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# Emergency Rules

## DECLARATION OF EMERGENCY

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

#### Certification of Commercial Applicators (LAC 7:XXIII.711)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the commissioner of agriculture and forestry declares an emergency to exist and adopts by emergency process the attached regulation requiring proficiency testing for all commercial applicators in 2017. R.S. 3:3203(A) provides that the “commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Chapter, including but not limited to, rules and regulations governing the registration, distribution, sale, offering for sale, and application of pesticides...” Additionally, R.S. 3:3242 provides that the “commissioner by rule shall provide for the issuance of annual certification cards.” In order to be in compliance with state and federal laws regarding testing and licensure, the commissioner believes proficiency testing in 2017 is necessary to protect the health and safety of the public. This Emergency Rule was initially published at LR 43:9.

This Emergency Rule shall become effective May 5, 2017, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

### Chapter 7. Examinations, Certification and Licensing

#### Subchapter B. Certification

#### §711. Certification of Commercial Applicators

A. - E. ...

F. The commissioner shall issue a certification card to each commercial applicator showing the categories or subcategories in which the applicator is certified. This certification card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form prescribed by the commissioner and by submitting the proper fee.

1. In order to renew a certification card that expires on December 31, 2017, a commercial applicator shall take and pass a proficiency test.

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), repromulgated LR 32:1011 (June 2006), amended LR 35:627 (April 2009), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011), LR 43:

Mike Strain DVM  
Commissioner

1705#009

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration; Obligations of the Licensee/Permittee  
(LAC 7:XXV.113 and 117)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the commissioner of agriculture and forestry and Louisiana Structural Pest Control Commission declare an emergency to exist and hereby adopt by emergency process the attached regulation requiring proficiency testing for all structural licensees and registered technicians and in 2017. R.S. 3:3366 grants the Structural Pest Control Commission the authority to adopt rules and regulations “to protect the interests, health, safety, and welfare of the public.” In order to be in compliance with state and federal laws regarding testing and licensure, the commissioner believes proficiency testing in 2017 is necessary to protect the health and safety of the public. This Emergency Rule was initially published at LR 43:9-10.

This Emergency Rule shall become effective May 5, 2017, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXV. Structural Pest Control

### Chapter 1. Structural Pest Control Commission

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

A. - O. ...

P. Each registered technician shall participate in an entire continuing education program as a condition of maintaining his or her status as a registered technician at least once annually (July 1 to June 30).

1. Each continuing education program, minimum of four hours of technical training, shall be approved in advance by the department.

2. Each continuing education program shall be a minimum of one hour in length per phase.

3. Documentation of the technician attendance and participation shall be forwarded to the department and a copy retained at the technician's place of employment.

4. Each continuing education program offered in 2017 shall include a proficiency test which shall be taken and passed in order to maintain one's status as a registered technician.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3366, 3368 and 3369.

**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), repromulgated LR 32:1016 (June 2006), amended LR 35:207 (February 2009), LR 37:279 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:301 (February 2013), LR 42:213 (February 2016), LR 43:

**§117. Obligations of the Licensee/Permittee**

A. - D. ...

E. Maintenance of a Commercial Applicator Certification by a Licensee

1. A licensee shall maintain his commercial applicator certification in current status by:

a. attending a continuing educational program for recertification approved by the department;

b. recertification at least once every three years; such recertification shall be completed by December 31 of the year preceding the third anniversary of either the original certification or the most recent recertification;

c. a minimum of six hours of technical training which shall include but not limited to the phases of general pest control, termite control and commercial vertebrate control;

d. a minimum of six hours of technical training for the phase of fumigation;

e. in order to renew a commercial certification card that expires on December 31, 2017, a licensee shall take and pass a proficiency test.

2. A licensee attending an approved recertification seminar shall attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar.

3. Time and location for each licensee recertification can be obtained by calling or writing to the department.

F. - Q. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3366 and 3:3368.

**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 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR 35:1468 (August 2009), LR 37:280 (January 2011), LR 39:301 (February 2013), LR 42:214 (February 2016), LR 43:

Mike Strain DVM  
Commissioner

1705#008

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Crime Victims Reparations Board**

Crime Victims Reparations Board (LAC 22:XIII.503)

The following amendment is published in accordance with R.S. 46:1807(C)(1), the Crime Victims Reparations Act, which allows the Crime Victims Reparations Board to promulgate rules necessary to carry out its business or provisions of the Chapter. This Rule will clarify the limits on claimant awards for crime victims.

This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect on April 27, 2017 for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part XIII. Crime Victims Reparations Board**

**Chapter 5. Awards**

**§503. Limits on Awards**

A. - F.4. ...

G. Medical Expenses

1. - 2. ...

3. The board will pay up to 70 percent of all outstanding charges after payment by any third-party source(s) up to the statutory limit.

G.4. - O.3.b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR 24:328 (February 1998), LR 25:26 (January 1999), LR 26:1019 (May 2000), LR 29:577 (April 2003), LR 31:1330 (June 2005), LR 32:242 (February 2006), LR 35:65 (January 2009), LR:37:1605 (June 2011), LR 39:1042 (April 2013), LR 41:1668 (September 2015), LR 42:570 (April 2016), LR 42:743 (May 2016), LR 43:

**Public Comments**

Interested persons may submit written comments on this Emergency Rule no later than June 1, 2017 at 5 p.m. to Bob Wertz, Louisiana Commission on Law Enforcement, P.O. Box 3133, Baton Rouge, LA 70821.

Amanda Tonkavitch  
Chairman

1705#010

**DECLARATION OF EMERGENCY**

**Department of Health  
Bureau of Health Services Financing**

Inpatient Hospital Services  
Children's Specialty Hospitals  
Supplemental Payments for New Orleans Area Hospitals  
(LAC 50:V.969)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title

XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain children's specialty hospitals from state-owned and operated to private partners, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted a supplemental payment methodology for inpatient hospital services rendered by children's specialty hospitals in the New Orleans area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 12, 2015 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and continued access to inpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing supplemental payments for inpatient hospital services rendered by children's specialty hospitals in the New Orleans area.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 9. Non-Rural, Non-State Hospitals**

#### **Subchapter B. Reimbursement Methodology**

#### **§969. Supplemental Payments to Children's Specialty Hospitals in the New Orleans Area**

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for inpatient hospital services rendered in a hospital in the New Orleans area that meets the following qualifying criteria per the as filed cost report ending in state fiscal year 2014:

1. classified by Medicare as a specialty children's hospital;
2. has a least 100 full-time equivalent interns and residents;
3. has least 70 percent Medicaid inpatient days' utilization rate;
4. has at least 25,000 Medicaid inpatient days; and
5. has a distinct part psychiatric unit.

B. Supplemental payments for inpatient hospital services will be paid quarterly up to the hospital specific upper payment limit (the difference between Medicaid inpatient charges and Medicaid inpatient payments). The payments to the qualifying hospital(s) shall not exceed:

1. the annual Medicaid hospital specific inpatient charges per 42 CFR 447.271;
2. the annual aggregate inpatient hospital upper payment limit for the classification of hospitals per 42 CFR 442.272; and

3. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#037

### **DECLARATION OF EMERGENCY**

#### **Department of Health Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Supplemental Payments for Baton Rouge Area Hospitals  
(LAC 50:V.973)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.973 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain hospitals from state-owned and operated to private partners, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services rendered by non-rural, non-state hospitals in order to adopt a supplemental payment methodology for services provided by hospitals located in the Baton Rouge area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 12, 2015 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient

provider participation and continued access to inpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals in the Baton Rouge area.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§973. Supplemental Payments to Baton Rouge Area Hospitals**

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for inpatient hospital services rendered in a hospital in the Baton Rouge area that meets the following qualifying criteria per the as filed cost report ending in state fiscal year 2014:

1. classified as a major teaching hospital;
2. has at least 3,000 Medicaid deliveries, as verified per the Medicaid data warehouse; and
3. has at least 45 percent Medicaid inpatient days utilization rate.

B. Supplemental payments for inpatient hospital services will be paid quarterly up to the hospital specific upper payment limit (the difference between Medicaid inpatient charges and Medicaid inpatient payments). The payments to the qualifying hospital(s) shall not exceed:

1. the annual Medicaid hospital specific inpatient charges per 42 CFR 447.271;
2. the annual aggregate inpatient hospital upper payment limit for the classification of hospitals per 42 CFR 442.272; and
3. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

**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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#038

## **DECLARATION OF EMERGENCY**

### **Department of Health Bureau of Health Services Financing**

#### **Inpatient Hospital Services Non-Rural, Non-State Hospitals Supplemental Payments for Monroe Area Hospitals (LAC 50:V.971)**

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.971 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain hospitals from state-owned and operated to private partners, the Department of Health and Hospitals (DHH), Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals in order to adopt a supplemental payment methodology for services provided by hospitals located in LDH Administrative Region 8 in the Monroe area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated in order to continue the provisions of the February 12, 2015 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and continued access to inpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals in the Monroe area.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§971. Supplemental Payments to Monroe Area Hospitals**

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for inpatient hospital services rendered by a hospital in the Monroe area that meets the following qualifying criteria:

1. inpatient acute hospital classified as a major teaching hospital;

2. located in LDH Administrative Region 8 (lowest per capita income of any region per the 2010 U.S. Census Bureau records); and

3. per the as filed fiscal year ending June 30, 2013 cost report has:

a. greater than 25 full-time equivalent interns and residents;

b. at least 40 percent Medicaid inpatient days utilization; and

c. a distinct part psychiatric unit.

B. Supplemental payments for inpatient hospital services will be paid quarterly up to the hospital specific upper payment limit (the difference between Medicaid inpatient charges and Medicaid inpatient payments). The payments to the qualifying hospital(s) shall not exceed:

1. the annual Medicaid hospital specific inpatient charges per 42 CFR 447.271;

2. the annual aggregate inpatient hospital upper payment limit for the classification of hospitals per 42 CFR 442.272; and

3. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#039

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with  
Intellectual Disabilities—Public Facilities  
Reimbursement Rate Increase  
(LAC 50:VII.32969)

The Department of Health, Bureau of Health Services Financing amends LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

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

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD), hereafter referred to as intermediate care facilities for persons with intellectual disabilities (ICFs/ID), to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 39, Number 2). This Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*.

The department promulgated an Emergency Rule which amended the provisions governing the transitional rates for public facilities in order to redefine the period of transition (*Louisiana Register*, Volume 39, Number 10). The department subsequently promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:953, and to continue the provisions of the October 1, 2013 Emergency Rule governing transitional rates for public facilities (*Louisiana Register*, Volume 40, Number 3). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to increase the add-on amount to the per diem rate for the provider fee (*Louisiana Register*, Volume 40, Number 3).

Due to an increase in the add-on amount to the per diem rate for the provider fee, the department promulgated an Emergency Rule which amended the provisions governing the transitional rates for public facilities in order to increase the Medicaid reimbursement rate (*Louisiana Register*, Volume 40, Number 9). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2014 Emergency Rule. This action is being taken to protect the public health and welfare of Medicaid recipients transitioning from public ICFs/ID by ensuring continued provider participation in the Medicaid Program.

Effective May 26, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with intellectual disabilities.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part VII. Long Term Care

#### Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

#### Chapter 329. Reimbursement Methodology

#### Subchapter C. Public Facilities

#### §32969. Transitional Rates for Public Facilities

A. - F.4. ...

G. Effective for dates of service on or after October 1, 2014, the transitional Medicaid reimbursement rate shall be increased by \$1.85 of the rate in effect on September 30, 2014.

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, Bureau of Health Services Financing, LR

39:326 (February 2013), amended LR 40:2588 (December 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#040

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Outpatient Hospital Services  
Children's Specialty Hospitals  
Supplemental Payments for New Orleans Area Hospitals  
(LAC 50:V.6121)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.6121 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain children's specialty hospitals from state-owned and operated to private partners, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted a supplemental payment methodology for outpatient hospital services rendered by children's specialty hospitals in the New Orleans area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 12, 2015 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and continued access to inpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing outpatient supplemental payments for outpatient hospital services rendered by children's specialty hospitals in the New Orleans area.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospitals

##### Subpart 5. Outpatient Hospitals

#### Chapter 61. Other Outpatient Hospital Services

##### Subchapter B. Reimbursement Methodology

#### §6121. Supplemental Payments for Children's Specialty Hospitals in the New Orleans Area

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for outpatient hospital services rendered in a hospital in the New Orleans area that meets the following qualifying criteria per the as filed cost report in state fiscal year 2014:

1. classified by Medicare as a specialty children's hospital;
2. has at least 100 full-time equivalent interns and residents;
3. has at least 70 percent Medicaid inpatient days' utilization rate;
4. has at least 25,000 Medicaid inpatient days; and
5. has a distinct part psychiatric unit.

B. Supplemental payments for outpatient hospital services will be paid quarterly. The payments to the qualifying hospital(s) shall not exceed:

1. the aggregate outpatient hospital upper payment limits for the classification of hospitals pursuant to 42 CFR 447.321; and
2. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#041

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Supplemental Payments for Baton Rouge Area Hospitals  
(LAC 50:V.6905)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain hospitals from state-owned and operated to private partners, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services rendered by non-rural, non-state hospitals in order to adopt a supplemental payment methodology for services provided by hospitals located in the Baton Rouge area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 12, 2015 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and continued access to outpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals in the Baton Rouge area.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 5. Outpatient Hospital Services

#### Chapter 69. Supplemental Payments

#### §6905. Non-Rural, Non-State Hospitals in the Baton Rouge Area

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for outpatient hospital services rendered in a hospital in the Baton Rouge area that meets the following qualifying criteria per the as filed cost report ending state fiscal year 2014:

1. classified as a major teaching hospital;
2. has at least 3,000 Medicaid deliveries, as verified per the Medicaid data warehouse; and
3. has at least 45 percent Medicaid inpatient days utilization rate.

B. Supplemental payments for outpatient hospital services will be paid quarterly. The payments to the qualifying hospital(s) shall not exceed:

1. the aggregate outpatient hospital upper payment limits for the classification of hospitals pursuant to 42 CFR 447.321; and

2. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

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, Bureau of Health Service Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#042

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Supplemental Payments for Monroe Area Hospitals  
(LAC 50:V.6903)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the state plan amendment for the financing of the transition of the management and operation of certain hospitals from state-owned and operated to private partners, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals in order to adopt a supplemental payment methodology for services provided by hospitals located in LDH Administrative Region 8 in the

Monroe area (*Louisiana Register*, Volume 41, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 12, 2015 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and continued access to outpatient hospital services through the maximization of federal dollars.

Effective June 8, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions governing supplemental payments for outpatient hospital services rendered by non-rural, non-state hospitals in the Monroe area.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part V. Hospital Services**  
**Subpart 5. Outpatient Hospital Services**  
**Chapter 69. Supplemental Payments**  
**§6903. Non-Rural, Non-State Hospitals in the Monroe Area**

A. Effective for dates of service on or after February 12, 2015, quarterly supplemental payments shall be made for outpatient hospital services rendered by a hospital in the Monroe area that meets the following qualifying criteria:

1. inpatient acute hospital classified as a major teaching hospital;
2. located in LDH administrative region 8 (lowest per capita income of any region per the 2010 U.S. Census Bureau records); and
3. per the as filed fiscal year ending June 30, 2013 cost report has:
  - a. greater than 25 full-time equivalent interns and residents;
  - b. at least 40 percent Medicaid inpatient days utilization; and
  - c. a distinct part psychiatric unit.

B. Supplemental payments for outpatient hospital services will be paid quarterly. The payments to the qualifying hospital(s) shall not exceed:

1. the aggregate outpatient hospital upper payment limits for the classification of hospitals pursuant to 42 CFR 447.321; and
2. the budgeted state fiscal year supplemental payment amount included in the Annual Appropriation Act as allocated to this specific program in the budget spread pursuant to the department's reimbursement methodology.

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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#043

**DECLARATION OF EMERGENCY**

**Department of Health**  
**Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
Methods of Payment

The Department of Health, Bureau of Health Services Financing hereby rescinds the provisions of the November 1, 2012 Emergency Rule which revised the reimbursement methodology for pharmacy services covered under the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule was adopted on October 19, 2012 and published in the November 20, 2012 edition of the *Louisiana Register*. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing provides coverage and reimbursement for prescription drugs to Medicaid eligible recipients enrolled in the Medicaid Program. The department promulgated an Emergency Rule which amended the provisions of the September 5, 2012 Emergency Rule to further revise the provisions governing the methods of payment for prescription drugs and the dispensing fee (*Louisiana Register*, Volume 38, Number 11).

Upon further consideration and consultation with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) on the corresponding Medicaid State Plan Amendment, the department determined that it was necessary to rescind the provisions of the November 1, 2012 Emergency Rule governing the reimbursement methodology for services rendered in the Pharmacy Benefits Management Program, and to return to the reimbursement rates in effect on September 5, 2012 which is consistent with the currently approved Medicaid State Plan (*Louisiana Register*, Volume 40, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2014 Emergency Rule.

Effective May 26, 2017, the Department of Health, Bureau of Health Services Financing rescinds the Emergency Rule governing pharmacy services which appeared in the November 20, 2012 edition of the *Louisiana Register* on pages 2725-2728.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for

responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#044

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Professional Services Program  
Enhanced Federal Medical Assistance Percentage Rate for  
Preventative Services  
(LAC 50:IX.15101)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:IX.15101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 4106(b) of the Patient Protection and Affordable Care Act (P.L. No. 111-148), hereafter referred to as the Affordable Care Act (ACA), established a one percentage point increase in the federal medical assistance percentage (FMAP) rate applied to Medicaid covered expenditures for specified adult vaccines and clinical preventive services provided on a fee-for-service or managed care basis to states that provide coverage without cost sharing. In compliance with the requirements of the ACA, the Department of Health, Bureau of Health Services Financing amends the provisions governing reimbursement for professional services in the Medical Assistance Program in order to establish provisions governing the enhanced FMAP for the coverage of those specified preventive services.

This action is being taken to secure enhanced federal funding. It is anticipated that implementation of this Emergency Rule will result in a net increase in expenditures in the Medicaid Program by approximately \$4,301, but will reduce state general fund expenditures by approximately \$12,732 for state fiscal year 2017-2018.

Effective May 15, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement for professional services.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

##### Subchapter A. General Provisions

#### §15101. Enhanced Federal Medical Assistance

##### Percentage Rate for Preventive Services

A. Effective for dates of service on or after May 15, 2017, the federal medical assistance percentage (FMAP) rate received by the department for specified adult vaccines and clinical preventive services shall increase one percentage point of the rate on file as of May 14, 2017.

1. Services covered by this increase are those assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF) and approved vaccines and their administration as recommended by the Advisory Committee on Immunization Practices (ACIP).

2. The increased FMAP rate applies to these qualifying services whether the services are provided on a fee-for-service (FFS) or managed care basis.

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, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#036

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Professional Services Program  
Reimbursement Methodology  
State-Owned or Operated Professional Services Practices  
(LAC 50:IX.15110 and 15113)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:IX.15110 and amends §15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 (B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing provides reimbursement under the Medicaid State Plan to physicians and other professional services practitioners for services rendered to Medicaid covered recipients.

The department has now determined that it is necessary to amend the provisions governing the Professional Services Program in order to revise the reimbursement methodology for services rendered by physicians and other professional services practitioners employed by, or under contract to provide services in affiliation with a state-owned or operated entity. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging continued provider participation in the Medicaid Program to ensure recipient access to services. It is estimated that

implementation of this Emergency Rule will have no fiscal impact to the state in fiscal year 2017.

Effective May 1, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the Professional Services Program to revise the payment methodology for supplemental payments to physicians and other professional service practitioners affiliated with a state owned or operated entity.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

##### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **Subchapter A. General Provisions**

#### **§15110. State-Owned or Operated Professional Services Practices**

A. Qualifying Criteria. Effective for dates of service on or after May 1, 2017, in order to qualify to receive payments for services rendered to Medicaid recipients under these provisions, 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, or under contract to provide services in affiliation with, a state-owned or operated entity, such as a state-operated hospital or other state entity, including a state academic health system, which:
  - a. has been designated by the department as an essential provider. Essential providers include:
    - i. LSU School of Medicine—New Orleans;
    - ii. LSU School of Medicine—Shreveport; and
    - iii. LSU state-operated hospitals (Lallie Kemp Regional Medical Center and Villa Feliciana Geriatric Hospital).

B. Payment Methodology. Effective for dates of service on or after May, 1, 2017, payments shall be made in the amount of the billed charges for services rendered by physicians and other eligible professional service practitioners who qualify under the provisions of §15110.A.

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, Bureau of Health Services Financing, LR 43:

##### **Subchapter B. Physician Services**

#### **§15113. Reimbursement Methodology**

A. - M. ...

N. Effective for dates of service on or after May 1, 2017, physicians, who qualify under the provisions of §15110 for services rendered in affiliation with a state-owned or operated entity that has been designated as an essential provider, shall receive payment in the amount of the billed charges for qualifying services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), LR 37:904 (March 2011), LR 39:3300, 3301 (December 2013), LR 41:541 (March 2015), LR 41:1119 (June 2015), LR 41:1291 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1705#001

### **DECLARATION OF EMERGENCY**

#### **Department of Health Office of Public Health**

#### **Burial or Cremation of Aborted Human Remains (LAC 51:XXVI.102)**

The state health officer, acting through the Louisiana Department of Health, Office of Public Health (“LDH-OPH”), pursuant to the rulemaking authority granted by R.S. 40:4(A)(3), R.S. 40:4(A)(13) and R.S. 40:5(A)(14), hereby adopts the following Emergency Rule to require burial or cremation of remains resulting from an abortion as provided for under Act No. 593 of the 2016 Regular Session of the Louisiana Legislature. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and shall remain in effect for the maximum period allowed under the law or until adoption of a final Rule, whichever occurs first. This Emergency Rule is effective on the 21st day of April 2017.

#### **Title 51**

### **PUBLIC HEALTH—SANITARY CODE**

#### **Part XXVI. Burial, Transportation, Disinterment, or Other Disposition of Dead Human Bodies**

##### **Chapter 1. General Requirements**

#### **§102. Burial or Cremation of Aborted Human Remains**

A. Each physician who performs or induces an abortion which does not result in a live birth shall insure that the remains of the child are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

B. The requirements of Subsection A of this Section shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

C. An abortion patient may by written consent authorize the physician performing the abortion to dispose of the human remains by burial or cremation, in accordance with the provisions of Part XXVII, Chapter 11, Section 1101.A.7 of this Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(3), R.S. 40:4(A)(13), and R.S. 40:5(A)(14).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 43:

Rebekah E. Gee, MD, MPH  
Secretary  
and  
Jimmy Guidry, MD  
State Health Officer

1705#005

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

Emergency Rule 33—Suspension of Right to Cancel or Nonrenew—Residential, Commercial Residential, or Commercial Property Insurance due to Historic Flooding (LAC 37:XI.Chapter 51)

The Department of Insurance hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted by *Louisiana Revised Statutes* 22:1 et seq., adopts Emergency Rule 33 which maintains and continues in effect the provisions of Emergency Rule 28 that became effective August 12, 2016; Emergency Rule 30 that became effective October 13, 2016; and Emergency Rule 32 that became effective February 10, 2017. Emergency Rule 33 shall be effective May 11, 2017, and shall remain effective through Monday, August 14, 2017.

Emergency Rule 33 is issued pursuant to the transfer of authority to suspend provisions of regulatory statutes and implementing regulations from the governor to the commissioner of Insurance in Executive Order No. JBE 2016-58, signed by Governor John Bel Edwards on August 17, 2016, amended on September 12, 2016, by Executive Order No. JBE 2016-67, amended on October 11, 2016, by Executive Order No. JBE 2016-71, amended on February 6, 2017, by Executive Order No. JBE 2017-04, and subsequently amended on May 8, 2017, by Executive Order No. JBE 2017-11. The transfer of authority in Executive Order No. JBE 2016-58 is authorized in the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and rules promulgated by the commissioner relative to the *Louisiana Insurance Code* are authorized in R.S. 22:11 and are promulgated through the aforementioned Administrative Procedure Act.

On August 12, 2016, Governor John Bel Edwards declared a state of emergency within the state of Louisiana in response to historic flooding in Louisiana. This state of emergency, declared pursuant to Proclamation No. 111 JBE 2016, extended from Friday, August 12, 2016, to Monday, September 12, 2016. Louisiana citizens have suffered damage due to this historic flooding. In some places, it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed, precluding habitation. The damage caused by this historic flooding has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, interruption of communication services, the temporary

displacement of persons from their homes, loss of personal belongings, and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance-related matters. This historic flooding has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

Insurers have been working diligently to adjust and pay claims. However, due to a shortage of building materials, contractors, and construction workers, many policyholders who have received, or will soon receive, claim payments from insurers will find that they are unable to repair or reconstruct their residential, commercial residential, or commercial property within normal time frames. In many places, it could be months before residential, commercial residential, or commercial property damaged by the historic flood can be repaired or reconstructed. This inordinate time period to repair or reconstruct residential, commercial residential, or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential, or commercial property insurance. For these reasons, Executive Order No. JBE 2016-58, amended by Executive Order No. JBE 2016-67 signed by Governor John Bel Edwards on September 12, 2016; amended by Executive Order No. JBE 2016-71, signed on October 11, 2016; amended by Executive Order No. JBE 2017-04, signed on February 6, 2017; and subsequently amended by Executive Order No. JBE 2017-11, signed on May 8, 2017, remains in effect through Monday, August 14, 2017.

The commissioner will be hindered in the proper performance of his duties and responsibilities under the *Louisiana Insurance Code*, as well as his duties and responsibilities regarding the referenced state of emergency, without the authority to suspend certain statutes in the *Louisiana Insurance Code* and the rules and regulations that implement the *Louisiana Insurance Code* and without the adoption of Emergency Rule 33, which relates to the cancellation and nonrenewal of all personal residential, commercial residential, or commercial property insurance subject to the *Louisiana Insurance Code*.

Therefore, Emergency Rule 33 is issued and shall apply to all insurers, property and casualty insurers, surplus lines insurers, and any and all other entities doing business in Louisiana and/or regulated by the commissioner, regarding any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, all surplus lines insurance, and any and all other insurance regulated entities doing business in Louisiana and/or regulated by the commissioner.

