlet* applies solely to businesses with a single location.

Traditional or Usual Manner of Operation—

a. cutting up, slicing and trimming carcasses, halves, quarters or wholesale cuts into retail cuts such as steaks, chops and roasts, and freezing such cuts;

b. grinding and freezing products made from meat;

c. curing, cooking, smoking, rendering or refining of livestock fat or other preparation of products, except slaughtering or retort processing of canned products;

d. breaking bulk shipments of products;

e. wrapping or re-wrapping of products.

USDA—the United States Department of Agriculture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:709 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1012 (June 2006).

§105. Persons Required to Register

A. The following persons shall register with the department prior to conducting intrastate operations and commerce:

1. meat brokers, renderers and animal food manufacturers;

2. wholesalers of any carcasses or parts of carcasses of any cattle, sheep, poultry, swine, goats, horses, mules or other equines, whether the product is intended for human consumption or not;

3. public warehousemen who store carcasses or parts of carcasses of any cattle, sheep, poultry, swine, goats, horses, mules or other equines;

4. buyers, sellers, and transporters of any dead, dying, disabled or diseased animals or parts of carcasses of such animals;

5. meat brokers;

6. meat jobbers;
7. meat processors;
8. slaughters, including custom slaughters;
9. processors, including custom processors;
10. combination custom slaughterers and processors;
11. educational programs where carcasses or parts of carcasses are slaughtered, processed, or both;
12. any combination of the above.

B. All persons entering into any of the business activities listed in Subsection A shall apply for registration prior to engaging in such business. All persons shall be registered by category as shown in Subsection A above.

C. All registrants shall pay an initial registration fee of \$25 for each establishment at the time of application to cover the costs of processing of registrations and issuance of certificates of registration.

D. All persons must submit the following information in their applications for registration:

1. names and addresses of each establishment or place of business;
2. names and addresses of owner(s) and principal stockholder(s) and/ or names and addresses of members of boards of directors;
3. all trade names under which the person, firm, association, corporation or educational program conducts business.

E. All registrations must be renewed on or before April 1 of each year. The fee for renewal of registrations shall be the same as for the initial registration.

F. Each registrant shall receive a certificate of registration within 30 days after the application for registration is filed with the department if the registrant is in full compliance with applicable federal and state laws and regulations regarding slaughtering, processing, inspecting, packaging, handling, and transportation meat and poultry.

G. Penalties for failure to register or to annually renew a registration if the establishment is still in operation shall be assessed in accordance with R.S. 3:4233.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:709 (December 1980), amended LR 11:247 (March 1985) amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1012 (June 2006).

§107. Licenses for Establishments Coming under Inspection

A. All persons operating a slaughtering, processing, or combination slaughtering/processing establishment, or as a custom slaughterer, custom processor or a combination custom slaughterer and processor shall obtain a license from the department for each establishment prior to conducting intrastate operations or commerce.

B. All applications for licenses shall consist of a completed Form 401 submitted to the department at 5825 Florida Boulevard, Baton Rouge, LA 70806. Form AHS-09-54 is available on request from the department.

C. A license number shall be assigned to each establishment upon the department's approval of the application. The license shall be issued to the establishment within 30 days of final approval, in one of the following categories:

1. slaughter;
2. processing;
3. custom;
4. any combination of Paragraphs 1, 2 or 3 above.

D. All establishments receiving licenses shall display the license at a prominent location in the establishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:710 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1013 (June 2006).

§109. Change of Ownership of Licensed Establishments

A. Whenever the ownership or operation of a licensed establishment changes, the new owner or operator must submit an application for a license to the department at least 30 days prior to the date the change in ownership or operation is to take place.

B. Within 30 days of change of ownership or operation, the new owner or operator shall submit to the department a certified copy of the act of sale, lease agreement or other legal document showing change of ownership or operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:710 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1013 (June 2006).

§111. Exemption

A. No person or establishment shall be exempt, under the Louisiana Meat and Poultry Inspection Law, from the inspections of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations except as provided in R.S. 3:4215 and 4216.

B. Establishment at which the slaughter of animals and the preparation of the carcasses, parts thereof, meat, poultry, and meat and poultry food products are exempt from inspection under R.S. 3:4215 and 4216 shall conduct slaughtering and processing operations under the same sanitary standards as are required of slaughter and processing establishments that engage in interstate operations or commerce.

C. No retail store, restaurant, or similar retail type establishment shall qualify for any exemption provided for in R.S. 3:4215 and 4216 unless the establishment otherwise qualifies as a retail store or restaurant under The Federal Meat Inspection Act and regulations promulgated pursuant to the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:710 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1013 (June 2006).

§113. Removal of Inspection Services

A. An assigned inspector may, upon proper justification, withhold inspection services for an inspected plant for a period not to exceed six hours, but may not withhold inspection services for a period longer than six hours. If for any reason the assigned inspector leaves the plant during the period when inspection services are withheld, he shall be

available to the plant within one hour of notification of correction of the situation justifying the withholding of inspection services.

B. An area supervisor may, upon proper justification, withhold inspection services for a period not to exceed a total of 12 hours from the time when inspection services were first withheld.

C. The state office of the meat and poultry inspection program may withhold inspection services for an indefinite period of time upon proper justification.

D. An informal public hearing shall be held on the next working day following the initial withholding of inspection services upon the request of the establishment.

E. Inspection services may not be permanently withdrawn by the department except following a public hearing on the matter conducted in accordance with §121 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:711 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1013 (June 2006).

§115. Inspection Brands; Hot Brands; Replacement Brands

A. The department shall furnish an appropriate number of inspection brands to the establishment upon initial approval for inspection.

B. The establishment shall furnish the required number of hot brands and the number provided shall be provided to the department.

C. The establishment shall notify the assigned inspector when replacement brands are needed, providing the following information to the assigned inspector:

1. the name and address of the brand manufacturer preferred by the establishment; and
2. the number and kind of brands needed.

D. Upon receipt of the information required in §121.C, the inspector shall immediately notify the state office, which shall place the official order with instructions for the brands to be shipped direct to the establishment.

E. Upon receipt of the replacement brands, the establishment must deliver all unserviceable brands to the assigned inspector for transmittal to the department for destruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:711 (December 1980) amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1014 (June 2006).

§117. Stamping of Carcasses

A. All beef, calf and veal carcasses must be stamped with not less than two stamps per side. At least one stamp shall be affixed, on each side, in each of the numbered portions illustrated in Figure 7 in Appendices (§137.A and §139) attached immediately following.

B. All swine carcasses must be stamped with not less than two stamps per side. At least one stamp shall be affixed, on each side, in each of the numbered portions illustrated in Figure 8 in Appendices (§141).

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:711 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Certification, LR 32:1014 (June 2006).

§119. Inspection upon Movement of Meat and Meat Products

A. All carcasses, parts of carcasses, meat and meat products brought into any slaughtering, meat canning, salting, packing, rendering or similar establishment must originate from an establishment under inspection.

B. All carcasses, parts of carcasses, meat or meat products which are inspected and passed at any slaughtering, meat canning, salting, packing, rendering or similar establishment before movement there from, which is later returned to the same establishment, must be re-inspected upon return before further treatment or processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:711 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1014 (June 2006).

§121. Appeals from Decisions of the Cooperative Federal/State Meat and Poultry Inspection Program

A. Any person owning or operating an establishment that is subject to inspection or these rules and regulations may appeal any dispute of any decision made by an inspector in accordance with the procedures set forth in this rule.

B. If the person disputes the methods used by any inspector in the program, such person shall first make his objections known to the inspector.

C. If the person objecting and the inspector cannot resolve the dispute, the person objecting shall immediately notify the area supervisor of the dispute and the basis for the dispute.

D. If the dispute cannot be resolved by conference with the area supervisor, the person objecting shall then notify the department's program manager of the meat and poultry inspection program within three business days after the conference. Such notification may be verbal but shall be confirmed in writing within three days after the verbal notification.

E. If the person objecting and the program manager cannot resolve the dispute the person objecting may petition the commissioner, in writing, for a resolution of the dispute within three business days after the program manager makes his decision.

F. The commissioner may appoint a designee who does not work in the meat and poultry inspection program mediate the dispute. If the mediation is unsuccessful or the commissioner determines that a public hearing is necessary to resolve the dispute then the commissioner may set a public hearing to resolve the dispute. Any public hearing shall be conducted in accordance with the Administrative Procedure Act.

G. No license shall be suspended or revoked from any establishment without a full hearing on the matter in accordance with R.S. 3:4233 and the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:711 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1014 (June 2006).

§123. Taking of Blood Samples

A. A slaughter establishment under inspection shall be responsible for the identification of animals and the maintenance of records as provided in this rule.

B. Any cattle that are not officially backtagged upon receipt shall be identified by an official backtag, properly placed.

C. The name and address of the consignor and the name and address of the owner of the herd of origin, if different from the consignor, shall be recorded on forms provided by the department, the original of which shall be transmitted to the department and the copy of which shall be maintained in the establishment's files.

D. The assigned inspector shall take a blood sample from all cattle received at the establishment.

E. The assigned inspector shall be responsible for collection and identification of all blood samples, and for packaging and transmission of blood samples, corresponding backtags and forms to the diagnostic laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:713 (December 1980), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:1015 (June 2006).

§125. Overtime and Holiday Inspection Service

A. The Department of Agriculture and Forestry shall perform inspection services for official establishments, without charge, up to a 40 hours workweek Monday through Friday.

B. The department shall charge to and be reimbursed by official establishments an hourly overtime rate per department employee providing overtime inspection services to the official establishment. The overtime periods and rate per period are as follows:

1. \$25 per hour for inspection services provided for more than 40 hours in any workweek Monday through Friday;

2. \$30 per hour for inspection services provided on a Saturday or Sunday that is not otherwise a legal holiday established by R.S. 1:55;

3. \$35 per hour for inspection services provided on days of public rest and legal holidays, other than Saturdays and Sundays, observed by the departments of the state in accordance with R.S. 1:55;

4. overtime inspection services shall be billed at a minimum of two hours at the appropriate rate. Time spent providing inspection services in excess of two hours shall be billed in increments of quarter hours, with the time being rounded up to the next quarter hour.

C. Bills are payable upon receipt and become delinquent 30 days from the date of the bill. Overtime inspections will not be performed for official establishments having a delinquent account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4232.

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

of Agriculture and Forestry, Office of the Commissioner, LR 31:1055 (May 2005), LR 32:1015 (June 2006).

Bob Odom
Commissioner

0606#013

RULE

**Department of Agriculture and Forestry
Structural Pest Control Commission**

Termite Control Licensing
(LAC 7:XXV.101, 107, 113, 115 and 121)

Editor's Note: This Rule is being repromulgated to correct errors in codification. The original Rule may be viewed on pages 796-797 of the May 20, 2006 edition of the *Louisiana Register*.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, adopts regulations combining the license phases of Termite Control and Wood Destroying Insect Report Inspector, creating a phase for certified technicians, definition of terms and adding to the requirements of obtaining a termite control license.

The Department of Agriculture and Forestry deems the implementation of these rules and regulations necessary to insure that those persons with a Termite Control License and certified technicians can properly treat and inspect for termites. This Rule allows the department to better regulate the pest control industry by insuring that they are better trained to conduct wood destroying insect inspections.

This Rule complies with and is enabled by R.S. 3:3203.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§101. Definitions

License—a document issued by the commission which authorizes the practice and/or supervision of one or more phases of structural pest control work as follows.

1. *General Pest Control*—the application of remedial or preventive measures to control, prevent or eradicate household pests by use of pesticides used as sprays, dusts, aerosols, thermal fogs, barriers, traps and baits. Residential rodent control will be limited to the use of anticoagulant rodenticide and traps.

2. *Commercial Vertebrate Control*—the application of remedial or preventive measures to control, prevent or eradicate vertebrates, including baits, chemicals, barriers, gases and traps, in nonresidential establishments, but not including tarpaulin fumigation.

3. *Termite Control*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects and the inspection of structures for wood-destroying insects.

4. *Fumigation*—the use of lethal gases and/or rodenticides in a gaseous form for the control, prevention or

eradication of insect pests, rodents, or other pests in a sealed enclosure with or without a tarpaulin.

* * *

Wood Destroying Insect—subterranean termites, drywood termites, powder post beetles, old house borers, carpenter ants, and carpenter bees.

Wood Destroying Insect Report—any document approved by the Structural Pest Control Commission issued by a pest control operator which pertains to wood-destroying insects, but not including a bid, a proposal or a contract for any structural pest control services.

Wood-Destroying Organisms—repealed.

Wood-Infestation Report—repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), LR 31:26 (January 2005), LR 32:796 (May 2006), LR 32:1015 (June 2006).

§107. License to Engage in Structural Pest Control Work Required; Qualifications of Applicant; Requirements for Licensure; Phases of Structural Pest Control License; Conditions of the License

A. No person may perform structural pest control work of any kind, or advertise to provide structural pest control services, until licensed to do so by the commission.

B. Each applicant for license must possess one of the following qualifications in order to take the examination(s).

1. General Pest Control, Commercial Vertebrate Control and Fumigation:

a. a degree from an accredited four-year college or university with a major in entomology; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

2. Termite Control:

a. a degree from an accredited four-year college or university with a major in entomology and complete a commission approved comprehensive termite program; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a Commission approved comprehensive termite program; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations and complete a commission approved comprehensive termite program. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

C. - H. ...

I. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. general pest control;
2. commercial vertebrate control;
3. termite control;
4. structural fumigation;
5. ship fumigation;
6. commodity fumigation.

J. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3308 and R.S. 3:3306 (redesignated R.S. 3:3366 and 3:3368).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), LR 23:1493 (November 1997), LR 32:796 (May 2006), LR 32:1016 (June 2006).

§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration

A. Each licensee must register every employee under his supervision with the commission within 30 days after the commencement of the employee's employment and shall test as required by R.S. 3:3369.H.

B. - Q.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 32:797 (May 2006), LR 32:1016 (June 2006).

§115. Certified WDIR Technician

A. Requirements of a Certified WDIR technician, prior to conducting WDIR inspections, are as follows:

1. shall be registered as a termite technician, and
2. complete department approved WDIR training, and
3. pass WDIR technician test with a score of 70 or greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:855 (July 1997), amended LR 32:797 (May 2006), LR 32:1016 (June 2006).

§121. Wood Destroying Insect Report

A. A wood infestation report approved by the Structural Pest Control Commission shall be issued when any inspection is made to determine the presence of wood destroying insects, specifically for acts of sale of structures, but not limited for this purpose.

B. Any wood infestation report or written instrument issued for the transfer of real property shall be issued by a person who is licensed by the Structural Pest Control Commission in Termite Control or certified WDIR technician, and is working under the supervision of a person who is licensed by the Structural Pest Control Commission in Termite Control. This instrument shall carry a guarantee that the property will be treated without charge should live wood destroying insects with the exception, the presence of frass will be acceptable as evidence of a live infestation of Power Post Beetles; however, frass must be exuding or streaming from the holes on the outside of the wood, covered by this report, and be found within 90 days from date of inspection.

B.1. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:856 (July 1997), LR 24:631 (April 1998), LR 25:235 (February 1999), LR 25:829 (May 1999), LR 31:26 (January 2005), LR 32:197 (May 2006), LR 32:1017 (June 2006).

Bob Odom
Commissioner

0606#011

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School,
District, and State Accountability System
(LAC 28:LXXXIII.Chapters 3, 4, 5, 6, 7,
14, 15, 17, 21, 24, 35, 41, 43, and 45)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28:LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's Accountability System is an evolving system with different components.

The changes define/outline/clarify the following: school performance score goals; calculating the SPS component; incentive points; calculating a K-8 assessment index; calculating a 9-12 assessment index; state assessments and accountability; pairing/sharing of schools with insufficient test data; inclusion of schools; growth targets; defining a graduation index; determining a cohort for a graduation index; documenting a graduation index; calculating a graduation index; subgroup component indicators; safe

harbor; calculating a graduation rate; failing the subgroup component; levels of academic assistance; levels of school improvement; entry into school improvement; exit from school improvement; school improvement requirements and state support at each level; recovery school district; inclusion of alternative education students; option considerations; valid data considerations; NRT and CRT data; attendance and dropout/exit data; and subgroup component adequate yearly progress. Chapter 45, Disaster Consideration for School and District Accountability, is a proposed amendment to existing policy. It is designed to address the impacts of Hurricane Katrina and Rita and other disaster scenarios that may occur.

**Title 28
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,
District, and State Accountability System**

**Chapter 3. School Performance Score Component
§301. School Performance Score Goal**

A. ...

B. Through 2005, the school performance score shall be determined using a weighted composite index derived from; three or four indicators: criterion-referenced tests (CRT), norm-referenced tests (NRT), student attendance for grades K-12, dropout rates for grades 7-12.

Through 2005, K-12 Indicators and Weighting	
CRT (60% K-12)	Grades 4, 8, 10, 11
NRT (30% K-12)	Grades 3, 5, 6, 7, 9
Attendance (10% K-6; 5% 7-12)	Grades K-12
Dropout Rate (5% 7-12)	Grades 7-12

1. In 2005-2006, the NRT (Iowa) tests administered in grades 3, 5, 6, 7, and 9 will be replaced with the iLEAP tests. Changes in SPS calculations are described below (Paragraph H.4).

2. In 2006-2007, the attendance and dropout rate calculations for grades 9-12 will end. A Graduation Index will replace these indicators in schools with a 12th grade as described below (Paragraph I.6).

C. - D. ...

E. Beginning in 2004, preliminary accountability results issued each summer shall include both preliminary school performance scores and subgroup component analyses for those schools on the academic watch list, or in School Improvement 2 or higher, or who have failed the subgroup component the prior year. Beginning in 2007, preliminary accountability results each summer shall include any schools determined to be entering into or remaining in School Improvement 2 or higher, exiting School Improvement 2 or higher, and who have failed the Subgroup Component the prior year. Final accountability results shall be issued during the fall semester of each year.

1. Preliminary accountability results shall not be released in the summer of 2006.

a. School Improvement status from the fall release of the 2005 final accountability results shall continue to apply through the first semester of academic year 2006-2007.

b. Schools identified as entering SI2 at the release of the 2006 final accountability results must offer school choice or Supplemental Educational Services beginning in

January and continuing for the remainder of the academic year.

F. In the fall of 2004, schools shall receive two SPS:

1. a Growth SPS, which shall consist of the CRT, NRT, and LAA data from the prior school year and the attendance and/or dropout data from the school year two years prior (example: fall 2004 Growth SPS will include spring 2004 CRT, NRT and LAA data and 2002-2003 attendance and/or dropout data):

a. the Growth SPS shall be used to determine growth labels, rewards status and academic assistance status for the SPS component;

b. beginning in 2006, LEAP Alternate Assessment (LAA) will consist of Levels 1 and 2 (LAA 1 and LAA 2). LAA 2 will be administered in grades 4, 8, and 10 in ELA and math and grade 11 in science and social studies in 2006. Additionally, LAA 2 will be administered in grades 5, 6, 7, and 9 in ELA and math in 2007. LAA 2 will be fully implemented with science and social studies added to grades 4-8 in 2008;

2. a Baseline SPS, which shall consist of the two prior school years' CRT, NRT, and LAA data and attendance and/or dropout data from two years' prior to the most recent assessment results (Example: fall 2004 Baseline SPS will include spring 2003 and 2004 CRT, NRT, and LAA data and 2001-02 and 2002-03 attendance and/or dropout data):

a. the Baseline SPS shall be used to determine performance labels and academically unacceptable schools;

b. beginning in 2006, LEAP Alternate Assessment will consist of two levels as described above in Subparagraph F.1.b.

G. In the fall of 2005, schools shall receive three SPS.

1. Two will be those described above (Paragraphs F.1 and 2).

2. Schools will also receive a Transition Baseline SPS which will determine the Growth Target for 2006.

3. The 2005 Transition Baseline SPS will consist of the following indicators and weighting with the test data collected in spring 2004 and 2005, and attendance and dropout data collected in academic years 2002-2003 and 2003-2004.

2005 Transition Baseline SPS K-12 Indicators and Weighting	
LEAP/GEE, LAA (90% K-12)	Grades 4, 8, 10, 11
Attendance (10% K-6; 5% 7-12)	Grades K-12
Dropout Rate (5% 7-12)	Grades 7-12

H. In the fall of 2006, schools will receive two SPS.

1. The Growth SPS will determine Growth Labels, rewards status, and academic assistance status for the SPS component.

2. The Growth SPS will consist of the indicators and weighting in the table above (Paragraph G.3), with the test data collected in spring 2006, and attendance and dropout data collected in the academic year 2004-2005.

3. The Baseline SPS will determine Performance Labels and Academically Unacceptable schools.

a. Schools that were not labeled Academically Unacceptable in 2005 and that have a 2006 Baseline SPS of less than 60, shall be labeled Academically Unacceptable in 2006 but shall have SI status waived.

4. The Baseline SPS will consist of the indicators and weighting in the table below, with the test data collected in spring 2006 and attendance and dropout data collected in academic years 2003-2004 and 2004-2005.

2006 Baseline SPS K-12 Indicators and Weighting	
LEAP/GEE, iLEAP, LAA-1 and 2 (90% K-12)	Grades 3-11
Attendance (10% K-6; 5% 7-12)	Grades K-12
Dropout Rate (5% 7-12)	Grades 7-12

I. In the fall of 2007, schools will receive two SPS.

1. The Growth SPS will determine Growth Labels, rewards status and academic assistance status for the SPS component.

2. The Growth SPS will consist of the indicators and weighting in the table above, with the test data collected in spring 2007, and attendance and dropout data collected in the academic year 2005-2006.

3. The Baseline SPS will determine Performance Labels and Academically Unacceptable schools.

4. For K-8 schools in 2007, the Baseline SPS will consist of the indicators and weighting in the table below, with the test data collected in spring 2006 and 2007, and attendance and dropout data collected in the academic years 2003-2004 and 2004-2005.

2007 (and beyond) Baseline SPS K-8 Indicators and Weighting	
LEAP, iLEAP, LAA-1 and 2 (90% K-8)	Grades 3-8
Attendance (10% K-6; 5% 7-8)	Grades K-8
Dropout Rate (5% 7-8)	Grades 7-8

5. For 9-12 schools in 2007, the Baseline SPS will determine Performance Labels and Academically Unacceptable schools.

a. 9-12 schools that were not labeled Academically Unacceptable in 2006 and whose 2007 baseline SPS are below 60, are labeled Academically Unacceptable in 2007, but if their 2007 Growth SPS are 60 or greater shall have SI requirements waived.

6. For 9-12 schools in 2007, the Baseline SPS will consist of the indicators and weighting in the table below, with the test data collected in spring 2006 and 2007, and graduation data collected in the academic year 2005-2006.

2007 (and beyond) Baseline SPS 9-12 Indicators and Weighting	
LEAP, iLEAP, LAA-1 and 2 (70%)	Grades 9-11
Cohort Graduation Index (30%)	Grade 12

J. In 2008 and beyond, schools will continue to receive two SPS.

1. A Growth SPS will be calculated using the indicators and weighting from the tables above (Paragraphs I.4 and I.6).

2. The Growth SPS will continue to determine Growth Labels, rewards status and academic assistance status for the SPS component.

a. The Growth SPS will include test data from the most recent spring administration (in the prior academic year) and attendance/dropout or graduation data from two years prior.

3. A Baseline SPS will continue to determine Performance Labels and Academically Unacceptable schools.

4. The indicators and weighting for both SPS will consist of that used for the 2007 Baseline SPS.

a. The Baseline SPS will include test data from the two most recent spring administrations and attendance/dropout or graduation data from two and three years prior.

K. 2005-2006 K-8 Transitions

2005-2006 K-8 Transitions			
2005			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2005	LEAP (60%), Iowa (30%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2005
Baseline SPS	2004 & 2005	LEAP (60%), Iowa (30%), Attendance (5%), Drop (5%)	Performance Label, SI Status, SPS AYP
Transition Baseline SPS	2004 & 2005	LEAP (90%), Attendance (5%), Drop (5%)	Growth Target, Growth Goal for 2006
2006			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2006	LEAP (90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2006
Baseline SPS	2006	LEAP/iLEAP (90%), Attendance (5%), Drop (5%)	Performance Label, SI Status (refer to H.3.a. above), SPS AYP, Growth Target and Goal for 2007

L. 2005-2007 High School Transition

2005-2007 High School Transition			
2005			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2005	GEE (60%), Iowa (30%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2005
Baseline SPS	2004 & 2005	GEE (60%), Iowa (30%), Attendance (5%), Drop (5%)	Performance Label, SI Status, SPS AYP for 2005
Transition Baseline SPS	2004 & 2005	GEE (90%), Attendance (5%), Drop (5%)	Growth Target, Growth Goal for 2006
2006			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2006	GEE (90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2006
Baseline SPS	2006	GEE/iLEAP (90%), Attendance (5%), Drop (5%)	Performance Label, SI Status refer to H.3.a. above), SPS AYP for 2006; Growth Target and Goal for 2007
2007			
	Years of Data	Indicators/Weights	Generates
Growth SPS	2007	GEE/iLEAP (90%), Attendance (5%), Drop (5%)	Growth Label, Rewards for 2007
Baseline SPS	2007	GEE/iLEAP (70%), Graduation Index (30%)	Performance Label, SI Status, SPS AYP for 2007; Growth Target and Goal for 2008 (refer to I.5.a. above)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006).

§303. Calculating the SPS Component

A. ...

B. Formula for Calculating an SPS [K-6] (Academic Year 2004/2005)

The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(66.0 * 60\%) + (75.0 * 30\%) + (50.0 * 10\%)] = 67.1$

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
			SPS = 67.1

C. The 2005 Transition Baseline SPS and the 2006 Growth SPS will be calculated for all schools using a 90 percent weight for the CRT

D. Beginning in 2006, the K-6 Baseline SPS will be calculated using the following formula. Beginning in 2007, both Baseline and Growth SPS will use this formula.

The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(87.8 * 90\%) + (110.9 * 10\%)] = 90.1$

Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 3-6)	87.8	90%	79.0
Attendance (K-6)	110.9	10%	11.1
			SPS = 90.1

1. Any K-6 school with at least one grade that is assessed (3-6) will receive an SPS based only on its own student data.

2. Any configuration that has no assessed grades will be paired/shared as described in §521.

E. Formula for Calculating an SPS [K-8] (Academic Year 2004/2005)

The SPS for a K-8 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(71.2 * 60\%) + (76.1 * 30\%) + (87.7 * 5\%) + (90.4 * 5\%)] = 74.4$

Indicator	Index Value	Weight	Indicator Score
CRT	71.2	60%	42.7
NRT	76.1	30%	22.8
Attendance	87.7	5%	4.4
Dropout	90.4	5%	4.5
			SPS = 74.4

F. Beginning in 2006, the K-8 Baseline SPS will be calculated using the following formula. Beginning in 2007, both Baseline and Growth SPS will use this formula.

The SPS for a K-8 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(87.8 * 90\%) + (95.2 * 5\%) + (102.7 * 5\%)] = 88.9$

Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 3-8)	87.8	90%	79.0
Attendance (K-8)	95.2	5%	4.8
Dropout (7-8)	102.7	5%	5.1
			SPS = 88.9

1. Any K-8 school with at least one grade that is assessed (3-8) will receive an SPS based only on its own student data.

G. Formula for Calculating an SPS for 9-12 and Combination Schools (Academic Year 2004/2005)

Combination schools (through 2005) are schools that contain a 10th and/or 11th grade and that also contain a 4th and/or 8th grade. The SPS for a 9-12 school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is:
 $SPS = (.60 * CRT \text{ Adjusted Achievement Index}) + (.30 * NRT \text{ Adjusted Achievement Index}) + (.05 * Dropout \text{ Index}) + (.05 * Attendance \text{ Index})$
 The following is an example of how this calculation shall be made:
 $[(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0$

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
			SPS = 69.0

H. In 2006, the 9-12 Baseline SPS will be calculated using the following formula.

The SPS for a 9-12 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(85.5 * 90\%) + (92.3 * 5\%) + (89.9 * 5\%)] = 86.1$

Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 9-11)	85.5	90%	77.0
Attendance (9-12)	92.3	5%	4.6
Dropout (9-12)	89.9	5%	4.5
			SPS = 86.1

I. In 2007 and future years, the 9-12 SPS will be calculated using the following formula.

The SPS for a 9-12 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example:
 $[(92.1 * 70\%) + (83.3 * 30\%)] = 89.5$

Indicator	Index Value	Weight	Indicator Score
Assessment Index (Grades 9-11)	92.1	70%	64.5
Graduation Index (Grade 12)	83.3	30%	25.0
			SPS = 89.5

J. Beginning in 2006, a school with a grade configuration that includes a combination from both categories of schools, K-8 and 9-12, will receive a score from a weighted average of the SPS from the K-8 grades and the SPS from the 9-12 grades.

1. The K-8 SPS will be weighted by the number of students eligible to test during the spring test administration.

2. The 9-12 SPS will be weighted by the sum of:

a. the students eligible to test during the spring test administration, and:

i. in 2006, the average number of students per grade level in grades 9-11;

ii. beginning in 2007, the number of members of the cohort used as the denominator in the graduation index calculation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2738 (December 2003), amended LR 31:763 (April 2004), LR 32:1020 (June 2006).

§307. Incentive Points

A. ...

B. If, during spring testing, a repeating 4th or 8th grade student scores at a higher achievement level on a LEAP test of mathematics, English language arts, science or social studies than the previous spring, the retaining school shall receive 50 incentive points per improved subject in its accountability index. A student may earn a maximum of 50 points per subject for a total of 200 incentive points for his/her school (before weighting). Incentive points will not be awarded for a student's improved performance in the same subject for both the spring retest and summer school improvement (as described in Subsection C below). Students retained a second year may again earn 50 incentive points per subject.

C. ...

D. Option II 8th grade students (students passing one part of the LEAP that have been placed on a high school campus) must retake the part of the LEAP exam they failed.

1. If, during spring testing, an Option II 8th grade student receives a score of approaching basic or above on the LEAP test for which he/she received a score of unsatisfactory the previous spring, the high school in which the Option II 8th grader is enrolled, shall earn 50 incentive points in its 9th grade NRT index through 2005 and in its assessment index in 2006.

2. Due to changes in high-stakes testing policy, fall 2005 will be the last year students will be newly labeled as Option II 8th graders. Option II 8th graders will participate in 9th grade iLEAP beginning in 2006. They will repeat the subject test of the 8th grade LEAP that they failed. The category "Option II 8th graders" will cease to exist after spring testing 2006.

E. Students repeating the GEE ELA, math, science, and/or social studies tests shall not earn incentive points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

H. Example of K-8 Assessment Index Calculation

Grade	Subject	Subject-Test Index Score	Incentive Points (Spring Retest)	Unit Weight	Weighted Subject-Test Index Score
3	ELA	100		2	200
3	MTH	50		1	50
3	SCI	50		0.5	25
3	SS	100		0.5	50
4	ELA	100	50	2	300
4	MTH	50		2	100
4	SCI	50	50	1	100
4	SS	50		1	50
5	ELA	150		1	150
5	MTH	150		1	150
5	SCI	100		1	100
5	SS	150		1	150
6	ELA	100		1	100
6	MTH	100		1	100
6	SCI	100		1	100
6	SS	50		1	50
7	ELA	0		1	0
7	MTH	50		1	50

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), amended LR 31:2422 (October 2005), LR 32:1021 (June 2006).

Chapter 4. Assessment Index Calculations

§405. Calculating a K-8 Assessment Index

A. For all grades 3 - 8 use the values from the following table.

iLEAP, LEAP and GEE Index Points	
Label	Subject-Test Index Points
Advanced =	200
Mastery (Exceeding the Standard) =	150
Basic (Meeting the Standard) =	100
Approaching Basic (Approaching the Standard) =	50
Unsatisfactory =	0

1. Add any incentive points earned by repeating 4th or 8th graders to their subject-test index points (a student scoring Basic in 06 in ELA, who scored Unsatisfactory in 05 in ELA, is recorded as earning 150 points in 06 in ELA.

B. Weight each subject-test index score by the corresponding value from the table below.

Unit Weights for K-8 Assessment Index				
Grade	ELA	Math	Science	Social Studies
3rd	2	1	1/2	1/2
4th	2	2	1	1
5th	1	1	1	1
6th	1	1	1	1
7th	1	1	1	1
8th	2	2	1	1

C. Sum all weighted subject-test index scores.

D. Sum all weights applied to subject-test index scores from the table above (in Subsection B).

E. Weight the sum of all summer school incentive points (from the prior summer as described in §307) by 2.

F. Add the value from Step (Subsection) E to the value from Step (Subsection) C.

G. Divide the sum from Step (Subsection) F by the sum from Step (Subsection) D. This quotient is the K-8 Assessment Index.

Grade	Subject	Subject-Test Index Score	Incentive Points (Spring Retest)	Unit Weight	Weighted Subject-Test Index Score
7	SCI	0		1	0
7	SS	0		1	0
8	ELA	150		2	300
8	MTH	100		2	200
8	SCI	100		1	100
8	SS	150		1	150
Sums				28	2575
K-8 Assessment Index				2575 ÷ 28 = 92.0	

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006).

§409. Calculating a 9-12 Assessment Index

A. For all grades 9-11, use the values from the table in §405.A, above.

B. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The 9th grade dropout adjustment factor is the previous year's 9th grade non-dropout rate plus 7 percent $[(100.0 \text{ percent} - 9\text{th grade DO rate} + 7.0 \text{ percent})]$

2. The 10th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 7 percent and the 10th grade non-dropout rate plus 7 percent $[(100.0 \text{ percent} - 9\text{th grade DO rate} + 7.0 \text{ percent}) \times (100.0 \text{ percent} - 10\text{th grade DO rate} + 7.0 \text{ percent})]$

3. The 11th grade dropout adjustment factor is the product of the previous year's 9th grade non-dropout rate plus 7 percent and the 10th grade non-dropout rate plus 7 percent $[(100.0 \text{ percent} - 9\text{th grade DO rate} + 7.0 \text{ percent}) \times (100.0 \text{ percent} - 10\text{th grade DO rate} + 7.0 \text{ percent})]$

$(100.0 \text{ percent} - 10\text{th grade DO rate} + 7.0 \text{ percent}) \times (100.0 \text{ percent} - 11\text{th grade DO rate} + 7.0 \text{ percent})]$

C. Weight each adjusted subject-test index score by the corresponding value from the table below.

Unit Weights for 9-12 Assessment Index					
Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1	1			2
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

D. Sum all weighted values from Step (Subsection) C, above.

E. Divide the sum from Step (Subsection) D, above, by the sum of all weights applied to subject-test index scores from the table above (in Subsection C). This quotient is the 9-12 Assessment Index.

F. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are: 9th - 92.0 percent, 10th - 95.0 percent, and 11th - 96.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1	99.0
9	MTH	50	.990	49.5	1	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				594.2 ÷ 7 = 84.9		

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1022 (June 2006).

Chapter 5. Calculating the NRT Index

§515. State Assessments and Accountability

A. With the exception of grade 8 Option II students (ends after 2006 testing), Louisiana students in grades 3 through 11 will participate in only one of the following state assessments on an annual basis:

1. LEAP, or;
2. GEE, or;
3. Iowa On-Level replaced with iLEAP in 2006, or;
4. LEAP Alternate Assessment Level 1 (LAA 1), or;
5. LEAP Alternate Assessment Level 2 (LAA 2).

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:2422 (October 2005), LR 32:1022 (June 2006).

§519. Inclusion of Schools

A. - B.2. ...

C. Beginning in 2006 for the Baseline SPS, all K-8 schools shall have a minimum number of 80 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

D. Beginning in 2007 for the Growth SPS, all K-8 schools shall have a minimum number of 40 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

E. In 2006 for the Baseline SPS, all 9-12 and combination schools shall have a minimum number of 80 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

F. In 2006 for the Growth SPS, all 9-12 and combination schools shall have a minimum number of 40 testing units in any combination of LEAP, and LAA 1 or 2.

G. In 2007 for the Growth SPS, all 9-12 and combination schools shall have a minimum number of 40 testing units in any combination of LEAP, iLEAP, and LAA 1 or 2.

H. Beginning in 2007 for the Baseline SPS, all 9-12 and combination schools shall have a minimum number of 80 units in any combination of graduation cohort membership and LEAP, iLEAP, and LAA 1 or 2.

I. Each member of a cohort used to calculate a graduation index shall be counted as 4 units when determining the minimum number of units required calculating an SPS.

J. Beginning in 2008 for the Growth SPS, all 9-12 and combination schools shall have a minimum number of 40 units in any combination of graduation cohort membership and LEAP, iLEAP, and LAA 1 or 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 32:1022 (June 2006).

§521. Pairing/Sharing of Schools with Insufficient Test Data

A. In order to receive an SPS through 2005, a given school must have at least one grade level of CRT testing and at least one grade level of NRT testing. A school that does not meet this requirement must be either "paired or shared" with another school in the district as described below. For the purpose of the Louisiana Accountability System, such a school shall be defined as a "non-standard school."

1. Beginning in 2006, any school with at least one testing grade (3-11) will receive its Baseline SPS based only on its own student data provided it meets the requirements of §519.

B. Through 2005, a school with a grade-level configuration such that it participates in neither the CRT nor the NRT (e.g., a K, K-1, K-2 school) must be "paired" with another school that has at least one grade level of CRT testing and one grade level of NRT testing. This "pairing" means that a single SPS shall be calculated for both schools by averaging both schools' attendance and/or dropout data and using the test score data derived from the school that has at least two grade levels of testing.

1. For the Transition Baseline SPS in 2005 and the 2006 Growth SPS, any school that does not include 4th, 8th, 10th or 11th will share CRT test data from another school. The school sharing the CRT data will provide its own attendance and/or dropout data to its own SPS.

2. Beginning with the Baseline SPS in 2006, any K-2 school will share 3rd-grade test data from another school. The K-2 school will provide its own attendance data to its own SPS.

3. Beginning in 2007, any school enrolling only 12th grade students will share data with a school or schools containing grades 9-11 that send it the majority of its students. This sharing relationship is to define the cohort that will provide the starting roster on which its graduation index will be based. The 12th grade school will receive an SPS based solely on the graduation index.

4. Beginning in 2007, any K-2, 9-12 configuration shall receive an SPS based solely on the 9-12 data.

C. Through 2005, a school with a grade-level configuration in which students participate in either CRT or NRT testing, but not both (e.g., a K-3, 5-6 school) must "share" with another school that has at least one grade level of the type of testing missing. Both schools shall "share" the missing grade level of test data. This shared test data must come from the grade level closest to the last grade level in the non-standard school. The non-standard school's SPS shall be calculated by using the school's own attendance, dropout, and testing data and the test scores for just one grade from the other school.

D. ...

E. If a school is not paired/shared at the beginning of the school year for the baseline SPS, it shall not be paired/shared at the end of the school year for the growth SPS. A school's sharing/pairing status at the beginning of the school year for the baseline SPS shall be its status at the end of the school year for the growth SPS.

F. Requirements for the number of test/graduation index units shall be the sum of the units used to calculate the school's SPS (see §519).

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 30:1445 (July 2004), LR 32:1023 (June 2006).

§523. Growth Targets

A. - B. ...

C. The percentage of LEP students and students with disabilities varies significantly across schools, and the rate of growth for such students, when compared to regular education students, may be different. Therefore, the proportion of such students eligible to participate in the CRT, NRT, LAA 1 or 2 in each school will be a factor in determining the growth target for each school.

$$\text{PropRE} * (120 - \text{SPS}/N) + [\text{PropSE} * (120 - \text{SPS}) / (2N)] + [\text{PropLEP} * (120 - \text{SPS}) / (2N)] \text{ or } 2.0 \text{ points, whichever is greater.}$$

PropRE (Proportion Regular Education Students) = the number of students not in special education or LEP divided by the total number of students in the school eligible to participate in the NRT, CRT, LAA 1, or 2.

PropSE (Proportion Special Education Students) = the number of special education students in the school who are eligible to participate in the NRT, CRT, LAA 1, or 2 and who are not defined as LEP students divided by the total number of students in the school who are eligible to participate in the NRT, CRT, or LAA. For purposes of this calculation, gifted, talented, and 504 students shall not be counted as special education students, but shall be included in the calculations as regular education students

Prop LEP (Proportion Limited English Proficient Students) = the number of limited English proficient students in the school participating in the NRT, CRT LAA 1, or 2 divided by the total number of students in the school who are eligible to participate in the NRT, CRT LAA 1, or 2.

SPS = Baseline School Performance Score.

N = Number of remaining years until 2014.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2742 (December 2003), amended LR 32:1023 (June 2006).

Chapter 6. Graduation Index

§601. Defining a Graduation Index

A. Beginning in 2007, the Louisiana Department of Education (LDE) will calculate a Graduation Index based on a cohort of students for use in the School Performance Score of each school with students in grade 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006).

§603. Determining a Cohort for a Graduation Index

A. A cohort of students is all students who entered 9th grade at a given school in a given academic year.

B. Each cohort of students will be tracked for four years, from entry as first time 9th-graders through 12th grade.

C. Students who exit a cohort in less than four years for legitimate reasons shall not be counted as dropouts in the cohort's graduation index calculations.

1. Exit Codes 7, 8, 9, 10, 12, 14, 16, 20, 21, 27, 28, 29, and 30 from §611 are legitimate.

D. Students who exit a cohort for other than legitimate reasons will be considered dropouts in graduation index calculations.

E. Students who transfer from another LEA, home school, non-public school, or state into a school on or before October 1 of a cohort's 11th grade year will enter the cohort at the students' assigned grade level.

F. Students transferring within an LEA will remain in their same grade-level cohort.

1. Students transferring within an LEA on or before October 1 of their cohort's 12th grade year will be included in the calculation of the graduation index at the school into which they transfer and complete their 4th year of high school.

G. Students who graduate or complete high school in less than 4 years will be included in the cohort in which they started 9th grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006).

§611. Documenting a Graduation Index

A. Beginning with academic year 2005-2006, all schools are required to maintain the following documentation if the corresponding exit code is used.

Exit Code Documentation		
Code	Descriptions	Required Documentation
01	Expelled	Due process documentation supporting expulsion
03	Illness	Letter from a physician stating the student's date(s) of care written on the doctor office's letterhead with the doctor's original signature
04	Graduate with Diploma	Official transcript showing successful completion of requirements
05	GED only	LDE confirmation document
06	Certificate of Achievement (Special Education)	Official transcript showing successful completion of requirements
07	Death (of student) or permanent incapacitation	Death Certificate, obituary, or similar form. Signed statement by a physician indicating student's inability to return.
08	Transferred to another public school within district	Request for records from the receiving school
09	Transferred to another public school within Louisiana	Request for records from the receiving school
10	Transferred out of state or country	Request for records from the receiving school (or similar form located in the student's cumulative records, signed and dated by the parent/guardian or adult student and an authorized representative of the school). Documentation proving a student was a foreign exchange student.
12	Transferred to Correctional Institution	A signed statement from the sentencing judge, Office of Youth Development, or representative of the correctional facility.
14	Transferred to non-public school	Request for records from the receiving school
15	Exit from grade for reassignment to another grade	Test results, summer school grades or similar forms located in the student's cumulative records supporting the grade change
16	Transferred to home study/in-school Private Schooling	LDE Approval letter
17	Completed all Carnegie unit requirements but not the GEE	Official transcript showing successful completion of requirements
20	Transferred to Early College Admissions Program	School withdrawal form and request for records from the College or University and proof of full-time enrollment in an academic program.
21	Transferred to State school	Request for records from the receiving school
22	Options Program Completer: GED & Industry Based Certificate	Official transcript showing successful completion of requirements
23	Options Program Completer: GED & Locally Designed Skills Certificate	Official transcript showing successful completion of requirements
24	Options Program Completer: Industry Based Certification	Official transcript showing successful completion of requirements
25	Options Program Completer: Local Skills Certificate Only	Official transcript showing successful completion of requirements
26	Options Program Completer: Certificate of Completion	Official transcript showing successful completion of requirements
27	Exit under SBESE Academic School Choice Policy	Request for records from the receiving school
28	Exit under SBESE Unsafe School Choice Policy	Request for records from the receiving school
29	Exit due to Hurricane Katrina	Used only by specific districts as defined in Chapter 45. Entry into SIS is sufficient documentation
30	Exit due to Hurricane Rita	Used only by specific districts as defined in Chapter 45. Entry into SIS is sufficient documentation

B. Valid alternate documentation that provides sufficient justification for the use of an exit code is allowable.

C. Schools without sufficient documentation to support exit codes are subject to the actions described in Chapter 41.

D. Schools shall maintain documentation that supports exit codes for at least four years after the data has been used in School Performance Scores.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006).

§613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's 4th year of high school according to the following table.

1. Students who do not earn a diploma, a GED, a Skills Certificate, or a Certificate of Achievement after four years of high school are defined as attendees.

Student Result	Points
Regular Diploma w/Academic and Career/Technical Endorsement	240
Regular Diploma w/Academic or Career/Technical Endorsement	180
Regular Diploma	120
GED	90
Skills Certificate or Certificate of Achievement	60
Attendee	30
Dropout	0

B. The graduation index of a school shall be the average number of points earned by cohort members.

C. Students who complete/exit high school in more than four years may earn incentive points for their school provided they are no older than 21 at the beginning of the academic year in which they exit.

1. The incentive points earned is the difference between those a student earned in the 4th year of high school and the points corresponding to the higher level at which the student exits high school in a subsequent year.

a. Students shall not be considered dropouts if they exit the school after earning points for their cohort.

D. Schools that re-enroll students who dropped out of school will earn incentive points if the "reclaimed" students:

1. were considered dropouts and were included as such in schools' accountability scores; and

2. are no older than 21 at the beginning of the academic year in which they are re-enrolled; and

3. complete/exit a second time with a GED or higher:

a. these "reclaimed" students shall not be considered dropouts a second time.

E. To insure the accuracy of data used to calculate the graduation index, the calculation shall lag one year behind the collection of the data (the index earned by the graduating class of 2006 will be used for 2007 accountability calculations).

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
4	Attendee	30	120
15	Dropout	0	0
80 Total Students			7500
Attendee from prior year earned GED (90-30)			60
Attendee from prior year earned Skills Cert. (60-30)			30
Dropout from prior year earned Reg. Diploma (120-0)			120
Total Incentive Points			210
Total Points			7710
7710 ÷ 80 =		Graduation Index	96.4

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006).

Chapter 7. Subgroup Component

§701. Subgroup Component Indicators

A. - A.1.c.i. ...

ii. The subgroup improved or met the criterion on the additional academic indicator (attendance rate for-K-11 schools, and non-dropout rate through 2006 and graduation rate beginning in 2007 for schools with a 12th grade).

2. - 3. ...

4. For the non-proficient reduction portion of the safe harbor test, a comparison of current year assessment data to the previous year assessment data shall be used. For the additional academic indicator check for the safe harbor test and for the whole school check, attendance and dropout data from two years prior will be compared to data from three years prior. Beginning in 2007, a graduation rate shall replace use of the dropout data for the additional academic indicator.

5. To ensure high levels of reliability, Louisiana will apply a 99 percent confidence interval to the calculations of subgroup component determinations for the:

a. AMO status test;

b. reduction of non-proficient students (safe harbor test); and

c. additional academic indicator status analyses.

6. Louisiana will not apply a confidence interval to improvement analyses for the additional academic indicator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2742 (December 2003), amended LR 30:2445 (November 2004), LR 32:1025 (June 2006).

§707. Safe Harbor

A. - B.2.a. ...

b. makes at least 0.1 percent improvement in attendance rate (for schools without a 12th grade) or non-dropout rate (through 2006 for schools with a 12th grade) from the previous year;

c. for schools with a 12th grade, the non-dropout rate shall be evaluated for students in grade 9 and above.

C. Beginning in 2007, a graduation rate shall replace the non-dropout rate for schools with a 12th grade. It will be calculated as described in §708.

D. ...

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
2	Regular Diploma w/2 Endorsements	240	480
8	Regular Diploma w/ Endorsement	180	1440
35	Regular Diploma	120	4200
10	GED	90	900
6	Skills Certificate or Certificate of Achievement	60	360

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 32:1025 (June 2006).

§708. Calculating a Graduation Rate

A. As required by the *No Child Left Behind Act of 2001*, Louisiana shall calculate a graduation rate based on a panel of students beginning in 2007.

B. A panel of students is all first-time 9th graders in a given school in a specific year.

C. The percentage of students in a panel who graduate within four years with a standard diploma shall be the graduation rate used for the subgroup component.

1. Students leaving a panel for legitimate reasons shall be exited from the panel (Exit Codes 7, 8, 9, 10, 12, 14, 16, 20, 21, 27, 28, 29, and 30 from §611 are legitimate).

2. Students with disabilities whose IEPs state that they will take longer than four years to earn a standard diploma shall be added to the panel with which they graduate provided they are less than 22 years of age at the beginning of the academic year.

D. The 2007 graduation rate shall be calculated using the first-time 9th grade students from fall 2002. The results from this 2002 panel will be evaluated to establish a baseline graduation rate for the subgroup component.