Emergency Rule 33 is applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline,

Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

Emergency Rule 33 is available on the Internet at [www.lda.state.la.us](http://www.lda.state.la.us) and is available for inspection between the hours of 8 a.m. until 4:30 p.m. at the Louisiana Department of Insurance, 1702 North Third Street, Baton Rouge, LA 70802.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 51. Emergency Rule 33—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential, or Commercial Property Insurance Due To Historic Flooding**

**§5101. Benefits, Entitlements, and Protections**

A. The benefits, entitlements, and protections of Emergency Rule 33 shall be applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5103. Applicability**

A. Emergency Rule 33 shall apply to any and all types of personal residential, commercial residential, or commercial property insurance covering a dwelling, residential property, or commercial property located in one of the parishes set forth in Section 5101.A that sustained damage as a result of the August 2016 historic flood or its aftermath, including but not limited to, any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, and any and all other insurance regulated by the commissioner that falls within the intent and purpose of Emergency Rule 33.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5105. Cancellation or Nonrenewal Suspended**

A. Any statutory or regulatory provision, or any policy provisions contained in any and all policies of insurance set forth in Section 5103.A above, that authorizes any insurer, surplus lines insurer, or any other entity regulated by the commissioner to cancel or nonrenew, on the grounds of a material change in the risk being insured, any personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in Louisiana that sustained damages as a result of the August 2016 historic flood or its aftermath, is suspended and unenforceable, and such cancellations or nonrenewals shall be prohibited through Monday, August 14, 2017, unless extended by the commissioner. Any such notice of cancellation or nonrenewal issued on or after August 12, 2016, through August 14, 2017, shall be null and void and have no force or effect. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements, and any such notice shall not be issued prior to August 15, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5107. Insured's Obligation**

A. The insured is obligated to exercise good faith with regard to undertaking the repairs or reconstruction of the dwelling or residential property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5109. Insurer's Obligation**

A. The insurer or surplus lines insurer or any other entity regulated by the commissioner is obligated to provide the insured with sufficient time to effectuate the repairs or reconstruction to the dwelling or residential property and to recognize the inordinate conditions that exist in the state of Louisiana with regard to the ability of the insured to engage a contractor, engage construction workers, obtain materials, and otherwise undertake to accomplish the necessary repairs or reconstruction of the dwelling, residential property, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5111. Exemption from Compliance**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 33 upon the written request by the insurer if the commissioner determines that compliance with Emergency Rule 33 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5113. Purpose and Intent**

A. The provisions of Emergency Rule 33 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana who desire to maintain or obtain personal residential, commercial residential, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5115. Authority**

A. The commissioner reserves the right to amend, modify, alter, or rescind all or any portion of Emergency Rule 33. Additionally, the commissioner reserves the right to extend Emergency Rule 33.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5117. Severability**

A. If any Section or provision of Emergency Rule 33 is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of Emergency Rule 33 to any persons or circumstances to which provisions can be given effect without the invalid Sections or provisions, and the application to any such person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**§5119. Effective Date**

A. Emergency Rule 33 shall be effective upon adoption and shall remain effective through Monday, August 14, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

James J. Donelon  
Commissioner

1705#026

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Commercial Large Coastal Shark Closure—2017 Season

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish and the authority given to the secretary of the department, by commission action on January 5, 2017, to close the 2017 commercial large coastal shark season and in its rule LAC 76:VII.357.M.2 which allows the secretary authority to modify seasons to maintain consistency with the adjacent federal waters, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., May 4, 2017, the commercial fishery for large coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will close and remain closed until January 1, 2018, at which time the season is scheduled to reopen. This closure will not pertain to persons holding a federal shark research permit issued by NOAA Fisheries Service, when those persons are legally fishing under the regulations promulgated for that permit including that a National Marine Fisheries Service (NMFS)-approved observer is aboard the vessel. Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks, whether taken from within or without Louisiana waters, except for a federal shark research permit holder, when legally operating under that permit. Also effective with the closure, no person shall possess large coastal sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure or from federal shark research permit holders, provided that all commercial dealers possessing large coastal sharks shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA Fisheries Service that the harvest of large coastal sharks in the federal

waters of the Gulf of Mexico closed at 11:30 p.m. local time on May 2, 2017, and will be closed until January 1, 2018, at which time the season is scheduled to reopen.

Jack Montoucet  
Secretary

1705#020

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Opening of Shrimp Season in Portion of State Outside Waters—2017

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicate that marketable shrimp, in sufficient quantities are available for harvest, and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on December 1, 2016 which authorizes the secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

That state outside waters seaward of the inside/outside shrimp line as described in R.S. 56:495 out to the three mile line, from the Atchafalaya River Ship Channel at Eugene Island as delineated by the channel red buoy line westward to western shore of Freshwater Bayou Canal at -92 degrees 18 minutes 33 seconds west longitude shall reopen to shrimping at 6 a.m. May 1, 2017.

Recent biological samples taken by Office of Fisheries biologists indicate that small white shrimp which have overwintered in these waters from December through the present time have reached marketable sizes and the closure is no longer necessary. Notice of any opening, delaying or closing of a season by the secretary will be made by public notice at least 72 hours prior to such action.

Jack Montoucet  
Secretary

1705#004

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Spring Inshore Shrimp Season Opening Dates

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters and to increase the minimum mesh size provided in R.S. 56:499 for any trawl, skimmer net, or butterfly net for the duration of any special shrimp season or regular shrimp season extension, the Wildlife and Fisheries Commission does hereby set the 2017 spring shrimp season in Louisiana state waters to open as follows:

that portion of state inside waters from the Mississippi/Louisiana state line to the eastern shore of South Pass of the Mississippi River to open at 6 a.m. May 15, 2017; and

that portion of state inside waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Freshwater Bayou Canal to open at 6 a.m. May 8, 2017; and

that portion of state inside waters from the western shore of Freshwater Bayou Canal westward to the Louisiana/Texas state line to open at 6 a.m. May 15, 2017; and

the commission also hereby grants authority to the secretary of the Department of Wildlife and Fisheries to delay or advance these opening dates if biological and technical data indicate the need to do so, and; to close any portion of Louisiana's inside waters to protect small juvenile white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop. The secretary is further granted the authority to open any area, or re-open any previously closed area, and to open and close special shrimp seasons in any portion of state waters. Notice of any opening, delaying or closing of a season by the secretary will be made by public notice at least 72 hours prior to such action.

Chad J. Courville  
Chairman

1705#019

# Rules

## RULE

### Board of Trustees of the District Attorneys' Retirement System

District Attorneys' Retirement System  
(LAC 58:XXI.103, 105, 107, 701, and 901)

The Board of Trustees of the District Attorneys' Retirement System (DARS) has amended LAC 58:XXI.Chapter 9 as interpretation of the provisions of the District Attorneys' Retirement System, as authorized by R.S. 11:1658 and 1659. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purposes of this Rule are to provide improved funding for the District Attorneys' Retirement System, to permit the repayment of benefits that have been distributed, and to comply with certain requirements of the *Internal Revenue Code*.

#### Title 58

#### RETIREMENT

#### Part XXI. District Attorneys' Retirement System

#### Chapter 1. General Provisions

#### §103. Actuarial Equivalent

A. Effective July 1, 2013 and continuing through June 30, 2015, as provided by R.S. 11:1588(A) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.5 percent per annum.

a. For single life option factors, mortality rates shall be based on the RP-2000 combined healthy tables unisexed based on 70 percent males and 30 percent females. For joint life option factors, mortality rates shall be based on the RP-2000 combined healthy tables unisexed based on 95 percent males and 5 percent females for retirees and 5 percent males and 95 percent females for beneficiaries

b. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 disabled lives tables unisexed based on 70 percent males and 30 percent females.

B. Effective July 1, 2015 and continuing through June 30, 2016, as provided by R.S. 11:1588(A) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.25 percent per annum.

a. For single life option factors, mortality rates shall be based on the RP-2000 combined healthy tables unisexed based on 70 percent males and 30 percent females. For joint life option factors, mortality rates shall be based on the RP-2000 combined healthy tables unisexed based on 95 percent males and 5 percent females for retirees and 5 percent males and 95 percent females for beneficiaries.

b. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 disabled lives

tables unisexed based on 70 percent males and 30 percent females.

C. Effective July 1, 2016 and continuing so long as not amended by resolution of the board, as provided by R.S. 11:1588(A) actuarial equivalent shall be defined by using the following assumptions.

1. Interest shall be compounded annually at the rate of 7.00 percent per annum.

a. For single life option factors, mortality rates shall be based on the RP-2000 combined healthy table with white collar adjustment with no setback for males and with 1 year setback for females and unisexed based on 80 percent males and 20 percent females. For joint life option factors, mortality rates shall be based on the RP-2000 combined healthy tables with white color adjustment with no setback for males and with a 1 year setback for females and unisexed based on 95 percent males and 5 percent females for retirees and 5 percent males and 95 percent females for beneficiaries.

b. For disability award lifetime equivalences, mortality rates shall be based on the RP-2000 disabled lives tables set back 5 years for males and set back 3 years for females unisexed based on 80 percent males and 20 percent females.

D. After July 1, 2016, the interest and mortality rate assumptions shall be as adopted by resolution of the board. The board shall consult with its actuary with regard to the proper rates to use.

E. For purposes of comparing the benefits of the forms of distribution with the maximum limitation on benefits, the applicable mortality tables described in IRC §417(e)(3)(B) shall be used.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1658-1659 and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2313 (November 2015), amended LR 43:877 (May 2017).

#### §105. Accumulated Contributions, Rollovers

A. - D.5. ...

E. Payment for Age Discrimination Service Credit

1 - 2. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A), R.S. 11:1617(B), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2313 (November 2015), amended LR 43:877 (May 2017).

#### §107. Repayment of Withdrawn Accumulated Contributions

A. Withdrawn Accumulated Contributions May be Repaid

1. Repayment Permitted

a. Member contributions that have been refunded to the member upon his termination of employment before qualifying for retirement benefits under the DARS may be repaid to DARS by the member upon his reemployment by a participating employer and his participation in and

contributing to DARS for a minimum of six months, provided such repayment is made prior to any application by the member for retirement.

2. Amount of Repayment

a. Repayment of a refund shall include the amount refunded plus interest thereon. The trustees shall determine the interest rate applicable to each period during which the accumulated contributions have been refunded and ending with the date of repayment. Such interest shall be determined on a consistent basis and shall apply to all members. Installments shall not be permitted. If funds used for repayment originate from multiple sources, all funds due must be received by DARS within 45 days of each other. Service credit shall not be restored until full payment has been received.

3. Sources of Payment

a. The member shall be responsible for certifying and demonstrating the amount of any refund from a source for which taxes have been paid by the member. Amounts received in a rollover, whether a direct rollover or 60-day rollover will be presumed not to have been taxed; however, the trustees or their delegates may offer the member the opportunity to demonstrate that part or all of the rollover is of after-tax funds, subject to any administrative requirements that the trustees regard as reasonable to demonstrate proof of the after-tax status of the funds. DARS will maintain records of after-tax amounts held for the benefit of the member.

4. Distribution of Refund Amounts

a. Any distribution of amounts repaid by the member that includes after-tax payments shall include the allocable portion of the after-tax payment. Determination of the allocable portion of each payment shall be in accordance with federal income tax rules and the policies and procedures of the trustees.

B. Service Credited Upon Repayment

1. Service Credited

a. All creditable service forfeited upon refund shall be restored upon full repayment of the refund plus interest in accordance with Subsection A above. The accrual rate of such service shall be the applicable rate in place at the time the service was initially earned.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A) and R.S. 11:1617(B).

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 43:877 (May 2017).

**Chapter 7. Required Minimum Distributions**

**§701. Required Beginning Date**

A. - B.2.e. ...

C. Applicable Accounts

1. This Subsection shall apply with respect to any account that is part of the system that is considered to be a defined contribution account within the system. This Subsection shall apply to the refund of accumulated contributions as provided in R.S. 11:1635 (hereinafter referred to as "applicable account").

2. - 6.b. ...

D. Deferred Retirement Option Plan (DROP) and Back-Deferred Retirement Option Plan (Back-DROP)

1. Required Beginning Date

a. The DROP account and/or Back-DROP account of a member shall be distributed, or commence to be distributed, on or before the member's required beginning date.

2. Minimum Required Distribution (MRD)

a. Unless a greater amount is elected by the member for a calendar year, the amount to be distributed as the minimum required distribution shall be determined by annuitizing the DROP account and/or back-DROP account of the member over the period equal to the number of years beginning with the first distribution calendar year and continuing for the period equal to the number of whole years of the member's life expectancy measured from the first distribution calendar year as determined under the uniform lifetime table in 26 C.F.R. §1.401(a)(9)-9. The board shall have authority to designate the interest rate for purposes of calculating the periodic payments. Notwithstanding the foregoing, all payments shall be made from the DROP account or back-DROP account of the member, and no amount shall be paid that is not accrued for the member's benefit under such account.

3. Right to Accelerate Payments

a. The member shall have the right to accelerate payments and to receive a distribution of the entire DROP account or back-DROP account in a lump sum.

4. Rollover

a. If a distribution is made that includes the minimum required distribution for a calendar year, then that minimum required distribution may not be rolled over; however, any amount distributed in excess of the minimum required distribution for any calendar year shall be an eligible rollover distribution and may be rolled over into an eligible retirement plan.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A), R.S. 11:1635, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2316 (November 2015), amended LR 43:878 (May 2017).

**Chapter 9. Funding of Retirement System**

**§901. Employer Contributions**

A. In accordance with R.S. 11:1658, the Board of Trustees directs that the direct employer contribution rate for January 1, 2017 through June 30, 2017 shall be 0 percent.

B. Any excess funds resulting from application of Subsection A of this Section shall be combined with any contribution surplus or offset by any contribution shortfall, and the resulting balance, if greater than zero, shall be accumulated in the funding deposit account pursuant to R.S. 11:1659.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A), R.S. 11:1658-1659, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 43:878 (May 2017).

E. Pete Adams  
President

1705#018

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 112—Louisiana Connectors for English Language Learners (LAC 28:LXXXV.Chapters 1-7)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 112—Louisiana Connectors for English Language Learners*: §101, Introduction; §301, Receptive Modalities; §303, Productive Modalities; and §305, Interactive Modalities.

Act 329 of the 2015 Regular Legislative Session provided for the review and development of state content standards for English language arts (ELA) and mathematics. As a requirement and final step to the Louisiana student standards for English language arts and mathematics, which were enacted in the summer of 2016, the Louisiana Department of Education worked in partnership with Louisiana English language learner experts to establish a set of standards alignments. These alignments ensure that the standards are fully aligned to the Louisiana student standards. This alignment is also required by federal law in the Elementary and Secondary Education Act, known as the Every Student Succeeds Act.

#### Title 28 EDUCATION

#### Part LXXXV. Bulletin 112—Louisiana Connectors for English Language Learners

#### Chapter 1. Introduction

#### §101. Introduction

A. The Louisiana connectors for English language learners, developed for K, 1, 2-3, 4-5, 6-8, and 9-12, highlight and amplify the critical language, knowledge about language, and skills using language that are in college-and-career-ready standards and that are necessary for English language learners (ELL) to be successful in schools. The 10 connectors for English language learners highlight a strategic set of language functions (what students do with language to accomplish content-specific tasks) and language forms (vocabulary, grammar, and discourse specific to a particular content area or discipline) which are needed by English language learners as they develop competence in the practices associated with English language arts (ELA) and literacy, mathematics, and science. The five English language proficiency levels for each of the connectors address the question, “What might an English language learner’s language use look like at each English language proficiency level as he or she progresses toward independent participation in grade-appropriate activities?” The connectors might also be framed in relation to narrower domains of listening, speaking, reading, and writing and also in relation to broader receptive, productive, and interactive modalities. The interactive modalities category allows for emphasis on the need for English language learners to meaningfully engage with their peers during content area instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:879 (May 2017).

#### §103. Listening Benchmarks and Proficiency Levels

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:768 (April 2004), repealed LR 43:879 (May 2017).

#### Chapter 3. Modalities

#### §301. Receptive Modalities

A. Receptive modalities refer to the learner as a reader or listener/viewer working with “text” whose author or deliverer is not present or accessible. It presumes that the interactions with authentic written or oral documents where language input is meaningful and content-laden. The learner brings background knowledge, experience, and appropriate interpretive strategies to the task to promote understanding of language and content in order to develop a personal reaction.

B. ELL connectors one (listening) and eight (reading) are the two domains of the receptive modality.

1. ELL Connector One. Construct meaning from oral presentations through grade-appropriate listening.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to use a very limited set of strategies to identify a few key words from read-alouds and oral presentations of information or stories.

ii. Grade One. By the end of first grade, English language learners should be able to use, with prompting and support (including context and visual aids), a very limited set of strategies to identify a few key words from read-alouds, picture books, and oral presentations.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to use a very limited set of strategies to identify a few key words and phrases from read-alouds, simple written texts, and oral presentations.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to use a very limited set of strategies to identify a few key words and phrases in oral communications and simple written texts.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to use a very limited set of strategies to identify a few key words and phrases in oral communications and simple written texts.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to use a very limited set of strategies to identify a few key words and phrases in oral communications and simple oral and written texts.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to use an emerging set of strategies to identify some key words and phrases from read-alouds, simple written texts, and oral presentations.

ii. Grade One. By the end of first grade, English language learners should be able to use an emerging set of strategies to identify key words and phrases from read-alouds, simple written texts, and oral presentations.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to use an emerging set of strategies to identify some key words and phrases from read-alouds, simple written texts, and oral presentations; and identify the main topic or message/lesson from read-alouds, simple written texts, and oral presentations.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to use an emerging set of strategies to identify the main topic from read-alouds, simple written texts, and oral presentations; and retell a few key details from read-alouds, simple written texts, and oral presentations.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to use an emerging set of strategies to identify the main topic in oral communications and simple written texts; and retell a few key details.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to use an emerging set of strategies to identify the main topic; and retell a few key details in oral presentations and simple oral and written texts.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), use a developing set of strategies to identify main topics from read-alouds and oral presentations; and ask and answer questions about key details from read-alouds, simple written texts, and oral presentations.

ii. Grade One. By the end of first grade, English language learners should be able to use a developing set of strategies to identify main topics from read-alouds, simple written texts, and oral presentations; answer questions about key details from read-alouds, simple written texts, and oral presentations, and retell some key details from read-alouds, simple written texts, and oral presentations.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to use a developing set of strategies to identify the main topic or message from read-alouds, simple written texts, and oral presentations; answer questions from read-alouds, simple written texts, and oral presentations; and retell some key details from read-alouds, simple written texts, and oral presentations.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to use a developing set of strategies to determine the main idea or theme, and retell a few key details from read-alouds, simple written texts, and oral presentations; and retell familiar stories.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to use a developing set of strategies to determine the central idea or theme in simple oral presentations or written texts and explain how the theme is supported by specific details.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to use a developing set of strategies to determine the central idea or theme in oral presentations

and written texts; explain how the theme is developed by specific details in the texts; and summarize part of the text.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), use an increasing range of strategies to identify main topics from read-alouds, picture books, and oral presentations; answer questions about key details or parts of stories from read-alouds, picture books, and oral presentations; and retell events from read-alouds, picture books, and oral presentations.

ii. Grade One. By the end of first grade, English language learners should be able to use an increasing range of strategies to identify main topics from read-alouds, written texts, and oral presentations; ask and answer questions about an increasing number of key details from read-alouds, written texts, and oral presentations; and retell familiar stories or episodes of stories from read-alouds, written texts, and oral presentations.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to use an increasing range of strategies to determine the main idea or message from read-alouds, written texts, and oral presentations; identify or answer questions about some key details that support the main idea/message from read-alouds, written texts, and oral presentations; and retell a variety of stories.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to use an increasing range of strategies to determine the main idea or theme; explain how some details support the main idea or theme from read-alouds, written texts, and oral presentations; and summarize part of a text.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to use an increasing range of strategies to determine two or more central ideas or themes in oral presentations or written texts; explain how the central ideas/themes are supported by specific textual details; and summarize a simple text.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to use an increasing range of strategies to determine two central ideas or themes in oral presentations and written texts; analyze the development of the themes/ideas; cite specific details and evidence from the texts to support the analysis; and summarize a simple text.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), use a wide range of strategies to identify main topics from read-alouds, picture books, and oral presentations; answer questions about key details; and retell familiar stories.

ii. Grade One. By the end of first grade, English language learners should be able to use a wide range of strategies to identify main topics from read-alouds, written texts, and oral presentations; ask and answer questions about key details from read-alouds, written texts, and oral presentations; and retell stories, including key details from read-alouds, written texts, and oral presentations.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to use a wide range of strategies to determine the main idea or message from read-alouds, written texts, and oral communications; tell how key details support the main idea from read-alouds, written texts, and oral communications; and retell a variety of stories.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to use a wide range of strategies to determine two or more main ideas or themes from read-alouds, written texts, and oral presentations; explain how key details support the main ideas or themes from read-alouds, written texts, and oral presentations; and summarize a text.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to use a wide range of strategies to determine central ideas or themes in oral presentations or written texts; explain how the central ideas/themes are developed by supporting ideas or evidence; and summarize a text.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to use a wide range of strategies to determine central ideas or themes in presentations and written texts; analyze the development of the themes/ideas; cite specific details and evidence from the texts to support the analysis; and summarize a text.

2. ELL Connector Eight. An ELL can determine the meaning of words and phrases in oral presentation and literacy and informational text.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), recognize the meaning of a few frequently occurring words in simple oral presentations and read-alouds about familiar topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support (including context and visual aids), recognize the meaning of a few frequently occurring words and phrases in simple oral presentations and read-alouds about familiar topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, relying heavily on visual aids, context, and knowledge of morphology in his or her native language, recognize the meaning of a few frequently occurring words, simple phrases, and formulaic expressions, in simple oral discourse, read-alouds, and written texts about familiar topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, relying heavily on visual aids, context, and knowledge of morphology in his or her native language recognize the meaning of a few frequently occurring words, phrases, and formulaic expressions in simple discourse, read-alouds, and written texts about topics, experiences, or events.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, relying heavily on visual aids, context, and knowledge of morphology in his or her native language,

recognize the meaning of a few frequently occurring words and simple phrases in texts about familiar.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, relying heavily on visual aids, context, and knowledge of morphology in his or her native language, recognize the meaning of a few frequently occurring words, simple phrases, and formulaic expressions.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), recognize the meaning of some frequently occurring words and phrases in simple oral presentations and read-alouds about familiar topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support (including context and visual aids), answer and sometimes ask simple questions to help determine the meaning of frequently occurring words and phrases in simple oral presentations and read-alouds about familiar topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, using context, visual aids, and knowledge of morphology in his or her native language, ask and answer questions about the meaning of frequently occurring words, phrases, and expressions in simple oral discourse, read-alouds, and written texts about familiar topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, using context, some visual aids, reference materials, and knowledge of morphology in his or her native language, determine the meaning of some frequently occurring words, phrases, and expressions in simple discourse, read-alouds, and written texts about familiar topics, experiences, or events.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, using context, visual aids, reference materials, and knowledge of morphology in his or her native language determine the meaning of frequently occurring words, phrases, and expressions in texts about familiar topics, experiences or events.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, using context, visual aids, reference materials, and knowledge of morphology in his or her native language, determine the meaning of frequently occurring words, phrases, and expressions in texts about familiar topics, experiences, or events.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), answer questions to help determine the meaning of some words and phrases in simple oral presentations and read-alouds about familiar topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, using sentence-level context and visual aids, answer and sometimes ask questions to help determine the meaning of some less frequently

occurring words and phrases in oral presentations, read-alouds, and simple texts about familiar topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, using context, some visual aids, reference materials, and a developing knowledge of English morphology, determine the meaning of less-frequently occurring words and phrases, content-specific words, and some idiomatic expressions in oral discourse, read-alouds, and written texts about familiar topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, using context, visual aids, reference materials, and a developing knowledge of English morphology, determine the meaning of frequently occurring words and phrases in texts about familiar topics, experiences, or events; and determine the meanings of some idiomatic expressions in texts about familiar topics, experiences, or events.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, using context, visual aids, reference materials, and a developing knowledge of English morphology (e.g. affixes and root words), determine the meaning of general academic and content-specific words and phrases and frequently occurring expressions in texts about familiar topics, experiences, or events.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, using context, some visual aids, reference materials, and a developing knowledge of English morphology (e.g., affixes and root words), determine the meaning of general academic and content-specific words and phrases and frequently occurring expressions in texts about familiar topics, experiences, or events.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), answer and sometimes ask questions about the meaning of words and phrases in simple oral presentation and read-alouds about a variety of topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, using sentence context, visual aids, and some knowledge of frequently occurring root words and their inflectional forms, answer and ask questions to help determine the meaning of less common words, phrases, and simple idiomatic expressions in oral presentations and written texts about a variety of topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, using context, some visual aids, reference materials, and an increasing knowledge of morphology (root words, some prefixes) determine the meaning of less-frequently occurring words and phrases and some idiomatic expressions in oral discourse, read-alouds, and written texts about a variety of topics, experiences, or events, and, at Grade 3, some general academic and content-specific vocabulary.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, using context, reference materials, and an increasing

knowledge of English morphology determine the meaning of general academic and content-specific words and phrases in texts about a variety of topics, experiences, or events; and determine the meaning of a growing number of idiomatic expressions in texts about a variety of topics, experiences, or events.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, using context, reference materials, and an increasing knowledge of English morphology, determine the meaning of general academic and content-specific words and phrases, and a growing number of idiomatic expressions in texts about a variety of topics, experiences, or events.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, using context, increasingly complex visual aids, reference materials, and an increasing knowledge of English morphology, determine the meaning of general academic and content-specific words and phrases, figurative and connotative language, and a growing number of idiomatic expressions in texts about a variety of topics, experiences, or events.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support (including context and visual aids), ask and answer questions about the meaning of words and phrases in simple oral presentations and read-alouds about a variety of topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, using context, some visual aids, and knowledge of morphology (e.g., simple inflectional endings such as -ed, -ing, and some common prefixes), answer and ask questions to help determine or clarify the meaning of words, phrases, and idiomatic expressions in oral presentations and written texts about a variety of topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, using context, reference materials, and morphology (e.g., root words, simple inflectional endings such as -ed, -ing, and some common prefixes), determine the meaning of less-frequently occurring words, phrases, and some idiomatic expressions in oral presentations and written texts about a variety of topics, experiences, or events; and, at grade 3, some general academic and content-specific vocabulary.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, using context, reference materials, and knowledge of English morphology, determine the meaning of general academic and content-specific words and phrases in texts about a variety of topics, experiences, or events; and determine the meaning of figurative language (e.g., metaphors, similes, adages, and proverbs) in topics, experiences, or events.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, using context, reference materials, and knowledge of English morphology, determine the meanings of general academic and content-specific words and phrases, idiomatic expressions, and figurative and connotative language (e.g., metaphor, personification) in texts about a variety of topics, experiences, or events.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, using context, complex visual aids, reference materials, and consistent knowledge of English morphology, determine the meaning of general academic and content-specific words and phrases, figurative and connotative language (e.g., irony, hyperbole), and idiomatic expressions in texts about a variety of topics, experiences, or events.