E. Schools with a 12th grade will be evaluated for the first time for their graduation rate in the fall of 2007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1026 (June 2006).

§709. Failing the Subgroup Component

A. ...

B. A school in which all subgroups have passed the subgroup component must also have the school pass the additional academic indicator (AAI). A school passes the AAI when it has:

1. achieved a 90 percent attendance rate (for schools without a 12th grade)/90 percent non-dropout rate (through 2006 for schools with a 12th grade). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout rate check.); or

2. made at least 0.1 percent improvement in attendance rate (for schools without a 12th grade) or non-

dropout rate (for schools with a 12th grade) from the previous year. Schools with a 12th grade will use a non-dropout rate through 2006;

3. beginning in 2007 for schools with a 12th grade, earned a sufficient graduation rate as described in §708 or improved the graduation rate by at least 0.1 percent.

NOTE: If a school in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:2256 (October 2004), LR 32:1026 (June 2006).

Chapter 14. Academic Assistance (formerly School Improvement 1)

§1401. Levels of Academic Assistance

A. ...

B. Remedies Requires for Levels of Academic Assistance

Academic Assistance Level	Remedy
1	If SPS < 80.0 the district will assist the school with a needs assessment and in analyzing the data to determine strengths, weaknesses, goals, and objectives. Revised School Improvement Plan
2	District Assistance Team
3	Scholastic Audit (Year 1)
4	Add from Corrective Action List Scholastic Audit (Year 2)
5	Develop Reconstitution "light" plan
6	Implement Reconstitution "light" - Substantial school reform aimed at increasing the academic performance of low achieving subgroups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 32:1026 (June 2006).

Chapter 15. School Improvement (formerly called Corrective Actions)

§1501. Levels of School Improvement

A. - C. ...

SI Level	Remedy	SPS Component Academically Unacceptable Schools		Subgroup Component AYP Analysis	
		Title I	Non-Title I	Title I	Non-Title I
SI 2	Revised School Improvement Plan	X	X	X	X
	School Choice	X	X	X	-
	District Assistance Team	X	X	X	X
SI 3	Supplemental Educational Services (SES)	X	-	X	-
	Schools are eligible for DE	X	X	-	-
	Scholastic Audit (Year 1)	X	X	X	X
SI 4	Add from Corrective Action List	X	X	X	X
	Scholastic Audit (Year 2)	X	X	X	X
	Develop reconstitution plan (eligible for DE Partnership)	X	X	-	-

SI Level	Remedy	SPS Component Academically Unacceptable Schools		Subgroup Component AYP Analysis	
		Title I	Non-Title I	Title I	Non-Title I
SI 5	Implement reconstitution plan or lose school approval	X	X	-	-
	Develop Alternate Governance plan	-	-	X	-
	Develop Reconstitution "light" plan	-	-	-	X
SI 6	Alternate Governance	X	X	X	-
	Implement Reconstitution "light" - Substantial school reform aimed at increasing the academic performance of low achieving subgroups.	-	-	-	X

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 30:2744 (December 2004), LR 31:1513 (July 2005), LR 31:2764 (November 2005), LR 32:1026 (June 2006).

§1503. Entry into School Improvement

A. Schools shall enter school improvement by two methods of identification.

1. Any Academically Unacceptable school enters school improvement 2.

a. Beginning in 2005, schools with a Baseline SPS below 60.0 shall be considered Academically Unacceptable.

b. For 2006 only, schools with an SPS below 60, whose SPS was 60 or above in 2005, shall have SI requirements waived.

c. For 2007 only, 9-12 and combination schools that are Academically Unacceptable shall have SI requirements waived if their 2006 Baseline SPS was 60 or above and their 2007 Growth SPS is 60 or above.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 30:2257 (October 2004), LR 30:2445 (November 2004), LR 31:1514 (July 2005), LR 32:1027 (June 2006).

§1505. Exit from School Improvement

A. A school shall exit School Improvement when the fall accountability results indicate:

1. it is no longer Academically Unacceptable, and has not failed the Subgroup Component for 2 consecutive years;

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2257 (October 2004), LR 31:1514 (July 2005), LR 32:1027 (June 2006).

Chapter 17. Requirements for Schools in School Improvement (SI)

§1703. School Improvement 2 Requirements (SI 2)

A. - B.3. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:2257 (October 2004), LR 30:2745

(December 2004), LR 31:1515 (July 2005), LR 32:1027 (June 2006).

§1704. School Improvement 3 Requirements

A. - E.3. ...

F. With the assistance of the District Assistance Team, the school shall revise its School Improvement Plan to address the findings of the Scholastic Audit that will be conducted by an external team assigned by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2746 (December 2003), amended LR 30:2257 (October 2004), LR 30:2745 (December 2004), LR 31:1515 (July 2005), LR 32:1027 (June 2006).

§1705. School Improvement 4 Requirements

A. - G. ...

H. With the assistance of the District Assistance Team, the school shall continue to implement its School Improvement Plan to address the findings of the Scholastic Audit that will be conducted by an external team assigned by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2747 (December 2003), amended LR 30:2257 (October 2004), LR 30:2446 (November 2004), LR 31:1515 (July 2005), LR 31:2764 (November 2005), LR 32:1027 (June 2006).

Chapter 21. State-Level School Improvement Tasks

§2101. State Support at Each Level

A. - A.4. ...

5. provide training for District Assistance Teams;

6. work to secure new funding and/or redirect existing resources to help implement their improvement plans;

7. approve school choice plans;

8. provide additional school improvement funds, as available.

B. - B.3. ...

4. ensure that an external Scholastic Audit is completed for all SI3 schools as funding is available. If funding is limited, SI3 schools will be prioritized from lowest SPS to highest SPS, and Scholastic Audits will be conducted in rank order until funding is exhausted.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 32:1027 (June 2006).

Chapter 24. Recovery School District

§2401. Recovery School District

A. The Louisiana Legislature established the Recovery School District with the passage of R.S. 17:1990. A school is eligible for the Recovery School District under any of the following conditions.

1. The LEA fails to submit a reconstitution plan for a school in SI4 to BESE for approval.

2. A school's reconstitution plan is submitted to BESE but is deemed to be unacceptable.

3. A school in SI5 or 6 and/or the LEA fails to comply with the terms of a BESE approved reconstitution plan.

4. A school is labeled Academically Unacceptable for four consecutive years.

B. A school that enters the Recovery School District shall remain until:

1. it is no longer labeled Academically Unacceptable; and

2. BESE approves a proposal from the LEA for the return of the school that includes:

a. provisions for the continuation of the programs that have provided the basis for the improved academic achievement of the students; and

b. provisions providing for the continued employment of all persons employed by the Recovery School District or the operator of the school; and

c. provisions for the means and timetable for the school's transition and return to the jurisdiction of the LEA.

C. When a school in the Recovery School District is still Academically Unacceptable after four years, BESE shall take one of the following actions.

1. Revoke all school approval.

2. Require the Recovery School District to terminate the operational arrangement and provide a different operational arrangement.

3. Return the school to the jurisdiction of the city, parish, or other local public school board or other public entity from which it was transferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1028 (June 2006).

Chapter 35. Inclusion of Alternative Education Students

§3503. Option I

A. The testing score, and beginning in 2007 with the Baseline SPS, the attendance, dropout, and graduation data for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's and district's accountability calculations for both the SPS and subgroup components. The alternative school itself shall receive a "diagnostic" SPS, not to be used for rewards or corrective actions, if a statistically valid number of students were enrolled in the school at the time of testing.

B. Students included in the GED/Skills Option program will be included in school accountability. They will be required to take the 9th grade Iowa Test (beginning in 2006, the Iowa Test is replaced by the iLEAP) or participate in LEAP Alternate Assessment Level 1 or Level 2 (LAA 1 or 2) while enrolled. All programs will be considered Option I for alternative education purposes, and student test score data, and beginning in 2007 with the Baseline SPS, the

attendance, dropout, and graduation data will be sent back to the sending high schools and districts for accountability purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006).

Chapter 41. Data Collection and Data Verification

§4101. Valid Data Considerations

A. An Unusual Data Result (UDR) shall be defined as any CRT, NRT, attendance, dropout, and graduation data that exceeds a parameter or a range of parameters, which shall be determined by the LDE and approved by the SBESE. Irregular data shall be defined as any data, which appears to contradict results, which are otherwise expected; unrealistic information; or data generated as a result of defective data collection or processing.

B. A test score shall be entered for all eligible students within a given school. For any eligible student who does not take the test, including those who are absent, a score of "0" on the CRT and NRT shall be calculated in the school's SPS. To assist a school in dealing with absent students, the Louisiana Department of Education shall provide an extended testing period for test administration. The only exceptions to this policy are students who were sick, whose family member(s) died, or who were in protective custody during the test and re-testing periods and who have formal documentation for that period.

C. The LDE shall evaluate the accountability results each year to identify irregular data and Unusual Data Results.

1. The LDE will select a sample of schools to investigate.

2. Districts shall be notified of the schools with irregular or unusual data that they must investigate themselves.

a. The LDE will identify the specific areas of concern.

b. The District will provide a written report explaining the irregular or unusual data within 60 days of notification by the LDE.

D. If inaccurate, invalid, and/or undocumented data is discovered and was or will be used in the calculation of School Performance Scores or Subgroup Adequate Yearly Progress determinations, the LDE shall correct and/or void the data.

1. For example, if four students in fall 2005 are coded as "out-of-state" transfers, it is determined in August 2006 that no documentation exists to support this exit code, and the students are not found enrolled in another Louisiana school; these four students will be changed to dropouts and counted as such in the dropout adjustment and non-dropout rates in the final fall 2006 accountability results, and if applicable, in the appropriate cohort for any graduation index calculations beginning in 2007.

2. In any instance where the inaccurate, invalid, and/or undocumented data was used in a previous year's accountability results, the LDE will evaluate the impact of the data and recommend to BESE any repayment of rewards or school improvement funds indicated by the recalculation of accountability results.

E. The LDE will notify in writing the superintendent of the LEA associated with any school where data is corrected and/or voided or where rewards must be repaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006).

§4103. NRT and CRT Data

A. For NRT and CRT data:

1. if there is evidence of irregular data or a UDR, the LDE shall require the LEA to investigate. The LEA shall report the results of its investigation to the State Superintendent of Education;

2. if the State Superintendent of Education determines that the results of the investigation do not sufficiently explain the data, s/he shall designate a team to visit the school and conduct its own investigation:

a. if the test data is determined to be inaccurate, invalid, and/or undocumented the LDE shall void or correct the data as described in §4101;

3. if the gains are validated by the visit, the school will be designated a "pacesetter" school. If the gains cannot be validated, the State Superintendent of Education may initiate further action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), LR 32:1029 (June 2006).

§4104. Attendance and Dropout/Exit Data

A. The LDE may review and validate attendance, dropout, and exit code data:

1. due to an Unusual Data Result or irregular data;

2. while at a school or district site primarily to investigate other data or records;

3. during a random data audit.

B. If attendance data reported to the LDE through the Student Information System is found to differ from that in the teacher roll books, the LDE shall void or correct the data to match the roll books as described in §4101.

C. If there is insufficient documentation to validate the use of any student exit codes, the LDE shall void or correct the data as described in §4101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1029 (June 2006).

Chapter 43. District Accountability

§4310. Subgroup Component AYP (Adequate Yearly Progress)

A. - B.2. ...

3. Each subgroup (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students) within each district shall be evaluated separately on ELA and mathematics. In calculating the subgroup component for a district:

a. the alternate academic achievement standards for students participating in LAA 1 will be used, provided that the percentage of proficient LAA 1 students does not exceed

1.0 percent of all students in the grades assessed. If the district exceeds the 1.0 percent proficient cap, the district shall request a waiver. The students exceeding the cap shall be assigned a zero on the assessment and be considered non-proficient if:

i. the district fails to request the waiver; or

ii. the district requests the waiver but it is determined by LDE that ineligible students were administered LAA 1;

b. the modified academic achievement standards for students participating in LAA 2 will be used, provided that the percentage of proficient LAA 2 students does not exceed 2.0 percent of all students in the grades assessed. If the district exceeds the 2.0 percent proficient cap, the district shall request a waiver. The students exceeding the cap shall be assigned a zero on the assessment and be considered non-proficient if:

i. the district fails to request the waiver or;

ii. the district requests the waiver but it is determined by LDE that ineligible students were administered LAA 2;

c. students participating in LAA 1 or LAA 2 shall be included in the special education subgroup;

d. LEP students shall participate in the statewide assessments:

i. scores shall not be included in AMO or improvement in Percent Proficient calculations for LEP students who have not been enrolled in an English-speaking school for one full school year.

B.4. - E.2.b.Note ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:1447 (July 2004), amended LR 30:2446 (November 2004), LR 31:424 (February 2005), LR 31:633 (March 2005), LR 31:913 (April 2005), LR 32:1029 (June 2006).

Chapter 45. Disaster Considerations for School and District Accountability

Reserved.

Weegie Peabody
Executive Director

0606#003

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV.1103)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 741—Louisiana Handbook for School Administrators*, §1103, Compulsory Attendance (LAC 28: CXV). The proposed amendment would provide nurse practitioners, licensed by the state of Louisiana, with the authority to substitute student absences. This revision is required to align the policy language in Bulletin 741, Section 1103, with the revisions made to R.S. 17:226 by the passage of Act 200 of the 2005 Regular Legislative Session.

Title 28
EDUCATION

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 11. Student Services

§1103. Compulsory Attendance

A. - H. ...

1. The only exception to the attendance regulation shall be the enumerated extenuating circumstances that are verified by the Supervisor of Child Welfare and Attendance. Students shall be temporarily excused from the attendance regulation for the following reasons:

1. extended personal physical or emotional illness. Each LEA shall adopt policies regarding the requirement of a certificate from a physician or nurse practitioner licensed in the state in substantiation of the absence;

2. extended hospital stay as verified by a physician or dentist;

3. extended recuperation from an accident as verified by a physician, dentist, or nurse practitioner;

4. extended contagious disease within a family as verified by a physician or dentist; or

5. observance of special and recognized holidays of the student's own faith.

J. - M. ...

NOTE: Refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:1030 (June 2006).

Weegie Peabody
Executive Director

0606#004

RULE

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook
Adoption Policy and Procedure Manual
(LAC 28:XXXIII.101, 301, 305, 315,
505, 507, 701, 707, 717, and 901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual* (LAC 28:XXXIII). The amendments:

1. revise the department's mailing address (§101.B);

2. replace the language throughout the bulletin related to state approved content standards to reflect the review and adoption of textbooks based on their alignment with SBESE-approved Louisiana Grade-Level Expectations [§§301 Definitions (Basal and Textbook); 305.B.1; 315.A.1, B.1, and (Note); 507.C.2.c and, G.1; 707.A; 717.B, and G];

3. update and modify the adoption cycle to reflect a year delay in the adoption of textbooks as a result of the hurricanes of 2005 and the review and adoption of K-12 Reading and Literature prior to the review and adoption of K-12 Language Arts as shown below (Chapter 9.Appendix A);

4. correct §505.A.1.a to reflect a former SBESE approval allowing local adoptions within six months instead of three months;

5. clarify textbook access options outlined in §505.A.2.d.i.(a) for districts to report access to student textbooks to take home; and

6. add a definition of the term *piloting* in §701.L.1. The term *piloting* refers to product testing and research in any school or school system in Louisiana by any company and/or its parent affiliate.

This amendment is required by action of the State Board of Elementary and Secondary Education, in exercising its administrative and oversight authority for the state textbook adoption process.

Title 28
EDUCATION

**Part XXXIII. Bulletin 1794—State Textbook Adoption
Policy and Procedure Manual**

Chapter 1. Purpose

§101. Introduction

A. ...

B. It is hoped that the policies and procedures contained in this bulletin will help local school districts to provide textbooks that will have a significant, positive impact on student achievement, student attitudes and behaviors, and on the interactions in the learning environment for students of all ages, abilities, backgrounds and areas of interest. Any interested citizen may request his or her name be placed on the mailing list for textbook adoption information (R.S. 17:415.1.A) by writing to:

State Department of Education
Division of Educational Improvement and Assistance
P.O. Box 94064
Baton Rouge, LA 70804
Attn: Textbook Adoption Program

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1436 (August 1999), repromulgated LR 26:991 (May 2000), amended LR 32:1030 (June 2006).

Chapter 3. General Provisions

§301. Definitions

* * *

Basal—student-based curricular materials (print or non-print) that encompass the SBESE-approved Louisiana Grade-Level Expectations for specified subject areas. These curricular materials are considered a major teacher and student resource for attainment of the state standards and benchmarks and for the locally designed and aligned curriculum and course.

* * *

Textbook—any medium or material (print or non-print), book, or electronic medium that constitutes the principal source for teaching and learning in a specified subject area. A textbook shall be a systematically organized core of stand alone instructional materials (which may be hardbound, softbound, electronic or other media) designed to support the teaching and learning of a curriculum based on the SBESE-approved Grade-Level Expectations or state curricular

guides (e.g., home economics, foreign language, health, business education).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1436 (August 1999), repromulgated LR 26:992 (May 2000), amended LR 32:1030 (June 2006).

§305. Textbooks and Materials of Instruction

A. - A.1. ...

B. Adequate and Appropriate Instructional Materials

1. Instruction (at the local level) shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system and state adopted Grade-Level Expectations.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1437 (August 1999), repromulgated LR 26:992 (May 2000), amended LR 29:124 (February 2003), LR 32:1031 (June 2006).

§315. Establish Criteria and Procedure for Evaluation and Selection of Textbooks and Materials of Instruction

A. The following SBESE-approved definition shall serve as a framework for the review of textbooks and materials of instruction which are offered for adoption.

1. A *State-Approved Textbook* a systematically organized core of instructional materials (which may be hardbound, softbound, electronic or other media) designed to support the teaching and learning of a curriculum based on the State-approved Grade-Level Expectations and state assessment as approved by the SBESE. This definition includes any medium or material (print or non-print), book, or electronic medium that constitutes the principal source of study for teaching in specified subject areas.

B. At a minimum, the following framework shall guide evaluation.

1. Textbooks and materials of instruction shall align with the standards and benchmarks of the State Grade-Level Expectations, State-approved curriculum guides, and state assessment program.

2. - 4. ...

Note: The SDE shall establish an appropriate evaluation instrument(s) that shall be used by State Textbook Adoption Committee members, and their local subcommittees, as tools for final decision-making. In addition to the above frameworks, additional evaluation criteria shall focus on alignment of proposed textbooks and materials with the SBESE-approved state Grade-Level Expectations/curriculum guides and assessment programs.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1440 (August 1999), repromulgated LR 26:996 (May 2000), amended LR 32:1031 (June 2006).

Chapter 5. Local School System Responsibilities

§505. Local Implementation

A. Adequate and Appropriate Instructional Materials

1. Textbooks and materials of instruction for all curriculum areas at the local level shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system (see also, Bulletin 741, 1.070.00).

a. School systems shall make a formal adoption of textbooks within six months from the date of state-level approval by the State Board of Elementary and Secondary Education (SBESE). Local school systems shall provide students with access to current textbooks that conform to minimum standards of quality.

2. - 2.c. ...

d. Access. A school system shall, based on input from local teachers, principals, administrators, and others, determine how access to textbooks in core subject areas will be made available to students. School systems must ensure that each child within the classroom will have equal access to any available instructional materials. School systems shall also inform each parent/guardian in writing at the beginning of each school year of the method of access to textbooks which has been selected for each course or grade level. A contact person and phone number should be provided.

i. Options for providing textbook access for students may include:

(a) textbooks provided for each student to take home.

2.d.i.(b). - 3.a. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1442 (August 1999), repromulgated LR 26:998 (May 2000), amended LR 32:1031 (June 2006).

§507. Local Adoption Procedures

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

c. Local adoption committee members are to receive special training in textbook selection criteria (i.e., knowledge of subject area Grade-Level Expectations and assessments), voting procedure, and integrity of interaction with publishers.

D. - F.7. ...

G. Local Selection of Textbooks

1. An evaluation instrument must be used by local school districts. Alignment with State-adopted Grade-Level Expectations and state and local curriculum objectives, where applicable, shall be a primary consideration in the evaluation process. Local school districts may model state developed procedures and evaluation instruments.

G.2. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1443 (August 1999), repromulgated LR 26:998 (May 2000), amended LR 29:124 (February 2003), LR 32:1031 (June 2006).

Chapter 7. Publishers' Responsibilities

§701. Requirements for Publishers' Participation in State Textbook Adoption

A. - K. ...

L. The "piloting" of new materials in any school or school system prior to official review by the State Textbook

Adoption Committee and final approval by the SBESE is prohibited. Publishers are not to offer school-wide copies or classroom sets of any item or material on a trial or pilot basis.

1. The term *piloting* refers to product testing and research in any school or school system in Louisiana by any company and/or its parent affiliate.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1446 (August 1999), repromulgated LR 26:1002 (May 2000), amended LR 29:125 (February 2003), LR 32:1031 (June 2006).

§707. Submission of Correlations to State-Approved Grade-Level Expectations/Curriculum Guides

A. Publishers are required to submit in writing detailed correlations to *State Grade-Level Expectations/Curriculum Guides* for subject/content areas under adoption by the specified time each year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1447 (August 1999), repromulgated LR 26:1003 (May 2000), amended LR 32:1032 (June 2006).

§717. Written Questions and Responses to Questions Regarding Textbooks Under Consideration

A. - B. ...

C. Questions may address the physical characteristics and layout; factual content of the book; relationship to State Grade-Level Expectations and assessment; organization, presentation and sequencing of content; and any other area specified for evaluation on the state evaluation form. Questions may not address items contained on the Ancillary Materials Submission Form, Free Materials Submission Form, including in-service offerings. Questions will be forwarded to publishers.

D. - F. ...

G. Each publisher shall be invited to a question/answer session during which time state committee members may seek further clarification to written responses provided by publishers or may pose additional questions for publishers' response. Publishers shall be allowed to discuss how their basal and teacher's editions align with the state Grade-Level Expectations and assessment program. Publishers may not address ancillary or free materials proposed for addition after SBESE approval of the basals.

H. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1448 (August 1999), repromulgated LR 26:1004 (May 2000), amended LR 32:1032 (June 2006).

Chapter 9. Appendix A

NOTE: Forms contained in the Appendix are subject to revision by SDE.

§901. Adoption Cycle

A. Louisiana State Textbook Adoption Cycle: Core Subject Areas are Adopted Every Seven Years

State Textbook Adoption Cycle			
2006-2007	2007-2008	2008-2009	2009-2010
Social Studies K-12	Reading and Literature K-12	Language Arts K-12	Career and Technical Education

2010-2011	2011-2012	2012-2013
Science K-12	Foreign Language	Mathematics K-12
Health and Physical Education	Handwriting	
Computer Education	Music and Fine Arts	

NOTE: Adoption schedule may follow current cycle (listed above) with changes made to follow and align with any planned revisions to state content standards, Grade-Level Expectations, and/or state assessment content.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1450 (August 1999), repromulgated LR 26:1005 (May 2000), amended LR 32:1032 (June 2006).

Weegie Peabody
Executive Director

0606#005

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Pretreatment Streamlining
(LAC 33:IX.2903, 6105, 6109, 6111, 6113, 6115, 6123, 6129, and 7127)(Log #WQ067ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.2903, 6105, 6109, 6111, 6113, 6115, 6123, 6129, and 7127.Appendix N (Log #WQ067ft).

This Rule is identical to federal regulations found in 40 CFR 122.62, 403.3, 403.5, 403.6, 403.7, 403.8, 403.12, 403.15, and Appendix G to Part 403, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule revises several provisions of the general pretreatment regulations that address requirements for, and oversight of, industrial users (IUs) who introduce pollutants into publicly owned treatment works (POTWs). Changes to certain program requirements are made to be consistent with NPDES requirements for direct dischargers to surface waters. This Rule will reduce the regulatory burden on both IUs and state and POTW control authorities without adversely affecting environmental protection, and will allow control authorities to better focus oversight resources on IUs with the greatest potential for affecting POTW operations or the environment. The Rule also corrects a citation referring to the pretreatment regulations. This Rule is necessary in

order to comply with federal regulations that require the LDEQ Pretreatment Program to be consistent with the EPA General Pretreatment Regulations. EPA's Office of Waste Management initiated the evaluation of streamlining opportunities in 40 CFR Part 403 regulations in 1995. EPA proposed the Streamlining Rule in July 1999, and formally submitted the final Rule in June 2005. The Streamlining Rule was signed by the EPA Administrator on September 26, 2005, and became effective 30 days after its publication in the Federal Register (October 14, 2005). The basis and rationale for this Rule are to streamline the general pretreatment regulations for existing and new sources of pollution and to mirror the federal regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits

§2903. Modification or Revocation and Reissuance of Permits

A. - A.1.f. ...

g. Reopener. When required by the reopener conditions in a permit, which are established in the permit under LAC 33:IX.2707.C (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also LAC 33:IX.2707.B) or LAC 33:IX.6135.E (pretreatment program).