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### **§303. Productive Modalities**

A. Productive modalities place the learner as speaker and writer for a “distant” audience, one with whom interaction is not possible or limited. The communication is set for a specified audience, has purpose, and generally abides by rules of genre or style. It is a planned or formalized speech act or written document, and the learner has an opportunity to draft, get feedback, and revise, before publication or broadcast.

B. ELL connectors three, four, and seven are the domains of the productive (speaking and writing) modality.

1. ELL Connector Three. Construct meaning from oral presentations through grade-appropriate listening.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to communicate simple information or feelings about familiar topics or experiences.

ii. Grade One. By the end of first grade, English language learners should be able to communicate simple information or feelings about familiar topics or experiences.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to communicate simple information about familiar texts, topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to communicate simple information about familiar texts, topics, events, or objects in the environment.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, communicate simple information about familiar texts, topics, and experiences.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, with support (including modeled sentences), communicate information about familiar texts, topics, and experiences.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to communicate simple information or feelings about familiar topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to communicate simple messages about familiar topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to deliver simple oral presentations about familiar texts, topics,

experiences, or events; and compose written texts about familiar texts, topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to deliver short oral presentations about familiar texts, topics, and experiences; compose written texts about familiar texts, topics, and experiences.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to deliver short oral presentations about familiar texts, topics, experiences, or events; and compose written narratives or informational texts about familiar texts, topics, experiences, or events.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, with support (including modeled sentences), deliver short oral presentations about familiar texts, topics, experiences, or events; and compose written narratives or informational texts about familiar texts, topics, experiences, or events.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to communicate information or feelings about familiar topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to deliver short simple oral presentations about familiar topics, stories, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to deliver short oral presentations about familiar texts, topics, experiences, or events; compose written narratives about familiar texts, topics, experiences, or events; and compose informational texts about familiar texts, topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, including a few details, deliver short oral presentations about familiar texts, topics, and experiences; and compose written narratives or informational texts about familiar texts, topics, and experiences.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to deliver short oral presentations about familiar texts, topics, and experiences; compose written narratives or informational texts about familiar texts, topics, and experiences; and deliver texts with some details about familiar texts, topics, and experiences.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to, with support (including modeled sentences), deliver short oral presentations about familiar texts, topics, or events; compose written informational texts about familiar texts, topics, or events; and develop the topic with a few details.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to tell or dictate simple messages about a variety of topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, using simple sentences and drawings or illustrations, deliver short simple oral presentations about a variety of texts, topics, experiences, or events; and compose written texts about a variety of texts, topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to deliver short oral presentations about a variety of texts, topics, experiences, or events; compose written narratives about a variety of texts, topics, experiences, or events; and compose informational texts about a variety of texts, topics, experiences, or events.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, including some details, deliver short oral presentations about a variety of texts, topics, and experiences; and compose written narratives or informational texts about a variety of texts, topics, and experiences.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to deliver oral presentations about a variety of texts, topics, and experiences; compose written narratives or informational texts about a variety of texts, topics, or experiences; and develop texts with some specific details about a variety of texts, topics, and experiences.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to deliver oral presentations about a variety of texts, topics, or events; compose written informational texts about a variety of texts, topics, or events; develop the topic with some relevant details, concepts, examples, and information; and integrate graphics or multimedia when useful.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to make simple oral presentations about a variety of topics, experiences, or events; and compose short written texts about a variety of topics, experiences, or events.

ii. Grade One. By the end of first grade, English language learners should be able to, including a few descriptive details, deliver oral presentations about a variety of texts, topics, experiences, or events; and compose written texts.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with some details, deliver oral presentations about a variety of texts, topics, experiences, or events; compose written narratives about a variety of texts, topics, experiences, or events; and compose informational texts.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, including details and examples to develop a topic, deliver oral presentations about a variety of texts, topics, and experiences; and compose written narrative or informational texts.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to deliver oral presentations about a variety of texts, topics, and experiences; compose written narratives or

informational texts about a variety of texts, topics, and experiences; and develop texts with relevant details, ideas, or information about a variety of texts, topics, or experiences.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to recount a complex and detailed sequence of events or steps in a process, with an effective sequential or chronological order; introduce and effectively develop an informational topic with fact, details, and evidence; use complex and varied transitions to link the major sections of text and speech and to clarify relationships among events and ideas; and provide a concluding section or statement.

2. ELL Connector Four. Construct grade-appropriate complex oral and written claims and support them with reasoning and evidence.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to express a feeling or opinion about a familiar topic showing limited control.

ii. Grade One. By the end of first grade, English language learners should be able to express a preference or opinion about familiar topics or experiences.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to express an opinion about a familiar topic.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to express an opinion about a familiar topic.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to express an opinion about a familiar topic.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to express an opinion about a familiar topic.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to express an opinion or preference about a familiar topic showing emerging control.

ii. Grade One. By the end of first grade, English language learners should be able to express an opinion about familiar topics, experiences, or events.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to express an opinion about a familiar topic or story.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to construct a simple claim about a familiar topic; and give a reason to support the claim.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to construct a simple claim about a familiar topic; and give a reason to support the claim.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to construct a claim about familiar topics; introduce the topic; give a reason to support the claim; and provide a concluding statement.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to express an opinion or preference about a familiar topic showing developing control.

ii. Grade One. By the end of first grade, English language learners should be able to express an opinion about familiar topics, experiences, or events; and give a reason for the opinion.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to express an opinion about a familiar topic or story; and give one or more reasons for the opinion.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to construct a claim about familiar topics; introduce the topic; and provide a few reasons or facts to support the claim.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to construct a claim about a familiar topic; introduce the topic; provide several supporting reasons or facts in a logical order; and provide a concluding statement.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to construct a claim about familiar topics; introduce the topic; provide sufficient reasons or facts to support the claim; and provide a concluding statement.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to express an opinion or preference about a variety of topics or stories showing increasing control.

ii. Grade One. By the end of first grade, English language learners should be able to express opinions about a variety of texts, topics, experiences, and events; and give a reason for the opinion.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to introduce a topic about a variety of topics; express opinions about a variety of topics; and give several reasons for the opinions.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to construct a claim about a variety of topics; introduce the topic; provide several reasons or facts to support the claim; and provide a concluding statement.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to construct a claim about a variety of topics; introduce the topic; provide sufficient reasons or facts to support the claim; and provide a concluding statement.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to construct a claim about a variety of topics; introduce the topic; provide logically ordered reasons or facts that effectively support the claim; and provide a concluding statement.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to express an opinion or preference about a variety of topics or stories showing increasing control.

ii. Grade One. By the end of first grade, English language learners should be able to express opinions about a variety of texts, topics, experiences, or events; introduce the topic; give a reason for the opinion; and provide a sense of closure.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to introduce a topic about a variety of topics; express opinions about a variety of topics; give several reasons for the opinions; and provide a concluding statement.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to construct a claim about a variety of topics; introduce the topic; provide logically ordered reasons or facts to support the claim; and provide a concluding statement.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to construct a claim about a variety of topics; introduce the topic; provide compelling and logically ordered reasons or facts that effectively support the claim; and provide a concluding statement.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to construct a substantive claim about a variety of topics; introduce the claim; distinguish it from a counter-claim; provide logically ordered and relevant reasons and evidence to support the claim and to refute the counter-claim; and provide a conclusion that summarizes the argument presented.

3. ELL Connector Seven. Adapt language choices to purpose, task, and audience when speaking and writing.

a. Level 1—Beginning

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. Standard introduced at level 3—upper intermediate.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to recognize the meaning of some words learned through conversations, reading, and being read to.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recognize the meaning of some words learned through conversations, reading, and being read to.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to recognize the meaning of some words learned through conversations, reading, and being read to.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to recognize the meaning of some words learned through conversations, reading, and being read to.

b. Level 2—Early Intermediate

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. Standard introduced at level 3—upper intermediate.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to show increasing awareness of differences between informal “playground speech” and language appropriate to the

classroom; and use some words learned through conversations, reading, and being read to.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, with emerging control adapt language choices to different social and academic contents; and use some words through conversations, reading, and being read to.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, with emerging control, adapt language choices according to task and audience; begin to use frequently occurring general academic and content-specific words and phrases in conversations and discussions.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to adapt language choices to task and audience with emerging control; use come frequently occurring general academic and content-specific words in conversations and discussion.

c. Level 3—Intermediate

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. By the end of first grade, English language learners should be able to show a developing awareness between appropriate language for the playground and language for the classroom.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to compare examples of the formal and informal use of English at grade 3, use an increasing number of general academic and content-specific words in conversations and discussions.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, with developing control, adapt language choices according to purpose, task, and audience in conversations, discussions, and short written texts; and use an increasing number of general academic and content-specific words, phrases, and expressions in conversation, discussions, and shorten written text.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, with developing ease, adapt language choices and style according to purpose, task, and audience; use an increasing number of general academic and content-specific words and phrases in speech and short written texts; and show developing control of style and tone in oral or written text.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to adapt language choices and style according to purpose, task, and audience with developing ease; use an increasing number of general academic and content-specific words and expressions in speech and written text; and show developing control of style and tone in oral or written text.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to show a developing awareness of the difference between appropriate language for the playground and language for the classroom.

ii. Grade One. By the end of first grade, English language learners should be able to show awareness of differences between informal “playground speech” and language appropriate to the classroom; and use some words learned through conversations, reading, and being read to.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to adapt language choices, as appropriate, to formal and informal contexts; and at grade 3, use a wider range of general academic and content-specific words in conversations and discussions.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to, with increasing ease, adapt language choices and style (includes register) according to purpose, task, and audience in speech and writing; and use a wider range of general academic and content-specific words and phrases in speech and writing.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, with developing ease, adapt language choices and style according to purpose, task, and audience; use a wider range of general academic and content-specific academic words and phrases; and maintain consistency to style and tone throughout most of oral or written text.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to adapt language choices and style according to purpose, task, and audience; use a wider range of complex general academic and content-specific words and phrases; and adapt and maintain a formal style in speech and writing as appropriate.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to show awareness of differences between informal (“playground speech”) and language appropriate to the classroom; and cite some words learned through conversations, reading, and being read to.

ii. Grade One. By the end of first grade, English language learners should be able to shift appropriately between informal “playground speech” and language appropriate to the classroom most of the time; and use words learned through conversations, reading, and being read to.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to adapt language choices, as appropriate, to formal and informal contexts; and at grade 3, use a wide variety of general and content-specific academic words and phrases in conversations or in short written texts.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to adapt language choices and style according to purpose, task, and audience in speech in speech and writing; and use a wide variety of general academic and content-specific words and phrases in speech and writing.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to, with ease, adapt language choices and style according to purpose, task, and audience; use a wide variety of complex general academic and content-specific academic words to precisely express ideas; and maintain an

appropriate and consistent style and tone throughout an oral or written text.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to adapt language choices and style according to purpose, task, and audience with ease; use a wide variety of complex general academic and content-specific words and phrases; and employ both formal and more informal styles effectively as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:880 (May 2017).

### §305. Interactive Modalities

A. Interactive modalities refer to the learner as a speaker/listener and reader/writer. It requires two-way interactive communication where negotiation of meaning may be observed. The exchange will provide evidence of awareness of the socio-cultural aspects of communication as language proficiency develops.

B. ELL connectors two, five, and six are the domains of the interactive (listening, speaking, reading and writing) modality.

1. ELL Connector Two. Participate in grade appropriate oral and written exchanges of information, ideas, and analyses, responding to peer, audience, or reader comments and questions.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to listen with limited participation in short conversations; and respond to simple yes/no and some *wh*- questions about familiar topics.

ii. Grade One. By the end of first grade, English language learners should be able to listen to short conversations; and respond to simple yes/no and some WH questions about familiar topics.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to listen to and occasionally participate in short conversations; and respond to simple yes/no and some *wh*- questions about familiar topics.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to participate in short conversations; participate in short written exchanges; actively listen to others; and respond to simple questions and some *wh*- questions about familiar topics.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to participate in short conversational and written exchanges on familiar topics; present simple information; and respond to simple questions and some *wh*- questions.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to participate in short conversational and written exchanges on familiar topics; present information; and respond to simple yes/no questions and some *wh*- questions.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to participate in short conversations; and respond to simple yes/no and *wh*- questions about familiar topics.

ii. Grade One. By the end of first grade, English language learners should be able to participate in short conversations; take turns; and respond to simple yes/no and *wh*- questions about familiar topics.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to participate in short conversations, discussions, and written exchanges; take turns; and respond to simple yes/no and *wh*- questions about familiar topics.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to participate in short conversations; participate in short written exchanges; actively listen to others; and respond to simple questions and some *wh*- questions.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to participate in short conversational and written exchanges on familiar topics and texts; present information and ideas; respond to simple questions and *wh*- questions.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to participate in short conversational and written exchanges on familiar topics and texts; present information and ideas; and respond to simple questions and *wh*- questions.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to participate in short conversations; follow some rules for discussion; and respond to simple yes/no and *wh*- questions about familiar topics.

ii. Grade One. By the end of first grade, English language learners should be able to participate in short discussions, conversations, and short written exchanges; follow rules for discussion; and ask and answer simple questions about familiar topics.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to participate in short discussions and written exchanges; follow the rules for discussion; ask questions to gain information or clarify understanding; respond to the comments of others; and contribute his or her own comments about familiar topics and texts.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to participate in short conversations and discussions; participate in short written exchanges; respond to others' comments; add some comments of his or her own; and ask and answer questions about familiar topics and texts.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to participate in conversations, discussions, and written exchanges on familiar topics and texts; build on the ideas of others; express his or her own ideas; ask and answer relevant questions; and add relevant information.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to participate in conversations, discussions, and written exchanges on familiar topics, texts, and issues; build on the ideas of others; express his or her own ideas; ask and answer relevant questions; add relevant

information and evidence; and restate some of the key ideas expressed.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to participate in conversations and discussions; ask and answer simple questions; and follow increasing number of rules for discussion about a variety of topics.

ii. Grade One. By the end of first grade, English language learners should be able to participate in discussions, conversations, and written exchanges; follow rules for discussion; ask and answer questions; respond to the comments of others; and make comments of his or her own about a variety of topics and texts.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to participate in discussions, conversations, and written exchanges; follow the rules for discussion; ask and answer questions; build on the ideas of others; and contribute his or her own ideas about a variety of topics and texts.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to participate in conversations and discussions; participate in written exchanges; build on the ideas of others; express his or her own ideas; ask and answer relevant questions; and add relevant information and evidence about a variety of topics and texts.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to participate in conversations, discussions, and written exchanges on a variety of topics, texts, and issues; build on the ideas of others; express his or her own ideas; ask and answer relevant questions; add relevant information and evidence; and paraphrase the key ideas expressed.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to participate in conversations, discussions, and written exchanges on a range of topics, texts, and issues; build on the ideas of others; express his or her own ideas clearly; support points with specific and relevant evidence; ask and answer questions to clarify ideas and conclusions; and summarize the key points expressed.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to participate in conversations and discussions; ask and answer questions; and follow rules for discussion about a variety of topics.

ii. Grade One. By the end of first grade, English language learners should be able to participate in extended discussions, conversations, and written exchanges; follow rules for discussion; ask and answer questions; build on the comments of others; and contribute his or her own comments about a variety of topics and texts.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to participate in extended discussions, conversations, and written exchanges; follow the rules for discussion; ask and answer questions; build on the ideas of others; and express his or her own ideas about a variety of topics and texts.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to

participate in extended conversations and discussions; participate in extended written exchanges; build on the ideas of others; express his or her own ideas clearly; pose and respond to relevant questions; add relevant and detailed information using evidence; and summarize the key ideas expressed about a variety of topics and texts.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to participate in extended conversations, discussions, and written exchanges about a variety of topics, texts, and issues build on the ideas of others; express his or her own ideas clearly; pose and respond to relevant questions; add relevant and specific evidence; summarize the key ideas; and reflect on the key ideas expressed.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to participate in extended conversations, discussions, and written exchanges on a range of substantive topics, texts, and issues; build on the ideas of others; express his or her own ideas clearly and persuasively; refer to specific and relevant evidence from texts or research to support his or her ideas; ask and answer questions that probe reasoning and claims; and summarize the key points and evidence discussed.

2. ELL Connector Five. Conduct research and evaluate and communicate findings to answer or solve problems.

a. Level 1—Beginning

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support from adults, recall information from experience or from a provided source.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support from adults, participate in shared research projects; gather information; and label information from provided sources showing limited control.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, carry out short individual or shared research projects; and gather information from provided sources; and label information.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recall information from experience; gather information from a few provided sources; and label some key information.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to gather information from a few provided sources; and label collected information.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to gather information from a few provided print and digital sources; and label collected information, experiences, or events.

b. Level 2—Early Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support from adults, recall information from experience or use information from a provided source to answer a question.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support from adults, participate in shared research projects; gather information; and summarize some key information from provided sources showing emerging control.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, carry out short individual or shared research projects; recall information from experience; gather information from provided sources; and record some information/observations in simple notes.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recall information from experience; gather information from provided sources; and record some information.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to gather information from provided sources; and record some data and information.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to gather information from provided print and digital sources; and summarize data and information.

c. Level 3—Intermediate

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support from adults, recall information from experience or use information from provided sources to answer a question showing developing control.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support from adults, participate in shared research projects; gather information; and summarize information from provided sources showing developing control.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, carry out short individual or shared research projects; recall information from experience; gather information from provided sources; and record information/ observations in orderly notes.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recall information from experience; gather information from print and digital sources to answer a question; and identify key information in orderly notes.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to gather information from multiple provided print and digital sources; summarize or paraphrase observations, ideas, and information, with labeled illustrations, diagrams, or other graphics, as appropriate; and cite sources.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to carry out short research projects to answer a question; gather information from multiple provided print and digital sources; evaluate the reliability of each source; paraphrase key information in a short written or oral report; include illustrations, diagrams, or other graphics; and provide a list of sources.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support from adults, recall information from experience or use information from provided sources to answer a question showing increasing control.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support from adults, participate in shared research projects; gather information; summarize information; and answer a question from provided sources showing increasingly independent control.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, carry out short individual or shared research projects; recall information from experience; gather information from multiple sources; and sort evidence into provided categories.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recall information from experience; gather information from print and digital sources to answer a question; record information in organized notes, with charts, tables, or other graphics, as appropriate; and provide a list of sources.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to gather information from multiple print and digital sources; use search terms effectively; quote or paraphrase the data and conclusions of others, using charts, diagrams, or other graphics, as appropriate; cite sources; and use a standard format for citations.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to carry out both short and more sustained research projects to answer a question; gather and synthesize information from multiple print and digital sources; use search terms effectively; evaluate the reliability of each source; integrate information into an organized oral or written report; and cite sources appropriately.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support from adults, recall information from experience or use information from provided sources to answer a question showing increasing control.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support from adults, participate in shared research projects; gather information; summarize information; and answer a question from provided sources showing independent control.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to carry out short individual or shared research projects; recall information from experience; gather information from multiple sources; and sort evidence into categories.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to recall information from experience; gather information from print and digital sources; summarize key ideas and

information in detailed and orderly notes, with graphics as appropriate; and provide a list of sources.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to gather information from multiple print and digital sources; use search terms effectively; at Grade Eight, evaluate the credibility of each source; quote or paraphrase the data and conclusions of others using charts, diagrams, or other graphics, as appropriate; cite sources; and use a standard format for citations.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to carry out both short and more sustained research projects to answer a question or solve a problem; gather and synthesize information from multiple print and digital sources; use advanced search terms effectively; evaluate the reliability of each source; analyze and integrate information into a clearly organized oral or written text; and cite sources appropriately.

3. ELL Connector Six. Analyze and critique the arguments of others orally and in writing.

a. Level 1—Beginning

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. Standard introduced at level 2—lower intermediate.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, use a few frequently occurring words and phrases to identify a point made by an author or a speaker.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to identify a point made by an author or a speaker.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to identify a point made by an author or a speaker.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to identify a point made by an author or a speaker.

b. Level 2—Early Intermediate

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. By the end of first grade, English language learners should be able to, with prompting and support, identify a reason an author or a speaker gives to support a point.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to, with prompting and support, identify a reason an author or a speaker gives to support the main point.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to identify a reason an author or speaker gives to support a main point; and agree or disagree with the author or speaker.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to identify the main argument made by an author or a

speaker; and identify one reason an author or a speaker gives to support the argument.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to identify the main argument made by an author or a speaker; and identify one reason an author or a speaker gives to support the argument.

c. Level 3—Intermediate

i. Kindergarten. Standard introduced at level 4—advanced.

ii. Grade One. By the end of first grade, English language learners should be able to identify one or two reasons an author or a speaker gives to support the main point.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to tell how one or two reasons support the main point an author or a speaker makes.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to tell how one or two reasons support the specific points an author or speaker makes or fails to make.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to explain the argument an author or a speaker makes; and distinguish between claims that are supported by reasons and evidence from those that are not.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to explain the reasons an author or a speaker gives to support a claim; and cite textual evidence to support the analysis.

d. Level 4—Early Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support, identify a reason an author or speaker gives to support a point.

ii. Grade One. By the end of first grade, English language learners should be able to identify reasons an author or a speaker gives to support the main point.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to tell how one or two reasons support the specific points an author or a speaker makes.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to describe how reasons support the specific points an author or speaker makes or fails to make.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to analyze the argument and specific claims made in texts or speech; determine whether the evidence is sufficient to support the claims; cite textual evidence to support the analysis.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to analyze the reasoning and use of rhetoric in persuasive texts or speeches, including documents of historical and literary significance; determine

whether the evidence is sufficient to support the claim; and cite textual evidence to support the analysis.

e. Level 5—Advanced

i. Kindergarten. By the end of kindergarten, English language learners should be able to, with prompting and support, identify appropriate reasons an author or speaker gives to support main points.

ii. Grade One. By the end of first grade, English language learners should be able to identify appropriate reasons an author or a speaker gives to support the main point.

iii. Grades Two and Three. By the end of second and third grade, English language learners should be able to describe how reasons support the specific points an author or a speaker makes.

iv. Grades Four and Five. By the end of fourth and fifth grade, English language learners should be able to explain how an author or speaker uses reasons and evidence to support or fail to support particular points; and, at grade 5, identify which reasons and evidence support which points.

v. Grades Six through Eight. By the end of sixth, seventh, and eighth grade, English language learners should be able to analyze and evaluate the argument and specific claims made in texts or speech/ presentations; determine whether the reasoning is sound and the evidence is relevant and sufficient to support the claims; and cite textual evidence to support the analysis.

vi. Grades Nine through Twelve. By the end of ninth, tenth, eleventh, and twelfth grade, English language learners should be able to analyze and evaluate the reasoning and use of rhetoric in persuasive texts, including documents of historical and literary significance; determine whether the evidence is sufficient to support the claim; and cite specific textual evidence to thoroughly support the analysis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:887 (May 2017).

### **Chapter 5. Standard Three**

#### **§501. General Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:770 (April 2004), repealed LR 43:891 (May 2017).

#### **§503. Reading Benchmarks and Proficiency Levels**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:770 (April 2004), repealed LR 43:891 (May 2017).

### **Chapter 7. Standard Four**

#### **§701. General Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:771 (April 2004), repealed LR 43:891 (May 2017).

#### **§703. Writing Benchmarks and Proficiency Levels**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:771 (April 2004), repealed LR 43:891 (May 2017).

Shan N. Davis  
Executive Director

1705#002

## **RULE**

### **Board of Elementary and Secondary Education**

Bulletin 127—LEAP Connect Assessment, Louisiana  
Connectors for Students with Significant Cognitive  
Disabilities (LAC 28:XI.Chapters 91-95)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 127—LEAP Connect Assessment, Louisiana Connectors for Students with Significant Cognitive Disabilities*: §9101, Introduction; §9301, Reading Literature; §9302, Reading Informational Text; §9303, Reading Foundation; §9304, Writing; §9305, Speaking and Listening; §9306, Reading Literature; §9307, Reading Informational Text; §9308, Reading Foundation; §9309, Writing; §9310, Speaking and Listening; §9311, Language; §9312, Reading Literature; §9313, Reading Informational Text; §9314, Reading Foundations; §9315, Writing; §9316, Speaking and Listening; §9317, Language; §9318, Reading Literature; §9319, Reading Informational Text; §9320, Reading Foundations; §9321, Writing; §9322, Speaking and Listening; §9323, Language; §9324, Reading Literature; §9325, Reading Informational Text; §9326, Reading Foundations; §9327, Writing; §9328, Speaking and Listening; §9329, Language; §9330, Reading Literature; §9331, Reading Informational Text; §9332, Reading Foundations; §9333, Writing; §9334, Speaking and Listening; §9335, Language; §9336, Reading Literature; §9337, Reading Informational Text; §9338, Writing; §9339, Speaking and Listening; §9340, Language; §9341, Reading Literature; §9342, Reading Informational Text; §9343, Writing; §9344, Speaking and Listening; §9345, Language; §9346, Reading Literature; §9347, Reading Informational Text; §9348, Writing; §9349, Speaking and Listening; §9350, Language; §9351, Reading Literature; §9352, Reading Informational Text; §9353, Writing; §9354, Speaking and Listening; §9355, Language; §9356, Reading Literature; §9357, Reading Informational Text; §9358, Writing; §9359, Speaking and Listening; §9360, Language; §9501, Counting and Cardinality; §9503, Operations and Algebraic Thinking; §9505, Number and Operations in Base Ten; §9507, Measurement and Data; §9509, Geometry; §9511, Counting and Cardinality; §9513, Operations and Algebraic Thinking; §9515, Number and Operations in Base Ten; §9517, Measurement and Data; §9519, Geometry; §9521, Operations and Algebraic Thinking; §9523, Number and Operations in Base Ten; §9525, Measurement and Data; §9527, Geometry; §9529, Operations and Algebraic Thinking; §9531, Number and Operations in Base Ten; §9533, Number and Operations—Fractions; §9535,

Measurement and Data; §9537, Geometry; §9539, Operations and Algebraic Thinking; §9541, Number and Operations in Base Ten; §9543, Number and Operations—Fractions; §9545, Measurement and Data; §9547, Geometry; §9549, Operations and Algebraic Thinking; §9551, Number and Operations in Base Ten; §9553, Number and Operations—Fractions; §9555, Measurement and Data; §9557, Geometry; §9559, Ratios and Proportional Relationships; §9561, The Number System; §9563, Expressions and Equations; §9565, Geometry; §9567, Statistics and Probability; §9569, Ratios and Proportional Relationships; §9571, The Number System; §9573, Expressions and Equations; §9575, Geometry; §9577, Statistics and Probability; §9579, The Number System; §9581, Expressions and Equations; §9583, Functions; §9585, Geometry; §9587, Statistics and Probability; §9589, Number and Quantity; §9591, Algebra; §9593, Statistics and Probability; §9595, Number and Quantity; §9596, Algebra; §9597, Statistics and Probability; §9598, Geometry; and §9599, Statistics and Probability.

Act 329 of the 2015 Regular Legislative Session provided for the review and development of state content standards for English language arts (ELA) and mathematics. As a requirement and final step to the Louisiana student standards for English language arts and mathematics, which were enacted in the summer of 2016, the LDE worked in partnership with Louisiana special education experts to establish a set of standards alignments. These alignments ensure that the standards, which are found in Bulletin 127, LEAP Alternate Assessment, Level 1 (LPAA) Extended Standards, are fully aligned to the Louisiana student standards. This alignment is also required by federal law in the Elementary and Secondary Education Act, known as the Every Student Succeeds Act.

**Title 28**  
**EDUCATION**

**Part XI. Accountability/Testing**

**Subpart 5. Bulletin 127—LEAP Connect Assessment,  
Louisiana Connectors for Students with Significant  
Cognitive Disabilities**

**Chapter 91. Introduction**

**§9101. Introduction**

**[Formerly LAC 28:CXLI.101]**

A. The Louisiana connect exam for students with significant cognitive disabilities aligned to the Louisiana standards in:

1. English-language arts;
2. mathematics; and
3. science.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:892 (May 2017).

**§9103. Purposes of the Extended Standards Handbook**

**[Formerly LAC 28:CXLI.103]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2340 (November 2008), repealed LR 43:892 (May 2017).

**§9105. Extended Standards Development**

**[Formerly LAC 28:CXLI.105]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2340 (November 2008), repealed LR 43:892 (May 2017).

**§9107. Conclusion**

**[Formerly LAC 28:CXLI.107]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2340 (November 2008), repealed LR 43:892 (May 2017).

**§9109. Definitions**

**[Formerly LAC 28:CXLI.109]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2340 (November 2008), repealed LR 43:892 (May 2017).

**Chapter 93. English Language Arts**

**Subchapter A. Kindergarten**

**§9301. Reading Literature**

A. With prompting and support, answer questions about key details in a story.

B. With prompting and support, retell a favorite story, including key details.

C. With prompting and support, sequence a set of events in a familiar story.

D. With prompting and support, identify the beginning, middle, and ending of a familiar story.

E. Retell a familiar story (e.g., “What was the story about?”).

F. With prompting and support, identify characters in a story.

G. With prompting and support, identify major events (e.g., problem or solution) in a story.

H. With prompting and support, show how characters interacted in a story.

I. With prompting and support, identify a setting in a story.

J. Ask questions about unknown words in a text.

K. Answer questions about unknown words in a text.

L. Answer questions about reading such as “Why do we read? What do we read?”

M. Recognize common types of text.

N. With prompting and support, identify the author of a familiar story (e.g., Show me the author, Show me who wrote the book).

O. With prompting and support, define the role of the author.

P. With prompting and support, identify the illustrator.

Q. With prompting and support, define the role of the illustrator.

R. With prompting and support, identify illustrations to aid comprehension.

S. With prompting and support, identify the relationship between an illustration and the story.

T. With prompting and support, compare and contrast (i.e., find something the same and something different) between familiar stories.

U. Answer questions about reading (e.g., "Why do we read? What do we read?")

V. Choose a literary text or poems to read and reread, listen to, or view for leisure purposes.

W. Engage in group reading of stories or poems by sharing something learned or something enjoyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:892 (May 2017).

### §9302. Reading Informational Text

A. With prompting and support, answer questions about key details in a text.

B. Discuss key details and main topic of a preferred text.

C. With prompting and support identify the main topic.

D. With prompting and support, retell/identify key details in a text.

E. With prompting and support, describe the connection between two individuals, events, ideas, or pieces of information in a text.

F. Ask questions about unknown words in a text.

G. Answer questions about unknown words in a text.

H. Distinguish front of book from back of book.

I. Identify the title of an informational text or the title page.

J. Identify the title of a story or poem or the title page.

K. Identify the author's purpose in an informational text.

L. Identify a labeled photo or diagram or graphic from within an informational text.

M. With prompting and support, interpret the information provided in photos or diagrams or graphics and the text in which they appear (e.g., what person, place, thing, or idea in the text an illustration depicts).

N. With prompting and support, identify the facts an author gives to support points in a text.

O. With prompting and support, identify basic similarities in and differences between two texts on the same topic (e.g., imaginary or real bear; photo versus illustration of something not real).

P. Choose an informational text to read and reread, listen to, or view for leisure or informational purposes (e.g., to answer questions; understand the world around them).

Q. Engage in group reading of informational text by sharing something learned or something enjoyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:893 (May 2017).

### §9303. Reading Foundations

A. During shared reading activities, point to text from top to bottom of page and left to right.

B. During shared reading activities, indicate need to turn the page for continued reading.

C. Distinguish individual letters from words.

D. Identify familiar written words when spoken (e.g., Show me the word "Tony").

E. Recognize that words are separated by spaces in print.

F. Identify or name uppercase letters of the alphabet.

G. Recognize rhyming words.

H. Produce rhyming words.

I. Count syllables in spoken words.

J. Blend and segment onsets and rimes of single-syllable spoken words.

K. Blend and segment syllables in spoken words.

L. Isolate initial sounds in consonant-vowel-consonant (CVC) words (not including blends).

M. Isolate final sounds in consonant-vowel-consonant (CVC) words (not including blends).

N. Add or substitute individual sounds (phonemes) in simple, one-syllable words to make new words.

O. Recognize the primary sound(s) for each consonant.

P. Produce the primary sound(s) for each consonant.

Q. Identify the long and short vowel sounds in common spellings for the five major vowel sounds.

R. Read common kindergarten high frequency words by sight.

S. Identify the sound that differs between two similarly-spelled words.

T. Participate in reading emergent-reader texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:893 (May 2017).

### §9304. Writing

A. Write, draw, or dictate the topic being communicated about.

B. Write, draw, or dictate the name of a book of interest.

C. Produce a statement which states an opinion or preference about the topic or book of interest.

D. With prompting and support, create an informative/explanatory permanent product (e.g., select/generate words to form a sentence or two) which names the topic they are communicating about and supplies some information about the topic.

E. Describe information gained from a stimulus (e.g., text, event, photo, etc.).

F. Generate story ideas in response to a stimulus (e.g., event, photo, text, daily writing log).

G. Write, dictate, or draw about an event.

H. Organize the details of an event in the order in which they occurred.

I. With guidance and support from adults, use feedback to strengthen permanent products (e.g., add a drawing or detail).

J. With guidance and support from adults, explore a variety of digital tools to produce and publish permanent products, including collaborating with peers.

K. Participate in shared research and writing projects (e.g., explore a number of books by a favorite author and express opinions about them).

L. With guidance and support from adults, recall information from experiences to answer a question.

M. Identify various sources (e.g., word wall, book talks, visuals/images, Internet) that can be used to gather information or to answer a question (e.g., "How do we find out?").

N. Use provided illustrations or visual displays to gain information on a topic.

O. With guidance and support from adults, gather information (e.g., highlight in text, quote or paraphrase from discussion) from provided sources to answer a question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:893 (May 2017).

### **§9305. Speaking and Listening**

A. Follow agreed-upon rules for discussions (e.g., listening to others and taking turns speaking about the topics and texts under discussion).

B. With prompting and support, confirm understanding of a text read aloud or information presented orally or through other media by requesting clarification if something is not understood.

C. Confirm understanding of a text read aloud or information presented orally or through other media by answering questions about key details.

D. Ask and answer questions in order to seek help, get information, or clarify something that is not understood.

E. Describe familiar people, places, things, and a single event or series of events.

F. With prompting and support, provide additional details to describe familiar people, places, things, and events.

G. Describe factual information about familiar people, places, things, and events.

H. Use drawings or visual displays to add detail to written products or oral discussions.

I. Share information from a selected permanent product or a favorite text.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:894 (May 2017).

### **Subchapter B. Grade 1**

#### **§9306. Reading Literature**

A. Answer questions about key details in a story (e.g., who, what, when, where, why).

B. Ask questions about key details in a familiar story.

C. Retell a favorite text, including key details.

D. Use details to tell what happened in a story.

E. Retell the sequence of events in a story.

F. Answer questions about the beginning, middle, and end of a story.

G. Use signal words (e.g., first, next, after, before) and text details to describe events of a story.

H. Identify and/or describe the characters from a story.

I. Identify and/or describe a major event (e.g., problem or solution) from a story.

J. Answer questions regarding key events of stories.

K. Identify and/or describe a setting in a story.

L. Describe feelings of characters in a story.

M. Ask questions to help determine or clarify the meaning of words in a text.

N. Answer questions to help determine or clarify the meaning of words in a text.

O. Ask questions to help determine or clarify the meaning of phrases in a text.

P. Answer questions to help determine or clarify the meaning of phrases in a text.

Q. Read books to examine how certain genres are written.

R. Identify the purpose of storybooks and informational text.

S. Identify who is telling the story in a text.

T. Use text features to aid comprehension.

U. Explain a key illustration in the story.

V. Use illustrations and details in a story to describe its characters, setting, or events.

W. Compare and contrast (what is the same and what is different) the experiences of characters in stories.

X. Choose literary texts or poems to read and reread, listen to, or view for leisure purposes.

Y. Engage in group reading of stories or poems by sharing something learned or something enjoyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:894 (May 2017).

#### **§9307. Reading Informational Text**

A. Answer questions about key details in a text read, read aloud, or viewed.

B. Discuss key details and main topic of a preferred text.

C. Identify the main topic of an informational text.

D. Retell/identify key details in an informational text.

E. Describe the connection between two individuals, events, or pieces of information in a text.

F. Ask questions to help determine or clarify the meaning of words in a text.

G. Answer questions to help determine or clarify the meaning of words in a text.

H. Ask questions to help determine or clarify the meaning of phrases in a text.

I. Answer questions to help determine or clarify the meaning of phrases in a text.

J. Identify text features to aid comprehension.

K. Use text features to aid comprehension.

L. Identify and use various text features (e.g., bold text, titles) to locate key facts or information in a text.

M. Distinguish between information provided by pictures or other illustrations and information provided by the words in a text.

N. Use the photos, diagrams, or graphics and details in a text to describe or identify its key ideas.

O. Identify the facts and details an author gives to support points in a text.

P. Identify basic similarities in and differences between two texts on the same topic (e.g., in illustrations, descriptions, or procedures).

Q. Choose informational texts to read and reread, listen to, or view for leisure or informational purposes (e.g., to answer questions; understand the world around them).

R. Engage in group reading of informational text by sharing something learned or something enjoyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:894 (May 2017).

#### **§9308. Reading Foundations**

A. Recognize rhyming words.

B. Produce rhyming words.

C. Identify long or short vowel sounds in spoken single-syllable words.

D. Produce single-syllable words by blending sounds (phonemes), including consonant blends.

E. Isolate and/or produce initial in consonant-vowel-consonant (CVC) words.

F. Isolate and/or produce medial vowel sound in consonant-vowel-consonant (CVC) words.

G. Isolate and/or produce final sounds in consonant-vowel-consonant (CVC) words.

H. Segment spoken single-syllable words into their complete sequence of individual sounds (phonemes).

I. Recognize the sound(s) for each consonant.

J. Produce the sound(s) for each consonant.

K. Identify common consonant digraphs using their sound correspondence (e.g., write/state/select “ch” when spoken).

L. Decode regularly spelled CVC words.

M. Recognize silent “e” as the reason the vowel sound is a long vowel sound in a word.

N. Read common first grade high frequency words by sight.

O. Read or identify frequently occurring words with inflectional endings.

P. Recognize grade-appropriate irregularly-spelled words.

Q. Identify the sound that differs between two similarly spelled words.

R. Read grade-level text with accuracy, appropriate rate, and expression (when applicable) on successive readings.

S. Identify grade-level words with accuracy and appropriate rate on successive attempts.

T. Practice self-monitoring strategies to aid comprehension (e.g., reread, use visuals or cueing system, self-correct, ask questions, confirm predictions).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:894 (May 2017).

### **§9309. Writing**

A. Produce an opinion statement about a topic or book of interest and provide accurate information as a reason.

B. Organize an opinion piece starting with an opinion statement followed by a reason.

C. Use a description of or detail about familiar people, places, things, and events to support an opinion.

D. Create an opinion piece that provides a sense of closure.

E. Produce a simple statement that names a topic and supplies some facts about the topic.

F. When creating informative/explanatory permanent products, represent facts and descriptions through the use of illustrations and captions.

G. Provide a sense of closure to an informative/explanatory permanent product.

H. Provide a title that tells the central idea or focus.

I. Describe a single event or a series of events that includes details about what happened.

J. Describe a series of events in the order in which they occurred, and when appropriate, use signal words (e.g., first, then, next).

K. Create a narrative permanent product that provides a sense of closure.

L. With guidance and support from adults, use feedback to strengthen permanent products (e.g., add a drawing or detail, reorder events).

M. With guidance and support from adults, use a variety of digital tools (e.g., word processing, internet) to produce

and publish permanent products, including collaborating with peers.

N. Participate in shared research and writing projects (e.g., drawings, visual displays, labels).

O. Generate ideas and or opinions when participating in shared writing projects.

P. With guidance and support from adults, recall information from experiences to answer a question.

Q. Identify various sources (e.g., word wall, book talks, visuals/images, Internet) that can be used to gather information or to answer questions (e.g., “How do we find out?”).

R. Use illustrations and details in a text to obtain facts and compose information on a topic.

S. With guidance and support from adults, gather information (e.g., highlight in text, quote or paraphrase from discussion) from provided sources to answer a question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:895 (May 2017).

### **§9310. Speaking and Listening**

A. Follow agreed-upon rules for discussions (e.g., listening to others with care, speaking one at a time about the topics and texts under discussion).

B. Build on others' talk in conversations by responding to the comments of others through multiple exchanges.

C. Ask questions to clear up any confusion about the topics or texts under discussion.

D. Engage in small or large group discussions by sharing one's own permanent product.

E. Engage in small or large group discussion of favorite texts or topic presented orally or through other media.

F. Answer questions about key details in a story (e.g., who, what, when, where, why).

G. Ask questions about key details in a familiar story.

H. Ask questions about information presented orally in order to clarify something that is not understood.

I. Retell a favorite text, including key details.

J. Describe people, places, things, and a single event or series of events with relevant details.

K. Describe factual information and ideas about familiar people, places, things, and events.

L. Describe subtopics of larger topics about familiar people, places, things, and events.

M. Use drawings or visual displays to add detail to permanent products.

N. Produce complete sentences (e.g., through dictation, writing, word array, picture) when appropriate to task and situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:895 (May 2017).

### **§9311. Language**

A. Produce uppercase and lowercase letters.

B. Use singular and plural nouns with matching verbs in basic sentences.

C. Use frequently occurring nouns when communicating.

D. Use personal, possessive, and indefinite pronouns (e.g., I, me, my; they, them, their; anyone, everything) when communicating.

E. Use verbs to convey a sense of past present or future when communicating.

F. Use frequently occurring adjectives when communicating.

G. Use frequently occurring conjunctions (e.g., and, but, or, so, because) when communicating.

H. Use frequently occurring prepositions (e.g., on, in) when communicating.

I. Produce and expand complete simple and compound declarative, interrogative, imperative, and exclamatory sentences in response to prompts.

J. Capitalize the first word in sentence, the pronoun "I", dates, and names of people.

K. Use end punctuation for sentences.

L. Produce a letter or letters for consonant and vowel sounds (phonemes).

M. Use context within a sentence as a clue to the meaning of a word or phrase.

N. Use frequently occurring affixes as a clue to the meaning of the word.

O. With guidance and support from adults, identify the category for a given word (e.g., a duck is a bird).

P. With guidance and support from adults, sort labeled objects into categories (e.g., shapes, food) to gain a sense of the concepts the categories represent.

Q. With guidance and support from adults, sort words or picture cards with words into categories (e.g., shapes, food) to gain a sense of the concepts the categories represent.

R. With guidance and support from adults, use newly acquired words in real-life context.

S. Use words and phrases acquired through conversations, reading and being read to, and responding to texts, or when adding captions or simple sentences to illustrations or drawings, including using frequently occurring conjunctions to signal simple relationships (e.g., because).

T. Use frequently occurring conjunctions to signal simple relationships.

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:895 (May 2017).

### **Subchapter C. Grade 2**

#### **§9312. Reading Literature**

A. Answer who, what, where, when, why, and how questions from stories.

B. Use details to recount stories, including fables and folktales from diverse cultures.

C. Retell a favorite text, including key details.

D. Describe or select a description of a major event or problem in a story.

E. Describe or select a description of how characters respond to major events or problems in a story.

F. Describe or select the description of what happened (or key events from) in the beginning of the story.

G. Describe or select the description of what happened (or key events from) in the end of the story.

H. Use signal words (e.g., then, while, because, when, after, before, later) to describe event sequence, actions, and interactions in a story.

I. Read books to examine how to write certain genres.

J. Identify different points of view of different characters in a story. (e.g., "Who thinks it is a bad idea to play a joke on a friend?")

K. Use illustrations to answer questions about the characters, key events, the problem or solution in a story.

L. Use information gained from illustrations to describe elements within the setting.

M. Use information gained from illustrations to describe a character's feelings or what a character wanted.

N. Use information gained from illustrations to describe a relationship between characters (e.g., mother/daughter, love/hate).

O. Use text features to aid comprehension.

P. Compare and contrast illustrations or visuals between two versions of the same story (e.g., Cinderella stories) by different authors or from different cultures.

Q. Compare and contrast characters or events between two versions of the same story by different authors or from different cultures.

R. Choose literary texts or poems to read and reread, listen to, or view for leisure purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:896 (May 2017).

#### **§9313. Reading Informational Text**

A. Answer who, what, where, when, why, and how questions from informational text.

B. Identify the main topic of a multi-paragraph informational text.

C. Identify the focus of a paragraph and the details that support the focus in an informational text.

D. Identify the sequence of events in an informational text.

E. Identify the steps in a process in an informational text.

F. Identify the cause and effect relationships in an informational text.

G. Determine the meaning of words and phrases in a text relevant to a grade 2 topic or subject area.

H. Identify and use text features (e.g., title, bold print, illustrations, glossaries) to aid comprehension (e.g., locate key facts or information in a text efficiently).

I. Identify the main purpose of a text, including what question the author is answering, explaining, or describing.

J. Explain or identify what specific images (e.g., a diagram showing how a machine works) teach or inform the reader.

K. Use the illustrations and details in a text to describe or identify its key ideas.

L. Identify the facts and details an author gives to support points in a text.

M. Describe how facts and details support specific points the author makes in a text.

N. Compare and contrast the most important points presented by two texts on the same topic.

O. Choose informational texts to read and reread, listen to, or view for leisure or informational purposes (e.g., to answer questions; understand the world around them).

P. Discuss key details and main topic of a preferred text.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:896 (May 2017).

### **§9314. Reading Foundations**

A. Answer who, what, where, when, why, and how questions from informational text. LAC.RF.2.2a Produce single-syllable words by blending sounds (phonemes), including consonant blends.

B. Isolate and/or produce initial, medial vowel, and/or final sounds in consonant-vowel-consonant (CVC) words.

C. Segment spoken single-syllable words into their complete sequence of individual sounds (phonemes).

D. Identify long and short vowels in regularly spelled one-syllable words.

E. Decode regularly spelled one-syllable words with long vowels.

F. Decode regularly spelled two-syllable words with long vowels.

G. Decode words with common prefixes and suffixes.

H. Recognize and/or read grade appropriate irregularly spelled words.

I. Read or identify frequently occurring root words with and without inflectional endings.

J. Read grade-level text with accuracy, appropriate rate, and expression (when applicable) on successive readings.

K. Identify grade-level words with accuracy and on successive attempts.

L. Practice self-monitoring strategies to aid comprehension (e.g., reread, use visuals or cueing system, self-correct, ask questions, confirm predictions).

M. Use context to confirm or self-correct word recognition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:897 (May 2017).

### **§9315. Writing**

A. Produce an opinion statement about a topic or book of interest, supply reasons that support the opinion, and provide a concluding statement.

B. Connect reasons to the opinion using linking words.

C. Organize an opinion piece starting with an opinion statement followed by related reasons and ending with a concluding statement.

D. Produce a statement that names a topic and supplies some facts about the topic.

E. When creating information/explanatory permanent products represent facts and descriptions through the use of illustrations and captions.

F. Order factual statements to describe a sequence of events or explain a procedure.

G. Provide a concluding statement or section to an informative/explanatory permanent product.

H. Provide a title that tells the central idea or focus.

I. Describe a single event or series of events by including actions, thoughts, or feelings about who, what, and why.

J. Describe a series of events in the order in which they occurred, and when appropriate, use signal words (e.g., first, then, next).

K. Create a narrative permanent product that provides a sense of closure.

L. With guidance and support from adults, use feedback to strengthen permanent products (e.g., add more details or description).

M. With guidance and support from adults, use a variety of digital tools (e.g., word processing, Internet) to produce and publish permanent products, including collaborating with peers.

N. Participate in shared research and writing projects (e.g., read a number of books on a single topic to produce a report; record science observations).

O. Generate ideas and or opinions when participating in shared writing projects.

P. Recall information from experiences to answer a question.

Q. With guidance and support from adults, gather information (e.g., highlight in text, quote or paraphrase from discussion) from provided sources to answer a question.

R. Use simple note-taking strategies (e.g., double entry journal, Venn diagram, T-chart, discussion web) to record reasons for or against a topic.

S. Create a permanent product (e.g., T-chart, word sort) to distinguish facts and opinion.

T. Use simple note-taking strategies or organizers (e.g., numbering, t-charts, graphic organizers) to gather information from provided sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:897 (May 2017).

### **§9316. Speaking and Listening**

A. Follow agreed-upon rules for discussions (e.g., gaining the floor in respectful ways, listening to others with care, speaking one at a time about the topics and text under discussion).

B. Build on others' talk in conversations by linking their comments to the remarks of others.

C. Engage in small or large group discussions by sharing one's own permanent product.

D. Engage in small or large group discussion of favorite texts presented orally or through other media.

E. Recount or describe key ideas or details from literary text read aloud or information presented orally or through other media.

F. Ask questions about information presented orally in order to clarify something that is not understood.

G. Share a story or recount an experience with appropriate facts and relevant, descriptive details.

H. Describe factual information and ideas about people, places, things, and a single event or series of events.

I. Provide at least two facts for each subtopic identified for a larger topic.

J. Describe a single event or a series of events by including actions, thoughts, or feelings.

K. Use drawings or other visual displays to clarify ideas, thoughts, and feelings.

L. Produce complete sentences (e.g., through dictation, writing, word array, picture) when appropriate to task and situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:897 (May 2017).

### §9317. Language

- A. Use collective and irregular plural nouns when communicating.
- B. Use past tense irregular verbs when communicating.
- C. Use reflexive pronouns (e.g., myself, ourselves) when communicating.
- D. Use adjectives and adverbs when communicating.
- E. Produce and expand upon simple or compound sentences.
- F. Capitalize dates, names of people, holidays, product names, and geographic names.
- G. Use conventional spelling for words with common spelling patterns.
- H. Use sentence context as a clue to the meaning of a word or phrase.
- I. Determine the meaning of a new word formed when a known prefix is added to the known word or root.
- J. Use a known root word as a clue to the meaning of an unknown word with the same root.
- K. Use knowledge of the meaning of individual words to predict the meaning of compound words.
- L. Use a glossary or beginning dictionary to determine the meaning of a word.
- M. Use newly acquired words in real-life context.
- N. Distinguish shades of meaning among related verbs and adjectives by defining them or acting out their meaning.
- O. Use words and phrases acquired through conversations, reading and being read to, and responding to texts, including using adjectives and adverbs to describe (e.g., When other kids are happy, that makes me happy).
- P. Identify connections with previously understood words to acquire the meaning of a new word (e.g., weeping is like crying).
- Q. Use newly acquired words in real-life context.
- R. Use adjectives to describe nouns.
- S. Use adverbs to describe verbs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:898 (May 2017).

### Subchapter D. Grade 3

#### §9318. Reading Literature

- A. Answer questions related to the relationship between characters, setting, events, or conflicts (e.g., characters and events, characters and conflicts, setting and conflicts).
- B. Answer questions (literal and inferential) and refer to text to support your answer.
- C. Support inferences, opinions, and conclusions using evidence from the text including illustrations.
- D. Identify the central message (theme), lesson, or moral within a story, folktale, or fable from diverse cultures.
- E. Use details to recount stories, including fables and folktales from diverse cultures.
- F. Use information in the text to determine and explain a lesson learned by a character or theme within the story.
- G. Explain how characters' actions contribute to the sequence of events/plot.
- H. Describe a character's traits in a story using details from the text and illustrations.
- I. Explain a character's motivation in a story using the character's thoughts, words, and actions as evidence from the text.

J. Explain a character's feelings in a story using the character's thoughts, words, and actions as evidence from the text.

K. Describe how a character changed in a story (e.g., different words, thoughts, feelings, actions).

L. Analyze how a character's point of view influences a conflict within a text.

M. Determine the meaning of literal and nonliteral words and phrases as they are used in a text.

N. Determine the meaning of general academic and domain-specific words and phrases in a text relevant to a grade 3 topic or subject area.

O. Identify how the structure of a poem is different than a story (e.g., rhyme shorter than stories; stanza instead of paragraph).

P. Identify how the structure of a play is different than the structure of a story (e.g., text includes props; dialogue without quotation marks acts/scenes instead of chapter).

Q. Identify narrator or character's point of view.

R. Identify own point of view.

S. Distinguish their own point of view from that of the narrator or those of the characters.

T. Support inferences, opinions, and conclusions using evidence from the text including illustrations.

U. Use descriptive words and illustrations/visuals from a story, read or viewed, to explain the mood in a given part of the story.

V. Compare two or more texts or adapted texts on the same topic or by the same author.

W. Read or be read to and recount self-selected literary texts, such as stories, fables, folktales, myths, or adapted texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:898 (May 2017).

#### §9319. Reading Informational Text

A. Answer questions to demonstrate understanding of a text, referring explicitly to the text as the basis for the answers.

B. Identify supporting details of an informational text read, read aloud or information presented in diverse media and formats, including visually, quantitatively, and orally.

C. Determine the main idea of text, read aloud, or information presented in diverse media and formats, including visually, quantitatively, and orally.