1.h.i. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:470 (March 2002), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 32:1033 (June 2006).

Chapter 61. General Pretreatment Regulations for Existing and New Sources of Pollution

§6105. Definitions

A. For purposes of this Chapter, except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

* * *

Best Management Practices (BMPs)—schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in LAC 33:IX.6109. *BMPs* also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Control Authority—a POTW, if the POTW's pretreatment program submission has been approved in accordance with the provisions in LAC 33:IX.6121; or the *approval authority*, as defined in this Subsection, if the submission has not been approved.

* * *

Significant Industrial User—

a. except as provided in Subparagraph b of this definition, the term *significant industrial user* means:

i. - ii.(b). ...

(c) is designated as such by the *control authority*, as defined in this Subsection, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with LAC 33:IX.6115.F.6);

b. the control authority may determine that an industrial user subject to categorical pretreatment standards under LAC 33:IX.6111 and 40 CFR Chapter I, Subchapter N is a non-significant categorical industrial user rather than a *significant industrial user* on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

i. the industrial user, prior to the control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

ii. the industrial user annually submits the certification statement required in LAC 33:IX.6123.Q together with any additional information necessary to support the certification statement; and

iii. the industrial user never discharges any untreated concentrated wastewater;

c. upon a finding that an industrial user meeting the criteria in Clause a.ii of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the *control authority* (as defined in this Subsection) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with LAC 33:IX.6115.F.6, determine that such industrial user is not a *significant industrial user*.

* * *

EDITORIAL NOTE: At 49 FR 5132, Feb. 10, 1984, Paragraphs (i) and (n) were suspended until further notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:474 (March 2002), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1033 (June 2006).

§6109. National Pretreatment Standards: Prohibited Discharges

A.1. - C.3. ...

4. POTWs may develop best management practices (BMPs) to implement Paragraphs C.1 and 2 of this Section.

Such BMPs shall be considered local limits and pretreatment standards for the purposes of Section 307(d) of the CWA.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2232 (December 2001), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1033 (June 2006).

§6111. National Pretreatment Standards: Categorical Standards

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate Subpart of 40 CFR Chapter I, Subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this Chapter.

A. - C.4. ...

5. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority.

a. The control authority may establish equivalent mass limits only if the industrial user meets all the following conditions. To be eligible for equivalent mass limits, an industrial user must:

i. employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

ii. currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

iii. provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

iv. not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

v. have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

b. An industrial user subject to equivalent mass limits must:

i. maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

ii. continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

iii. continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in Clause C.5.a.iii of this Section. Upon notification of a revised production rate, the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

iv. continue to employ the same or comparable water conservation methods and technologies as those implemented in accordance with Clause C.5.a.i of this Section so long as it discharges under an equivalent mass limit.

c. A control authority that chooses to establish equivalent mass limits:

i. must calculate the mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

ii. upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

iii. may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate is reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit are not based on the use of dilution as a substitute for treatment, in accordance with Subsection D of this Section. The industrial user must also be in compliance with LAC 33:IX.6133 (regarding the prohibition of bypass).

d. The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

6. The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions. When converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable Subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Subsection D of this Section.

7. Equivalent limitations calculated in accordance with Paragraphs C.3, 4, 5, and 6 of this Section are deemed pretreatment standards for the purposes of Section 307(d) of the CWA and this Chapter. The control authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the industrial user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

8. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum

monthly average, or four-day average, limitations. Where such standards are being applied, the same production of flow figure shall be used in calculating both the average and the maximum equivalent limitations.

9. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change with the next calendar month. Any user not notifying the control authority of such an anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

D. Dilution Prohibited as Substitute for Treatment. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The *control authority* (as defined in LAC 33:IX.6105.A) may impose mass limitations on industrial users that are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined Wastestream Formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical pretreatment standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical pretreatment standard(s). The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1034 (June 2006).

§6113. Removal Credits

A. Introduction

1. Definitions. For the purpose of this Section:

Overflow—the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

* * *

A.2. - G. ...

H. Compensation for Overflow. POTWs that at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either Paragraph H.1 or 2 of this Section. However, this Subsection shall not apply where industrial user(s) can demonstrate that overflow does not occur between the industrial user(s) and the POTW treatment plant.

1. - 1.c. ...

2.a. The consistent removal claimed is reduced pursuant to the following equation.

$$r_c = r_m \frac{8760 - z}{8760}$$

where:

r_m = POTW's consistent removal rate for that pollutant as established under LAC 33:IX.6113.A.1 and B.2.

r_c = removal corrected by the overflow factor.

Z = hours per year that overflow occurred between the industrial user(s) and the POTW treatment plant, the hours either to be shown in the POTW's current LPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

b. The POTW is complying with all NPDES permit requirements and any additional requirements in any order or decree issued in accordance with the CWA affecting combined sewer outflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the combined sewer overflow control policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2555 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), amended LR 32:1035 (June 2006).

§6115. Pretreatment Program Requirements:

Development and Implementation by POTW

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

c. control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under LAC 33:IX.6105.A. *Significant Industrial User*, this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except that:

i. at the discretion of the POTW, this control may include use of general control mechanisms if all of the facilities to be covered:

(a). involve the same or substantially similar types of operations;

(b). discharge the same types of wastes;

(c). require the same effluent limitations;

(d). require the same or similar monitoring; and

(e). in the opinion of the POTW, are more appropriately controlled under general control mechanisms than under individual control mechanisms;

ii. to be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with LAC 33:IX.6123.E.2 for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with LAC 33:IX.6123.E.2. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in Clause F.1.c.i of this Section, and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the combined wastestream formula or net/gross calculations (LAC 33:IX.6111.E and 6129).

d. employ individual or general control mechanisms that are enforceable and contain, at a minimum, the following conditions:

i. a statement of duration (in no case more than five years);

ii. a statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

iii. effluent limits, including best management practices, based on applicable general pretreatment standards in this Chapter, categorical pretreatment standards, local limits, and state and local law;

iv. self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with LAC 33:IX.6123.E.2, or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in

this Chapter, categorical pretreatment standards, local limits, and state and local law;

v. a statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable deadlines;

e. impose the following requirements to control slug discharges, if determined by the POTW to be necessary:

i. the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

ii. the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in LAC 33:IX.6123;

f. carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under LAC 33:IX.6123.O to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 308 of the CWA;

g. obtain remedies for noncompliance by any industrial user with any pretreatment standard or requirement:

i. all POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards or requirements;

ii. pretreatment requirements that can be enforced through the remedies set forth in Clause F.1.g.i of this Section include, but are not limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; and any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW that reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW that presents or may present an endangerment to the environment or that threatens to interfere with the operation of the POTW. The approval authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty that the approval

authority believes to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief are to be governed by applicable state or federal law, and not by this provision; and

h. comply with the confidentiality requirements set forth in LAC 33:IX.6127.

2. - 2.d....

e. randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards; and inspect and sample the effluent from each significant industrial user at least once a year, except as otherwise specified below:

i. where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with LAC 33:IX.6123.E.3, the POTW shall sample for the waived pollutant at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW shall immediately begin at least annual effluent inspection and monitoring of the user's discharge and inspection;

ii. where the POTW has determined that an industrial user meets the criteria for classification as a non-significant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in LAC 33:IX.6105;

iii. in the case of industrial users subject to reduced reporting requirements under LAC 33:IX.6123.E.3, the POTW shall randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in LAC 33:IX.6123.E.3, the POTW must immediately begin sampling and inspecting the industrial user at least once a year;

f. evaluate whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional significant industrial users must be evaluated within one year of being designated a significant industrial user. For purposes of this Subsection, a *slug discharge* is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge that has a reasonable potential to cause interference or pass-through, or in any other way violate the POTW's regulations, local limits, or permit conditions. The results of such activities shall be available to the approval authority upon request. Significant industrial users are required to notify the POTW immediately of any changes at their facilities affecting potential for slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

i. a description of discharge practices, including nonroutine batch discharges;

ii. a description of stored chemicals;

iii. procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under LAC 33:IX.6109.B, with procedures for follow-up written notification within five days;

iv. if necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

g. investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under LAC 33:IX.6123, or indicated by analysis, inspection, and surveillance activities described in Subparagraph F.2.e of this Section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

h. comply with the public participation requirements of 40 CFR Part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, of industrial users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a significant industrial user (or any industrial user that violates Clause F.2.h.iii, iv, or v of this Section) is in significant noncompliance if its violation meets one or more of the following criteria:

i. chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by LAC 33:IX.6105.A. *National Pretreatment Standard, Pretreatment Standard, or Standard*;

ii. technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by LAC 33:IX.6105.A. *National Pretreatment Standard, Pretreatment Standard, or Standard*, multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

iii. any other violation of a pretreatment standard or requirement as defined by LAC 33:IX.6105.A. *National Pretreatment Standard, Pretreatment Standard, or Standard* (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

iv. any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the

environment or has resulted in the POTW's exercise of its emergency authority under Clause F.1.g.ii of this Section to halt or prevent such a discharge;

v. failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

vi. failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

vii. failure to accurately report noncompliance;

viii. any other violation or group of violations, which may include a violation of best management practices, that the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

3. - 5.c. ...

d. adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in Paragraphs F.1 and 2 of this Section.

6. The POTW shall prepare and maintain a list of its industrial users meeting the criteria in LAC 33:IX.6105.A.*Significant Industrial User.a*. The list shall identify the criteria in LAC 33:IX.6105.A.*Significant Industrial User.a* applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination in accordance with LAC 33:IX.6105.A.*Significant Industrial User.c* that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the approval authority in accordance with LAC 33:IX.6117 as a nonsubstantial program modification in accordance with LAC 33:IX.6135.D. Modifications to the list shall be submitted to the approval authority in accordance with LAC 33:IX.6123.I.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:1092 (June 1999), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1035 (June 2006).

§6123. Reporting Requirements for POTWs and Industrial Users

A. Reserved.

1. Repealed.

2. Repealed.

B. - B.4.a.i. ...

ii. other streams as necessary to allow use of the combined wastestream formula of LAC 33:IX.6111.E (see Subparagraph B.5.d of this Section).

4.b. - 5.a. ...

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be

reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard.

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this Paragraph.

d. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of LAC 33:IX.6111.E, in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with LAC 33:IX.6111.E, this adjusted limit along with supporting data shall be submitted to the control authority.

e. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (see LAC 33:IX.4901) and amendments thereto. Where 40 CFR Part 136 (see LAC 33:IX.4901) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the 40 CFR Part 136 (see LAC 33:IX.4901) sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

f. The control authority may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

g. The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Certification. A statement, reviewed by an authorized representative of the industrial user (as defined in Subsection L of this Section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

B.7. - D. ...

E. Periodic Reports on Continued Compliance

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the approval authority, a report indicating the nature and concentration of pollutants in the effluent that are limited by

such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in Paragraph B.4 of this Section except that the control authority may require more detailed reporting of flows. In cases where the pretreatment standard requires compliance with a best management practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. The control authority may authorize an industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by the categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions.

a. The control authority may authorize a waiver where the pollutant is determined to be present solely due to sanitary wastewater discharged from the facility, provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

c. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with Subsection L of this Section, and include the certification statement in LAC 33:IX.6111.A.2.b. Non-detectable sample results may be only used as a demonstration that a pollutant is not present if the EPA-approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

d. Any grant of the monitoring waiver by the control authority must be included as a condition in the user's control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

e. Upon approval of the monitoring waiver and the revision of the user's control mechanism by the control authority, the industrial user must certify on each report, with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user.

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment

standard for 40 CFR [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since the filing of the last periodic report under LAC 33:IX.6123.E.1."

f. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately comply with the monitoring requirements of Paragraph E.1 of this Section, or other more frequent monitoring requirements imposed by the control authority, and notify the control authority.

g. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

3. The control authority may reduce the requirement in Paragraph E.1 of this Section to a requirement to report no less than once a year, unless required more frequently in the pretreatment standard or by the approval authority.

a. The industrial user must meet all of the following conditions:

i. the industrial user's total categorical wastewater flow does not exceed any of the following:

(a). 0.01 percent of the design dry weather hydraulic capacity of the POTW or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(b). 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

(c). 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with LAC 33:IX.6109.C and Subsection D of this Section;

ii. the industrial user has not been in significant noncompliance, as defined in LAC 33:IX.6115.F.2.h, for any time in the past two years;

iii. the industrial user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period in accordance with Paragraph G.3 of this Section.

b. An industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet the conditions of Clause E.3.a.i or ii of this Section. Upon notification, the industrial user must immediately begin complying with the minimum reporting requirements in Paragraph E.1 of this Section.

c. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under this Paragraph for a period of three years after the expiration of the term of the control mechanism.

4. Where the control authority has imposed mass limitations on industrial users as provided for by LAC 33:IX.6111.D, the report required by Paragraph E.1 of this Section shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in LAC 33:IX.6111.C, the report required by Paragraph E.1 of this Section shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by Paragraph E.1 of this Section shall include the user's actual average production rate for the reporting period.

F. ...

G. Monitoring and Analysis to Demonstrate Continued Compliance

1. Except in the case of non-significant categorical users, the reports required in Subsections B, D, and E of this Section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein that are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial use. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under Paragraph B.6 and Subsection D of this Section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the Office of Environmental Services, Water and Waste Permits Division, within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

a. the control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. the control authority performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

3. The reports required in Subsections B, D, E, and H of this Section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the

control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the composting procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in Subsections B and D of this Section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by Subsections E and H of this Section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

5. All analyses shall be performed in accordance with procedures established by the administrator pursuant to Section 304(h) of the CWA and contained in 40 CFR Part 136 (see LAC 33:IX.4901) and amendments thereto or with any other test procedures approved by the administrator (see 40 CFR Parts 136.4 and 136.5). Sampling shall be performed in accordance with the techniques approved by the administrator. Where 40 CFR Part 136 (see LAC 33:IX.4901) does not include sampling or analytical techniques for the pollutant in question, or where the administrator determines that the 40 CFR Part 136 (see LAC 33:IX.4901) sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

6. If an industrial user subject to the reporting requirement in Subsection E of this Section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in Paragraph G.5 of this Section, the results of this monitoring shall be included in the report.

H. Reporting Requirements for Industrial Users Not Subject to Categorical Pretreatment Standards. The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit

requires compliance with a best management practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user. These reports shall be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 (see LAC 33:IX.4901) and amendments thereto. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

I. Annual POTW Reports. POTWs with approved pretreatment programs shall provide the approval authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this Section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. an updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirement. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under Paragraph E.3 of this Section, and identify which industrial users are non-significant categorical industrial users;

2. - 5. ...

J. Notification of Changed Discharge. All industrial users shall promptly notify the control authority (and the POTW if the POTW is not the control authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under Subsection P of this Section.

K. Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by LAC 33:IX.6115.

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment).

2. No increment referred to in Paragraph K.1 of this Section shall exceed nine months.

K.3. - L.1.a. ...

b. the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment

recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions are taken to gather complete and accurate information for control mechanism requirements; and has been assigned or delegated authority to sign documents in accordance with corporate procedures;

2. - 4. ...

M. Signatory Requirements for POTW Reports. Reports submitted to the approval authority by the POTW in accordance with Subsection I of this Section must be signed by a principal executive officer, ranking elected official, or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

N. - N.3....

O. Recordkeeping Requirements

1. Any industrial user and POTW subject to the reporting requirements established in this Section shall maintain records of all information resulting from any monitoring activities required by this Section, including documentation associated with best management practices. Such records shall include for all samples:

a. - e. ...

2. Any industrial user or POTW subject to the reporting requirements established in this Section, including requirements for documentation associated with best management practices, shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this Section) and shall make such records available for inspection and copying by the state administrative authority and the EPA regional administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the state administrative authority or the EPA regional administrator.

O.3. - P.4. ...

Q. Annual Certification by Non-significant Categorical Industrial Users. A facility determined to be a non-significant categorical industrial user in accordance with LAC 33:IX.6105 must annually submit the following certification statement, signed in accordance with the signatory requirements in this Section. This certification must accompany an alternative report required by the control authority.

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards in 40 CFR [specify applicable national pretreatment standard part(s)], I certify, to the best of my knowledge and belief, that during the period from [month, day, year] to [month, day, year]:

1. the facility described as [insert facility name] was a non-significant categorical industrial user as described in LAC 33:IX.6105;

2. the facility complied with all applicable pretreatment standards and requirements during this reporting period; and

3. the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based upon the following information.

[Insert narrative description.]"

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2556 (November 2000), repromulgated LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2514 (October 2005), amended LR 32:1038 (June 2006).

§6129. Net/Gross Calculation

A. Application. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this Section. Any industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water), if the requirements of Subsection B of this Section are met.

B. Criteria

1. Calculations shall be done on a net basis if:

a. the applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that the standards shall be applied on a net basis; or

b. the industrial user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

2. - 4. ...

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:232 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1042 (June 2006).

Chapter 71. Appendices

§7127. Appendix N—Pollutants Eligible for a Removal Credit

I. Regulated Pollutants in 40 CFR Part 503 Eligible for a Removal Credit

Pollutants	Use or Disposal Practice		
	LA	SD	I

[See Prior Text]			

Key:

LA - I...

¹The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons or carbon monoxide in Subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator:

Acrylonitrile
Aldrin/Dieldrin (total)
Benzene
Benzidine
Benzo(a)pyrene
Bis(2-chloroethyl)ether
Bis(2-ethylhexyl)phthalate
Bromodichloromethane
Bromoethane
Bromoform
Carbon tetrachloride
Chlordane
Chloroform
Chloromethane
DDD
DDE
DDT
Dibromochloromethane
Dibutyl phthalate
1,2-dichloroethane
1,1-dichloroethylene
2,4-dichlorophenol
1,3-dichloropropene
Diethyl phthalate
2,4-dinitrophenol
1,2-diphenylhydrazine
Di-n-butyl phthalate
Endosulfan
Endrin
Ethylbenzene
Heptachlor
Heptachlor epoxide
Hexachlorobutadiene
Alpha-hexachlorocyclohexane
Beta-hexachlorocyclohexane
Hexachlorocyclopentadiene
Hexachloroethane
Hydrogen cyanide
Isophorone
Lindane
Methylene chloride
Nitrobenzene
N-Nitrosodimethylamine
N-Nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Polychlorinated biphenyls
2,3,7,8-tetrachlorodibenzo-p-dioxin
1,1,2,2-tetrachloroethane
Tetrachloroethylene
Toluene
Toxaphene
Trichloroethylene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
2,4,6-Trichlorophenol

II. – Footnote 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), LR 23:959 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2765 (December 2000),

Herman Robinson, CPM
Executive Counsel

0606#020

RULE

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Peace Officer Training (LAC 22:III.4715 and 4723)

In accordance with the provision of R.S. 40:2401, et seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., which is the Administrative Procedure Act, The Peace Officer Standards and Training Council hereby amends rules and regulations relative to the training of peace officers.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4715. Instructor Qualifications

A. - E. ...

F. POST Corrections Instructors

1.a. Eligibility for *Level 1* Corrections Instructors

i. All applicants must be both a *Level 1* (320 hr. basic) and *Level 3* (90 hr. correctional officer) peace officer or be a *Level 2* (218 hr. basic corrections) peace officer under the current law; and

ii. have two years minimum full time experience in supervising inmates in a jail or correctional facility; and

iii. successfully complete the POST/ACA Corrections Instructor Course.

b. No out-of-state transfers are allowed for corrections instructor certification.

2.a. Eligibility for *Level 2* Master Corrections Instructors

i. The applicant shall be a POST/ACA Corrections Instructor for at least two years; and

ii. be recommended by the head of the agency/department; and

iii. successfully complete the POST/ACA Master Corrections Instructor course.

b. The *Level 2* Master Corrections Instructor can train and certify new *Level 1* POST Corrections Instructors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999), LR 31:2008 (August 2005), LR 32:1043 (June 2006).

§4723. POST Firearms Qualification Course

A. Stages of Fire

1. STAGE I—At 25 yards, fire 6 rounds standing barricade, strong-hand, 6 rounds kneeling barricade, strong-hand, 6 rounds standing barricade, SH or OH, off-side. Time Limit: 90 seconds.

a. String I—The shooter must move maximum five yards to cover (barricade), draw and take up standing, strong-hand barricade position. Cover target (person) and give verbal commands. Shooter assumes he is in immediate danger and fires 6 rounds.

b. String II—Shooter then assumes a kneeling, strong-hand barricade position and fires 6 rounds.

c. String III—Shooter assumes off-side barricade position, strong or off-hand, and fires 6 rounds.

2. STAGE II—At 7 yards, fire 6 rounds kneeling (10 seconds), 12 rounds aim fire (25 seconds), 6 rounds off-hand (8 seconds), from ready gun position.

a. String I—Standing position: On command, draw and assume a kneeling position. Fire 6 rounds in 10 seconds.

b. String II—Standing position: On command, draw and fire 6 rounds, reload and fire 6 additional rounds in 25 seconds. Mandatory reloading for all weapons.

c. String III—Standing position with weapon in strong hand, ready gun position. On command, shooter shifts weapon to off hand only and fires 6 rounds in 8 seconds.

3. STAGE III—At 4 Yards, fire 3 rounds - One or two-hand instinct shooting position from holster in 3 seconds; back to ready gun position. 3 rounds - One or two-hand instinct shooting position.

a. String I—Standing position: On command, draw and fire 3 rounds in 3 seconds using instinct shooting position. Cover target for 1 second and assume a ready gun position; then, on command, shooter (using instinct shooting position) fires 3 rounds in 3 seconds.

b. String II—Repeat String I

4. STAGE IV—At 2 yards, fire 2 rounds - One or two-hand; take one step to rear in 2 seconds. Repeat 3 times.

a. String I—Standing position: On command, draw and fire 2 rounds in 2 seconds and holster. Shooter will take 1 step to rear while drawing.

b. String II—Repeat String I

c. String III—Repeat String I

B. Scoring of Target

1. Introduction. The following guidelines are published to provide a standard target and scoring system for the POST Qualification Course. The POST Qualification Target will be used for the course.

2. Scoring of the POST Target

a. Each hit in the silhouette, outside of the scoring ring, will be scored as one point.

b. Each hit in the scoring ring will be scored as two points.

c. A hit will not be recorded in the next higher scoring ring unless it breaks the line.

3. Qualification Requirements

a. Shooter must shoot 80 percent of possible 120. (80 percent = 96).

b. Basic academy qualification shooter will fire course 4 consecutive times and must average 80 percent minimum.

c. For in-service training, POST Course must be fired once annually with 80 percent minimum score.

d. For qualification course, basic or in-service, certified POST firearms instructor must score the target.

e. For any type of qualification, the course should be fired in order listed. Only during practice or demonstration may the course be fired in any order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:665 (April 1999), LR 32:1043 (June 2006).

Michael A. Ranatza
Executive Director

0606#056

RULE

Office of the Governor Division of Administration Office of the Commissioner

Small Entrepreneurship (Hudson Initiative)—Procurement (LAC 19:VIII.Chapters 11 and 13)

The Division of Administration, Office the Commissioner of Administration, in accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, has adopted LAC 19:VIII, Subpart 2, under the authority of R.S. 39:2007(F). The purpose of this promulgation is to provide for the establishment of regulations governing procurements made as part of the Louisiana Initiative for Small Entrepreneurships (Hudson Initiative), R.S. 39:2001 through 2008 and R.S. 51:931. This Rule will allow for coordination of state procurement with the February 20, 2006, implementation of Small Entrepreneurship certification procedures by the Department of Economic Development pursuant to LAC 19:VIII, Subpart 1.

Title 19

CORPORATIONS AND BUSINESS

Part VIII. Small Entrepreneurship (Hudson Initiative)

Subpart 2. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The State of Louisiana's Small Entrepreneurship (Hudson Initiative) Program, hereinafter called SE (HI), was created to provide additional opportunities for Louisiana-based small entrepreneurships, hereinafter called SE's, to participate in contracting and procurement with the state of Louisiana. By formalizing existing practices and implementing new procedures, the SE (HI) will allow the state of Louisiana to target more effectively certified SE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the SE (HI).