D. Determine the main idea of a text; recount the key details and explain how they support the main idea.

E. Identify facts that an author uses to support a specific point or opinion.

F. Identify the purpose of a variety of text features.

G. Use text features (keywords, glossary) to locate information relevant to a given topic or question.

H. Use tools (e.g., sidebars, icons, glossary) to locate information relevant to a given topic.

I. Identify the author's purpose in an informational text.

J. Identify own point of view about a topic.

K. Compare own point of view to that of the author.

L. Use illustrations (e.g., maps, photographs) in informational texts to answer questions.

M. Identify information learned from illustrations and information learned from the words in an informational text.

N. Use information gained from illustrations (e.g., maps, photographs) and the words in a text to demonstrate understanding of the text (e.g., where, when, why, and how key events occur).

O. Within informational texts, locate or identify evidence in the text or graphics to support the central ideas.

P. Identify signal words that help determine what the text structure is in an informational text.

Q. Describe the connection between sentences and paragraphs in a text.

R. Compare two or more texts on the same topic or by the same author.

S. When researching a topic, compare and contrast the most important points and key details presented in two informational texts on the same topic.

T. Read or be read to and recount self-selected informational texts or adapted texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:898 (May 2017).

### **§9320. Reading Foundations**

A. Identify the meaning of most common prefixes.

B. Identify the meaning of most common suffixes.

C. Decode regularly spelled one-syllable words with long vowels.

D. Decode regularly spelled two-syllable words with long vowels.

E. Decode multi-syllable words.

F. Recognize and/or read grade appropriate irregularly spelled words.

G. Read text (including prose and poetry) with accuracy, appropriate rate, and expression (when applicable) on successive readings.

H. Identify grade-level words with accuracy.

I. Practice self-monitoring strategies to aid comprehension (e.g., reread, use visuals or cueing system, self-correct, ask questions, confirm predictions).

J. Use context to confirm or self-correct word recognition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:899 (May 2017).

### **§9321. Writing**

A. Produce an opinion piece which introduces the topic or text they are communicating about and states an opinion.

B. Provide reasons that support the opinion.

C. Use linking words and phrases that connect the opinion and reasons.

D. Provide a concluding statement or section.

E. Produce an informative/explanatory permanent product which introduces a topic and groups related information together.

F. Develop the topic (i.e., offer additional information which supports the topic) by using facts, definitions, and details.

G. Include illustrations to enhance clarity and meaning.

H. Use linking words and phrases (e.g., also, another, and, more, but) to connect ideas within categories of information.

I. Provide a concluding statement or section.

J. Produce a narrative permanent product which establishes a situation by setting up the context for the story and introducing a narrator and/or characters.

K. Sequence events that unfold naturally.

L. When appropriate, use dialogue and descriptions of actions, thoughts, and feelings to develop a story.

M. Use temporal words and phrases to signal event order.

N. Provide a sense of closure.

O. With guidance and support from adults, produce a permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to inform or entertain), and audience (e.g., reader).

P. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

Q. With guidance and support from peers and adults, strengthen permanent products by revising (e.g., review a permanent product, strengthen a story by adding a description or dialogue).

R. With guidance and support from peers and adults, edit permanent products for clarity and meaning.

S. With guidance and support from adults, use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on permanent products).

T. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

U. Recall information from experiences to use in creating permanent products.

V. Gather information and facts (e.g., highlight in text, quote or paraphrase from discussion) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics).

W. Use text features and search tools (e.g., keywords, sidebars, hyperlinks) to locate information relevant to a given topic with the purpose of creating a permanent product (e.g., select/generate responses to form a paragraph or essay).

X. Locate important points on a single topic from two informational texts or sources.

Y. Identify key details in an informational text.

Z. Take brief notes (e.g., graphic organizers, notes, labeling, listing) on sources.

AA. Sort evidence collected from print and/or digital sources into provided categories.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:899 (May 2017).

### **§9322. Speaking and Listening**

A. Provide evidence of being prepared for discussions on a topic or text through appropriate statements made during discussion.

B. Ask questions to check understanding of information presented in collaborative discussions.

C. Link personal ideas and comments to the ideas shared by others in collaborative discussions.

D. Express ideas and understanding in light of collaborative discussions.

E. Determine the central message, lesson, moral, and key details of a text read aloud or information presented in diverse media and formats, including visually, quantitatively, and orally.

F. Determine the main idea of text read aloud or information presented in diverse media and formats, including visually, quantitatively, and orally.

G. Identify supporting details of an informational text read aloud or information presented in diverse media and formats, including visually, quantitatively, and orally.

H. Ask and answer questions about information from a speaker, offering appropriate elaboration and detail.

I. Report on a topic, tell a story or recount an experience with appropriate facts and relevant, descriptive details.

J. Add audio recordings and visual displays when appropriate to emphasize or enhance certain facts or details.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:899 (May 2017).

### §9323. Language

A. Identify nouns (regular, irregular, abstract), verbs (regular, irregular, simple tenses), adjectives, and/or adverbs within sentences.

B. Use nouns (regular, irregular, abstract), verbs (regular, irregular, simple tenses), and adjectives and/or adverbs when communicating.

C. Use correct subject-verb and pronoun-antecedent agreement when communicating.

D. Produce and expand upon simple and compound sentences.

E. Capitalize words in holidays, product names, geographic names, and appropriate words in titles.

F. Use commas accurately in addresses or dialogue when communicating.

G. Use quotation marks when communicating.

H. Use conventional spelling and spelling patterns (e.g., word families, syllable patterns, ending rules) when communicating high frequency and/or previously learned words.

I. Choose words and phrases for appropriate effect (e.g., to inform) within writing.

J. Use sentence context as a clue to the meaning of a new word, phrase, or multiple meaning word.

K. Determine the meaning of the new word formed when a known affix is added to a known word.

L. Use a known root word as a clue to the meaning of an unknown word with the same root.

M. Use a glossary or dictionary to determine the meaning of a word.

N. Distinguish literal from non-literal meanings of words and phrases in context.

O. Use newly acquired words in real-life context.

P. Identify and sort shades of meaning words from general to specific or lesser to specific.

Q. Use newly acquired conversational and general academic words and phrases accurately when communicating.

R. Use newly acquired domain-specific words and phrases accurately when communicating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:900 (May 2017).

### Subchapter E. Grade 4

#### §9324. Reading Literature

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Refer to details and examples in a text when drawing basic inferences about a story, poem, or drama.

C. Use details and examples in a text when explaining the author's purpose (e.g., what did the author use to scare you, surprise you?).

D. Use evidence from the text to summarize a story, poem or drama.

E. Determine the theme of a story, drama, or poem; refer to text to support answer.

F. Answer questions related to the relationship between characters, setting, events, or conflicts (e.g., characters and events, characters and conflicts, setting and conflicts).

G. Describe character traits (e.g., actions, deeds, dialogue, description, motivation, interactions); use details from text to support description.

H. Describe character motivation (e.g., actions, thoughts, words); use details from text to support description.

I. Determine the meaning of general academic and domain-specific words and phrases in a text relevant to a grade 4 topic or subject area.

J. Identify how the structure of a poem is different than a story (e.g., identify rhyme, shorter than stories; stanza instead of paragraph).

K. Identify how the structure of a play is different than the structure of a story (e.g., text includes props; dialogue without quotation marks acts/scenes instead of chapter).

L. Determine the author's point of view (first- or third-person).

M. Compare the point of view from which different stories are narrated, including the difference between first- and third-person narrations.

N. Use evidence from both the text version and oral or visual presentation of the same text to support inferences, opinions, and conclusions.

O. Make connections between the text of a story and the visual representations, refer back to text/illustrations to support answer.

P. Make connections between the text of a play and the oral representations, refer back to text/illustrations to support answer.

Q. Compare the treatment of similar themes and topics (e.g., opposition of good and evil) in stories, myths, and traditional literature from different cultures.

R. Compare the treatment of patterns of events (e.g., the quest) in stories, myths, and traditional literature from different cultures.

S. Read or be read to and recount self-selected literary texts, such as stories, dramas, poetry, or adapted texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:900 (May 2017).

#### §9325. Reading Informational Text

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Refer to details and examples in a text when drawing basic inferences from an informational text.

C. Determine the main idea of an informational text.

D. Identify supporting details of an informational text.

E. Determine the meaning of general academic and domain-specific words and phrases in a text relevant to a grade 4 topic or subject area.

F. Identify signal words that help determine what the text structure is in an informational text (e.g., description, problem/solution, time/order, compare/contrast, cause/effect, directions).

G. Describe the overall structure (e.g., chronology, comparison, cause/effect, problem/solution) of events, ideas, concepts, or information in a text or part of a text.

H. Organize information presented in an informational text to demonstrate the text structure.

I. Use text features (keywords, glossary) to locate information relevant to a given topic or question.

J. Use tools (e.g., sidebars, icons, glossary) to locate information relevant to a given topic.

K. Use search tools or text features as a means of locating relevant information.

L. Determine if information in a text is firsthand or secondhand.

M. Compare and contrast a firsthand and secondhand account of the same event or topic.

N. Use information presented visually, orally, or quantitatively (e.g., in charts, graphs, diagrams, time lines, animations, or interactive elements on Web pages) to answer questions.

O. Explain how the information presented visually, orally, or quantitatively contributes to the understanding of the text in which it appears.

P. Interpret information presented visually, orally, or quantitatively (e.g., in charts, graphs, diagrams, time lines, animations, or interactive elements on Web pages) and explain how the information contributes to an understanding of the text in which it appears.

Q. Compare and contrast how different authors use reasons and evidence to support the same topics across texts.

R. Identify reasons that the author uses to support ideas in an informational text.

S. Identify facts that an author uses to support a specific point or opinion.

T. Report out about two or more texts on the same self-selected topic.

U. Identify the most important information about a topic gathered from two texts on the same topic in order to write or speak about the subject knowledgeably.

V. Read or be read to and recount self-selected informational texts or adapted texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:900 (May 2017).

### §9326. Reading Foundations

A. Use letter-sound correspondences, syllabication patterns, and morphology (e.g., affixes) to identify and/or read multisyllabic words.

B. Identify grade level words with accuracy and on successive attempts.

C. Recognize and/or read grade appropriate irregularly spelled words.

D. Read text (including prose and poetry) with accuracy, appropriate rate, and expression (when applicable) on successive readings.

E. Practice self-monitoring strategies to aid comprehension (e.g., reread, use visuals or cueing system, self-correct, ask questions, confirm predictions).

F. Use context to confirm or self-correct word recognition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:901 (May 2017).

### §9327. Writing

A. Produce an opinion piece which introduces the topic or text, states an opinion, and groups related ideas together.

B. Provide reasons which include facts and details that support the stated opinion.

C. Link opinion and reasons using words and phrases (e.g., for instance, in order to, in addition).

D. Provide a concluding statement or section related to the opinion presented.

E. Produce an informative/explanatory permanent product which introduces a topic clearly and groups related information.

F. Develop the topic (i.e., add additional information related to the topic) with relevant facts, definitions, concrete details, quotations, or other information and examples related to the topic.

G. Include formatting (e.g., headings), illustrations, and multimedia when appropriate to convey information about the topic.

H. Link ideas within categories of information using words and phrases (e.g., another, for example, also, because).

I. Use precise language and domain-specific vocabulary to inform about or explain the topic.

J. Provide a concluding statement or section related to the information presented.

K. Produce a narrative permanent product which orients the reader by setting up the context for the story and introducing a narrator and/or characters.

L. Sequence events that unfold naturally.

M. When appropriate, use dialogue and description to develop experiences and events or show the responses of characters to situations.

N. Use a variety of transitional words and phrases to manage the sequence of events.

O. Use concrete words and phrases and sensory details to convey experiences and events.

P. Provide a conclusion (e.g., concluding sentence, paragraph, or extended ending) that follows from the narrated experiences or events.

Q. Produce a clear coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to inform or entertain), and audience (e.g., reader).

R. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

S. With guidance and support from peers and adults, strengthen permanent products by revising (e.g., review a

permanent product, strengthen an informative permanent product by adding a concrete detail).

T. With guidance and support from peers and adults, edit permanent products for clarity and meaning.

U. With guidance and support from adults, use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on permanent products).

V. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

W. Recall relevant information from experiences to use in creating permanent products.

X. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics).

Y. Identify key details from an informational text.

Z. Take brief notes and categorize information (e.g., graphic organizers, notes, labeling, listing) from sources into provided categories.

AA. Provide a list of sources that contributed to the creation of a permanent product.

BB. Provide evidence from texts when producing permanent products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:901 (May 2017).

### **§9328. Speaking and Listening**

A. Provide evidence of being prepared for discussions on a topic or text through appropriate statements made during discussion.

B. Ask questions to check understanding of information presented in collaborative discussions.

C. Make appropriate comments that contribute to a collaborative discussion.

D. Review the key ideas expressed within a collaborative discussion.

E. Paraphrase portions of a text read aloud or information presented in diverse media and formats, including visually, quantitatively, and orally.

F. Identify the reasons and evidence a speaker provides to support particular points.

G. Report on a topic or text, tell a story, or recount an experience in an organized manner, using appropriate facts and relevant, descriptive details.

H. Add audio recordings and visual displays to presentations when appropriate to enhance the development of main ideas or themes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:902 (May 2017).

### **§9329. Language**

A. Use relative pronouns and relative adverbs when communicating.

B. Use prepositional phrases when communicating.

C. Produce complete sentences, recognizing and correcting inappropriate fragments and run-ons.

D. Use correct capitalization when communicating.

E. Use commas and quotation marks when communicating.

F. Spell grade-appropriate words correctly in writing, consulting references as needed.

G. Choose words and phrases for appropriate effect (e.g., to inform) when communicating.

H. Use context to determine the meaning of unknown or multiple meaning words, or words showing shades of meaning.

I. Use common grade-appropriate roots and affixes as clues to the meaning of a word.

J. Use a glossary, dictionary, or thesaurus to determine the meaning of a word.

K. Identify simple similes in context.

L. Identify simple metaphors in context.

M. Relate words to their opposites (antonyms).

N. Relate words to words with similar but not identical meanings (synonyms).

O. Identify the meaning of common idioms.

P. Use grade-appropriate general academic and domain-specific words and phrases accurately when communicating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:902 (May 2017).

### **Subchapter F. Grade 5**

#### **§9330. Reading Literature**

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Refer to specific text evidence to support inferences, interpretations, or conclusions.

C. Summarize a portion of text such as a paragraph or a chapter.

D. Summarize a text from beginning to end in a few sentences.

E. Determine the theme of a story, drama, or poem including how characters in a story or drama respond to challenges or how the speaker in a poem reflects upon a topic.

F. Compare characters, settings, events within a story; provide or identify specific details in the text to support the comparison.

G. Compare and contrast two or more characters, settings, or events in a story or drama, drawing on specific details in the text (e.g., how characters interact).

H. Determine the meaning of words and phrases as they are used in a text including figurative language such as metaphors and similes.

I. Use signal words (e.g., meanwhile, unlike, next) to identify common types of text structure (e.g., sequence, compare/contrast, cause/effect, description) within a text.

J. Explain how a series of chapters fits together to provide the overall structure of a particular text.

K. Describe how a narrator's or speaker's point of view influences how events are described.

L. Explain how the description of characters, setting, or events might change if the person telling the story changed.

M. Interpret the meaning of metaphors and similes to help explain the setting within a text.

N. Interpret the meaning of metaphors and similes to help determine the mood within a text.

O. Describe how visual and multimedia elements contribute to the meaning or tone of a text (e.g., graphic novel, multimedia presentation of fiction, folktale, myth, poem).

P. Compare and contrast stories in the same genre (e.g., mysteries and adventure stories) on their approaches to similar themes and topics.

Q. Read or be read to a variety of literary texts or adapted texts, including graphic novels, poetry, and fiction.

R. Use a variety of strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:902 (May 2017).

### **§9331. Reading Informational Text**

A. Quote accurately from a text when explaining what the text says explicitly.

B. Quote accurately from a text to support inferences.

C. Determine the main idea, and identify key details to support the main idea.

D. Summarize the text or a portion of the text read, read aloud, or presented in diverse media.

E. Explain/identify the relationship between two or more individuals, events, ideas, or concepts in a historical, scientific, or technical text.

F. Explain the relationships or interactions between two or more individuals, events, ideas, or concepts in a historical, scientific, or technical text based on specific information in the text.

G. Explain the relationships or interactions between two or more individuals, events, ideas, or concepts in a historical, scientific, or technical text based on specific information across texts.

H. Determine the meaning of general academic and domain-specific words and phrases in a text relevant to a grade 5 topic or subject area.

I. Use signal words as a means of locating information (e.g., knowing that because or as a result of may help link a cause to a result).

J. Use signal words to identify common types of text structures.

K. Compare and contrast the overall structure (e.g., chronology, comparison, cause/effect, problem/solution) of events, ideas, concepts, or information in two or more texts.

L. Note important similarities and differences in the point of view of multiple accounts of the same event or topic.

M. Draw on information from multiple print or digital sources, demonstrating the ability to locate an answer to a question or to solve a problem.

N. Refer to multiple print or digital sources as support for inferences (e.g., “How did you know?”).

O. Explain how an author uses reasons and evidence to support particular points in a text.

P. Identify reasons and evidence that support an author's point(s) in a text.

Q. Identify the author's stated thesis/claim/opinion.

R. Identify evidence the author uses to support stated thesis/claim/opinion.

S. Identify key details from multiple sources on the same topic (e.g., “What are the important things that you learned?”).

T. Integrate information on a topic from multiple sources to answer a question or support a focus or opinion.

U. Read or be read to a variety of informational texts or adapted texts.

V. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:903 (May 2017).

### **§9332. Reading Foundations**

A. Use morphemes (e.g., roots and affixes) to decode unfamiliar multisyllabic words in and out of context.

B. Use context to confirm or self-correct word recognition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:903 (May 2017).

### **§9333. Writing**

A. Produce an opinion piece which has an introduction that states an opinion and has an organizational structure in which ideas are logically grouped to support the writer's opinion.

B. Provide relevant facts to support the reasons and stated opinion.

C. Link opinion and reasons using words and phrases.

D. Provide a concluding statement or section related to the opinion presented.

E. Produce an informative/explanatory permanent product which has an introduction that includes context/background information on a topic and establishes a central idea or focus about the topic.

F. Group related information logically.

G. Develop the topic (i.e., add additional information related to the topic) with facts, definitions, concrete details, quotations, or other information and examples.

H. Include formatting (e.g., headings), illustrations, and multimedia when appropriate to convey information about the topic.

I. Use transitional words and phrases to connect ideas.

J. Use precise language and domain-specific vocabulary to inform about or explain the topic.

K. Provide a concluding statement or section related to the information presented.

L. Produce a narrative permanent product which orients the reader by establishing a situation and introducing a narrator and/or characters.

M. Organize an event so that it unfolds naturally.

N. When appropriate use narrative techniques, such as dialogue and description, to develop experiences and events or show the responses of characters to situations.

O. Use transitional words and phrases to manage the sequence of events.

P. Use concrete words and phrases and sensory details to convey experiences and events precisely.

Q. Provide a conclusion (e.g., concluding sentence, paragraph, or extended ending) that follows from the narrated experiences or events.

R. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to inform or entertain), and audience (e.g., reader).

S. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

T. With guidance and support from peers and adults, strengthen permanent products by revising and editing (e.g., review a permanent product, strengthen an opinion piece by adding another reason, fix incorrect spelling).

U. Use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on writing).

V. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

W. Recall relevant information from experiences to use in permanent products.

X. Gather information (e.g., highlight in text, quote or paraphrase from a source) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics) relevant to a topic.

Y. Sort evidence collected from print and/or digital sources into provided categories.

Z. Provide a list of sources that contributed to the creation of a permanent product.

AA. Provide evidence from texts when producing permanent products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:903 (May 2017).

### **§9334. Speaking and Listening**

A. Make appropriate comments that contribute to a collaborative discussion.

B. Review the key ideas expressed within a collaborative discussion.

C. Determine the narrative point of view of a text read, read aloud, or viewed.

D. Summarize the text or a portion of the text read, read aloud, or presented in diverse media.

E. Identify a speaker's points or claims.

F. Summarize the points a speaker makes.

G. Identify reasons and evidence that a speaker provides to support points or claims.

H. Explain how at least one claim in a discussion is supported by reasons and evidence.

I. Report on a topic, story or claim using a logical sequence of ideas, appropriate facts, and relevant and descriptive details.

J. Elaborate on each fact or opinion given in support of a claim with relevant details.

K. Include multimedia components (e.g., graphics, sound) and visual displays in presentation when appropriate to enhance the development of topic.

L. Use captioned pictures, labeled diagrams, tables, or other visual displays in presentations when appropriate to support the topic or theme.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:904 (May 2017).

### **§9335. Language**

A. Use appropriate verb tense to convey times, sequence, state, and condition.

B. Recognize and correct inappropriate shifts in verb tense.

C. Identify and use conjunctions, prepositions, and interjections when communicating.

D. Produce simple, compound, and complex sentences in writing.

E. Use punctuation to separate items in a series.

F. Use commas accurately when communicating.

G. Spell words correctly when communicating, consulting references as needed.

H. Expand, combine, and reduce sentences for meaning, reader interest, and style when communicating.

I. Use context to determine the meaning of unknown or multiple meaning words.

J. Use common grade-appropriate roots and affixes as clues to the meaning of a word.

K. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the pronunciation of a word.

L. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the meaning of a word.

M. Identify the denotation for a known word.

N. Determine the meaning of words and phrases as they are used in a text including figurative language such as metaphors and similes.

O. Use figurative language in context, including similes and metaphors.

P. Identify the meaning of common idioms or proverbs.

Q. Use the relationship between particular words (e.g., synonyms, antonyms, homographs) in writing to promote understanding of each of the words.

R. Use grade-appropriate general academic and domain-specific words and phrases accurately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:904 (May 2017).

### **Subchapter G. Grade 6**

#### **§9336. Reading Literature**

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Use specific details from the text (e.g., words, interactions, thoughts, motivations) to support inferences or conclusions about characters including how they change during the course of the story.

C. Use the specific details from the text to support inferences and explanations about plot development.

D. Select key details about a character and relate those details to a theme within the text.

E. Determine the theme(s) of a story, drama, or poem including how it is conveyed through particular details.

F. Summarize a text from beginning to end in a few sentences without including personal opinions.

G. Describe how the plot unfolds in a story.

H. Analyze a character's interactions throughout a story as they relate to conflict and resolution.

I. Determine the meaning of words and phrases as they are used in a text including figurative (i.e., metaphors, similes, and idioms) and connotative meanings.

J. Analyze how a particular sentence, chapter, scene, or stanza fits into the overall structure of a text and contributes to the development of the theme, setting, or plot.

K. Determine the narrative point of view.

L. Identify and describe how the narrative point of view influences the reader's interpretation.

M. Explain how an author develops the point of view of the narrator or speaker in a text.

N. Compare the experience of reading a story or drama to listening to or viewing an audio, video, or live version of the text.

O. Compare texts from different genres that have a similar theme or address the same topic.

P. Read or be read to a variety of literary texts or adapted texts, including historical novels, fantasy stories and novels, poetry, and fiction.

Q. Use a variety of strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:904 (May 2017).

### **§9337. Reading Informational Text**

A. Use textual evidence to support inferences.

B. Provide a summary of the text distinct from personal opinions or judgments.

C. Identify key individuals, events, or ideas in a text.

D. Determine how key individuals, events, or ideas are introduced in a text.

E. Determine how key individuals, events, or ideas are illustrated in a text.

F. Determine how key individuals, events, or ideas are elaborated or expanded on in a text.

G. Determine the meaning of words and phrases as they are used in a text including figurative (e.g., metaphors, similes, and idioms) and connotative meanings.

H. Use signal words as a means of locating information (e.g., knowing that because or as a result of may help link a cause to a result).

I. Determine an author's point of view or purpose in a text and explain how it is conveyed.

J. Identify what is learned from different media or formats compared to what is learned via written words or spoken words.

K. Summarize information gained from a variety of sources including media or texts.

L. Identify relevant details from several texts on the same topic (e.g., "What are the important things that you learned?").

M. Identify an argument or claim that the author makes.

N. Evaluate the claim or argument; determine if it is supported by evidence.

O. Distinguish claims or arguments from those that are supported by evidence from those that are not.

P. Compare and contrast one author's presentation of events with that of another (e.g., a memoir written by and a biography on the same person).

Q. Read or be read to a variety of informational texts or adapted texts.

R. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:905 (May 2017).

### **§9338. Writing**

A. Produce a persuasive permanent product which has an introduction that introduces a claim.

B. Create an organizational structure in which ideas are logically grouped to support the claim.

C. Support the claim with clear reasons and relevant evidence from credible sources.

D. Use words, phrases, and clauses to link the claim and reasons.

E. Provide a concluding statement or section that follows the argument presented.

F. Distinguish claims presented orally or in writing that are supported by reasons and claims that are not.

G. Produce an informative/explanatory permanent product which has an introduction that includes context/background information on a topic and establishes a central idea or focus about the topic.

H. Organize ideas, concepts, and information (e.g., using definition, classification, comparison/contrast, cause/effect).

I. Develop the topic (i.e., add additional information related to the topic) with relevant facts, definitions, concrete details, quotations, or other information and examples.

J. Include formatting (e.g., headings), graphics (e.g., charts, tables), and multimedia when useful to promote reading understanding.

K. Use transitional words, phrases, and clauses that connect ideas.

L. Use precise language and domain-specific vocabulary to inform about or explain the topic.

M. Maintain a consistent style and voice.

N. Provide a concluding statement or section that follows from the information presented.

O. Produce a narrative permanent product which engages and orients the reader by establishing a context and introducing a narrator and/or characters.

P. Organize events so they unfold naturally.

Q. When appropriate, use narrative techniques, such as dialogue, pacing, and description, to develop experiences, events, and/or characters.

R. Use a variety of transition words, phrases, and clauses to convey sequence and signal shifts from one time frame or setting to another.

S. Use precise words and phrases, relevant descriptive details, and sensory language to convey experiences and events.

T. Provide a conclusion that follows from the narrated experiences or events.

U. Use figurative language appropriately, including similes and metaphors.

V. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to inform or entertain), and audience (e.g., reader).

W. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

X. With guidance and support from peers and adults, strengthen writing by revising and editing (e.g., review a permanent product, strengthen an informative/explanatory permanent product by adding transitional phrases, fix incorrect verb tense).

Y. Use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on writing).

Z. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

AA. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics) relevant to a topic.

BB. Quote or paraphrase the data and conclusions of others while avoiding plagiarism.