B.1. The SE (HI) is a goal-oriented program, encouraging state agencies to contract with certified SE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified SE's. The SE (HI) is a race and gender-neutral program. SE (HI) participation is restricted to Louisiana-based certified SE's in accordance with rules promulgated by the Louisiana Department of Economic Development.

a. The state will establish annual goals for certified SE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified SE's, and price competitiveness.

b. To participate, SE's must be certified by the Louisiana Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 440 of the 2005 Legislative Session.

c. The SE (HI) has guidelines for counting certified SE participation.

d. The SE (HI) incorporates several procedures to help implement the initiative.

2. These procedures are designed to maximize the initiative's success, including:

a. assisting certified SE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified SE's and larger firms;

c. assisting in developing a mentoring program for certified SE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified SE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified SE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified SE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified SE directory and source list(s) on the Internet to help identify qualified and available certified SE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for SE participation.

3. For designated contracts, the SE (HI) requires good-faith efforts by contractors to use certified SE's in contract performance. The SE (HI) has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified SE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified SE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on an SE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to three years. Procedures are in place to provide an opportunity for due process for any contractor or SE prior to the suspension.

5. The SE (HI) is race and gender neutral. The SE (HI) shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors and/or certified SE's that violate the state's non-discrimination mandate in the operations of the SE (HI) will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the SE (HI), reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified SE's, the number of contracts that included a good faith SE subcontracting plan, and the dollar value of SE contracts.

2. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1044 (June 2006).

§1103. Mission and Policy Statement

A. Act 440 of the 2005 legislative session enacted R.S. 39:2001, et seq. and R.S. 51:931, creating the Small Entrepreneurship (Hudson Initiative) Program for the state of Louisiana. As enacted, the SE (HI) is a goal-oriented program, encouraging the state to contract with certified SE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified SE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified SE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the SE (HI) to ensure opportunities for certified SE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The SE (HI) is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified SE participation in the state's contracting and procurement activities. In its operations, the SE (HI) will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, and certified SE's involved with SE (HI) contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem,

relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the SE (HI) including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified SE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the SE (HI) to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified SE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified SE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified SE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified SE participation;

6. to carry out the mandate of the state as enacted by Act 440 of the 2005 Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified SE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1307. Reserved.

§1309. Overall Annual SE (HI) Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for SE (HI) participation for the state will be set each year by the Commissioner of Administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The Commissioner of Administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified SE capacity, certified SE availability, nature of the contract, past experiences with SE (HI) participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the SE (HI).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified SE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;

2. issuing an order to a certified SE (prime contractor or distributor) on statewide contract;

3. using an ITB process to award a contract either to a certified SE or to a bidder who can demonstrate a good faith plan to use certified SE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified SE or be able to demonstrate its good faith subcontracting plan:

a. good faith subcontracting plans in an invitation to bid:

i. the ITB will require the bidder to certify that the bidder is either a certified SE or that the bidder has a good faith subcontracting plan;

ii. the following describes the process a non-certified SE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan:

(a). the bidder has or will use the SE (HI) certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified SE's capable of performing the subcontract. Notification must be provided to the certified SE's no less than five working days prior to the date of bid opening;

(b). written notification is the preferred method to inform certified SE's. This written notification may be transmitted via fax and/or e-mail;

(c). written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person;

(d). the successful bidder must be able to provide written justification of the selection process if a certified SE was not selected;

b. post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to

demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated;

4. using a request for proposals (RFP) process to award a contract to a certified SE or to a proposer demonstrating a good faith effort to use certified SE's as subcontractors:

a. if an agency decides to issue an RFP to satisfy its SE (HI) goal, the procurement process will include either of the following:

i. require that each proposer either be a certified SE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve 10 percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified SE or who have made a good faith effort to use one or more SE's in subcontracting;

b. in evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for SE participation beyond the designated amount set forth in the RFP;

c. good faith subcontracting in a request for proposal:

i. proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below:

(a). the proposer divided the contract work into reasonable lots or portions;

(b). the proposer used the SE (HI) certification list maintained by the Department of Economic Development to provide notice to three or more certified SE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified SE's no less than five working days prior to the submission of the proposal;

(c). the notification from the proposer was in writing. This written notification may have been transmitted via fax and/or e-mail;

(d). the written notification gave the SE's complete information regarding the potential subcontract including such things as:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person;

ii. an RFP under Clause 4.a.i shall require all proposers who are not certified SE's to certify they made a good faith subcontracting effort in their proposals;

iii. an RFP under Clause 4.a.ii may require that proposals include a proposed schedule of certified SE participation that lists the names of potential certified SE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified SE subcontract;

iv. an RFP under Clause 4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e., phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points;

v. proposers responding to RFP's under either Clauses 4.a.i or 4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified SE is not used as a subcontractor;

d. if at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1046 (June 2006).

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its SE (HI) goals the total dollar value of the contract awarded to the certified SE, if the certified SE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified SE.

C. The state may count towards its SE (HI) goals the total dollar value of a contract awarded to a joint venture, of which a certified SE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified SE.

D. The state may count toward its SE (HI) goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified SE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its SE (HI) goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Louisiana Department of Economic Development. (LAC 19:VII.Subpart A)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1317. Implementation Procedures

A. In an effort to maximize the SE (HI)'s success, the following procedures will be implemented to maximize opportunities for certified SE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the SE (HI).

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly

with certified SE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified SE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified SE's on challenges frequently encountered by certified SE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified SE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's SE (HI) initiative and to sensitize them to the problems of SE's;

g. inform certified SE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified SE's and larger firms to provide opportunities for certified SE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified SE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified SE subcontractors at the time of proposal review. Agreements between a proposer and a certified SE subcontractor in which the certified SE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1321. Reporting Procedures

A. The Commissioner of Administration is charged with the preparation of an annual report on the progress of the SE (HI) in the most recently ended fiscal year. The commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by the fifteenth day of January each year. Therefore,

information for the commissioner's report regarding an agency's achievement of SE (HI) goals must be submitted to the commissioner no later than the first day of October each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified SE's;

2. number of contracts and the value of the contracts that included a good faith certified SE subcontracting plan;

3. number of actual agency staff that attended Division of Administration training for SE (HI) and the number of certified SE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page. A new "activity code" will be established in ISIS to track expenditures related to SE (HI). Agencies that do not use ISIS must develop their own mechanism to capture SE (HI) expenditures in order to provide reporting information to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

Denise Lea
Director

0606#036

RULE

Department of Health and Hospitals Board for Hearing Aid Dealers

Conduct and Licensing
(LAC 46:XXXIX.301, 501, 503, 901, and 903)

Under the authority of R.S. 37:2457, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Board for Hearing Aid Dealers, has amended LAC 46:XXXIX.301, 501, 503, 901, and 903, to determine which evidence and testimony is relevant for revocation or suspension of a hearing aid dealer's license.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIX. Hearing Aid Dealers

Chapter 3. Ethics

§301. Unethical Conduct

A. It shall be the responsibility of each holder of a license, temporary training permit, or certificate of endorsement under R.S. 37:2441-2465 to be familiar with and to avoid commission of any of the acts regarded as unethical practices by the Act. Full responsibility for the ethical conduct of a temporary training permit holder shall rest with the license or certificate holder who sponsored his application for a temporary training permit; provided, however, that such sponsoring license or certificate holder may relieve himself of such responsibility by discharging the

holder of the temporary training permit, returning said license by registered mail, to the board, together with a letter explaining fully the circumstances under which the temporary training permit holder was separated from the employment of the sponsor. If the certificate cannot be returned, full explanation shall be included in same letter.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006).

Chapter 5. Application for License

§501. Application Forms; Fee

A. Every person requesting an application for a license or certificate of endorsement under this act shall be furnished the necessary form.

B. The application forms shall be designed to provide the board with the information necessary to satisfy itself that all requirements pertaining to Act 302 of 1968 of the legislature of the state of Louisiana are being fulfilled.

C. Failure to complete all forms and provide all information required may be just cause for the application to be rejected by the board and returned to the applicant.

D. The application shall be accompanied by a cashiers check or postal money order in the amount specified by this act. It shall be understood by the applicant that the application fee is to cover the cost of administration and shall not be refunded.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:2445 and R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006).

§503. Applications, Temporary Training Permit Notarized

A. All applications shall be subscribed by the applicant and sworn to by him before a notary public, and in the case of a temporary training permit, the sponsor's statement shall also be notarized.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:2448, R.S. 37:2449 and R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006).

Chapter 9. License

§901. Display of License

A. - C. ...

D. In any case where a temporary training permit holder is separated from the employment of his sponsor for any cause, he shall surrender his identification card to his sponsor for return to the board with his temporary permit. Upon application of a new sponsor, a new identification card will be issued to the temporary training permit holder and his certificate shall be forwarded to his new sponsor.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:2443 and R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1048 (June 2006).

§903. Revocation or Suspension of License

A. - B.1. ...

2. After due consideration of the written complaint, the written answer to the complaint, if any, all evidence offered, the written report of the Ethics Committee, and any additional investigation by the board, the Louisiana Board for Hearing Aid Dealers may:

- a. dismiss the complaint as unjustified;
- b. take action under R.S. 37:2461 and/or R.S. 37:2462, in accordance with the decision of the board.
- c. Repealed.

C. In the event that the board should seek the suspension or revocation of the license or temporary license of the accused party, the board shall:

- 1. set a time, date and location for a public hearing on the merits of the complaint;
- 2. notify the accused party of the time, date and location of such public hearing, in writing, and furnish him with the specific charges of the complaint at least 30 days before such hearing;
- 3. subpoena, compel the attendance and testimony of witnesses;
- 4. employ a public stenographer to transcribe all testimony adduced at the hearing;
- 5. any and all evidence and testimony relevant to the complaint may be presented to the board. The board will determine which evidence and testimony is relevant and make its consideration thereupon;
- 6. a majority of the board will preside;
- 7. obtain the services of legal counsel to assist the board at the hearing;
- 8. within 60 days after the hearing render its decision and reasons in writing, a copy of which is to be mailed to the complainant and the accused licensed hearing aid dealers.

AUTHORITY NOTE: Adopted in accordance with R.S. 37:2453 and R.S. 37:2457.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board for Hearing Aid Dealers, July 1969, amended by the Department of Health and Hospitals, Board for Hearing Aid Dealers, LR 32:1049 (June 2006).

Gerald Cockerham
Chairman

0606#024

RULE

**Department of Health and Hospitals
Board of Pharmacy**

**Pharmacy Technicians—Scope of Practice
(LAC 46:LIII.907)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended the referenced Rule.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 9. Pharmacy Technicians

§907. Scope of Practice

A. Pharmacy technician candidates and pharmacy technicians may assist the pharmacist by performing those duties and functions assigned by the pharmacist while under his direct and immediate supervision.

1. The ratio of candidates to pharmacists on duty shall not exceed one to one at any given time.

2. The ratio of technicians to pharmacists on duty shall not exceed two to one at any given time. However, the ratio of technicians to pharmacists on duty may be increased to three to one if no technician candidates are on duty at the same time.

B. Pharmacy technician candidates shall not:

- 1. receive verbal initial prescription orders;
- 2. give or receive verbal transfers of prescription orders;
- 3. interpret prescription orders (however, a technician candidate may translate prescription orders);
- 4. compound high-risk sterile preparations, as defined by the United States Pharmacopeia (USP), or its successor;
- 5. counsel patients.

C. Pharmacy technicians shall not:

- 1. release a verbal prescription order for processing until it is reduced to written form and initialed by the receiving technician and supervising pharmacist;
- 2. interpret prescription orders (however, a technician may translate prescription orders);
- 3. compound high-risk sterile preparations, as defined by the United States Pharmacopeia (USP), or its successor;
- 4. counsel patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2486 (November 2004), amended LR 32:1049 (June 2006).

Malcolm J. Broussard
Executive Director

0606#023

RULE

**Department of Health and Hospitals
Office of Public Health**

**Infectious Disease Epidemiology Program
(LAC 51:II.Chapter 1)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health pursuant to the authority in R.S. 40:5, amends Title 51, Part II, Chapter 1 providing for the control of diseases and disease reporting requirements. The changes represent upgrades to the present Sanitary Code to

accommodate new diseases and conditions of public health concern, to expand the list of health care providers required to report, and to clarify reporting requirements for laboratories. The changes to the Sanitary Code are divided into five categories: (1) make additions and amendments to the list of Reportable Diseases and Conditions; (2) add Laboratory Directors and Poison Control Centers to the list of health care providers required to report; (3) amend the definition of the types of cases that must be reported by health care providers; (4) amend the definition of cases that the State Health Officer may investigate; and (5) amend and clearly define the reporting requirements of clinical laboratories operating within or outside of the state.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 1. Disease Reporting Requirements

§101. Definitions [formerly paragraph 2:001]

A. ...

Case of Arsenic Exposure—any medical condition/visit resulting from arsenic exposure as determined from the exposure history or patient statement and/or injury resulting from inhalation, ingestion, dermal exposure or ocular contact with arsenic. Laboratory test results for arsenic: includes results of arsenic tests (blood, urine, or tissue samples), regardless of test result.

Case of Cadmium Exposure—any medical condition/visit resulting from cadmium exposure as determined from the exposure history or patient statement and/or injury resulting from inhalation, ingestion, dermal exposure or ocular contact with cadmium. Laboratory test results for cadmium: includes results of cadmium tests (blood, urine, or tissue samples), regardless of test result.

Case of Lead Exposure—any medical condition/visit resulting from lead exposure as determined from the exposure history or patient statement and/or injury resulting from inhalation, ingestion, dermal exposure or ocular contact with lead. Laboratory test results for lead: includes results of lead tests (blood, urine, or tissue samples), regardless of test result.

Case of Mercury Exposure—any medical condition/visit resulting from mercury exposure as determined from the exposure history or patient statement and/or injury resulting from inhalation, ingestion, dermal exposure or ocular contact with mercury. Laboratory test results for mercury: includes results of mercury tests (blood, urine, or tissue samples), regardless of test result.

Case of Pesticide-Related Illness and Injury—any medical condition/visit resulting from pesticide exposure as determined from the exposure history or patient statement and/or acute, subacute, or chronic illness or injury resulting from inhalation, ingestion, dermal exposure or ocular contact with a pesticide. Laboratory test results for pesticide-related illness and injury includes results of cholinesterase tests (plasma and red blood cell), regardless of test results, for which the purpose of the test was possible pesticide exposure; and tests of pesticides or metabolites in blood, urine, or tissue samples, regardless of test results.

Pesticide—any pesticide defined in the Louisiana Pesticide Law (Louisiana Revised Statutes Chapter 20, 1999) as now stated and as may be amended in the future. Pesticides include but are not limited to insecticides, herbicides, rodenticides, repellants, fungicides, and wood treatment products.

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with the specific provisions of R.S. 40:4(A)(2) and R.S. 40:5(1)(2) and (10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006).

§105. Reportable Diseases and Conditions [formerly paragraph 2:003]

A. The following diseases or conditions are hereby declared reportable with reporting requirements by Class.

1. Class A Diseases or Conditions which Shall Require Reporting within 24 Hours

a. This class includes diseases of major public health concern because of the severity of disease and potential for epidemic spread. Class A diseases or conditions shall be reported to the Office of Public Health by telephone immediately upon recognition that a case, a suspected case, or a positive laboratory result is known. In addition, all cases of rare or exotic communicable diseases, unexplained death, unusual cluster of disease and all outbreaks shall be reported. The following diseases or conditions shall be classified as Class A for reporting requirements:

- i. Anthrax;
- ii. Avian Influenza;
- iii. Botulism;
- iv. Brucellosis;
- v. Cholera;
- vi. Diphtheria;
- vii. Haemophilus influenzae (invasive infection);
- viii. Influenza-associated Mortality;
- ix. Measles (rubeola);
- x. Neisseria meningitidis (invasive infection);
- xi. Plague;
- xii. Poliomyelitis (paralytic);
- xiii. Q Fever (Coxiella burnetii);
- xiv. Rabies (animal and human);
- xv. Rubella (congenital syndrome);
- xvi. Rubella (German measles);
- xvii. Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV);
- xviii. Staphylococcus aureus, Vancomycin Intermediate or Resistant (VISA/VRSA);
- xix. Smallpox;
- xx. Tularemia;
- xxi. Viral Hemorrhagic Fever;
- xxii. Yellow Fever.

2. Class B Diseases or Conditions which Shall Require Reporting within One Business Day

a. This class includes diseases of public health concern needing timely response because of potential for

epidemic spread. The following Class B diseases shall be reported to the Office of Public Health by the end of the next business day after the existence of a case, a suspected case, or a positive laboratory result is known:

- i. Arthropod-Borne Neuroinvasive Disease and other infections (including West Nile, St. Louis, California, Eastern Equine, Western Equine and others);
- ii. Aseptic meningitis;
- iii. Chancroid¹;
- iv. Escherichia coli, Shiga-toxin producing (STEC), including E. coli O157:H7;
- v. Hantavirus Pulmonary Syndrome;
- vi. Hemolytic-Uremic Syndrome;
- vii. Hepatitis A (acute illness);
- viii. Hepatitis B (acute illness and carriage in pregnancy);
- ix. Hepatitis B (perinatal infection);
- x. Hepatitis E;
- xi. Herpes (neonatal);
- xii. Legionellosis;
- xiii. Malaria;
- xiv. Mumps;
- xv. Pertussis;
- xvi. Salmonellosis;
- xvii. Shigellosis;
- xviii. Syphilis¹;
- xix. Tetanus;
- xx. Tuberculosis²;
- xxi. Typhoid Fever.

3. Class C Diseases or Conditions which Shall Require Reporting within Five Business Days

a. This class shall include the diseases of significant public health concern. The following diseases shall be reported to the Office of Public Health by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known:

- i. Acquired Immune Deficiency Syndrome (AIDS)
- ii. Blastomycosis;
- iii. Campylobacteriosis;
- iv. Chlamydial infection¹;
- v. Coccidioidomycosis;
- vi. Cryptococcosis;
- vii. Cryptosporidiosis;
- viii. Cyclosporiasis;
- ix. Dengue;
- x. Ehrlichiosis;
- xi. Enterococcus, Vancomycin Resistant [(VRE), invasive disease];
- xii. Giardia;
- xiii. Gonorrhea¹;
- xiv. Hansen Disease (leprosy);
- xv. Hepatitis B (carriage, other than in pregnancy);
- xvi. Hepatitis C (acute illness);
- xvii. Hepatitis C (past or present infection);
- xviii. Human Immunodeficiency Virus (HIV);
- xix. Listeria;
- xx. Lyme Disease;
- xxi. Lymphogranuloma venereum¹;
- xxii. Psittacosis;
- xxiii. Rocky Mountain Spotted Fever (RMSF);
- xxiv. Staphylococcal Toxic Shock Syndrome;

- xxv. Staphylococcus aureus, Methicillin/Oxacillin Resistant [(MRSA), invasive infection];
- xxvi. Streptococcal disease, Group A (invasive disease);
- xxvii. Streptococcal disease, Group B (invasive disease);
- xxviii. Streptococcal Toxic Shock Syndrome;
- xxix. Streptococcus pneumoniae, Penicillin Resistant [(DRSP), invasive infection];
- xxx. Streptococcus pneumoniae (invasive infection in children <5 years of age);
- xxxi. Transmissible Spongiform Encephalopathies;
- xxxii. Trichinosis;
- xxxiii. Varicella (chickenpox);
- xxxiv. Vibrio infections (other than cholera).

4. Class D Special Reportable Diseases or Conditions Shall Require Reporting within Five Business Days

a. This class shall include the diseases of significant public health concern. The following diseases/conditions shall be reported to the Office of Public Health by the end of the workweek after the existence of a case, suspected case, or a positive laboratory result is known:

- i. Cancer;
- ii. Complications of abortion;
- iii. Congenital hypothyroidism³;
- iv. Galactosemia³;
- v. Heavy Metal (Arsenic, Cadmium, Mercury) Exposure and/or Poisoning (All Ages);
- vi. Hemophilia³;
- vii. Lead Exposure and/or Poisoning (All Ages)³;
- viii. Pesticide-Related Illness or Injury (All Ages);
- ix. Phenylketonuria³;
- x. Reye's Syndrome;
- xi. Severe traumatic head injury;
- xii. Severe under nutrition (severe anemia, failure to thrive);
- xiii. Sickle cell disease (newborns)³;
- xiv. Spinal cord injury;
- xv. Sudden infant death syndrome (SIDS).

B. Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Report forms (2430), facsimile, phone reports or through the Office of Public Health's electronic Reportable Disease Database: <https://ophrdd.dhh.state.la.us>.

1. ¹Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

2. ²Report on CDC72.5 (f.5.2431) card.

3. ³Report to the Louisiana Genetic Diseases Program and Louisiana Childhood Lead Poisoning Prevention Programs.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006).

§109. Reports by All Health Care Providers [formerly paragraph 2:006]

A. It shall be the duty of every osteopath, coroner, medical examiner, dentist, homeopath, infection control practitioner, laboratory director, medical records director, nurse, nurse midwife, nurse practitioner, pharmacist, physician assistant, podiatrist, poison control center, social worker, veterinarian, and any other health care professional

to report, a positive laboratory result, a confirmed or suspected case of any reportable disease or condition as specified in §105 in which he or she has examined or evaluated, or for which he or she is attending or has knowledge.

AUTHORITY NOTE: Promulgated in accordance with the provisions or R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1213 (June 2002), amended LR 32:1051 (June 2006).

§113. Laboratory Reporting Requirements [formerly paragraph 2:008]

A. The director of every laboratory whether public, private, hospital or other, within or out of the state shall report to the State Health Officer the results of all tests that are in any way clinically relevant, suggestive or indicative of an individual having active disease, past or present exposure to, past or present contact with and/or past or present association with any of the disease/conditions listed in the Public Health Sanitary Code, Part II, Chapter 1, §105. The results of the tests to be reported to the state health officer do not have to be conducted for diagnostic reasons, nor do the results have to be diagnostic or confirmatory. The report should be received in a timely manner consistent with the requirements of the diseases/conditions Class described in §105 and shall state the name, date of birth, sex, race, usual residence, specimen identification code/ID and test results of the tested individual as well as the name of the physician or person submitting the specimen. Contact information for the laboratory performing the test(s) must be provided. Laboratories shall not defer their Public Health Reporting responsibilities to other authorities (e.g., Infection Control) within the institutions they serve. In addition, laboratories performing tests on specimens received from other laboratories shall report to the state health officer all results as prescribed above plus the contact information for the facility/laboratory where the specimen originated. Moreover, no considerations, evaluations or concerns, regarding any test technology or test result by institutions and/or organizations whether federal, state or otherwise (e.g., FDA, CMS-CLIA, etc.) which may be overseeing, approving, evaluating or licensing laboratory testing, shall represent an a priori rationale for withholding laboratory reports from the state health officer.

B. Laboratory reports shall not be construed by the Office of Public Health as diagnosis. In the case of private patients, follow-up of laboratory reports shall be through the physician(s) submitting the specimen(s).

AUTHORITY NOTE: Promulgated in accordance with the provisions or R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1214 (June 2002), amended LR 32:1052 (June 2006).

§115. Investigations [formerly paragraphs 2:009]

A. The state health officer may immediately upon receiving notification of any communicable disease or reportable condition, investigate as the circumstances may require for the purpose of verification of the diagnosis, to ascertain the source of the causative agent, to disclose unreported cases and to reveal susceptible contacts if such information is required to prevent a serious health threat to the community. The decision of the state health officer as to the diagnosis shall be final, for administrative purposes.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions or R.S. 40:4(A)(2) and R.S. 40:5(10).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1214 (June 2002), amended LR 32:1052 (June 2006).

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

0606#075

RULE

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

Medical Assistance—Pharmacy
(LAC 50:XXIX.Chapters 1-9)

The following Chapters have been codified and placed in Title 50. The table below reflects current codification and citations of the text used to compile the Sections being promulgated.