CC. Provide a bibliography for sources that contributed to the creation of a permanent product.

DD. Provide evidence from texts when producing permanent products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:905 (May 2017).

### **§9339. Speaking and Listening**

A. Interpret information presented in diverse media and formats (e.g., visually, quantitatively, orally).

B. Explain how information gained via media and formats contributes to the understanding of a topic, text, or issue under study.

C. Summarize the points a speaker makes.

D. Summarize the points an author makes.

E. Distinguish claims or arguments from those that are supported by evidence from those that are not.

F. Distinguish claims presented orally or in writing that are supported by reasons and claims that are not.

G. Report on a topic, story or claim with a logical sequence of ideas, appropriate facts and relevant, descriptive details.

H. Include multimedia components (e.g., graphics, images, music, sound) and visual displays in presentations to clarify information.

I. Use captioned pictures, labeled diagrams, tables, or other visual displays in presentations when appropriate to support the topic or theme.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:906 (May 2017).

### **§9340. Language**

A. Use strategies (e.g., clarify language and grammar, vary sentence patterns, maintain consistent tone and style) to improve written expression in conventional language.

B. Use commas, parentheses, and/or dashes to set off nonrestrictive/parenthetical elements.

C. Spell words correctly when communicating.

D. Vary sentence patterns for meaning, reader interest, and style when communicating.

E. Use context to determine the meaning of unknown or multiple meaning words.

F. Use common grade-appropriate roots and affixes as clues to the meaning of a word.

G. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the pronunciation of a word.

H. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the synonym for a word.

I. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the precise meaning of a word.

J. Verify the prediction of the meaning of a new word or phrase (e.g., by checking a dictionary).

K. Explain the meaning of figures of speech (e.g., personification, idioms, proverbs) in context.

L. Interpret the use of personification within a text.

M. Use figurative language appropriately, including similes and metaphors.

N. Use the relationship between particular words (e.g., synonyms, antonyms, homographs) in writing to promote understanding of each of the words.

O. Use the relationship between particular words (e.g., cause/effect, part/whole, item/category) to better understand each of the words.

P. Identify the connotative meaning (i.e., the idea associated with the word) of a word or phrase.

Q. Use grade-appropriate general academic and domain-specific words and phrases accurately.

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:906 (May 2017).

### **Subchapter H. Grade 7**

#### **§9341. Reading Literature**

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Use two or more pieces of textual evidence to support conclusions, or summaries of text.

C. Determine the theme or central idea of a text.

D. Analyze the development of the theme or central idea over the course of the text.

E. Analyze the impact of story elements on the text (e.g., impact of setting on a character's choices, cause/effects within the text).

F. Analyze how particular elements of a story or drama interact (e.g., how setting shapes the characters or plot).

G. Determine the meaning of words and phrases as they are used in a text including figurative (i.e., metaphors, similes, and idioms) and connotative meanings.

H. Identify alliteration within text.

I. Analyze how the use of rhymes or repetitions of sounds affect the tone of the poem, story, or drama.

J. Examine how the structure of a poem or drama adds to its meaning.

K. Compare and contrast the points of view of different characters in the same text.

L. Compare and contrast a story, drama, or poem when presented in two different mediums.

M. Compare and contrast different mediums that may be used to present literary materials to explore the techniques used in the various mediums.

N. Compare and contrast a fictional portrayal of a time, place, or character and a historical account of the same period as a means of understanding how authors of fiction use or alter history.

O. Read or be read to a variety of literary texts or adapted texts including historical novels, dramas or plays, poetry (including soliloquies and sonnets), and fiction.

P. Use a variety of strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:906 (May 2017).

### **§9342. Reading Informational Text**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries of text.

B. Determine the central idea of a text.

C. Analyze the development of the central idea over the course of the text.

D. Create an objective summary of a text.

E. Analyze the interactions between individuals, events, and ideas in a text (e.g., how ideas influence individuals or events, or how individuals influence ideas or events).

F. Determine the meaning of words and phrases as they are used in a text including figurative (i.e., metaphors, similes, and idioms) and connotative meanings.

G. Analyze how the use of figurative, connotative or technical terms affect the meaning or tone of text.

H. Use signal words as a means of locating information.

I. Outline a given text to show how ideas build upon one another.

J. Determine the structure of a text.

K. Determine how the information in each section contribute to the whole or to the development of ideas.

L. Determine an author's point of view or purpose in a text and analyze how the author distinguishes his or her position from that of others.

M. Compare/contrast how two or more authors write or present about the same topic.

N. Identify an argument or claim that the author makes.

O. Evaluate the claim or argument to determine if they are supported by evidence.

P. Distinguish claims or arguments from those that are supported by evidence from those that are not.

Q. Use supporting evidence to summarize central ideas, draw inferences, or analyze connections within or across texts.

R. Compare/contrast how two or more authors write about the same topic.

S. Analyze how two or more authors writing about the same topic shape their presentations of key information by emphasizing different evidence or advancing different interpretations of facts.

T. Read or be read to a variety of informational texts or adapted texts.

U. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:907 (May 2017).

### **§9343. Writing**

A. Produce a persuasive permanent product which has an introduction that introduces a claim and acknowledges alternate or opposing claims.

B. Create an organizational structure in which ideas are logically grouped to support the claim.

C. Support the claim with logical reasoning and relevant evidence from credible sources.

D. Use words, phrases, and clauses to link the claim and reasons and clarify relationships among ideas.

E. Maintain a consistent style and voice.

F. Provide a concluding statement or section that follows from and supports the argument presented.

G. Produce an informative/explanatory permanent product which has an introduction that clearly previews information to follow about a topic.

H. Organize ideas, concepts, and information (e.g., using definition, classification, comparison/contrast, and cause/effect).

I. Develop the topic (i.e., add additional information related to the topic) with relevant facts, definitions, concrete details, quotations, or other information and examples.

J. Use transitional words, phrases, and clauses that connect ideas and create cohesion.

K. Use precise language and domain-specific vocabulary to inform about or explain the topic.

L. Maintain a consistent style and voice.

M. Provide a concluding statement or section that follows from and supports the information presented.

N. Produce a narrative permanent product which engages and orients the reader by establishing a context and point of view and introducing the narrator and/or characters.

O. Organize events so they unfold naturally.

P. When appropriate, use narrative techniques (e.g., dialogue, pacing, and description), to develop experiences, events, and/or characters.

Q. Use a variety of transition words, phrases, and clauses to convey sequence and signal shifts from one time frame or setting to another.

R. Use precise words and phrases, relevant descriptive details, and sensory language to capture the action and convey experiences and events.

S. Provide a conclusion that follows from the narrated experiences or events.

T. Use words, phrases, or gathered information to accurately reflect literary context.

U. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to persuade or inform), and audience (e.g., reader).

V. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

W. With guidance and support from peers and adults, strengthen writing by revising and editing (e.g., review a permanent product, strengthen an informative/explanatory permanent product by adding transitional phrases, vary sentence types).

X. Use technology to produce and publish writing (e.g., use internet to gather information; use word processing to generate and collaborate on writing).

Y. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

Z. List internet search terms for a topic of study.

AA. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics) relevant to a topic.

BB. Quote or paraphrase the data and conclusions of others while avoiding plagiarism.

CC. Use a standard format to write citations.

DD. Provide a bibliography for sources that contributed to the creation of a permanent product.

EE. Provide evidence from grade-appropriate literary or informational texts to support analysis, reflection, and research.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:907 (May 2017).

### **§9344. Speaking and Listening**

A. Describe how the claims within a speaker's argument match own argument.

B. Discuss how own view or opinion changes using new information provided by others.

C. Use information and feedback to refine understanding or products.

D. Use information and feedback to refine own thinking.

E. Critically evaluate main ideas and details presented in diverse media (e.g., visually, personal communication, periodicals, social media) and formats for accuracy.

F. Explain if and how ideas presented in diverse media (e.g., visually, personal communication, periodicals, social media) clarify a topic, text, or issue under study.

G. Identify how information on a topic or text presented in diverse media and formats (e.g., visually, quantitatively, orally) contributes to understanding.

H. Evaluate the soundness of reasoning and the relevance and sufficiency of evidence provided in an argument.

I. Evaluate the soundness or accuracy of reasons presented to support a claim.

J. Present claims and findings, emphasizing salient points in a coherent manner with pertinent descriptions, facts, details, and examples.

K. Report on a topic, with a logical sequence of ideas, appropriate facts and relevant, descriptive details which support the main ideas.

L. Include multimedia components and visual displays in presentations to clarify claims and findings and emphasize salient points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:908 (May 2017).

### **§9345. Language**

A. Use phrases and clauses accurately within a sentence.

B. When appropriate, use simple, compound, complex, and compound-complex sentences when communicating.

C. Use commas to separate coordinate adjectives.

D. Spell words correctly.

E. Use words, phrases, or gathered information to accurately reflect meaning.

F. Choose language that expresses ideas precisely and concisely by eliminating wordiness and redundancy.

G. Use context as a clue to determine the meaning of a grade-appropriate word or phrase.

H. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the pronunciation of a word.

I. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the synonym for a word.

J. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the precise meaning of a word.

K. Verify the prediction of the meaning of a new word or phrase (e.g., by checking a dictionary).

L. Identify allusion within a text or media.

M. Interpret figures of speech (e.g., personification, allusions) in context.

N. Use the relationship between particular words (e.g., synonym/antonym, analogy) to better understand each of the words.

O. Identify the connotative meaning (the idea associated with the word) of a word or phrase.

P. Distinguish among the connotations (i.e., associations) of words with similar denotations (i.e., definitions) (e.g., slim, skinny, scrawny, thin).

Q. Use words, phrases, or gathered information to accurately reflect literary context.

R. Use grade-appropriate general academic and domain-specific words and phrases accurately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:908 (May 2017).

## **Subchapter I. Grade 8**

### **§9346. Reading Literature**

A. Refer to details and examples in a text when explaining what the text says explicitly.

B. Use two or more pieces of evidence to support inferences, conclusions, or summaries or text.

C. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries or text.

D. Determine the theme or central idea of a text.

E. Analyze the development of the theme or central idea over the course of the text including its relationship to the characters, setting and plot.

F. Create an objective summary of a text.

G. Analyze how particular lines of dialogue or incidents in a story or drama propel the action, reveal aspects of a character or provoke a decision.

H. Identify the use of literary techniques within a text.

I. Explain how the use of literary techniques within a text advances the plot or reveal aspects of a character.

J. Identify and interpret an analogy within a text.

K. Determine the meaning of words and phrases as they are used in a text including figurative (i.e., metaphors, similes, and idioms) and connotative meanings.

L. Compare and contrast the structure of two or more texts.

M. Explain how language use contributes to the meaning of a poem or drama.

N. Compare and contrast the points of view of different characters in the same text.

O. Analyze how differences in points of view of the characters and the audience or reader (e.g., created through the use of dramatic irony) creates such effects as suspense or humor.

P. Compare and contrast content presented in text, media, and live performance.

Q. Compare modern works of literature to the texts from which they draw ideas.

R. Read or be read to a variety of literary texts or adapted texts including historical novels, dramas or plays, poetry (including soliloquies and sonnets), and fiction.

S. Use a variety of strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:908 (May 2017).

### **§9347. Reading Informational Text**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries of text.

B. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries or text.

C. Determine two or more central ideas in a text.

D. Analyze the development of the central ideas over the course of the text.

E. Provide/create an objective summary of a text.

F. Analyze how a text makes connections among and distinctions between individuals, ideas, or events (e.g., through comparisons, analogies, or categories).

G. Identify and interpret an analogy within a text.

H. Determine the meaning of words and phrases as they are used in a text including figurative (i.e., metaphors, similes, and idioms) and connotative meanings.

I. Analyze how the use of figurative, connotative or technical terms affects the meaning or tone of text.

J. Use signal words as a means of locating information.

K. Outline the structure (i.e., sentence that identifies key concept(s), supporting details) within a paragraph.

L. Determine the structure of a text.

M. Determine how the information in each section contributes to the whole or to the development of ideas.

N. Determine an author's point of view or purpose in a text and analyze how the author acknowledges and responds to conflicting evidence or viewpoints.

O. Identify an argument or claim that the author makes.

P. Evaluate the claim or argument to determine if it is supported by evidence.

Q. Analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation.

R. Read or be read to a variety of informational texts or adapted texts.

S. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:909 (May 2017).

### **§9348. Writing**

A. Produce a persuasive permanent product which has an introduction that introduces a claim and distinguishes it from alternate or opposing claims.

B. Create an organizational structure in which ideas are logically grouped to support the claim.

C. Support the claim with logical reasoning and relevant evidence from credible sources.

D. Use words, phrases and clauses to link the claim and reasons and clarify relationship among ideas.

E. Maintain a consistent style and voice.

F. Provide a concluding statement or section that follows from and supports the argument presented.

G. Produce an informative/explanatory permanent product which has an introduction that clearly previews information to follow about a topic.

H. Create an organizational structure (e.g., cause/effect, compare/contrast, descriptions and examples) that groups information logically to support the stated topic.

I. Develop the topic (i.e., add additional information related to the topic) with relevant, well-chosen facts, definitions, concrete details, quotations, or other information and examples.

J. Use transitional words, phrases, and clauses that connect ideas and create cohesion.

K. Use precise language and domain-specific vocabulary to inform about or explain the topic.

L. Maintain a consistent style and voice.

M. Provide a concluding statement or section that follows from and supports the information or explanation presented.

N. Produce a narrative permanent product which engages and orients the reader by establishing a context and point of view and introducing a narrator and/or characters.

O. Organize events so they unfold naturally.

P. When appropriate, use narrative techniques, such as dialogue, pacing, and description, to develop experiences, events, and/or characters.

Q. Use a variety of transition words, phrases, and clauses to convey sequence, signal shifts from one time frame or setting to another, and show the relationships among experiences and events.

R. Use precise words and phrases, relevant descriptive details, and sensory language to capture the action and convey experiences and events.

S. Provide a conclusion that follows from the narrated experiences or events.

T. Use literacy devices (e.g., similes, metaphors, hyperbole, personification, imagery) when communicating.

U. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to persuade or inform), and audience (e.g., reader).

V. With guidance and support from peers and adults, develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft).

W. With guidance and support from peers and adults, strengthen writing by revising and editing (e.g., review a permanent product, strengthen a persuasive permanent product by adding a reason, vary sentence types).

X. Use technology to produce and publish permanent products (e.g., use word processing to generate and collaborate on writing).

Y. Follow steps to complete a short research project (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

Z. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from print (e.g., text read aloud, printed image) and/or digital sources (e.g., video, audio, images/graphics) relevant to a topic.

AA. Quote or paraphrase the data and conclusions of others while avoiding plagiarism.

BB. Use a standard format to produce citations.

CC. Provide a bibliography for sources that contributed to the creation of a permanent product.

DD. Provide evidence from grade-appropriate literary or informational texts to support analysis, reflection, and research.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:909 (May 2017).

### **§9349. Speaking and Listening**

A. Use information and feedback to refine understanding.

B. Use information and feedback to clarify meaning for readers.

C. Discuss how own view or opinion changes using new information provided by others.

D. Analyze the purpose of information presented in diverse media (e.g., visually, personal communication, periodicals, social media).

E. Identify the motives behind information presented in diverse media and formats (e.g., visually, personal communication, periodicals, social media).

F. Evaluate the motives and purpose behind information presented in diverse media and format for persuasive reasons.

G. Evaluate the soundness of reasoning and the relevance and sufficiency of evidence provided in an argument.

H. Identify when irrelevant evidence is introduced within an argument.

I. Evaluate the soundness or accuracy (e.g., multiple sources to validate information) of reasons presented to support a claim.

J. Present claims and findings, emphasizing salient points in a coherent manner with relevant evidence.

K. Report on a topic, with a logical sequence of ideas, appropriate facts and relevant, descriptive details which support the main ideas.

L. Include multimedia components and visual displays in presentations to clarify claims and findings and emphasize salient points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:910 (May 2017).

### **§9350. Language**

A. Use active and passive verbs when communicating.

B. Use verbs in indicative, imperative, interrogative, conditional, and/or subjunctive mood when communicating.

C. Use punctuation (e.g., comma, ellipsis, dash) to indicate a pause or break.

D. Spell words correctly.

E. Use active and passive voice in writing to achieve a particular effect.

F. Use verbs in the conditional and subjunctive mood to achieve a particular effect.

G. Use context as a clue to the meaning of a grade-appropriate word or phrase.

H. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the pronunciation of a word.

I. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the synonym for a word.

J. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the precise meaning of a word.

K. Verify the prediction of the meaning of a new word or phrase (e.g., by checking a dictionary).

L. Identify irony within a text or media

M. Identify a pun within a text or media.

N. Interpret figures of speech (e.g., allusions, verbal irony, puns) in context.

O. Use literacy devices (e.g., similes, metaphors, hyperbole, personification, imagery) in narrative writing.

P. Use the relationship between particular words to better understand each of the words.

Q. Distinguish among the connotations (i.e., associations) of words with similar denotations (i.e., definitions) (e.g., bullheaded, willful, firm, persistent, resolute).

R. Use grade-appropriate general academic and domain-specific words and phrases accurately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:910 (May 2017).

### **Subchapter J. Grade 9-10**

#### **§9351. Reading Literature**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries of the plot, purpose, or theme within a text.

B. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries of text.

C. Determine the theme or central idea of an adapted grade appropriate text.

D. Determine how the theme develops.

E. Determine how key details support the development of the theme of an adapted grade-level text.

F. Identify character with multiple or conflicting motivations (i.e., a complex character).

G. Delineate how a complex character develops over the course of a text, interacts with other characters, and advances the plot or develops the theme.

H. Determine the meaning of words and phrases as they are used in a text including figurative (e.g., metaphors, similes, and idioms) and connotative meanings.

I. Analyze how an author's choices concerning how to structure a text, order events within it (e.g., parallel plots), and manipulate time (e.g., pacing, flashbacks) create such effects as mystery, tension, or surprise.

J. Compare and contrast works from different cultures with a common theme.

K. Analyze the representation of a subject or a key scene in two different artistic mediums, including what is absent in each treatment.

L. Analyze how an author draws on source material in a specific work (e.g., how Shakespeare treats a theme or topic from Ovid or the Bible or how a later author draws on a play by Shakespeare).

M. Read or be read to a variety of literary texts or adapted texts including historical novels, classical dramas or plays, poetry, novels written by international authors, and fiction.

N. Read challenging grade-level literary texts.

O. Use strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:910 (May 2017).

### **§9352. Reading Informational Text**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries.

B. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries in a text.

C. Determine the central idea of a text.

D. Determine how the central idea develops.

E. Determine how key details support the development of the central idea of a text.

F. Create an objective summary of a text.

G. Analyze key points throughout a text to determine the organizational pattern or text structure.

H. Identify connections between key points.

I. Determine the meaning of words and phrases as they are used in a text including figurative (e.g., metaphors, similes, and idioms) and connotative meanings.

J. Analyze the use of figurative, connotative or technical terms on the meaning or tone of text.

K. Analyze in detail how an author's ideas or claims are developed.

L. Identify key sentences or paragraphs that support claims.

M. Determine the author's point of view or purpose in a text.

N. Determine/identify the specific language/words that the author uses to advance the point of view or purpose.

O. Develop and explain ideas for why authors made specific word choices within text.

P. Analyze various accounts of a subject told in different mediums (e.g., a person's life story in both print and multimedia), determining which details are emphasized in each account.

Q. Identify claims and arguments made by the author.

R. Delineate/trace the author's argument and specific claims.

S. Evaluate the argument/claims that the author makes to determine if the statements are true or false.

T. Delineate the argument and specific claims in two or more texts on related topics.

U. Assess the validity of the arguments across texts on related topics.

V. Identify central ideas and concepts in seminal U.S. documents of historical and literary significance (e.g., Washington's Farewell Address, the Gettysburg Address, Roosevelt's Four Freedoms speech, King's "Letter from Birmingham Jail").

W. Analyze how seminal U.S. documents of historical and literary significance (e.g., Washington's Farewell Address, the Gettysburg Address, Roosevelt's Four Freedoms speech, King's "Letter from Birmingham Jail") address similar central ideas.

X. Read or be read to a variety of informational texts or adapted texts.

Y. Read challenging grade-level informational texts.

Z. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:911 (May 2017).

### **§9353. Writing**

A. Introduce claim(s) for an argument that reflects knowledge of the topic.

B. Identify claim(s) from alternate or opposing claims(s) in writing.

C. Create an organizational structure which develops relationships among claim(s), reasons, and evidence (e.g., introduce claims, distinguish supporting and opposing claims and relevant evidence for each, provide conclusion).

D. Identify specific evidence for claim(s) and counterclaim(s).

E. Use words, phrases, and clauses to clarify the relationship among claims, counterclaims, reasons, and evidence.

F. Maintain a consistent style and voice.

G. Provide a concluding statement or section that supports the argument presented by stating the significance of the claim.

H. Produce an informative/explanatory permanent product which has an introduction that clearly previews information to follow about a topic.

I. Create an organizational structure (e.g., cause/effect, compare/contrast, descriptions and examples) that groups information logically to support the stated topic.

J. Develop the topic (i.e., add additional information related to the topic) with relevant facts, extended definitions, concrete details, quotations, or other information and examples appropriate for the audience.

K. Use transitional words, phrases, and clauses that connect ideas and create cohesion.

L. Use precise language and domain-specific vocabulary to manage the complexity of the topic.

M. Maintain a consistent style and voice.

N. Provide a concluding statement or section that follows from and supports the information or explanation presented.

O. Produce a narrative permanent product which engages and orients the reader by setting out a problem, situation, or observation and establishes one or multiple point(s) of view.

P. Sequence events so that they build on one another to create a smooth progression of experiences or events.

Q. Include plot and pacing techniques (e.g., flashback, foreshadowing, suspense) as appropriate.

R. Include dialogue that advances the plot or theme (e.g., reveals character motivations, feelings, thoughts, how a character has changed perspectives).

S. Use precise words and phrases, telling details, and sensory language to convey a vivid picture of the experiences, events, setting, and/or characters.

T. Provide a conclusion that follows from and reflects on what is experienced, observed, or resolved over the course of the narrative.

U. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to persuade or inform), or audience (e.g., reader).

V. Develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft) focused on a specific purpose and audience.

W. Strengthen writing by revising and editing (e.g., review a permanent product, strengthen informative/explanatory permanent products by adding examples, use parallel structure correctly).

X. Use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on permanent products).

Y. Follow steps to complete a short or sustained research project to build knowledge on a topic or text, answer a question and/or solve a problem (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

Z. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from authoritative print and/or digital sources relevant to a topic or stated claim.

AA. Integrate information presented by others into permanent products while avoiding plagiarism.

BB. Use a standard format to write citations.

CC. Provide a bibliography for sources that contributed to the creation of a permanent product.

DD. Provide evidence from grade-appropriate literary or informational texts to support analysis, reflection, and research.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:911 (May 2017).

#### **§9354. Speaking and Listening**

A. Work with peers to set rules for collegial discussions and decision-making.

B. Actively seek the ideas or opinions of others in a discussion on a given topic or text.

C. Engage appropriately in discussion with others who have a diverse or divergent perspective.

D. Clarify, verify, or challenge ideas and conclusions within a discussion on a given topic or text.

E. Summarize points of agreement and disagreement within a discussion on a given topic or text.

F. Use evidence and reasoning presented in discussion on topic or text to make new connections with own view or understanding.

G. Analyze credibility of sources and accuracy of information presented in social media regarding a given topic or text.

H. Determine the speaker's point of view or purpose in a text.

I. Determine what arguments the speaker makes.

J. Evaluate the evidence used to make the argument.

K. Evaluate a speaker's point of view, reasoning, and use of evidence for false statements, faulty reasoning or exaggeration.

L. Report on a topic, using a logical sequence of ideas, appropriate facts and relevant, and descriptive details which support the main ideas.

M. Include digital or multimedia components and visual displays in presentations to clarify claims and findings and emphasize salient points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:912 (May 2017).

#### **§9355. Language**

A. Use parallel structure (e.g., when using gerunds [-ing], infinitives, or voice [active or passive]) within writing.

B. Use various types of phrases (noun, verb, adjectival, adverbial, participial, prepositional, absolute) and clauses (independent, dependent; noun, relative, adverbial) to convey meaning and add interest to writing.

C. Use a semicolon (i.e., link two or more related independent clauses) and/or colon (i.e., to introduce a list or quotation) appropriately in writing.

D. Spell correctly in writing.

E. Write and edit work to conform to guidelines in a style manual.

F. Use context (e.g., the overall meaning of a sentence, paragraph, or text; a word's position in a sentence) as a clue to the meaning of a word or phrase.

G. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the synonym for a word.

H. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the precise meaning of a word.

I. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the part of speech for a word.

J. Verify the prediction of the meaning of a new word or phrase (e.g., by checking a dictionary).

K. Identify an oxymoron in a text.

L. Identify the denotation for a known word.

M. Interpret how literary devices advance the plot or affect the tone or pacing of a text.

N. Interpret figures of speech in context.

O. Explain differences or changes in the meaning of words with similar denotations.

P. Use general academic and domain-specific words and phrases accurately.

Q. Use newly acquired domain-specific words and phrases accurately.

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### **Subchapter K. Grade 11-12**

#### **§9356. Reading Literature**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries of the plot, purpose, or theme within a text.

B. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries or text.

C. Use evidence to support conclusions about ideas not explicitly stated in the text.

D. Determine two or more themes or central ideas of an adapted grade-level text.

E. Determine how the theme develops.

F. Provide/create an objective summary of a text.

G. Analyze the author's choices about what is developed and included in the text and what is not developed and included related to story elements.

H. Analyze author's choices about how to relate elements of the story (e.g., where a story is set, how the action is ordered, how the characters are introduced and developed).

I. Determine the meaning of words and phrases as they are used in a text including figurative (e.g., metaphors, similes, and idioms) and connotative meanings.

J. Analyze how an author's choices concerning how to structure specific parts of a text (e.g., the choice of where to begin or end a story, the choice to provide a comedic or tragic resolution) contribute to its overall structure and meaning.

K. Define satire, sarcasm, and irony.

L. Differentiate from what is directly stated in a text from what is meant.

M. Analyze multiple interpretations of a story drama, or poem (e.g., recorded or live productions of a play or recorded novel or poetry) evaluating how each version interprets the source text.

N. Demonstrate knowledge of foundational words of U.S. and world literature, including how two or more texts from the same period treat similar themes or topics (e.g., historical reflection, social, morals).

O. Read or be read to a variety of literary texts or adapted texts including historical novels, classical dramas or plays, poetry, novels written by international authors, and fiction.