Current Placement	Uncodified Historical Citations
§105	LR 22:1134 (November 1996)
§107	LR 28:2363 (November 2002)
§109	LR 22:583 (July 1996)
§111	LR 22:107 (February 1996)
§113	LR 14:88 (February 1988), LR 16: 313 (April 1990), LR 29:2115 (October 2003).
§115	LR 16:972 (November 1990)
§117	LR 14:88 (February 1988), LR 16:313 (April 1990), LR 18:964 (September 1992).
§119	LR 14:88 (February 1988), LR 16:313 (April 1990).
§301	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 14:88 (February 1988), LR 16:313 (April 1990), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§303	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§305	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), repromulgated LR 22:583 (July 1996)
§307	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§309	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§311	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§313	LR 6:114 (March 1980), LR 12:244 (April 1986), LR 19:1579 (December 1993), LR 22:370 (May 1996), LR 22:583 (July 1996)
§315	LR 19:1579 (December 1993)
§501	LR 14:88 (February 1988), LR 16:313 (April 1990), LR 18:964 (September 1992), LR 31:931 (April 2005)
§701	LR 31:2897 (November 2005)
§703	LR 31:2897 (November 2005)
§705	LR 31:2898 (November 2005)
§707	LR 31:2898 (November 2005)
§709	LR 31:2899 (November 2005)
§711	LR 31:2899 (November 2005)
§713	LR 31:2899 (November 2005)
§715	LR 31:2900 (November 2005)

Current Placement	Uncodified Historical Citations
§901	LR 1:341 (August 1975), LR 14:88 (February 1988), LR 16:313 (April 1990)
§903	LR 14:88 (February 1988), amended LR 16:313 (April 1990)
§915	LR 18:57 (January 1992)
§917	LR 18:57 (January 1992)
§919	LR 18:57 (January 1992)
§921	LR 18:57 (January 1992)
§923	LR 14:88 (February 1988), LR 18:57 (January 1992)
§925	LR 4:296 (August 1978), LR 5:280 (September 1979), LR 7:501 (October 1981), LR 12:679 (October 1986), LR 13:24 (January 1987), LR 13:183 (March 1987), LR 13:657 (November 1987), LR 16:313 (April 1990), LR 16:693 (August 1990), LR 17:271 (March 1991), LR 18:57 (January 1992), LR 22:108 (February 1996), LR 22:1224 (December 1996), LR 23:1687 (December 1997), LR 24:2280 (December 1998)
§935	LR 14:88 (February 1988), LR 16:313 (April 1990), LR 26:1299 (June 2000), LR 26:1629 (August 2000), LR 28:837 (April 2002)
§945	LR 5:64 (March 1979), LR 5:244 (August 1979), LR 5:355 (November 1979), LR 6:175 (May 1980), LR 7:7 (January 1981), LR 7:629 (December 1981), LR 8:11 (January 1982), LR 8:510 (October 1982), LR 9:13 (January 1983), LR 9:14 (January 1983), LR 9:63 (February 1983), LR 9:552 (August 1983), LR 9:837 (December 1983), LR 10:466 (June 1984), LR 11:540 (May 1985), LR 11:637 (June 1985), LR 11:865 (September 1985), LR 11:1149 (December 1985), LR 12:769 (November 1986), LR 13:498 (September 1987), LR 14:88 (February 1988), LR 14:294 (May 1988), LR 14:353 (June 1988), LR 15:548 (July 1989), LR 15:844 (October 1989), LR 16:313 (April 1990)
§947	LR 14:88 (February 1988), amended LR 16:313 (April 1990)
§949	LR 1:341 (August 1975), LR 2:272 (September 1976), LR 5:64 (March 1979), LR 5:244 (August 1979), LR 5:355 (November 1979), LR 6:175 (May 1980), LR 7:7 (January 1981), LR 7:629 (December 1981), LR 8:11 (January 1982), LR 8:510 (October 1982), LR 9:13 (January 1983), LR 9:14 (January 1983), LR 9:63 (February 1983), LR 9:552 (August 1983), LR 9:837 (December 1983), LR 10:466 (June 1984), LR 11:540 (May 1985), LR 11:637 (June 1985), LR 11:865 (September 1985), LR 11:1149 (December 1985), LR 12:769 (November 1986), LR 13:498 (September 1987), LR 14:88 (February 1988), LR 14:294 (May 1988), LR 14:353 (June 1988), LR 15:548 (July 1989), LR 15:844 (October 1989), LR 16:313 (April 1990)
§961	LR 31:1595 (July 2005)
§963	LR 31:1595 (July 2005)
§971	LR 32:247 (February 2006)
§981	LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000)

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§101-103. Reserved.

§105. Medicaid Pharmacy Benefits Management

System Point of Sale—Prospective Drug Utilization Program

A. The Louisiana Medicaid Pharmacy Benefits Management System (LMPBM) includes a Point-of-Sale/Prospective Drug Utilization Review component.

B. The Department of Health and Hospitals reserves the right for ultimate decision making relative to certain drug class information and drug contraindications or interactions.

C. Formulary Management. The formulary is managed through the use of Federal Upper Limits (FUL) and the Louisiana Maximum Allowable Costs (LMAC) limitations. Federal Upper Limits and Louisiana Maximum Allowable Costs limitations provide for dispensing of multiple source drugs at established limitations unless the prescribing physician specifies that the brand product is medically necessary for a patient. Establishment of co-payments also provides for formulary management. The Medicaid Program has established a broad formulary with limited exceptions.

D. Reimbursement Management. The cost of pharmaceutical care is managed through Estimated Acquisition Costs (EAC) of drug ingredient costs through Average Wholesale Price (AWP) discounting, the Louisiana Maximum Allowable Costs (LMAC) limitations and compliance with Federal Upper Limits (FUL) regulations, and the establishment of the maximum allowable overhead costs, drug rebates and copayments.

E. Claims Management. The claims management component is performed through the processing of pharmacy claims against established edits. Claim edit patterns and operational reports are analyzed to review the effectiveness of established edits and to identify those areas where the development of additional edits are needed.

F. Program Integrity. Program integrity is maintained through the following mechanisms:

1. retrospective drug utilization review;
2. Lock-In Program for patient education;
3. Surveillance and Utilization Review Program

which provides for on-going review processes for misutilization, abuse and fraud, and audits of the providers of the Pharmacy Program.

G. Pharmacy Provider Network. Enrolled Medicaid pharmacy providers are required to comply with all applicable federal and state laws and regulations.

H. Point-of-Sale Prospective Drug Utilization Review System. This on-line Point-of-Sale System provides electronic claims management to evaluate and improve drug utilization quality. Information about the patient and the drug will be analyzed through the use of eight therapeutic modules in accordance with the standards of the National Council of Prescription Drug Plan. The purpose of prospective drug utilization review is to reduce in duplication of drug therapy, prevent drug-to-drug interactions, and assure appropriate drug use, dosage and duration. The PRO-DUR modules may screen for drug interactions, therapeutic duplication, improper duration of therapy, incorrect dosages, clinical abuse/misuse and age restrictions. Electronic claims submission sends on-line messages to pharmacists informing them of potential drug-related problems and the pharmacists must document their responses by using interventions codes. By using these codes, pharmacists will document prescription reporting and outcomes of therapy for Medicaid recipients.

I. POS/PRO-DUR Requirements Provider Participation

1. Point-of-Sale (POS) enrollment amendment and certification is required prior to billing POS/PRO-DUR system. Annual recertification is required.

2. All Medicaid enrolled pharmacy providers will be required to participate in the Pharmacy Benefits Management System.

3. All Medicaid enrolled pharmacy providers whose claim volume exceeds 100 claims or \$4,000 per month and all providers enrolled on January 1, 1996 will be required to participate in Point-of-Sale System. Long term care pharmacy provider claims may be processed through electronic media claims (EMC).

4. Providers accessing the POS/PRO-DUR system will be responsible for the purchase of all hardware for connection to the switching companies and any fees associated with connection or transmission of information to the fiscal intermediary. The Bureau of Health Services Financing will not reimburse the provider for any initial on-going fees incurred by the provider to access the POS/PRO-DUR system.

5. Providers are required to verify eligibility with the monthly eligibility card and a copy of the card should be retained for processing the claim.

6. Pharmacy providers and physicians may obtain assistance with clinical questions from the Northeast Louisiana University, School of Pharmacy.

7. Physicians and pharmacy providers will be required to participate in the educational and intervention features of the Pharmacy Benefits Management System.

J. Recipient Participation. Pharmacy patients are encouraged to take an active role in the treatment or management of their health conditions through participation in patient counseling efforts with their physicians and pharmacists.

K. Disease and Outcomes Management. Disease management will be focused on improving the drug therapy for certain disease states by developing procedures to assure direct interventions and increasing compliance of patients. Patient populations will be targeted for disease therapy monitoring and educational efforts

L. Peer Counseling and Conference Management. The department will analyze data for individual prescribers and pharmacists. Quality management strategies will be used for peer counseling and conferences with prescribers and/or pharmacists to assure appropriate prescribing and dispensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, Title XIX of the Social Security Act, and the 1995-96 General Appropriate Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006).

§107. Prior Authorization

A. The medication must be prescribed by a practitioner who is authorized to prescribe under state law. The National Drug Code (NDC) must be shown on each pharmacy claim form for reimbursement of prescription drugs subject to rebates from manufacturers as mandated by federal law and regulations.

B. Covered Drugs. Coverage of drugs shall be limited to specific drug products authorized for reimbursement by therapeutic category and listed by generic name, strength/unit, NDC, and brand name. Those drug products subject to mandatory coverage as a result of a rebate agreement with the federal government will be covered until written notice is received from the Centers for Medicare and

Medicaid Services that coverage will be terminated. Providers will be given prior notice of termination of coverage as required under federal regulations.

C. Prior Authorization with a Preferred Drug List

1. As authorized by R.S. 46:153.3(B)(2)(a) and pursuant to 42 U.S.C. s1396r-8, a prior authorization process is established which utilizes a preferred drug list (PDL) for selected therapeutic classes. Drugs included on the PDL are automatically prior authorized. Drugs in those classes that are not included on the PDL shall require prescribers to obtain prior authorization. Providers will be notified of the drugs selected for placement on the PDL by selected therapeutic classes prior to implementation of the prior authorization process and as additional drugs are subsequently added to the list. Lists of covered drug products, including those that require prior authorization, will be maintained in either the Prescription Drug Services Manual, other designated service provider manuals, on the Louisiana Medicaid web site or provider notices.

2. The prior authorization process provides for a turn-around response by either telephone or other telecommunications device within 24 hours of receipt of a prior authorization request. In emergency situations, providers may dispense at least a 72-hour supply of medication as mandated by R.S. 46:153.3(B)(2)(a) and pursuant to 42 U.S.C. s1396r-8.

3. The Pharmaceutical and Therapeutics Committee will make recommendations to the department regarding drugs to be considered for prior authorization. The composition of and appointment to the Pharmaceutical and Therapeutics Committee complies with R.S. 46:153.3(D) and 42 U.S.C.s1396r-8.

D. Drugs Excluded from Coverage. As provided by Section 1927(d)(2) of the Social Security Act, the following drugs are excluded from program coverage:

1. experimental drugs;
2. anorexics;
3. cough and cold preparations;
4. cosmetic drugs;
5. compounded prescriptions (mixtures of two or more ingredients-the individual drugs will continue to be reimbursed);
6. medications which are included in the reimbursement to a facility, i.e.:
 - a. hospitals;
 - b. skilled nursing facility for recipients receiving benefits under Part A of Title XVIII;
 - c. mental hospitals; or
 - d. some other nursing facilities;
7. non-legend drugs with some exceptions;
8. fertility drugs when used for fertility treatment;
9. vaccines covered in other programs; and
10. DESI Drugs (see Subsection E below).

E. DESI Drugs. Those drugs that are subject to a Notice of Opportunity for Hearing (NOOH), as prescribed by Section 1927(k)(2)(A) of the Social Security Act for which the Food and Drug Administration has proposed to withdraw from the market because they are "less than effective" or "identical, related, or similar drugs", and are identified as DESI ineffective drugs shall be excluded from coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1054 (June 2006).

§109. Medicare Part B

A. The Department of Health and Hospitals, Bureau of Health Services Financing pays the full co-insurance and the Medicare deductible on pharmacy claims for services provided to Medicaid recipients covered by Medicare Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006).

§111. Copayment

A. Payment Schedule

1. A copayment requirement in the Pharmacy Program is based on the following payment schedule.

Calculated State Payment	Copayment
\$10.00 or less	\$0.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

2. The pharmacy provider shall collect a copayment from the Medicaid recipient for each drug dispensed by the provider and covered by Medicaid. The following pharmacy services are exempt from the copayment requirement:

- a. services furnished to individuals under 21 years of age;
- b. services furnished to pregnant women if such services are related to the pregnancy, or to any other medical condition which may complicate the pregnancy;
- c. services furnished to any individual who is an inpatient in a hospital, long term care facility, or other medical institution;
- d. emergency services provided in a hospital, clinic, physician office or other facility equipped to furnish emergency care;
- e. family planning services and supplies.

B. In accordance with federal regulations, the following provisions apply.

1. The provider may not deny services to any eligible individual on account of the individual's inability to pay the copayment amount. However, this service statement does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate his or her liability for the copayment.

2. Providers shall not waive the recipient copayment liability.

3. Departmental monitoring and auditing will be conducted to determine provider compliance.

4. Violators of this §111 will be subject to a penalty such as suspension from the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 32:1055 (June 2006).

§113. Prescription Limit

A. The Department of Health and Hospitals will pay for a maximum of eight prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the eight prescriptions per calendar month limitation:

- 1. persons under 21 years of age;
- 2. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities; and
- 3. pregnant women.

C. The eight prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

- 1. "medically necessary override;" and
- 2. a valid ICD-9-CM Diagnosis Code that directly related to each drug prescribed that is over the eight prescription limit (no ICD-9-CM literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than eight prescriptions per calendar month is required by the recipient.

E. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

F. An acceptable statement and ICD-9-CM are required for each prescription in excess of eight for that month.

G. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006).

§115. Drug Coverage Limits

A. Reimbursement for multi-source prescription drugs shall be limited in accordance with state and federal law and rules pertaining thereto, with the following exception: Reimbursement shall be provided for any drug prescribed by a physician that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of the patient with the following limitations.

1. The prescribed drug has been approved and designated as safe and effective by the Food and Drug Administration.

2. The prescribed drug is not classified as a DESI drug (drugs which have been identified by the FDA as lacking evidence of safety/effectiveness).

3. The prescribed drug is not a compounded prescription (mixtures of two or more ingredients).

4. The prescribed drug is not a narcotic prescribed only for narcotic addiction.

5. The prescription is not for medications which are included in the reimbursement to Title XIX facilities, including, but not limited to:

- a. hospitalized recipients;
- b. recipients receiving benefits under Part A of Title XVIII in a skilled nursing facility; or

c. resident/patients at Villa Feliciana or any state mental hospital.

6. The prescribed drug is a cosmetic drug, anorexic cough and cold preparation, minor tranquilizer, or nonprescription drug that is recommended for coverage by the Medicaid Drug Committee and approved by the department for reimbursement.

7. The prescribed drug is included in the classification experimental drugs which are generally labeled: "Caution - limited by federal law to investigational use," a specific exception has been granted by the federal government and the prescription drug has been recommended for coverage by the Medicaid Drug Program Committee and approved by the department.

8. The prescribed drug is an immunosuppressant drug prescribed and billed to Medicare within one year from the date of the transplant for a Title XIX recipient who has Medicare Part B coverage.

9. The prescribed drug is an immunosuppressant drug covered by Medicare Part B which is prescribed for a nontransplant patient with Medicare Part B coverage and identified in the Title XIX provider manual as subject to special billing procedures. Payment shall be made only when billing requirements are met. Requirements may include provision of a physician statement (or copy) verifying the diagnosis attached to each claim submitted.

B. Drug Listing

1. A complete listing of covered drugs will be maintained in the Title XIX provider manual for utilization by providers. The bureau's fiscal intermediary will provide coverage information on any specific drug. Providers should contact the fiscal intermediary's provider relations unit when a specific coverage question arises.

2. The Title XIX provider manual shall include a listing of examples of prescribed medications and/or supplies which are not payable under pharmaceutical services of the Medical Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006).

§117. Time Limits

A. Filling Prescriptions. Prescriptions shall be filled within six months of the date prescribed by a physician or other service practitioner covered under Medicaid of Louisiana.

B. Transferring Prescriptions. Transfer of a prescription from one pharmacy to another is allowed if less than six months have passed since the date prescribed and in accordance with the Louisiana Board of Pharmacy requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006).

§119. Maximum Quantity

A. For all prescriptions, the maximum quantity payable shall be a month's supply or 100 unit doses, whichever is greater. The quantity billed shall be that prescribed, unless it exceeds the maximum quantity payable in which case the maximum quantity payable shall be filled.

B. When maintenance drugs are prescribed and dispensed for chronic illnesses they shall be in quantities sufficient to effect economy in dispensing and yet be medically sound. Listed below are drugs the agency considers to be maintenance type drugs and which should be prescribed and dispensed in a month's supply:

1. anti-coagulants;
2. anti-convulsants;
3. oral anti-diabetics;
4. calcium gluconate, calcium lactate, and calcium phosphate;
5. cardiovascular drugs including:
 - a. diuretics;
 - b. antihypertensives; and
 - c. antihyperlipidemics;
6. estrogens;
7. ferrous gluconate and ferrous sulfate;
8. potassium supplements;
9. thyroid and antithyroid drugs;
10. vitamins:
 - a. A, D, K, B₁₂ injection;
 - b. Folic Acid; and
 - c. Nicotinic Acid.

C. For patients in nursing homes, the pharmacist shall bill for a minimum of a month's supply of medication unless the treating physician specifies a smaller quantity for a special medical reason.

D. Payment will not be made for narcotics prescribed only for narcotic addiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006).

§121. Authorized Prescribers (Reserved)

Chapter 3. Lock-In Program

§301. Introduction

A. Recipients shall have free choice of pharmacy unless subject to the agency's Lock-In Program.

B. Lock-in is a mechanism for restricting Medicaid recipients to a specific physician and/or a specific pharmacy. The lock-in mechanism does not prohibit the recipient from receiving services from providers who offer services other than physician and pharmacy services. The lock-in mechanism:

1. ensures appropriate use of Medicaid benefits by recipients and/or providers; and
2. serves as an educational device in instructing recipients in the most efficient method of using Medicaid services to ensure maximum health benefits.

C. A Medicaid beneficiary who has shown a consistent pattern of misuse of program benefits may be placed into the lock-in mechanism. Misuse may take the form of obtaining prescriptions under the pharmacy program from various physicians and/or pharmacists without these providers' knowledge that the beneficiary is receiving these drugs in an uncontrolled and unsound way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006).

§303. Beneficiary Placement

A. Potential lock-in beneficiaries will be identified through review of various reports generated by the Medicaid Management Information System or by referral from other interested parties to the Fiscal Intermediary for data analysis. Professional medical personnel affiliated with the Fiscal Intermediary and/or Department of Health and Hospitals examine data for a consistent pattern of misuse of program benefits by a beneficiary. Contact with involved providers may be initiated for additional information. The MMIS beneficiary profile may be shared with providers. Professional medical personnel associated with the Fiscal Intermediary and/or Department of Health and Hospitals may render a decision to place a beneficiary in the Pharmacy Lock-In Program. The decision is submitted, along with any provisions regarding providers, to a Department of Health and Hospitals designee for approval. The decision making authority rests solely with the Department of Health and Hospitals, Bureau of Health Services Financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006).

§305. Agency Responsibilities

A. The Bureau of Health Services Financing advises the fiscal intermediary of the decision to place a beneficiary in the Pharmacy Lock-In Program. The fiscal intermediary staff shall forward a notification to the local Medicaid office of the decision to place the beneficiary in the program and to initiate the necessary steps.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006).

§307. Notification Directives

A. The local Medicaid office shall initiate the letter providing the beneficiary timely notice of the decision to lock-in providers and shall include the following additional information:

1. the bureau's intention to allow the beneficiary to choose one primary care provider and one pharmacy provider and a specialist provider;
2. that the Medical Assistance Program will make payments only to the physician and pharmacy providers chosen by the beneficiary and subsequently assigned by the bureau;
3. that a new eligibility card will be issued containing a special indicator identifying the beneficiary's lock-in status;
4. that the beneficiary is advised to contact his local Medicaid office for an appointment to discuss the Pharmacy Lock-In Program; and
5. that the beneficiary has the right to appeal the decision.

B. The local Medicaid office shall be responsible for the following:

1. initiate contact with the beneficiary in instances when the beneficiary fails to seek contact;
2. conduct a face-to-face interview with the beneficiary regarding the lock-in program and the beneficiary's rights and responsibilities;

3. assist the beneficiary, if necessary, in exercising due process rights; and complete Form 9-LI(2) at the initial contact and at each subsequent contact(s) when a beneficiary's choice of providers changes; and

4. notify the fiscal intermediary when beneficiaries refuse to choose providers.

C. The fiscal intermediary shall be responsible for the following:

1. ensure that production of regular eligibility card is suppressed upon receipt of Forms 9-LI(2) and 19LI;
2. verify to the local Medicaid office that the beneficiary has been locked in;
3. notify the local Medicaid office of confirmation or denial of providers;
4. notify the local Medicaid office of the effective month of lock-in;
5. ensure suppression of the regular eligibility card when the beneficiary refuses to choose providers and has not appealed the lock-in decision within 30 days of notification; and
6. initiate form to lock-in providers on the MMIS file;
7. notify lock-in providers of their selection.

D. The lock-in card with the special indicator may be issued either by the local eligibility office or the fiscal intermediary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006).

§309. Restrictions

A. Beneficiaries shall be prohibited from choosing physicians and pharmacists who overprescribe or oversupply drugs. When the agency cannot approve a beneficiary's choice of provider(s), the lock-in beneficiary shall be required to make another selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006).

§311. Appeals

A. The beneficiary has the right to appeal the lock-in decision within 30 days of mailing the notice of action. If the receipt requests a hearing before the date of action, the decision to lock-in is stayed pending the appeal hearing. The beneficiary also has a right to an informal discussion. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing staff will conduct the informal telephone discussion in conjunction with local Medicaid office staff when requested. An explanation of the reason for recommending lock-in will be made to the beneficiary. If after the informal discussion the decision is reaffirmed to proceed with lock-in, the beneficiary will be given 30 days from the informal discussion notice of decision to file and appeal. In instances when a beneficiary delays or postpones an appeal without prior notice, lock-in will be implemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006).

§313. Changing Lock-In Providers

A. Beneficiaries may change lock-in providers every year without cause. With good cause, they may change lock-in providers only with bureau's approval. Beneficiaries may change providers for the following "good cause" reasons:

1. a beneficiary relocates;
2. a beneficiary's primary diagnosis changes, requiring a different specialist;
3. the lock-in provider(s) request(s) that the recipient be transferred; or
4. the lock-in provider(s) stop(s) participating in the Medical Assistance Program.

a. The beneficiary may still receive other program services available through Medicaid such as hospital, transportation, etc., which are not controlled or restricted by placing a beneficiary in lock-in for pharmacy and physician services. No beneficiary on lock-in status shall be denied the service of a physician or pharmacist on an emergency basis within program regulations. The Medicaid eligibility card states that an enrolled provider will be reimbursed for such services. In instances in which a beneficiary is referred by his lock-in physician to another physician provider, reimbursement shall be made to the physician provider to whom the beneficiary was referred within program regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006).

§315. Beneficiary Profile Review

A. Beneficiary profiles are to be reviewed periodically as described in the Lock-In Procedure Manual (for determination of continuance of discontinuance of LI). Professional medical staff associated with the fiscal intermediary or Department of Health and Hospitals examine a recipient's profile for a continued pattern of misuse of program benefits. Periods of ineligibility for Medicaid will not affect the lock-in status of the individual. The local eligibility office will notify the Bureau of Health Services Financing upon reapplication and the recipient will be placed on a locked-in status. A review at the end of the first four months will be made to determine if lock-in should be continued. Based upon a recommendation of appropriate medical professional staff, a decision may be presented to Department of Health and Hospitals to restore unrestricted benefits and appropriate notification will be made to the beneficiary and the local eligibility office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006).

Chapter 5. Narcotics and Controlled Substances

§501. Schedule II Narcotic Analgesic Prescriptions

A. Schedule II narcotic analgesic prescriptions covered under the Louisiana Medicaid Program shall be filled within six months of the date prescribed by a physician or other prescribing practitioner. Also, in accordance with guidance from the drug enforcement agency, the prescriber has the ability to issue multiple prescriptions for the same Schedule II medication to the same patient on the same day. All prescriptions must be dated and signed on the date issued.

The prescriber may issue dispensing instruction, e.g., "do not dispense until a specified date."

B. Payment will not be made for narcotics prescribed only for narcotic addiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006).

Chapter 7. Parenteral Nutrition Therapy

§701. Introduction

A. Parenteral nutrition (PN) therapy is the introduction of nutrients by some means other than through the gastrointestinal tract, in particular intravenous, subcutaneous, intramuscular, or intramedullary injection. Intravenous nutrition is also referred to as TPN (Total Parenteral Nutrition) or Hyperalimentation Therapy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006).

§703. Medical Necessity

A. Parenteral nutrition is covered for a recipient with permanent, severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the recipient's general condition.