P. Independently read challenging grade-level literary texts.

Q. Use a variety of strategies to derive meaning from a variety of print and non-print literary texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:913 (May 2017).

#### **§9357. Reading Informational Text**

A. Use two or more pieces of evidence to support inferences, conclusions, or summaries or text.

B. Determine which piece(s) of evidence provide the strongest support for inferences, conclusions, or summaries in a text.

C. Determine two or more central ideas of a text.

D. Determine how the central ideas develop.

E. Determine how key details support the development of the central idea of a text.

F. Create an objective summary of a text.

G. Analyze key points throughout a text to determine the organizational pattern or text structure.

H. Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.

I. Determine the meaning of words and phrases as they are used in a text including figurative (e.g., metaphors, similes, and idioms) and connotative meanings.

J. Analyze the structure an author uses in his or her exposition or argument.

K. Evaluate the effectiveness of the structure an author uses in his or her exposition or argument, to determine whether the structure makes points clear, convincing.

L. Determine the author's point of view or purpose in a text.

M. Determine what arguments the author makes.

N. Determine/identify the specific language/words that the author uses that contribute to the power, persuasiveness or beauty of the text.

O. Develop and explain ideas for why authors made specific word choices within text.

P. Integrate and evaluate multiple sources of information presented in different media or formats (e.g., visually, quantitatively) as well as in words in order to address a question or solve a problem.

Q. Identify claims made by the author as being fact or opinion.

R. Distinguish reliable sources from non-reliable.

S. Evaluate the premises, purposes, argument that the author makes.

T. Delineate the premises, purposes, argument and specific claims in two or more texts on related topics.

U. Assess the validity of the premises, purposes, arguments across texts on related topics.

V. Identify central ideas and concepts in seminal U.S. documents of historical and literary significance (e.g., Washington's Farewell Address, the Gettysburg Address, Roosevelt's Four Freedoms speech, King's —Letter from Birmingham Jail).

W. Analyze seminal U.S. documents of historical and literary significance (e.g., Washington's Farewell Address, the Gettysburg Address, Roosevelt's Four Freedoms speech, King's—Letter from Birmingham Jail), address similar central ideas.

X. Read or be read to a variety of informational texts or adapted texts.

Y. Independently read challenging grade-level informational texts.

Z. Use a variety of strategies to derive meaning from a variety of print and non-print informational texts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:913 (May 2017).

#### **§9358. Writing**

A. Introduce claim(s) for an argument that reflects knowledge of the topic.

B. Use context or related text to establish the significance of the claim(s).

C. Identify claim(s) from alternate or opposing claims(s) in writing.

D. Create an organizational structure for a permanent product which logically sequences claim(s), counterclaims, reasons, and evidence (e.g., introduce claims, distinguish supporting and opposing claims and relevant evidence for each, provides conclusion).

E. Select the most relevant evidence for claim(s) and counterclaim(s).

F. If Develop clear claim(s) with the most relevant evidence for a topic or text.

G. Use words, phrases, and clauses to create cohesion.

H. Use words, phrases, and clauses to clarify the relationship among claims, counterclaims, reasons, and evidence.

I. Maintain a consistent style and voice.

J. Provide a concluding statement or section that supports the argument presented by stating the significance of the claim and/or presenting next steps related to the topic.

K. Produce an informative/explanatory permanent product which has an introduction that clearly previews information to follow about a topic.

L. Create an organizational structure (e.g., cause/effect, compare/contrast, descriptions and examples) that groups information logically to support the stated topic.

M. Develop the topic (i.e., add additional information related to the topic) with facts, extended definitions, concrete details, quotations, or other information and examples that are most relevant to the focus and appropriate for the audience.

N. Use transitional words, phrases, and clauses that connect ideas and create cohesion within writing.

O. Use precise language, domain-specific vocabulary to manage the complexity of the topic.

P. Maintain a consistent style and voice.

Q. Provide a concluding statement or section that follows from and supports the information or explanation presented.

R. Produce a narrative permanent product which engages and orients the reader by setting out a problem, situation, or observation and establishes one or multiple point(s) of view.

S. Use a variety of techniques to sequence events so they build on one another to create a smooth progression of experiences or events and build toward a particular tone and outcome (e.g., a sense of mystery, suspense, growth, resolution).

T. Include plot and pacing techniques (e.g., flashback, foreshadowing, suspense) as appropriate.

U. Include dialogue that advances the plot or theme (e.g., reveals character motivations, feelings, thoughts, how character has changed perspectives).

V. Use precise words and phrases, telling details, and sensory language to convey a vivid picture of the experiences, events, setting, and/or characters.

W. Provide a conclusion that follows from and reflects on what is experienced, observed, or resolved over the course of the narrative.

X. Produce a clear, coherent permanent product that is appropriate to the specific task (e.g., topic or text), purpose (e.g., to persuade or inform), or audience (e.g., reader).

Y. Develop a plan for permanent products (e.g., brainstorm topics, select a topic, gather information, create a draft) focused on a specific purpose and audience.

Z. Strengthen writing by revising and editing (e.g., review a permanent product, strengthen an argument by finding relevant evidence as support, use hyphens correctly).

AA. Use technology to produce and publish permanent products (e.g., use the Internet to gather information; use word processing to generate and collaborate on permanent products).

BB. Follow steps to complete a short or sustained research project to build knowledge on a topic or text, answer a question and/or solve a problem (e.g., determine topic, locate information on a topic, organize information related to the topic, draft a permanent product).

CC. Gather relevant information (e.g., highlight in text, quote or paraphrase from text or discussion) from authoritative print and/or digital sources relevant to a topic or stated claim.

DD. Integrate information presented by others which is determined to be the most appropriate for the task, purpose, and audience into permanent products while avoiding plagiarism.

EE. Use a standard format to write citations.

FF. Provide a bibliography for sources that contributed to the creation of a permanent product.

GG. Provide evidence from grade-appropriate literary or informational texts to support analysis, reflection, and research.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:913 (May 2017).

### **§9359. Speaking and Listening**

A. Work with peers to promote democratic discussions.

B. Actively seek the ideas or opinions of others in a discussion on a given topic or text.

C. Consider a full range of ideas or positions on a given topic or text when presented in a discussion.

D. Engage appropriately in discussion with others who have a diverse or divergent perspectives.

E. Clarify, verify, or challenge ideas and conclusions within a discussion on a given topic or text

F. Summarize points of agreement and disagreement within a discussion on a given topic or text.

G. Use evidence and reasoning presented in discussion on topic or text to make new connections with own view or understanding.

H. Analyze credibility of sources and accuracy of information presented in social media regarding a given topic or text.

I. Determine the speaker's point of view or purpose in a text.

J. Determine what arguments the speaker makes.

K. Evaluate the evidence used to make the speaker's argument.

L. Evaluate a speaker's point of view, reasoning, use of evidence, and rhetoric for ideas, relationship between claims, reasoning, and evidence, and word choice.

M. Report on a topic, using a logical sequence of ideas, appropriate facts and relevant, and descriptive details which support the main ideas.

N. Include digital or multimedia components and visual displays in presentations to clarify claims and findings and emphasize salient points.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:914 (May 2017).

### **§9360. Language**

A. Use hyphenation conventions.  
B. Spell correctly.  
C. Create and edit permanent products to conform to guidelines in a style manual.

D. Vary syntax within writing for effect.  
E. Use context (e.g., the overall meaning of a sentence, paragraph, or text; a word's position in a sentence) as a clue to the meaning of a word or phrase.

F. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the synonym for a word.

G. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the precise meaning of a word.

H. Consult print or digital reference materials (e.g., dictionaries, glossaries, thesauruses) to find the part of speech for a word.

I. Verify the prediction of the meaning of a new word or phrase (e.g., by checking a dictionary).

J. Identify hyperbole in a text.

K. Interpret how literary devices advance the plot or affect the tone or pacing of a text.

L. Interpret figures of speech in context.

M. Explain differences or changes in the meaning of words with similar denotations.

N. Use general academic and domain-specific words and phrases accurately.

O. Use newly acquired domain-specific words and phrases accurately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

## **Chapter 95. Mathematics**

### **Subchapter A. Kindergarten**

#### **§9501. Counting and Cardinality**

A. Count up to 10 objects in a line, rectangle, or array.  
B. Identify the set that has more.  
C. Identify the smaller or larger number given 2 numbers between 0-10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

#### **§9503. Operations and Algebraic Thinking**

A. Use objects or pictures to respond appropriately to "add \_\_\_" and "take away \_\_\_."

B. Communicate answer after adding or taking away.

C. Solve one step addition and subtraction word problems, and add and subtract within 10 using objects, drawings, pictures.

D. Solve word problems within 10.

E. Decompose a set of up to 10 objects into a group; count the quantity in each group.

F. For any number from 1 to 9, find the number that makes 10 when added to the given number, e.g., by using objects or drawings, and record or select the answer.

G. Add and subtract within 5 using manipulatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

#### **§9505. Number and Operations in Base Ten**

A. Build representations of numbers up to 19 by creating a group of 10 and some 1s (e.g., 13 = one 10 and three 1s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

#### **§9507. Measurement and Data**

A. Describe objects in terms of measurable attributes (longer, shorter, heavier, lighter...).

B. Compare 2 objects with a measurable attribute in common to see which object has more/less of the attribute (length, height, weight).

C. Sort objects by characteristics (e.g., big/little, colors, shapes, etc.).

D. Recognize pennies, nickels, dimes, and quarters by name and value (e.g., This is a nickel and it is worth 5 cents.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

#### **§9509. Geometry**

A. Use spatial language (e.g., above, below, etc.) to describe two-dimensional shapes.

B. Recognize two-dimensional shapes (e.g., circle, square, triangle, rectangle) regardless of orientation or size.

C. Recognize two-dimensional shapes in environment regardless of orientation or size.

D. Identify shapes as two-dimensional (lying flat) or three-dimensional (solid).

E. Distinguish two-dimensional shapes based upon their defining attributes (i.e., size, corners, and points).

F. Use informal language to describe how two shapes are similar and/or different.

G. Uses three dimensional objects (blocks, sticks, balls) to model shapes in the world.

H. Compose a larger shape from smaller shapes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

### **Subchapter B. Grade 1**

#### **§9511. Counting and Cardinality**

A. Understand the relationship between numbers and quantities.

1. Use a number line to count up to 31 objects by matching 1 object per number.

B. Write numbers from 0-31 and represent a number of objects with a written numeral.

1. Identify numerals 0-31.

2. Identify the numeral up to 31 when presented the name.

3. Write or select the numerals 0-31.

4. Recognize zero as representing none or no objects.
- C. Identify whether the number of objects in one group is greater than, less than, or equal to the number of objects in another group.
  1. Compare 2 sets and identify the set that is either greater than or less than the other set.
  2. Order up to 3 sets that have up to 10 objects in each set.
  3. Order up to 3 sets with up to 20 objects in each set.
- D. Compare two numbers between 0 and 31 presented as written numerals.
  1. Order up to 3 numbers up to 31.
  2. Identify the smaller or larger number given 2 numbers between 0-31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:915 (May 2017).

### §9513. Operations and Algebraic Thinking

- A. Use manipulatives or representations to write simple addition or subtraction equations within 20 based upon a word problem.
- B. Solve word problems within 20.
- C. Using objects or pictures respond appropriately to "add \_\_\_" and "take away \_\_\_."
- D. Solve one step addition and subtraction word problems where the change or result is unknown ( $4 + \_ = 7$ ) or ( $4 + 3 = \_$ ), within 20 using objects, drawings, pictures.
- E. Solve word problems that call for addition of two or three numbers whose sum is less than or equal to 20 by using objects and drawings.
- F. Recognize zero as an additive identity.
- G. Use commutative properties to solve addition problems with sums up to 20 (e.g.,  $3 + 8 = 11$  therefore  $8 + 3 = \_$ ).
- H. Use associative property to solve addition problems with sums up to 20.
- I. Subtract within 20 by using the strategy of an unknown addend. For example, subtract  $10 - 8$  by finding the number that makes 10 when added to 8.
- J. Decompose a set of up to 20 objects into a group; count the quantity in each group.
- K. Count 2 sets to find sums up to 20.
- L. Add and subtract within 20 supported by the use of manipulatives.
- M. Identify and apply addition and equal signs.
- N. Label simple equations as = or with the phrase "not equal."
- O. Identify and apply addition, subtraction, and equal signs.

- P. Determine the unknown whole number in an addition or subtraction equation relating three whole numbers. For example, determine the unknown number that makes the equation true in each of the equations  $8 + ? = 11$ ,  $5 = \square - 3$ ,  $6 + 6 = \square$ .

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:916 (May 2017).

### §9515. Number and Operations in Base Ten

- A. Rote count up to 31.
- B. Rote count up to 100.

C. Build representations of numbers up to 19 by creating a group of 10 and some 1s (e.g.,  $13 =$  one 10 and three 1s).

D. Identify the value of the numbers in the tens and ones place within a given number up to 31.

E. Compare two digit numbers up to 31 using representations and numbers (e.g., identify more tens, less tens, more ones, less ones, larger number, smaller number).

F. Add within 100, including adding a two-digit number and a one-digit number, and adding a two-digit number and a multiple of 10.

G. Understand that in adding two-digit numbers, one adds tens and tens, ones and ones; and sometimes it is necessary to compose a ten.

H. Mentally add or subtract 10 from a given two-digit number without having to count.

I. Mentally add or subtract 10 from a given set from the 10s family (e.g., what is 10 more than 50? What is 10 less than 70?).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:916 (May 2017).

### §9517. Measurement and Data

A. Order three objects by length; compare the lengths of two objects indirectly by using a third object.

B. Measure using copies of one object to measure another.

C. Express length of an object as a whole number of lengths unit by laying multiple copies of a shorter object end to end.

D. Compare two units of measurement and identify which unit would require more or less when measuring a selected object (e.g., I can measure with paper clips or markers, which unit will require more to measure the table?).

E. Use time to sequence up to three events, using a digital or analog clock.

F. Tell time to the nearest 1/2 hour using digital clocks.

G. Select questions that ask about "How many" and represent up to three categories that can be concretely represented.

H. Identify 2 categories resulting from a selected question.

I. Analyze data by sorting into 2 categories; answer questions about the total number of data points and how many in each category.

J. Using a picture graph, represent each object/person counted on the graph (1:1 correspondence) for 2 or more categories.

K. Interpret a picture graph to answer questions about how many in each category.

L. Select a question about three attributes that can be concretely represented.

M. Identify up to three categories resulting from a selected question.

N. Determine the value of a collection of coins up to 50 cents. (Pennies, nickels, dimes, and quarters in isolation; not to include a combination of different coins.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:916 (May 2017).

## **§9519. Geometry**

- A. Distinguish two-dimensional shapes based upon their defining attributes (i.e., size, corners, and points).
- B. Compose two- and three-dimensional shapes.
- C. Partition circles and rectangles into 2 and 4 equal parts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:917 (May 2017).

### **Subchapter C. Grade 2**

#### **§9521. Operations and Algebraic Thinking**

- A. Represent addition of two sets when shown the + symbol.
- B. Solve word problems within 20.
- C. Solve word problems within 100.
- D. Solve one- or two-step addition and subtraction problems, and add and subtract within 100, using objects, drawings, pictures.
- E. Use pictures, drawings or objects to represent the steps of a problem.
- F. Add and subtract within 20 using manipulatives.
- G. Identify numbers as odd or even.
- H. Find the total number of objects when given the number of identical groups and the number of objects in each group, neither number larger than 5.
- I. Find the total number inside an array with neither number in the columns or rows larger than 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:917 (May 2017).

#### **§9523. Number and Operations in Base Ten**

- A. Build representations of two digit numbers using tens and ones.
- B. Build representations of three digit numbers using hundreds, tens and ones.
- C. Build representations of numbers using hundreds, tens and ones.
- D. Skip count by 5s.
- E. Skip count by 10s.
- F. Skip count by 100s.
- G. Identify numerals 0-100.
- H. Identify the numeral between 0 and 100 when presented the name.
- I. Write or select the numerals 0-100.
- J. Write or select expanded form for any two digit number.
- K. Write or select expanded form for any three digit number.
- L. Explain what the zero represents in place value (hundreds, tens, ones) in a number.
- M. Write or select the expanded form for up to three digit number.
- N. Compare (greater than, less than, equal to) two numbers up to 100.
- O. Compare two digit numbers using representations and numbers (e.g., identify more tens, less tens, more ones, less ones, larger number, smaller number).
- P. Compare three digit numbers using representations and numbers (e.g., identify more hundreds, less hundreds, more tens, less tens, more ones, less ones, larger number, smaller number).

Q. Model addition and subtraction with base 10 blocks within 20.

R. Model addition and subtraction with base 10 blocks within 50.

S. Model addition and subtraction with base 10 blocks within 100.

T. Combine up to 3 sets of 20 or less.

U. Compose ones into tens and/or tens into hundreds in addition situation.

V. Decompose tens into ones and/or hundreds into tens in subtraction situations.

W. Use diagrams and number lines to solve addition or subtraction problems.

X. Mentally add or subtract 10 from a given set from the 10s family (e.g., what is 10 more than 50? What is 10 less than 70?).

Y. Mentally add or subtract 100 from a given set from the 100s family (e.g., what is 100 more than 500? What is 100 less than 700?).

Z. Mentally add or subtract 100 from a given set from the 100s family (e.g., what is 100 more than 500? What is 100 less than 700?).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:917 (May 2017).

#### **§9525. Measurement and Data**

A. Select appropriate tool and unit of measurement to measure an object (ruler or yard stick; inches or feet).

B. Select appropriate tools and demonstrate or identify appropriate measuring techniques.

C. Measure the length of an object using two different size units.

D. Recognize that standard measurement units can be decomposed into smaller units.

E. Estimate the length of an object using units of feet and inches.

F. Measure two objects with each no more than 10 inches long and find the difference in their lengths.

G. Solve one-step subtraction problems involving the difference of the lengths of two objects in standard length units.

H. Solve word problems involving the difference in standard length units.

I. Use diagrams and number lines to solve addition or subtraction problems.

J. Tell time to the nearest 5 minutes using a digital clock.

K. Solve word problems using dollar bills, quarters, dimes, nickels, or pennies.

L. Organize data by representing continuous data on a line plot.

M. Analyze data by sorting into categories established by each question.

N. Organize data by representing categorical data on a pictorial graph or bar graph.

O. Identify the value of each category represented on picture graph and bar graph or each point on a line plot.

P. Compare the information shown in a bar graph or picture graph with up to four categories. Solve simple comparisons of how many more or how many less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:917 (May 2017).

### **§9527. Geometry**

A. Identify two-dimensional shapes such as rhombus, pentagons, hexagons, octagon, ovals, equilateral, isosceles, and scalene triangles.

B. Distinguish two- or three-dimensional shapes based upon their attributes (i.e., # of sides, equal or different lengths of sides, # of faces, # of corners).

C. Draw two-dimensional shapes with specific attributes.

D. Find the total number of same size squares by counting when the number of rows and columns in a given array is 5 or less.

E. Partition circles and rectangles into two and four equal parts.

F. Label a partitioned shape (e.g., one whole rectangle was separated into two halves, one whole circle was separated into three thirds).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:918 (May 2017).

### **Subchapter D. Grade 3**

#### **§9529. Operations and Algebraic Thinking**

A. Describe a context in which a total number of objects can be expressed as product of two one-digit numbers.

B. Describe a context in which a number of shares or a number of groups can be expressed as a division problem.

C. Use objects to model multiplication and division situations involving up to 5 groups with up to 5 objects in each group and interpret the results.

D. Use objects to model multiplication and division situations involving up to 10 groups with up to 5 objects in each group and interpret the results.

E. Find total number inside an array with neither number in the columns or rows larger than 10.

F. Determine how many objects go into each group when given the total number of objects and the number of groups where the number in each group or number of groups is not greater than 10.

G. Apply properties of operations as strategies to multiply and divide.

H. Determine how many objects go into each group when given the total number of objects and the number of groups where the number in each group or number of groups is not greater than 5.

I. Determine the number of groups given the total number of objects and the number of objects in each group where the number in each group and the number of groups is not greater than 5.

J. Find the total number of objects when given the number of identical groups and the number of objects in each group, neither number larger than 5.

K. Find the total number inside an array with neither number in the columns or rows larger than 5.

L. Solve multiplication problems with neither number greater than 5.

M. Use rounding to solve word problems.

N. Solve or solve and check one or two step word problems requiring addition, subtraction or multiplication with answers up to 100.

O. Describe the rule for a numerical pattern (e.g., increase by 2, 5 or 10).

P. Select or name the three next terms in a numerical pattern where numbers increase by 2, 5 or 10.

Q. Identify multiplication patterns in a real word setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:918 (May 2017).

#### **§9531. Number and Operations in Base Ten**

A. Use place value to round to the nearest 10 or 100.

B. Use the relationships between addition and subtraction to solve problems.

C. Solve multi-step addition and subtraction problems up to 100.

D. Solve multi-digit addition and subtraction problems up to 1000.

E. Multiply a multiple of 10 in the range of 10-90 by a one digit whole number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:918 (May 2017).

#### **§9533. Number and Operations—Fractions**

A. Identify the number of highlighted parts (numerator) of a given representation (rectangles and circles).

B. Identify the total number of parts (denominator) of a given representation (rectangles and circles).

C. Identify the fraction that matches the representation (rectangles and circles; halves, fourths, thirds, eighths).

D. Identify that a part of a rectangle can be represented as a fraction that has a value between 0 and 1.

E. Select a model of a given fraction (halves, thirds, fourths, sixths, eighths).

F. Using a representation, decompose a fraction into multiple copies of a unit fraction (e.g.,  $\frac{3}{4} = \frac{1}{4} + \frac{1}{4} + \frac{1}{4}$ ).

G. Locate given common unit fractions (i.e.,  $\frac{1}{2}, \frac{1}{4}, \frac{1}{8}$ ) on a number line or ruler.

H. Locate fractions on a number line.

I. Order fractions on a number line.

J. Use =, <, or > to compare two fractions with the same numerator or denominator.

K. Express whole numbers as fractions.

L. Determine equivalent fractions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:918 (May 2017).

#### **§9535. Measurement and Data**

A. Solve word problems involving the addition and subtraction of time intervals of whole hours or within an hour (whole hours: 5:00 to 8:00, within hours: 7:15 to 7:45).

B. Determine the equivalence between number of minutes and the fraction of the hour (e.g., 30 minutes =  $\frac{1}{2}$  hour).

C. Determine the equivalence between the number of minutes and the number of hours (e.g., 60 minutes = 1 hour).

D. Add to solve one-step word problems.

E. Estimate liquid volume.

F. Select appropriate units for measurement (liquid volume, mass).

G. Select appropriate tools for measurement (liquid volume, mass).

H. Determine whether a situation calls for a precise measurement or an estimation.

- I. Collect data, organize into picture or bar graph.
- J. Select the appropriate statement that describes the data representations based on a givens scaled picture or bar graph.
- K. Generate measurement data by measuring lengths using rulers marked with halves and fourths of an inch.
- L. Measure to solve problems using number lines and ruler to 1 inch, 1/2 inch, or 1/4 of an inch.
- M. Organize measurement data into a line plot.
- N. Select a square from pictures as the appropriate unit for measuring area.
- O. Select a picture which correctly shows how to place squares to measure the area of a rectangle.
- P. Measure area of rectangles by counting squares.
- Q. Use tiling and addition to determine area.
- R. Multiply side lengths to find the area of a rectangle with whole number side lengths to solve problems.
- S. Use tiling and multiplication to determine area.
- T. Apply the distributive property to solve problems with models.
- U. Identify a figure as getting larger or smaller when the dimensions of the figure change.
- V. Use addition to find the perimeter of a rectangle.
- W. Solve real world problems involving perimeter.
- X. Solve word problems using bills greater than one dollar, quarters, dimes, nickels, or pennies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:918 (May 2017).

### §9537. Geometry

- A. Identify shared attributes of shapes.
- B. Partition rectangles into equal parts with equal area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:919 (May 2017).

### Subchapter E. Grade 4

#### §9539. Operations and Algebraic Thinking

- A. Use objects to model multiplication and division situations involving up to 5 groups with up to 5 objects in each group and interpret the results.
- B. Determine how many objects go into each group when given the total number of objects and the number of groups where the number in each group or number of groups is not greater than 10.
- C. Solve multiplicative comparisons with an unknown using up to 2-digit numbers with information presented in a graph or word problem (e.g., an orange hat cost \$3. A purple hat cost 2 times as much. How much does the purple hat cost? [ $3 \times 2 = p$ ]).
- D. Solve or solve and check one or two step word problems requiring addition, subtraction or multiplication with answers up to 100.
- E. Solve problems or word problems using up to three digit numbers and addition or subtraction or multiplication.
- F. Identify multiples for a whole number (e.g.,  $2 = 2, 4, 6, 8, 10$ ).
- G. Generate a pattern when given a rule and word problem. (I run 3 miles every day, how many miles have I run in 3 days).
- H. Extend a numerical pattern when the rule is provided.

- I. Generate a pattern that follows the provided rule.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:919 (May 2017).

#### §9541. Number and Operations in Base Ten

- A. Compare the value of a number when it is represented in different place values of two 3 digit numbers.
- B. Compare multi-digit numbers using representations and numbers.
- C. Write or select the expanded form for a multi-digit number.
- D. Use place value to round to any place (i.e., ones, tens, hundreds, thousands).
- E. Solve multi-digit addition and subtraction problems up to 1000.
- F. Solve multiplication problems up to two digits by one digit.
- G. Solve a 2-digit by 1-digit multiplication problem using two different strategies.
- H. Separate a group of objects into equal sets when given the number of sets to find the total in each set with the total number less than 50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:919 (May 2017).

#### §9543. Number and Operations—Fractions

- A. Determine equivalent fractions.
- B. Use  $=$ ,  $<$ , or  $>$  to compare 2 fractions (fractions with a denominator or 10 or less).
- C. Compare up to 2 given fractions that have different denominators.
- D. Using a representation, decompose a fraction into multiple copies of a unit fraction (e.g.,  $\frac{3}{4} = \frac{1}{4} + \frac{1}{4} + \frac{1}{4}$ ).
- E. Add and subtract fractions with like denominators of (2, 3, 4, or 8).
- F. Add and subtract fractions with like denominators (2, 3, 4, or 8) using representations.
- G. Solve word problems involving addition and subtraction of fractions with like denominators (2, 3, 4, or 8).
- H. Multiply a fraction by a whole or mixed number.

- I. Find the equivalent decimal for a given fraction with a denominator of 10 or 100.
- J. Match a fraction with a denominator of 10 or 100 as a decimal ( $\frac{5}{10} = .5$ ).