B. Parenteral nutrition is considered to be medically necessary when any of the following conditions exists. The conditions must be deemed to be severe enough that the recipient would not be able to maintain his/her weight and strength on only oral intake or tube enteral nutrition. The recipient:

1. has undergone recent (within the past three months) massive small bowel resection leaving less than or equal to 5 feet of small bowel beyond the ligament of Treitz; or
2. has a short bowel syndrome that is severe enough that the recipient has net gastrointestinal fluid and electrolyte malabsorption such that on an oral intake of 2.5-3 liters/day the enteral losses exceed 50 percent of the oral/enteral intake and the urine output is less than 1 liter/day; or
3. requires bowel rest for at least three months and is receiving intravenously 20-35 cal/kg/day for treatment of symptomatic pancreatitis with/without pancreatic pseudocyst, severe exacerbation of regional enteritis, or a proximal enterocutaneous fistula where tube feeding distal to the fistula is not possible; or
4. has complete mechanical small bowel obstruction where surgery is not an option; or
5. is significantly malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl) and has very severe fat malabsorption (fecal fat exceeds 50 percent of oral/enteral intake on a diet of at least 50 gm of fat/day as measured by a standard 72 hour fecal fat test); or
6. is significantly malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl) and has a severe motility disturbance of the small intestine and/or stomach which is unresponsive to prokinetic medication. Prokinetic medication is defined as the presence of daily symptoms of nausea and vomiting while taking maximal doses and is demonstrated either:

a. scintigraphically (solid meal gastric emptying study demonstrates that the isotope fails to reach the right colon by six hours following ingestion); or

b. radiographically (barium or radiopaque pellets fail to reach the right colon by six hours following administration).

Note: These studies must be performed when the recipient is not acutely ill and is not on any medication which would decrease bowel motility.

C. Maintenance of weight and strength commensurate with the recipient's overall health status must require intravenous nutrition and must not be possible utilizing all of the following approaches:

1. modifying the nutrient composition of the enteral diet (e.g., lactose free, gluten free, low in long chain triglycerides, substitution with medium chain triglycerides, provision of protein as peptides or amino acids, etc.); and

2. utilizing pharmacologic means to treat the etiology of the malabsorption (e.g., pancreatic enzymes or bile salts, broad spectrum antibiotics for bacterial overgrowth, prokinetic medication for reduced motility, etc.).

D. Recipients who do not meet the criteria in Paragraphs B.1-6 must meet criteria in Paragraphs C.1-2 (modification of diet and pharmacologic intervention) in addition to the following criteria:

1. the recipient is malnourished (10 percent weight loss over three months or less and serum albumin less than or equal to 3.4 gm/dl); and

2. a disease and clinical condition has been documented as being present and it has not responded to altering the manner of delivery of appropriate nutrients (e.g., slow infusion of nutrients through a tube with the tip located in the stomach or jejunum).

E. The following are some examples of moderate abnormalities which would require a failed trial of tube enteral nutrition before PN would be covered:

1. moderate fat malabsorption - fecal fat exceeds 25 percent of oral/enteral intake on a diet of at least 50 gm fat/day as measured by a standard 72 hour fecal fat test;

2. diagnosis of malabsorption with objective confirmation by methods other than 72 hour fecal fat test (e.g., Sudan stain of stool, dxylose test, etc.);

3. gastroparesis which has been demonstrated:

a. radiographically or scintigraphically as described in Subsection B above with the isotope or pellets failing to reach the jejunum in three to six hours; or

b. by manometric motility studies with results consistent with an abnormal gastric emptying, and which is unresponsive to prokinetic medication;

4. a small bowel motility disturbance which is unresponsive to prokinetic medication, demonstrated with a gastric to right colon transit time between three to six hours;

5. small bowel resection leaving greater than 5 feet of small bowel beyond the ligament of Treitz;

6. short bowel syndrome which is not severe (as defined in Paragraph B.2);

7. mild to moderate exacerbation of regional enteritis, or an enterocutaneous fistula;

8. partial mechanical small bowel obstruction where surgery is not an option.

F. Documentation must support that a concerted effort has been made to place a tube. For gastroparesis, tube placement must be post-pylorus, preferably in the jejunum.

Use of a double lumen tube should be considered. Placement of the tube in the jejunum must be objectively verified by radiographic studies or fluoroscopy. Placement via endoscopy or open surgical procedure would also verify location of the tube.

G. A trial with enteral nutrition must be documented, with appropriate attention to dilution, rate, and alternative formulas to address side effects of diarrhea.

H. PN can be covered in a recipient with the ability to obtain partial nutrition from oral intake or a combination of oral/enteral or oral/enteral/parenteral intake as long as the following criteria are met:

1. a permanent condition of the alimentary tract is present which has been deemed to require parenteral therapy because of its severity;

2. a permanent condition of the alimentary tract is present which is unresponsive to standard medical management; and

3. the person is unable to maintain weight and strength.

I. If the medical necessity criteria for parenteral nutrition are met, medically necessary nutrients, administration supplies and equipment are covered. PN solutions containing little or no amino acids and/or carbohydrates would be covered only in situations stated in Paragraphs B.1, 2, or 4 above.

J. Documentation Requirements

1. Recipients covered under Paragraph B.4 must have documentation of the persistence of their condition. Recipients covered under Paragraphs B.5-D.2 must have documentation that sufficient improvement of their underlying condition has not occurred which would permit discontinuation of parenteral nutrition. Coverage for these recipients would be continued if the treatment has been effective as evidenced by an improvement of weight and/or serum albumin. If there has been no improvement, subsequent claims will be denied unless the physician clearly documents the medical necessity for continued parenteral nutrition and any changes to the therapeutic regimen that are planned, e.g., an increase in the quantity of parenteral nutrients provided.

2. A total caloric daily intake (parenteral, enteral and oral) of 20-35 cal/kg/day is considered sufficient to achieve or maintain appropriate body weight. The ordering physician must document in the medical record the medical necessity for a caloric intake outside this range in an individual recipient.

3. Parenteral nutrition would usually be noncovered for recipients who do not meet criteria in Paragraphs H.1-3, but will be considered on an individual case basis if detailed documentation is submitted.

4. Recipients covered under criteria in Paragraphs B.1 or 2 must have documentation that adequate small bowel adaptation had not occurred which would permit tube enteral or oral feedings.

5. Recipients covered under Paragraphs B.3 must have documentation of worsening of their underlying condition during attempts to resume oral feedings.

6. The ordering physician must document the medical necessity for protein orders outside of the range of 0.8-1.5 gm/kg/day, dextrose concentration less than 10 percent, or

lipid use greater than 15 units of a 20 percent solution or 30 units of a 10 percent solution per month.

7. If the medical necessity for special parenteral formulas is not substantiated, authorization of payment will be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006).

§705. Exclusionary Criteria

A. Parenteral nutrition will be denied as noncovered in situations involving temporary impairments. The recipient must have:

1. a condition involving the small intestine and/or its exocrine glands which significantly impairs the absorption of nutrients; or

2. a disease of the stomach and/or intestine which is a motility disorder and impairs the ability of nutrients to be transported through the GI system. There must be objective evidence supporting the clinical diagnosis.

B. Parenteral nutrition is noncovered for the recipient with a functioning gastrointestinal tract whose need for parenteral nutrition is only due to:

1. a swallowing disorder;

2. a temporary defect in gastric emptying such as a metabolic or electrolyte disorder;

3. a psychological disorder impairing food intake such as depression;

4. a metabolic disorder inducing anorexia such as cancer;

5. a physical disorder impairing food intake such as the dyspnea of severe pulmonary or cardiac disease;

6. a side effect of a medication; or

7. renal failure and/or dialysis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1060 (June 2006).

§707. Prior Authorization

A. Parenteral nutrition therapy may be approved by the Prior Authorization Unit (PAU) at periodic intervals not to exceed six months. However, Medicaid will pay for no more than one month's supply of nutrients at any one time. All requests to the PAU shall include:

1. the prognosis as well as the diagnosis;

2. the date the recipient was first infused;

3. whether the recipient has been trained to use parenteral equipment;

4. a statement that the recipient is capable of operating the parenteral equipment;

5. either the Medicaid certificate of medical necessity form for TPN, or the Medicare certificate of medical necessity form, Form DMERC 10.02A, completed and signed by the treating physician;

6. documentation showing that the recipient has a permanent impairment. Permanence does not require a determination that there is no possibility that the recipient's condition may improve sometime in the future. Medical documentation must substantiate that the condition is expected to last a long and indefinite duration (at least three months).

B. Additional documentation must be included with the initial request for parenteral nutrition.

1. In the situations addressed in Paragraphs B.1-4 under Medical Necessity Criteria, the documentation must include copies of the operative report and/or hospital discharge summary and/or x-ray reports and/or a physician letter which document the condition and the necessity for PN therapy.

2. For the situations addressed in Paragraphs B.5 and D.2 under Medical Necessity Criteria (when appropriate), include the results of the fecal fat test and dates of the test.

3. For the situations addressed in Paragraphs B.6 and D.2 under Medical Necessity Criteria, include a copy of the report of the small bowel motility study and a list of medications that the recipient was on at the time of the test.

4. For the situations addressed in Paragraphs B.5 - D.2 under Medical Necessity Criteria, include the results of serum albumin and the date of the test (within one week prior to initiation of PN) and a copy of a nutritional assessment by a physician, dietitian or other qualified professional within one week prior to initiation of PN, to include the following information:

a. current weight with date and weight one - three months prior to initiation of PN;

b. estimated daily calorie intake during the prior month and by what route (e.g., oral, tube);

c. statement of whether there were caloric losses from vomiting or diarrhea and whether these estimated losses are reflected in the calorie count;

d. description of any dietary modifications made or supplements tried during the prior month (e.g., low fat, extra medium chain triglycerides, etc.).

5. For situations described in Paragraphs D.2 under Medical Necessity Criteria, include:

a. a statement from the physician;

b. copies of objective studies; and

c. excerpts of the medical record giving the following information:

i. specific etiology for the gastroparesis, small bowel dysmotility, or malabsorption;

ii. a detailed description of the trial of tube enteral nutrition including the beginning and ending dates of the trial, duration of time that the tube was in place, the type and size of tube, the location of tip of the tube, the name of the enteral nutrient, the quantity, concentration, and rate of administration, and the results;

iii. a copy of the x-ray report or procedure report documenting placement of the tube in the jejunum;

iv. prokinetic medications used, dosage, and dates of use;

v. nondietary treatment given during prior month directed at etiology of malabsorption (e.g., antibiotic for bacterial overgrowth); and

vi. any medications used that might impair GI tolerance to enteral feedings (e.g., anticholinergics, opiates, tricyclics, phenothiazines, etc.) or that might interfere with test results (e.g., mineral oil, etc.) and a statement explaining the need for these medications.

6. Any other information which supports the medical necessity for parenteral nutrition may also be included.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1060 (June 2006).

§709. Intradialytic Parenteral Nutrition

A. Intradialytic Parenteral Nutrition Therapy (IDPN) is parenteral nutrition therapy provided to a recipient with end stage renal disease (ESRD) while the recipient is being dialyzed.

B. In order to cover IDPN, documentation must be clear and precise to verify that the recipient suffers from a permanently impaired gastrointestinal tract and that there is insufficient absorption of nutrients to maintain adequate strength and weight. The supporting documentation must substantiate that the recipient cannot be maintained on oral or enteral feedings and that due to severe pathology of the alimentary tract, the recipient must be intravenously infused with nutrients.

C. Infusions must be vital to the nutritional stability of the recipient and not supplemental to a deficient diet or deficiencies caused by dialysis. Physical signs, symptoms and test results indicating severe pathology of the alimentary tract must be clearly evident in any documentation submitted. Recipients receiving IDPN must also meet the criteria for parenteral nutrition.

D. If the medical necessity criteria for parenteral nutrition are met, one supply kit and one administration kit will be covered for each day that parenteral nutrition is administered, if such kits are medically necessary and used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006).

§711. Additional Documentation

A. For the initial request and for revised requests or reconsiderations involving a change in the order, there must be additional documentation to support the medical necessity of the following orders, if applicable:

1. the need for special nutrients;
2. the need for dextrose concentration less than 10 percent;
3. the need for lipids more than 15 units of a 20 percent solution or 30 units of a 10 percent solution per month.

B. After the first six months, the PA request must include a physician's statement describing the continued need for parenteral nutrition. For situations described in Paragraphs B.5-D.2 under medical necessity criteria, the PA request must include the results of the most recent serum albumin (within two weeks of the request date) and the recipient's most recent weight with the date of each. If the results indicate malnutrition, there should be a physician's statement describing the continued need for parenteral nutrition and any changes to the therapeutic regimen that are planned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006).

§713. Equipment and Supplies

A. An infusion pump is used to deliver nutritional requirements intravenously. Infusion pumps are covered for the delivery of parenteral nutrition for those recipients who

cannot absorb nutrients by the gastrointestinal tract. Only one pump (ambulatory or stationary) will be covered at any one time. Additional pumps will be denied as not medically necessary.

1. An external ambulatory infusion pump is a small portable electrical device that is used to deliver parenteral nutrition. It is designed to be carried or worn by the recipient.

2. A stationary infusion pump is an electrical device, which serves the same purpose as an ambulatory pump, but is larger and typically mounted on a pole.

B. An IV pole is a device to suspend fluid to be administered by gravity or pump. An IV pole will be covered when a recipient is receiving parenteral fluids and the recipient is not using an ambulatory infusion pump.

C. Infusion pumps, ambulatory and stationary, are indicated for the administration of parenteral medication in the home when parenteral administration of the medication in the home is reasonable and medically necessary, and an infusion pump is necessary to safely administer the medication.

D. An external ambulatory infusion pump is a small portable electrical device that is used to deliver parenteral medication. It is designed to be carried or worn by the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006).

§715. Reimbursement

A. The reimbursement rate for parenteral nutrition formula is 80 percent of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount.

B. The reimbursement rate for parenteral equipment and supplies is 70 percent of the Medicare Fee Schedule amount or billed charges, whichever is the lesser amount. If an item is not available at 70 percent of the Medicare Fee Schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006).

Chapter 9. Methods of Payment

Subchapter A. General Provisions

§901. Definitions

Average Wholesale Price—the wholesale price of a drug product as reported to the agency by one or more national compendia on a weekly basis to update the Medicaid Management Information System (MMIS).

Brand Name—any registered trade name commonly used to identify a drug.

Legend Drugs—drugs which bear the federal legend: "Caution: federal law prohibits dispensing without a prescription."

Multiple Source Drug—a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more

different proprietary names or both under a proprietary name and without such a name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006).

§903. Claims Documentation

A. The manufacturer number, product number, and package number for the drug dispensed shall be listed on all claims. This information shall be taken from the actual package from which the drug is usually purchased by a provider, from a supplier whose products are generally available to all pharmacies and reported in one or more national compendia. Repackaged drug products supplied through co-ops, franchises, or other sources not readily available to other providers shall not be used. In such instances, the manufacturer number, product number, and package number for the largest package size, as reported in one or more national compendia for the drug shall be listed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Finances, LR 32:1062 (June 2006).

Subchapter B. Maximum Allowable Overhead Cost

§915. Cost Determination

A. Definitions

Adjustment Factors—

- a. CPI—all item factor;
- b. CPI—medical care factor;
- c. Wage Factor. Each of the above adjustment factors is computed by dividing the value of the corresponding index for December of the year preceding the overhead year and by the value of the index one year earlier (December of the second preceding year).

d. ROI. One year treasury bill rate applied to a portion of prescription drug cost (17 percent) in recognition of inventories maintained for the purpose of filling prescriptions.

*Base Rate—*the rate calculated in accordance with §917.A.2, plus any base rate adjustments which are in effect at the time of calculation of new rates or adjustments. The base rate was initially calculated using the 1990/91 fee survey findings of average cost for pharmacies representative of the average pharmacy participating in Medicaid reimbursement (15,000 - 50,000 Rx volume). This rate was then inflated forward to December 1990 to establish the first overhead cost maximum.

*Base Rate Components—*the base rate is the summation of the components shown below. Each component is intended to set the maximum allowable for the costs indicated by its name.

Base Rate Component	Adjustment Factor
Pharmacist Salaries	CPI – Medical Care
Other Salaries	WAGE
Other Routine Services	CPI – All Items
Inventory Cost	ROI (1)
Fixed Cost	None (2)
Return on Equity	None (3)
	(1) No return on equity allowed
	(2) No inflation allowed
	(3) Adjusted by ROE Factor
	(4) Indices

a. CPI—All Items. *The Consumer Price Index for all Urban Consumers - Southern Region* (All items line of Table 12) as published by the United States Department of Labor.

b. CPI—Medical Care. *The Consumer Price Index for all Urban Consumers - Southern Region* (Medical Care line of Table 12) as published by the United States Department of Labor.

c. Wage. The average annual wage for production or nonsupervisory service workers as furnished by the Dallas Regional Office of the Bureau of Labor Statistics of the U.S. Department of Labor. This figure will be obtained by telephone in May and will be utilized to calculate the adjustment factor based upon the change which has occurred since December of the preceding year.

d. ROI. Interest Rates—Money and Capital Markets. The average percent per year for one year U.S. Treasury bills taken from the *Federal Reserve Bulletin* report on Money Market Rates (line 17) for the preceding calendar year.

*Maximum Allowable Overhead Cost—*overhead cost is determined through use of cost survey results adjusted by various indices to assure recognition of costs which must be incurred by efficiently and economically operated providers. The cost determined is referred to as a maximum allowable to reflect application of the "lesser of" methodology for determining total reimbursement.

*Overhead Year—*the one-year period from July 1 - June 30 of the next calendar year during which a particular rate is in effect. It corresponds to a state fiscal year.

B. Determination of Limits. Limits on overhead cost are established through the overhead cost survey process which classifies cost in accordance with generally accepted accounting principles and Medicare principles regarding the allowability of cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006).

§917. Maximum Allowable Overhead Cost Calculation

A. The most recent cost survey results will be utilized to establish base cost for professional salaries; other salaries; other routine costs; and fixed cost. Claims processing data for claims paid in the current overhead period will be utilized to determine average drug cost. Seventeen percent of this cost will be utilized as base prescription inventory. The base prescription inventory amount shall not be added to the overhead cost maximum allowable. Base prescription inventory is recognized as an allowable investment subject to a return on investment only. Calculation of maximum allowable overhead cost per prescription shall be performed as follows:

1. $NORC = ORC \times CPIF$:
 - a. NORC is the new other routine cost component;
 - b. ORC is the current (base) routine cost component;
 - c. CPIAI is the CPI - All items Economic Adjustment Factor.
2. $NPS = PS \times CPIMC$:
 - a. NPS is the new pharmacist salaries cost component;

b. PS is the current (base) pharmacist salaries cost component;

c. CPIMC is the CPI - Medical Care Economic Adjustment Factor.

3. $NOS = OS \times W$:

a. NOS is the new other salaries cost component;

b. OS is the current (base) salaries cost component;

c. W is the Wage Economic Adjustment Factor.

4. $NROI = ROI \times IR$:

a. NROI is the new return on investment component;

b. ROI is 17 percent of the current average drug cost;

c. IR is the Interest Rate - Money and Capital Markets

5. $Rate = (NORC + NPS + NOS + FCC) \times ROEF + NROI$ where:

a. NORC, NPS, NOS, and NROI are computed by formulae in Paragraphs 1-4 above;

b. FCC is the fixed cost component which does not include prescription drug inventory;

c. ROEF is the return on equity factor of 1.05 applied to all cost components except return on investment which is calculated separately.

B. After formal adoption of the new maximum allowable overhead cost, the components computed above will become the base components used in calculating the next year's overhead maximum allowable, unless they are adjusted as provided in §911 below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1062 (June 2006).

§919. Parameters and Limitations

A. Method of Calculation. All calculations described herein shall be carried out algebraically.

B. Rounding in all calculations the base maximum allowable and the base components will be rounded to the nearest one cent (two decimal places) and the economic adjustment factors will be rounded to four decimal places.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006).

§921. Interim Adjustment to Overhead Cost

A. If an unanticipated change in conditions occurs which affects the overhead costs of at least 50 percent of the enrolled providers by an average of five percent or more, the maximum allowable overhead cost may be adjusted. Medicaid of Louisiana will determine whether or not the maximum allowable overhead cost limit should be changed when requested to do so by 10 percent of the enrolled pharmacies. The burden of proof as to the extent and cost effect of the unanticipated charge will rest with the entities requesting the change. Medicaid of Louisiana, however, may initiate an adjustment without a request to do so

1. Temporary Adjustments. Temporary adjustments do not affect the base cost used to calculate a new maximum allowable overhead cost limit. Temporary adjustments may be made in the rate when changes which will eventually be reflected in the economic indices, such as a change in the

minimum wage, occur after the end of the period covered by the index, i.e., after the December preceding the limit calculation. Temporary adjustments are effective only until the next overhead cost limit calculation which uses economic adjustment factors based on index values computed after the change causing the adjustment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006).

§923. Cost Survey

A. Every three years a cost survey shall be conducted which includes cost data for all enrolled pharmacy providers. Participation shall be mandatory for continued enrollment as a pharmacy provider. Cost data from providers who have less than 12 months of operating data shall not be utilized in determining average overhead cost or grouping providers by prescription volume. Pre-desk reviews shall be performed on all cost surveys to determine an average provider profile based upon total prescription volume. Through statistical analysis, minimum and maximum volume ranges shall be established which represent the majority of providers participating in Medicaid reimbursement. Cost surveys of providers whose prescription volumes are above or below the volume range established, shall not be utilized in calculating average overhead cost. Information submitted by participants shall be desk reviewed for accuracy and completeness. Field examination of a representative sample of participants shall be primarily random, but geographic location and type of operation shall be taken into consideration in order to ensure examination of pharmacies in various areas of the state and representative of various types of operations.

B. Cost Finding Procedures. The basic analytical rationale used for cost finding procedures shall be that of full costing. Under full costing, all costs associated with a particular operation are summed to find the total cost. The objective of cost finding shall be to estimate the cost of dispensing prescriptions through generally accepted accounting principles.

C. Inflation Adjustment. Where data collected from participating pharmacies represents varying periods of time, cost and price data may be adjusted for the inflation that occurred over the relevant period. The appropriate Consumer Price Index Indicator (Table 12, Southern Region, *Urban Consumer*) and wage indicator produced by the U.S. Department of Labor Statistics shall be utilized.

D. In addition to cost finding procedures, a usual and customary survey shall be included in the survey instrument. This instrument shall be used to determine the following:

1. an average usual and customary charge, or gross margin for each pharmacy;

2. the computation of the net margin per prescription (gross margin less computed dispensing cost per prescription) in order to approximate the average profit per prescription;

3. computation of the average percentage of markup per prescription;

4. the computation of average usual and customary charges shall include adjustments to allow comparability with upper limits for prescription reimbursement utilized by Medicaid of Louisiana.

E. Statistical Analysis. Statistical analysis shall be undertaken to estimate the cost to pharmacies of dispensing prescriptions. Such analysis shall include, but not be limited to:

1. an average dispensing cost for pharmacies;
2. analysis of the correlations among overhead costs and parameters deemed relevant to pharmacy costs;
3. the statistical relationship between independent variables and dispensing cost shall be analyzed using the techniques of simple linear and stepwise multiple regression. Independent variables may include annual volume of prescriptions filled, pharmacy location, type of ownership, and number of Medicaid claims paid:

- a. before regression analysis is performed, efforts shall be made to insure that the data collected during the surveys was accurate and representative, and that errors made during data entry are corrected. Efforts should include tabulations, cross tabulations, data plotting, and visual data inspection.

F. Survey Results

1. Medicaid of Louisiana shall consider survey results in determining whether the maximum allowable overhead cost should be rebased. Where the overhead cost survey findings demonstrate the current maximum allowable is below average cost or above the eightieth percentile of cost, rebasing shall be required.

2. Medicaid of Louisiana may review the survey data and establish a new cost base utilizing the cost survey findings and any other pertinent factors, including, but not limited to:

- a. inflation adjustment;
- b. application of return on equity;
- c. recognition of inventory investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1063 (June 2006).

§925. Dispensing Fee

A. Maximum Allowable Overhead Cost

1. The maximum allowable overhead cost will remain at the level established for state fiscal year 1994-95. This maximum allowable overhead cost will remain in effect until the dispensing survey is completed and an alternate methodology is determined.

2. No inflation indices or any interim adjustments will be applied to the maximum allowable overhead costs.

B. Provider participation in the Louisiana Dispensing Fee Survey shall be mandatory. Failure to cooperate in the Louisiana Dispensing Fee Survey by a provider shall result in removal from participation as a provider of pharmacy services under Title XIX. Any provider removed from participation shall not be allowed to re-enroll until a dispensing fee survey document is properly completed and submitted to the bureau.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006).

Subchapter C. Average Wholesale Price §935. Estimated Acquisition Cost Formula

A. *Estimated Acquisition Cost (EAC)* is the modified average wholesale price of the drug dispensed, identified by the manufacturer number, product number, and package number usually purchased by a provider, from a supplier whose products are generally available to all pharmacies and reported in one or more national compendia. Repackaged drug products supplied through co-ops, franchises, or other sources not readily available to other providers shall not be used to estimate provider acquisition cost. In such instances, the average wholesale price for the drug product used by the repackager identified by the manufacturer number, product number, and largest reported package size in one or more national compendia shall be utilized by the agency to estimate acquisition cost.

B. The agency shall make payments for multiple source drugs other than drugs subject to "physician certifications" based on the lower of:

1. Average Wholesale Price (AWP) minus 13.5 percent for independent pharmacies and AWP minus 15 percent for chain pharmacies. This applies to:

- a. single source drugs;
- b. multiple source drugs that do not have a state maximum allowable cost (MAC) or federal upper limit; and
- c. those prescriptions subject to MAC overrides based on the physician's certification that a brand name product is medically necessary;

2. Louisiana's maximum allowable cost limitation plus the maximum allowable overhead cost;

3. federal upper limits plus the maximum allowable overhead cost; or

4. provider's usual and customary charges to the general public. *General Public* is defined here as all other non-Medicaid prescriptions including:

- a. third-party insurance;
- b. pharmacy benefit management; and
- c. cash.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006).

Subchapter D. Maximum Allowable Costs

§945. Reimbursement Methodology

A. Maximum Pharmaceutical Price Schedule

1. The maximum payment by the agency for a prescription shall be no more than the cost of the drug established by the state plus the established dispensing fee.

2. Each pharmacy's records shall establish that the established dispensing fee paid by the Medical Assistance Program for prescription does not exceed the dispensing fee paid by others. This also applies to the payment for insulin and diabetic testing agency and indwelling catheters and catheterization trays for which the dispensing fee may not exceed 50 percent of the wholesale price.

B. Payment will be made for medications in accordance with the payment procedures for any eligible person who has identified himself to the provider by presenting his

identification card which shows his eligibility. State office advises participating pharmacists regarding payable medication.

C. The pharmacy must be licensed to operate in Louisiana except:

1. as provided for a person residing near the state line; or

2. as provided for a recipient visiting out-of-state.

D. Payment will be made only to providers whose records are subject to audit.

E. Payment will be made to providers only for medications furnished to persons eligible for medical vendor payments on a prescription written by a licensed physician or dentist.

F. Payments will be made only for the drugs covered under the Medical Assistance Program's Pharmacy Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006).

§947. Payments to Dispensing Physician

A. Payment will be made for medications dispensed by a physician on a continuing basis only when his main office is more than five miles from a facility which dispenses drugs.

1. Under the above circumstances, vendor payments (when the treating prescriber dispenses his own medications and bills Medical Assistance Program under his own name or the name of his own clinic or hospital) will be made on the same basis as a pharmacist as specified in §945.A.1-2.

B. A prescriber who has a suboffice in an area more than five miles from a pharmacy or other facility dispensing medications will not be paid for medications he dispenses if his main office is within five miles of a pharmacy or other facility dispensing medications.

C. When a prescriber bills the Medical Assistance Program for medications he dispenses, he shall certify that he himself, another prescriber, or a pharmacist dispensed the medications and he shall maintain the same records as required of the pharmacist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006).

§949. Cost Limits

A. Federal Upper Limits for Multiple Source Drugs

1. Except for drugs subject to "Physician Certification," the Medical Assistance Program shall utilize listings established by CMS that identify and set upper limits for multiple source drugs that meet the following requirements.

a. All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of their publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

b. At least three suppliers list the drug (which has been classified by the FDA as category "A" in the aforementioned publication based on listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

2. The Medical Assistance Program shall utilize the maximum acquisition cost established by CMS in determining multiple source drug cost.

3. The Medical Assistance Program shall provide pharmacists who participate in Title XIX reimbursement with updated lists reflecting:

a. the multiple source drugs subject to federal multiple source drug cost requirements;

b. the maximum reimbursement amount per unit; and

c. the date such costs shall become effective.

B. Louisiana Maximum Allowable Cost (LMAC) Limits

1. LMAC is the median AWP cost for a specific strength/unit drug determined by listing the wholesale costs for each readily available manufacturer, labeler, etc., and taking the median of those AWP costs (one-half will be above the median cost and one-half will be below the median cost). LMAC limits may be adjusted by the agency based on changes in the availability and estimated acquisition costs (EAC) of the drugs.

2. The agency shall make determinations of which multiple source drugs are to be subject to LMAC regulation based on the availability of drugs in the Louisiana Medical Assistance Program. The availability of a drug product will be determined by review of provider claim data. Providers shall be given advanced notice of any additions, deletions, or adjustments in price. Any provider may request and receive at no charge, one complete listing annually.

3. In no case shall a recipient be required to provide payment for any difference in a prescription price that may occur with implementation of the LMAC limit, nor may BHSF use a cost which exceeds the established maximums except for physician certification for brand name drugs.

C. Lower of Reimbursement for Multiple Source Drugs. The agency shall make payments for multiple source drugs other than drugs subject to *physician certifications* based on the lower of:

1. the providers' usual and customary charges to the general public not to exceed the agency's maximum pharmaceutical price schedule;

2. the agency's estimate of acquisition cost plus the agency's established dispensing fee;

3. any applicable federal upper limit for multiple source drugs plus the agency's established dispensing fee; or

4. any applicable Louisiana Maximum Allowable Cost limit plus the agency's established dispensing fee.

D. Physician Certifications

1. Limits on payments for multiple source drugs shall not be applicable when the prescriber certifies in his own handwriting that a specified brand name drug is medically necessary for the care and treatment of a recipient. Such certification may be written directly on the prescription or on a separate sheet which is attached to the prescription. A standard phrase in the prescriber's handwriting, such as "brand necessary" will be acceptable.

2. Any practice which precludes the prescriber's handwritten statement shall not be accepted as a valid certification. Such practices include, but are not limited to:

a. a printed box on the prescription blank that could be checked by the prescriber to indicate brand necessity;

b. a handwritten statement transferred to a rubber stamp and then stamped on the prescription blank;

c. preprinted prescription forms using a facsimile of the prescriber's handwritten statement.

E. Other Drug Cost Limits. The agency shall make payments for drugs other than multiple source drugs and drugs subject to "Physician Certifications" based on the lower of:

1. the agency's estimate of acquisition cost plus the agency's established dispensing fee;

2. the providers' usual and customary charges to the general public not to exceed the agency's "Maximum Pharmaceutical Price Schedule."

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006).

Subchapter E. 340B Program

§961. Definitions

Actual Acquisition Cost—the covered entity's net payment made to purchase a drug product, after taking into account such items as purchasing allowances, discounts, wholesaler fees and rebates.

Contract Pharmacy—a pharmacy under contract with a covered entity that lacks its own pharmacy whereby the contract pharmacy is authorized to dispense 340B-discounted drugs on behalf of the covered entity in accordance with 1996 Health Resources and Services Administration (HRSA) guidelines (61 FR 43549, August 23, 1996). Contract pharmacies may also serve as billing agents for covered entities.

Covered Entity—a provider or program that meets the eligibility criteria for participating in the 340B Program as set forth in Section 340B(a)(4) of the Public Health Service Act. Covered entities include eligible disproportionate share hospitals that are owned by or under contract with state or local government, community health centers, migrant health centers, health centers for public housing, health centers for the homeless, AIDS drug assistance programs and other AIDS clinics and programs, black lung clinics, hemophilia treatment centers, native Hawaiian health centers, urban Indian clinics/638 tribal centers, 340s school-based programs, Title X family planning clinics, sexually-transmitted disease clinics, and tuberculosis clinics.

Dispensing Fee—the fee paid by Medicaid for the professional services provided by a pharmacist when dispensing a prescription, including the \$0.10 provider fee assessed for each prescription filled in the state of Louisiana per legislative mandate.

Medicaid Carve-Out—a billing mechanism available to covered entities that implements the 340B requirement protecting manufacturers from giving a 340B discount and paying a Medicaid rebate on the same drug. If a covered entity elects to implement the Medicaid carve-out option, the covered entity only purchases through the 340B Program covered drugs dispensed to non-Medicaid patients; drugs dispensed to Medicaid patients are purchased outside the 340B Program.

Patient—an individual eligible to receive 340B-discounted drugs from a covered entity by virtue of being the covered entity's patient as defined in HRSA's 1996 patient definition guideline (61 FR 55156, October 24, 1996).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006).

§963. Reimbursement

A. Self-administered drugs that are purchased by a covered entity through the 340B program and dispensed to patients who are covered by Medicaid shall be billed to Medicaid at actual acquisition cost unless the covered entity has implemented the Medicaid carve-out option, in which case such drugs shall be billed in accordance with existing state Medicaid reimbursement methodologies.

B. Contract Pharmacies. In the event that the covered entity has entered into a contract pharmacy arrangement and the contract pharmacy serves as the covered entity's billing agent, the contract pharmacy shall bill Medicaid at actual acquisition cost under the covered entity's Medicaid pharmacy billing number, unless the covered entity has implemented the Medicaid carve-out option, in which case such drugs shall be billed in accordance with existing state Medicaid reimbursement methodologies under the contract pharmacy's Medicaid pharmacy billing number.

C. Dispensing Fees. The covered entity shall be paid a dispensing fee of \$8.10 for each prescription dispensed to a Medicaid patient, unless the covered entity has implemented the carve-out option, in which case the covered entity shall be paid the state's existing maximum allowable overhead cost. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$8.10 dispensing fee on behalf of the covered entity, unless the covered entity elects the Medicaid carve-out, in which case the contract pharmacy shall be paid the state's existing maximum allowable overhead cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006).

Subchapter F. Antihemophilia Drugs

§971. Reimbursement

A. The estimated acquisition cost reimbursement rate under the Medicaid Program for Antihemophilia drugs, factor products is the average wholesale price minus 30 percent for all prescription drug providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006).

Subchapter G. Provider Fees

§981. Prescription Fee

A. A prescription fee shall be paid by each pharmacy and dispensing physician for each outpatient prescription dispensed. The fee shall be \$0.10 per prescription dispensed by a pharmacist or dispensing physician. Where a prescription is filled outside of Louisiana and not shipped or delivered in any form or manner to a patient in the state, no fee shall be imposed. However, out-of-state pharmacies or dispensing physicians dispensing prescriptions which are shipped, mailed or delivered in any manner inside the state

of Louisiana shall be subject to the \$0.10 fee per prescription. The fee only applies to prescriptions which are dispensed and sold for human use. Pharmacies and dispensing physicians subject to prescription fees shall provide documentation quarterly, on a form provided by the department, of utilization for all medications dispensed in conjunction with payment of fees

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006).

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

0606#078

RULE

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

Nursing Facilities—Minimum Licensing Standards (LAC 48:1.9717, 9820, 9911)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:1.9717 and 9911, and adopts 9820 as authorized by R.S. 36:254 and 40:2009.1-2116.4. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9717. Administration

A. Facility Administrator. All facilities are required to have full-time administrators. Full-time administrators are persons who are licensed, currently registered and engaged in the day-to-day management of the facility. The administrator's duties shall conform to the following standards.

1. Administrative/management activities shall be the major function of the required duties.

2. An adequate and reasonable amount of time shall be spent on the premises of the facility. The administrative activities must be the major function of the person performing the duties.

3. A major portion of the time, described above, shall be spent during the normal work week of the facility's personnel.

B. A full-time employee functioning in an administrative capacity shall be authorized in writing to act in the administrator's behalf when he/she is absent or functioning as a full-time administrator for two facilities.

C. Administrator Responsibilities and Restrictions

1. No individual may function as a full-time administrator for more than two nursing facilities. When a full-time administrator is engaged in the management of two nursing facilities, the facilities' sizes and proximity to one

another have considerable bearing on the administrator's ability to adequately manage the affairs of both nursing facilities.

a. The response time to either facility shall be no longer than one hour.

b. If an administrator serves two facilities, he/she must spend 20 hours per week at each facility.

2. The administrator or his designee is responsible, in writing, for the execution of all policies and procedures.

3. If a change occurs in the individual who is the administrator of a nursing facility, notice shall be provided to the Bureau of Health Services Financing, Health Standards Section by the facility administrator or, in the absence of an administrator, by the governing body of the facility at the time the change occurs.

a. Notice shall include the identity of all individuals involved and the specific changes which have occurred.

b. Failure to provide written notice by certified mail within 30 calendar days from the date a change occurs will result in a Class C civil money penalty.

c. The Department shall allow nursing facilities 30 days from the date of the change in the position to fill the resulting vacancy in the administrator position. There shall be no waiver provisions for this position.

d. The governing body of the facility shall appoint a facility designee charged with the general administration of the facility in the absence of a licensed administrator.

e. Failure to fill a vacancy or to notify the Department in writing by the thirty-first day of vacancy that the administrator position has been filled shall result in a Class C civil money penalty.

D. Assistant Administrator. A nursing facility with a licensed bed capacity of 161 or more beds must employ an assistant administrator. An assistant administrator shall be a full-time employee and function in an administrative capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998), amended LR 32:1067 (June 2006).

Chapter 98. Nursing Homes

Subchapter C. Dietetic Services

§9820. Feeding Assistants

A. Prior to assisting nursing facility residents with feeding, the assistant must have successfully completed the state-approved training course published by the American Health Care Association, *Assisted Dining: The Role and Skills of Feeding Assistants*.

1. Licensed personnel qualified to teach the course include:

- a. registered nurses;
- b. licensed practical nurses;
- c. dietitians; and
- d. speech therapists.

2. The competency of feeding assistants must be evaluated by course instructors and supervisory nurses.

3. If feeding assistants transfer between facilities, the receiving facility must assure competency.

B. Feeding assistants must be registered on the Direct Service Worker Registry (DSW) unless they are volunteers.

1. Volunteers must complete the training course except in cases where a family member or significant other is feeding the resident.

2. If verification of completion of training cannot be obtained from the DSW Registry, the training course must be taken.

C. The clinical decision as to which residents are fed by a feeding assistant must be made by a registered nurse (RN) or licensed practical nurse (LPN). It must be based upon the individual nurse's assessment and the resident's latest assessment and plan of care.

1. A physician or speech therapist may override the nurse's decision, if in their professional opinion, it would be contraindicated.

D. The use of a feeding assistant must be noted on the plan of care.

E. There must be documentation to show that the residents approved to be fed by feeding assistants have no complicated feeding problems.

1. Feeding assistants may not feed residents who have complicated feeding problems such as difficulty swallowing, recurrent lung aspirations and tube or IV feedings.

F. There must be documentation of on-going assessment by nursing staff to assure that any complications that develop are identified and addressed promptly.

G. A feeding assistant must work under the supervision of a RN or LPN and the resident's clinical record must contain entries made by the supervisory RN or LPN describing services provided by the feeding assistant.

H. Facilities may use feeding assistants at mealtimes or snack times, whenever the facility can provide the necessary supervision.

1. A feeding assistant may feed residents in the dining room or another congregate area.

I. Facilities may use their existing staff to feed residents as long as each staff member successfully completes the state-approved training course.

J. Facilities must maintain a record of all individuals used as feeding assistants who have successfully completed the training course.

K. Residents have the right to refuse to be fed by a feeding assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1067 (June 2006).

Chapter 99. Nursing Homes

Subchapter A. Physical Environment

§9911. Toilet, Hand Washing and Bathing Facilities

A. Each floor occupied by residents shall be provided with a toilet and lavatory, and either a bathtub or shower.

B. ...

C. In nursing homes built prior to August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

Lavatories	1:10 beds
Toilets	1:10 beds
Showers or tubs	1:15 beds

D. In nursing homes built after August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

Lavatories	One per bedroom or immediately adjacent thereto
Toilets	1:8 beds
Showers or tubs	1:10 beds

E. - F. ...

G. Separate toilet and lavatory facilities for use by employees shall be provided. Separate bathtubs or showers shall be provided for employees who live on the premises.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:63 (January 1998), amended LR 32:1068 (June 2006).

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

0606#073

RULE

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

**Professional Services
Physician Supplemental Payment**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will provide supplemental Medicaid payments for qualifying essential state-owned or operated physician practice plans organized by or under the control of a state academic health system or other state entity.

A. In order to qualify to receive supplemental payments, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by a state-owned or operated entity, such as state-operated hospital or other state entity, including a state academic health system, which:

a. has been designated by the bureau as an essential provider; and

b. has furnished satisfactory data to DHH regarding the commercial insurance payments made to its employed physicians and other professional service practitioners.

B. The supplemental payment to each qualifying physician or other eligible professional services practitioner in the practice plan will equal the difference between the Medicaid payments otherwise made to these qualifying providers for professional services and the average amount that would have been paid at the equivalent community rate. The community rate is defined as the average amount that would have been paid by commercial insurers for the same services.

C. The supplemental payments shall be calculated by applying a conversion factor to actual charges for claims paid during a quarter for Medicaid services provided by the state-owned or operated practice plan providers. The commercial payments and respective charges shall be obtained for the state fiscal year preceding the reimbursement year. If this data is not provided satisfactorily to DHH, the default conversion factor shall equal "1." This conversion factor shall be established annually for qualifying physicians/practitioners by:

1. determining the amount that private commercial insurance companies paid for commercial claims submitted by the state-owned or operated practice plan or entity; and

2. dividing that amount by the respective charges for these payers.

D. The actual charges for paid Medicaid services shall be multiplied by the conversion factor to determine the maximum allowable Medicaid reimbursement. For eligible nonphysician practitioners, the maximum allowable Medicaid reimbursement shall be limited to 80 percent of this amount.

E. The actual base Medicaid payments to the qualifying physicians/practitioners employed by a state-owned or operated entity shall then be subtracted from the maximum Medicaid reimbursable amount to determine the supplemental payment amount.

F. The supplemental payment for services provided by the qualifying state-owned or operated physician practice plan will be implemented through a quarterly supplemental payment to providers, based on specific Medicaid paid claim data.

Implementation of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

0606#074

RULE

Department of Public Safety and Corrections Corrections Services

Louisiana Risk Review Panel
(LAC 22:I.107)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby amends LAC 22:I.107, Louisiana Risk Review Panel.

The Department of Public Safety and Corrections hereby amends and clarifies the secretary's current regulation regarding the Louisiana Risk Review Panel, in particular, eligibility requirements.

Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

§107. Louisiana Risk Review Panel

A. ...

B. Applicability. deputy secretary, chief of operations, undersecretary, assistant secretary of the office of adult services, wardens, director of probation and parole, chairman/Board of Parole, chairman/Board of Pardons and administrators of local jail facilities.

C.1. - 2.e. ...

3. A majority of the members of each panel shall constitute a quorum. All official actions of the panel shall require an affirmative vote of a majority of members present.

C.4. - D.1.c.iii. ...

iv. sentenced to life imprisonment and has served at least seven years in actual custody;

v. an inmate sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes was a crime of violence defined or enumerated in R.S. 14:2(13).

D.2. - G.1.a. ...

b. risk level based upon Louisiana Risk Need Assessment II (LARNA II) score;

c. comments submitted by the sentencing judge, district attorney, assistant district attorney, the Board of Parole, the Board of Pardons, the victim or victim's family or the inmate;

d. the age of the inmate (to include consideration of chronological age and length of confinement where such contributes to a reduction in danger to the public);

e. current medical condition (where such contributes to a reduction in danger to the public);

f. damage or injury occasioned by the crime committed;

g. resources available to the inmate in the event of release (job and housing, family or other support, skill level); and

h. the extent to which the sentence for the instant offense exceeded the minimum sentence in effect at the time of sentencing.

2. ...

H. The effective date of this regulation is June 20, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.22 (as enacted by Act Number 403 of the 2001 Regular Session of the Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 28:94 (January 2002), amended LR 29:2847 (December 2003), LR 32:1069 (June 2006).

Richard L. Stalder
Secretary

0606#045

RULE

**Department of Treasury
State Employees' Retirement System**

DROP Program—Interest (LAC 58:I.2715 and 4135)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.2715 and adopted LAC 58:I.4135. These Rules clearly establish that interest is paid by LASERS only on traditional DROP funds and not on funds transferred into the Self-Directed Plan.

**Title 58
RETIREMENT**

**Part I. Louisiana State Employees' Retirement System
Chapter 27. DROP Program**

Subchapter C. Withdrawal

§2715. Interest

A. ...

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

C. Interest shall not be paid on funds transferring to the Self-Directed Plan. DROP participants who are vested under LAC 58:I.4103 who choose to transfer their funds to the SDP shall not be paid DROP interest under this section beginning on the date LASERS receives the participant's request for transfer. DROP participants who were not vested under LAC 58:I.4103 shall not be paid DROP interest under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 31:946 (April 2005), LR 32:1070 (June 2006).

Chapter 41. Self-Directed Plan

§4135. No DROP Interest

A. Participants in the SDP shall not receive interest paid by LASERS on traditional DROP/IBO accounts under the provisions of LAC 58:I.2715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 32:1070 (June 2006).

Cindy Rougeou
Executive Director

0606#058

RULE

**Department of Treasury
State Employees' Retirement System**

DROP Program—Time for Disbursement (LAC 58:I.2713)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.2713. The amended Rule will sets

out the manner in which disbursements from DROP accounts shall be made.

**Title 58
RETIREMENT**

Part I. Louisiana State Employees' Retirement System

Chapter 27. DROP Program

Subchapter C. Withdrawal

§2713. Time for Disbursement

A. ...

B. Disbursements from the DROP accounts shall be made on the first day of each month; if the first is a weekend or holiday, the disbursement shall be made on the following workday.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999), LR 29:1121 (July 2003), LR 30:2079 (September 2004), LR 32:1070 (June 2006).

Cindy Rougeou
Executive Director

0606#059

RULE

**Department of Treasury
State Employees' Retirement System**

Self-Directed Plan—Time to Transfer Funds
(LAC 58:I.4111)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.4111. This Rule sets out the time in which funds are transferred from LASERS to the third-party administrator of the Self-Directed Plan.

**Title 58
RETIREMENT**

Part I. Louisiana State Employees' Retirement System

Chapter 41. Self-Directed Plan

§4111. Time to Transfer Funds

A. Except in emergency circumstances as determined by the executive director:

1. LASERS shall forward the entire deposit balance of a participant to the third party administrator within 10 working days from the end of the DROP accumulation period. LASERS may supplement or otherwise correct balances forwarded in those instances where there are errors, missing documents or incomplete reports submitted by agencies reporting earnings for the participant;

2. for participants in the Initial Benefit Option ("IBO") or for those DROP participants whose accumulation period is less than six months, LASERS shall transfer 80 percent of the DROP/IBO balance within 45 days from the date of initial transfer into the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement

System, LR 30:1307 (June 2004), amended LR 32:1070 (June 2006).

Cindy Rougeou
Executive Director

0606#057

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Spotted Seatrout Management Measures (LAC 76:VII.341)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.341, modifying the recreational daily take and possession limit in a defined area within Cameron and Calcasieu Parishes. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), R.S. 56:325.1(A), and R.S. 56:326.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

**Chapter 3. Saltwater Sport and Commercial Fishery
§341. Spotted Seatrout Management Measures**

A. - B. ...

C. Recreational Regulations. Within those areas of the state, including coastal territorial waters, south of Interstate 10 from its junction at the Texas-Louisiana boundary eastward to its junction with Louisiana Highway 171, south

to Highway 14, and then south to Holmwood, and then south on Highway 27 through Gibbstown south to Louisiana Highway 82 at Creole and south on Highway 82 to Oak Grove, and then due south to the western shore of the Mermentau River, following this shoreline south to the junction with the Gulf of Mexico, and then due south to the limit of the state territorial sea, under the authority of the provisions of R.S. 56:325.1(A), the daily take and possession limit shall be 15 fish, regardless of where taken, with no more than 2 spotted seatrout exceeding 25 inches total length. Those spotted seatrout exceeding 25 inches in length shall be considered as part of the daily recreational take and possession limit.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S.56:6(25)(a); R.S. 56:306.5, R.S. 56:306.6, 56:325.1(A) and (B); R.S. 56:325.3; R.S. 56:326.3; Act 1316 of the 1995 Regular Legislative Session; and Act 1164 of the 2003 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:360 (February 1998), LR 26:2333 (October 2000), LR 30:1509 (July 2004), LR 30:2498 (November 2004), repromulgated LR 32:125 (January 2006), amended LR 32:1071 (June 2006).

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