- K. Read, write or select decimals to the tenths place.
- L. Read, write or select decimals to the hundredths place.
- M. Use  $=$ ,  $<$ , or  $>$  to compare 2 decimals (decimals in multiples of 10).
- N. Compare two decimals to the tenths place with a value of less than 1.
- O. Compare two decimals to the hundredths place with a value of less than 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:919 (May 2017).

#### §9545. Measurement and Data

- A. Complete a conversion table for length and mass within a single system.

B. Identify the appropriate units of measurement for different purposes in a real life context (e.g., measure a wall using feet, not inches).

C. Use the four operations to solve word problems involving distance, time, mass, and money and problems that require conversions from one unit to a smaller unit.

D. Select appropriate units for measurement (length, liquid volume, time, money).

E. Solve word problems using perimeter and area where changes occur to the dimensions of a figure.

F. Make a line plot to display a data set of measurements in fractions of a unit ( $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{1}{8}$ ).

G. Solve problems involving addition and subtraction of fractions with like denominators by using information presented in line plots.

H. Recognize an angle in two-dimensional figures.

I. Use a protractor or angle ruler to sketch a given angle.

J. Measure right angles using a tool (e.g., angle ruler, protractor).

K. Given a picture of a right angle divided into two angles, find the measure of the missing angle when given the measure of one of the two angles.

L. Match an accurate addition and multiplication equation to a representation.

M. Apply the formulas for area and perimeter to solve real world problems.

N. Apply the distributive property to solve problems with models.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:919 (May 2017).

### §9547. Geometry

A. Recognize a point, line and line segment, rays in two-dimensional figures.

B. Recognize perpendicular and parallel lines in two-dimensional figures.

C. Recognize an angle in two-dimensional figures.

D. Classify two-dimensional shapes based on attributes (# of angles).

E. Categorize angles as right, acute, or obtuse.

F. Identify a right triangle.

G. Recognize a line of symmetry in a figure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:920 (May 2017).

### Subchapter F. Grade 5

#### §9549. Operations and Algebraic Thinking

A. Evaluate an expression with one set of parentheses.

B. Write a simple numerical expression that indicates calculations with whole numbers.

C. Given two patterns involving the same context (e.g., collecting marbles), determine the first five terms and compare the values.

D. When given a line graph representing two arithmetic patterns, identify the relationship between the two.

E. Generate or select a comparison between two graphs from a similar situation.

F. Using provided table with numerical patterns, form ordered pairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:920 (May 2017).

#### §9551. Number and Operations in Base Ten

A. Compare the value of a number when it is represented in different place values of two three-digit numbers.

B. Find the product of a number and a power of 10.

C. Read, write, or select a decimal to the hundredths place.

D. Read, write or select a decimal to the thousandths place.

E. Compare two decimals to the thousandths place with a value of less than one.

F. Round decimals to the next whole number.

G. Round decimals to the tenths place.

H. Round decimals to the hundredths place.

I. Multiply whole numbers with up to three digits by numbers with up to two digits.

J. Find whole number quotients up to two dividends and two divisors.

K. Find whole number quotients up to four dividends and two divisors.

L. Solve one-step problems using decimals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:920 (May 2017).

#### §9553. Number and Operations—Fractions

A. Add and subtract fractions with unlike denominators by replacing fractions with equivalent fractions (identical denominators).

B. Add or subtract fractions with unlike denominators.

C. Solve one-step word problems involving addition and subtraction of fractions with unlike denominators.

D. Solve a one-step word problem involving division of whole numbers leading to answers in the form of a fraction or mixed number.

E. Multiply a fraction by a whole or mixed number.

F. Determine whether the product will increase or decrease based on the multiplier.

G. Solve word problems involving multiplication of fractions and mixed numbers.

H. Divide unit fractions by whole numbers and whole numbers by unit fractions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:920 (May 2017).

#### §9555. Measurement and Data

A. Convert measurements of time.

B. Convert standard measurements of length.

C. Convert standard measurements of mass.

D. Solve problems involving conversions of standard measurement units when finding area, volume, time lapse, or mass.

E. Given a data set of fractions with denominators 2, 4, or 8, create a line plot and use the information on the plot to solve problems.

F. Select a cube as the measurement unit for the volume.

G. Use cubes (blocks or other manipulatives) to create a solid figure and counts the number of cubes to determine its volume.

H. Use filling and multiplication to determine volume.

I. Apply formula to solve one step problems involving volume.

J. Decompose complex 3-D shapes into simple 3-D shapes to measure volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:920 (May 2017).

### **§9557. Geometry**

A. Locate the x and y axis on a graph.

B. Locate points on a graph.

C. Use order pairs to graph given points.

D. Find coordinate values of points in the context of a situation.

E. Recognize properties of simple plane figures.

F. Distinguish quadrilaterals by their properties.

### **Subchapter G. Grade 6**

#### **§9559. Ratios and Proportional Relationships**

A. Write or select a ratio to match a given statement and representation.

B. Select or make a statement to interpret a given ratio.

C. Describe the ratio relationship between two quantities for a given situation.

D. Complete a statement that describes the ratio relationship between two quantities.

E. Write or select a ratio to match a given statement and representation.

F. Determine the unit rate in a variety of contextual situations.

G. Use ratios and reasoning to solve real-world mathematical problems (e.g., by reasoning about tables of equivalent ratios, tape diagrams, double number line diagrams, or equations).

H. Find a missing value (representations, whole numbers, common fractions, decimals to hundredths place, percent) for a given ratio.

I. Solve unit rate problems involving unit pricing.

J. Solve one-step real world measurement problems involving unit rates with ratios of whole numbers when given the unit rate (3 inches of snow falls per hour, how much in 6 hours).

K. Calculate a percent of a quantity as rate per 100.

L. Complete a conversion table for length, mass, time, volume.

M. Analyze a table of equivalent ratios to answer questions.

N. Solve word problems involving ratios.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:921 (May 2017).

#### **§9561. The Number System**

A. Solve one step problems involving division of fractions by fractions.

B. Divide multi-digit whole numbers.

C. Solve one step, addition, subtraction, multiplication, or division problems with fractions or decimals.

D. Find the greatest common multiple of two whole numbers less than or equal 25 and the least common multiple of two whole numbers less than or equal to 8.

E. Solve one-step, addition, subtraction, multiplication, or division problems with fractions or decimals.

F. Find given points between -10 and 10 on both axes of a coordinate plane.

G. Label points between -10 and 10 on both axes of a coordinate plane.

H. Identify numbers as positive or negative.

I. Locate positive and negative numbers on a number line.

J. Plot positive and negative numbers on a number line.

K. Compare two numbers on a number line (e.g.,  $-2 > -9$ ).

L. Determine the meaning of absolute value.

M. Use coordinates and absolute value to find the distance between two coordinates with the same first coordinate or the same second coordinate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:921 (May 2017).

#### **§9563. Expressions and Equations**

A. Identify what an exponent represents (e.g.,  $8^3 = 8 \times 8 \times 8$ ).

B. Solve numerical expressions involving whole number exponents.

C. Evaluate expressions from formulas containing exponents for specific values of their variables.

D. Use properties to produce equivalent expressions.

E. Evaluate whether or not both sides of an equation are equal.

F. Use substitute to determine which values from a specified set make an equation or inequality true.

G. Use variable to represent numbers and write expressions when solving real world problems.

H. Solve problems or word problems using up to three digit numbers and any of the four operations.

I. Solve real world, single step linear equations.

J. Given a real world problem, write an inequality.

K. Use variables to represent two quantities in a real-world problem that change in relationship to one another.

L. Analyze the relationships between the dependent and independent variables using graphs and tables, and relate to the equation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:921 (May 2017).

#### **§9565. Geometry**

A. Apply the formula to find the area of triangles.

B. Decompose complex shapes (polygon, trapezoid, pentagon) into simple shapes (rectangles, squares, triangles) to measure area.

C. Find area of quadrilaterals.

D. Find area of triangles

E. Identify the appropriate formula (i.e., perimeter, area, volume) to use when measuring for different purposes in a real life context.

F. Use coordinate points to draw polygons.

G. Use coordinate points to find the side lengths of polygons that are horizontal or vertical.

H. Find the surface area of three dimensional figures using nets of rectangles or triangles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:921 (May 2017).

### **§9567. Statistics and Probability**

- A. Identify statistical questions and make a plan for data collection.
- B. Find the range of a given data set.
- C. Explain or identify what the mode represents in a set of data.
- D. Explain or identify what the mean represents in a set of data.
- E. Collect and graph data: bar graph, line plots, dot plots, histograms.
- F. Select an appropriate statement about the range of the data for a given graph (bar graph, line plot) (i.e., range of data) up to 10 points.
- G. Use measures of central tendency to interpret data including overall patterns in the data.
- H. Solve for mean of a given data set.
- I. Select statement that matches mean, mode, and spread of data for one measure of central tendency for a given data set.
- J. Explain or identify what the median represents in a set of data.
- K. Use measures of central tendency to interpret data including overall patterns in the data.
- L. Solve for the median of a given data set.
- M. Identify outliers, range, mean, median, and mode.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:922 (May 2017).

### **Subchapter H. Grade 7**

#### **§9569. Ratios and Proportional Relationships**

- A. Find unit rates given a ratio.
- B. Determine unit rates associated with ratios of lengths, areas, and other quantities measured in like units.
- C. Solve one-step problems involving unit rates associated with ratios of fractions.
- D. Identify the proportional relationship between two quantities.
- E. Determine if two quantities are in a proportional relationship using a table of equivalent ratios or points graphed on a coordinate plane.
- F. Use a rate of change or proportional relationship to determine the points on a coordinate plane.
- G. Represent proportional relationships on a line graph.
- H. Find percents in real world contexts.
- I. Solve one-step percentage increase and decrease problems.
- J. Use proportions to solve ratio problems.
- K. Solve word problems involving ratios.
- L. Use proportional relationships to solve multistep percent problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:922 (May 2017).

#### **§9571. The Number System**

- A. Identify the additive inverse of a number (e.g., -3 and +3).

- B. Identify the difference between two given numbers on a number line using absolute value.

- C. Identify a representation of addition on a horizontal or vertical number line.

- D. Solve problems requiring addition or subtraction of positive/negative numbers.

- E. Solve multiplication problems with positive/negative numbers.

- F. Solve division problems with positive/negative numbers.

- G. Solve one-step addition, subtraction, multiplication, division problems with fractions, decimals, and positive/negative numbers.

- H. Solve two-step addition, subtraction, multiplication, and division problems with fractions, decimals, or positive/negative numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:922 (May 2017).

#### **§9573. Expressions and Equations**

- A. Add and subtract linear expressions.
- B. Factor and expand linear expressions.
- C. Identify an equivalent fraction, decimal and percent when given one of the three numbers.
- D. Solve real-world multi-step problems using whole numbers.
- E. Solve equations with one variable based on real-world problems.
- F. Set up equations with one variable based on real-world problems.
- G. Use variables to represent quantities in a real-world or mathematical problem, and construct simple equations and inequalities to solve problems by reasoning about the quantities.

- H. Use a calculator to solve word problems leading to inequalities of the form  $px + q > r$ ,  $px + q \geq r$ ,  $px + q < r$ , or  $px + q \leq r$  where  $p$ ,  $q$ , and  $r$  are specific rational numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:922 (May 2017).

#### **§9575. Geometry**

- A. Solve problems that use proportional reasoning with ratios of length and area.
- B. Solve one-step real world problems related to scaling.
- C. Construct or draw plane figures using properties.
- D. Describe the two-dimensional figures that result from a decomposed three-dimensional figure.
- E. Apply formula to measure area and circumference of circles.
- F. Identify supplementary angles.
- G. Identify complimentary angles.
- H. Identify adjacent angles.
- I. Use angle relationships to find the value of a missing angle.
- J. Add the area of each face of a prism to find surface area of three dimensional objects.
- K. Find the surface area of three-dimensional figures using nets of rectangles or triangles.

L. Find area of plane figures and surface area of solid figures (quadrilaterals).

M. Solve one-step real world measurement problems involving area, volume, or surface area of two- and three-dimensional objects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:922 (May 2017).

### **§9577. Statistics and Probability**

- A. Determine sample size to answer a given question.
- B. Analyze graphs to determine or select appropriate comparative inferences about two samples or populations.
- C. Make or select a statement to compare the distribution of 2 data sets.
- D. Identify the range (high/low), median (middle), mean, or mode of a given data set.
- E. Analyze graphs to determine or select appropriate comparative inferences about two samples or populations.
- F. Make or select an appropriate statements based upon two unequal data sets using measure of central tendency and shape.
- G. Describe the probability of events as being certain or impossible, likely, less likely or equally likely.
- H. State the theoretical probability of events occurring in terms of ratios (words, percentages, decimals).
- I. Make a prediction regarding the probability of an event occurring; conduct simple probability experiments.
- J. Compare actual results of simple experiment with theoretical probabilities.
- K. Determine the theoretical probability of multistage probability experiments (2 coins, 2 dice).
- L. Collect data from multistage probability experiments (2 coins, 2 dice).
- M. Compare actual results of multistage experiment with theoretical probabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:923 (May 2017).

### **Subchapter I. Grade 8**

#### **§9579. The Number System**

- A. Identify  $\pi$  as an irrational number.
- B. Round irrational numbers to the hundredths place.
- C. Use approximations of irrational numbers to locate them on a number line.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:923 (May 2017).

#### **§9581. Expressions and Equations**

- A. Use properties of integer exponents to produce equivalent expressions.
- B. Find the square roots of perfect squares and cube roots of whole numbers less than 100.
- C. Rewrite very large or very small quantities as a single digit times an integer power of 10.
- D. Convert a number expressed in scientific notation as number in standard form for numbers no greater than 10,000.
- E. Perform operations with numbers expressed in scientific notation.

F. Represent proportional relationships on a line graph.

G. Write the equation of a line intercepting the y-axis at b as  $y = mx + b$ .

H. Solve linear equations with one variable.

I. Solve systems of two linear equations in two variables and graph the results.

J. Solve real world and mathematical problems leading to two linear equations in two variables.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:923 (May 2017).

#### **§9583. Functions**

- A. Distinguish between functions and non-functions, using equations, graphs, or tables.
- B. Compare properties of two functions each represented in a different way (algebraically, graphically, numerically in tables, or by verbal descriptions). For example, given a linear function represented by a table of values and a linear function represented by an algebraic expression, determine which function has the greater rate of change.
- C. Given two graphs, describe the function as linear and not linear.
- D. Identify the rate of change (slope) and initial value (y-intercept) from graphs.
- E. Given a verbal description of a situation, create or identify a graph to model the situation.
- F. Given a graph of a situation, generate a description of the situation.
- G. Describe or select the relationship between the two quantities Given a line graph of a situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:923 (May 2017).

#### **§9585. Geometry**

- A. Recognize a rotation, reflection, or translation of a figure.
- B. Recognize that lengths of line segments and measures of angles do not change when rotated, reflected or translated.
- C. Recognize that lines are taken to lines and parallel lines are taken to parallel lines when rotated, reflected or translated.
- D. Recognize congruent and similar figures.
- E. Identify a rotation, reflection, or translation of a plane figure when given coordinates.
- F. Recognize congruent and similar figures.
- G. Given two similar two-dimensional figures, show or describe a sequence that exhibits the similarity between them.
- H. Use angle relationships to find the value of a missing angle.
- I. Create a model of the Pythagorean Theorem using areas of squares with a right triangle whose side lengths are 3, 4 and 5 units.
- J. Apply the Pythagorean Theorem to determine lengths/distances in real-world situations.
- K. Find the hypotenuse of a two-dimensional right triangle (Pythagorean Theorem).
- L. Find the missing side lengths of a two-dimensional right triangle (Pythagorean Theorem).

M. Apply the Pythagorean Theorem to find the distance between two points in a coordinate system.

N. Apply the formula to find the volume of 3-dimensional shapes (i.e., cubes, spheres, and cylinders).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:923 (May 2017).

### **§9587. Statistics and Probability**

A. Graph bivariate data using scatter plots and identify possible associations between the variables.

B. Using box plots and scatter plots, identify data points that appear to be outliers.

C. Analyze displays of bivariate data to develop or select appropriate claims about those data.

D. Distinguish between a linear and non-linear association when analyzing bivariate data on a scatter plot.

E. Interpret the slope and the y-intercept of a line in the context of a problem.

F. Construct a two-way table summarizing data on two categorical variables collected from the same subjects; identify possible association between the two variables.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

## **Subchapter J. Algebra I**

### **§9589. Number and Quantity**

A. Explain the pattern for the sum or product for combinations of rational and irrational numbers.

B. Determine the necessary unit(s) to use to solve real-world problems.

C. Solve real-world problems involving units of measurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

### **§9591. Algebra**

A. Factor a quadratic expression.

B. Understand the definition of a polynomial.

C. Understand the concepts of combining like terms and closure.

D. Add, subtract, and multiply polynomials and understand how closure applies under these operations.

E. Find the zeros of a polynomial when the polynomial is factored.

F. Translate a real-world problem into a one variable linear equation.

G. Solve multi-variable formulas or literal equations, for a specific variable.

H. Transform a quadratic equation written in standard form to an equation in vertex form  $(x-p)=q^2$  by completing the square.

I. Derive the quadratic formula by completing the square on the standard form of a quadratic equation.

J. Solve quadratic equations in one variable by simple inspection, taking the square root, factoring, and completing the square.

K. Solve systems of equations using the elimination method (sometimes called linear combinations).

L. Solve a system of equations by substitution (solving for one variable in the first equation and substitution it into the second equation).

M. Solve systems of equations using graphs.

N. Understand that all solutions to an equation in two variables are contained on the graph of that equation.

O. Explain why the intersection of  $y = f(x)$  and  $y = g(x)$  is the solution of the equation  $f(x) = g(x)$  for any combination of linear or exponential. Find the solution(s) by: Using technology to graph the equations and determine their point of intersection, Using tables of values, or Using successive approximations that become closer and closer to the actual value.

P. Graph the solutions to a linear inequality in two variables as a half-plane, excluding the boundary for non-inclusive inequalities.

Q. Graph the solution set to a system of linear inequalities in two variables as the intersection of their corresponding half-planes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

### **§9593. Statistics and Probability**

A. Use descriptive stats; range, median, mode, mean, outliers/gaps to describe the data set.

B. Compare means, median, and range of 2 sets of data.

C. Represent data on a scatter plot to describe and predict.

D. Select an appropriate statement that describes the relationship between variables.

E. Interpret the rate of change using graphical representations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

## **Subchapter K. Algebra II**

### **§9595. Number and Quantity**

A. Rewrite expressions that include rational exponents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

### **§9596. Algebra**

A. Represent quantities and expressions that use exponents.

B. Use the formula to solve real world problems such as calculating the height of a tree after  $n$  years given the initial height of the tree and the rate the tree grows each year.

C. Understand and apply the Remainder Theorem.

D. Find the zeros of a polynomial when the polynomial is factored.

E. Prove polynomial identities by showing steps and providing reasons.

F. Illustrate how polynomial identities are used to determine numerical relationships. For example the polynomial identity  $(a + b)^2 = a^2 + 2ab + b^2$  can be used to rewrite  $(25)^2 = (20 + 5)^2 = 20^2 + 2(20*5) + 5^2$ .

G. Rewrite rational expressions,  $a(x)/b(x)$ , in the form  $q(x) + r(x)/b(x)$  by using factoring, long division, or synthetic division.

H. Translate a real-world problem into a one variable linear equation.

I. Solve quadratic equations in one variable by simple inspection, taking the square root, factoring, and completing the square.

J. Solve systems of equations using the elimination method (sometimes called linear combinations).

K. Solve a system of equations by substitution (solving for one variable in the first equation and substitution it into the second equation).

L. Solve systems of equations using graphs.

M. Solve a system containing a linear equation and a quadratic equation in two variables graphically and symbolically.

N. Explain why the intersection of  $y = f(x)$  and  $y = g(x)$  is the solution of the equation  $f(x) = g(x)$  for any combination of linear or exponential. Find the solution(s) by: Using technology to graph the equations and determine their point of intersection, Using tables of values, or using successive approximations that become closer and closer to the actual value.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:924 (May 2017).

#### **§9597. Statistics and Probability**

A. Use descriptive stats; range, median, mode, mean, outliers/gaps to describe the data set.

B. Represent data on a scatter plot to describe and predict.

C. Select an appropriate statement that describes the relationship between variables.

D. Determine what inferences can be made from statistics.

E. Make or select an appropriate statement(s) about findings.

F. Apply the results of the data to a real world situation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:925 (May 2017).

#### **Subchapter L. Geometry**

##### **§9598. Geometry**

A. Construct, draw or recognize a figure after its rotation, reflection, or translation.

B. Make formal geometric constructions with a variety of tools and methods.

C. Determine the dimensions of a figure after dilation.

D. Determine if two figures are similar.

E. Describe or select why two figures are or are not similar.

F. Use definitions to demonstrate congruency and similarity in figures.

G. Use the reflections, rotations, or translations in the coordinate plane to solve problems with right angles.

H. Apply the formula to the area of a sector (e.g., area of a slice of pie).

I. Apply the formula of geometric figures to solve design problems (e.g., designing an object or structure to satisfy physical restraints or minimize cost).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:925 (May 2017).

#### **§9599. Statistics and Probability**

A. Select or make an appropriate statement based on a two-way frequency table.

B. Select or make an appropriate statement based on real world examples of conditional probability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:925 (May 2017).

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#### **RULE**

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

#### **Electronic Notice of Air Permit Actions (LAC 33:III.Chapter 5)(AQ368)**

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 Air regulations, LAC 33:III.504.E, 509.Q and W, and 531.A (AQ368).

The Rule allows LDEQ to provide public notice of all air permit actions, including title V and prevention of significant deterioration (PSD) permits, by posting notices on the department's website ([www.deq.louisiana.gov](http://www.deq.louisiana.gov)) instead of by publishing advertisements in *The Advocate* and in local newspapers. The Rule also allows LDEQ to make certain documents available via the department's electronic document management system (EDMS) rather than at a physical location in the area of a proposed source or modification. On October 18, 2016, the Environmental Protection Agency (EPA) promulgated a Rule entitled "Revisions to Public Notice Provisions in Clean Air Act Permitting Programs" (81 FR 71613). The federal Rule removes the mandatory requirement to provide public notice of proposed air permits (and certain other related actions) via publication of an advertisement in a newspaper. Permitting authorities may now satisfy the public participation requirements of the Act by providing electronic notice ("e-notice") of proposed air permits. When e-notice is provided, the federal Rule also requires permitting authorities to provide electronic access to proposed permits.

The federal Rule also clarifies that the provisions under 40 CFR 51 requiring permitting authorities to make certain elements of the administrative record available in the area of a proposed source or modification may be satisfied by making such materials available at either a physical location or on a public website identified by the permitting authority. The basis and rationale for this Rule are to allow for "e-notice" of air permit actions. The Rule is anticipated to save

LDEQ \$61,382.75 annually (based on 2015 expenditures). 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.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 5. Permit Procedures**

**§504. Nonattainment New Source Review (NNSR)  
Procedures and Offset Requirements in  
Specified Parishes**

A. - E.3.b. ...

4. The department shall consider any analysis with respect to visibility impacts provided by the federal land manager if it is received within 30 days from the date a complete application is given to the federal land manager. In any case where the department disagrees with the federal land manager's analysis, the department shall either explain its decision to the federal land manager or give notice as to where the explanation can be obtained. In the case where the department disagrees with the federal land manager's analysis, the department will also explain its decision or give notice to the public by means of a notice published on the department's website as to where the decision can be obtained.

E.5. - M.5.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:1232 (May 2012), amended by the Office of the Secretary, Legal Division, LR 38:2766 (November 2012), LR 41:2135 (October 2015), LR 42:403 (March 2016), LR 43:926 (May 2017).

**§509. Prevention of Significant Deterioration**

A. - Q.2.a. ...

b. make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on the department's electronic document management system;

c. notify the public, by notice posted on the department's website, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as through written public comment:

i. the notice shall be available for the duration of the public comment period and shall include:

(a) the notice of public comment;

(b) the proposed permit;

(c) information on how to access the administrative record for the proposed permit; and

(d) information on how to request and/or attend a public hearing on the proposed permit;

d. - e. ...

f. consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. The administrative authority shall make all comments available for public inspection in the same physical locations or on the same website where the administrative authority made available preconstruction information relating to the proposed source or modification;

g. ...

h. notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same website where the administrative authority made available preconstruction information and public comments relating to the source.

3. The department's website shall be used to provide notice of all permits subject to notice under this Section. Web publication may be supplemented by other noticing methods at the discretion of the department.

R. - W.3. ...

4. If the administrative authority rescinds a permit under this Subsection, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission on the department's website shall be considered adequate notice.

X. - AA.15.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended by the Office of the Secretary, Legal Division, LR 38:3163 (December 2012), LR 39:1280 (May 2013), LR 42:402 (March 2016), LR 42:564 (April 2016), LR 43:926 (May 2017).

**§531. Public Notice and Affected State Notice**

A. - A.2.c. ...

3. Each public notice provided under Paragraph A.2 of this Section shall meet the following requirements.

a. Methods of Notice

i. The notice shall be given by posting the notice and the proposed permit on the department’s website for the duration of the public comment period.

ii. The notice shall be given by mail to persons included on the appropriate mailing list developed and maintained by the permitting authority. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.

b. Such notice shall identify:

i. the title and address of the permitting authority; the name and address of the permittee;

ii. the name and physical location of the affected facility;

iii. the activities involved in the permit action;

iv. the emissions change involved;

v. the name or title, address, and telephone number of an LDEQ employee from whom additional information may be obtained, including copies of the proposed permit, the application, and all supporting materials;

vi. a brief description of the appropriate comment procedures; and

vii. the time and place of any hearing that may be held with a statement of procedures to request a hearing.

c. ...

d. The department’s website shall be used to provide notice of all permits subject to notice under this Section. Web publication may be supplemented by other noticing methods at the discretion of the department.

A.4. - B.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1841 (October 2006), amended by the Office of the Secretary, Legal Division, LR 43:926 (May 2017).

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**RULE**

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

**Emission Reduction Credits (ERC) from  
Mobile Sources (LAC 33:III.Chapter 6)(AQ365)**

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 Air regulations, LAC 33:III.603, 605, 606, 607, 611, 617 and 619 (AQ365).

LAC 33:III.Chapter 6 currently limits participation in the Emission Reduction Credit (ERC) Banking Program to

stationary point sources. “Stationary point source” is defined as “any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.” Stationary point sources include fugitive emissions, but exclude mobile sources such as cars, trucks, motorcycles, marine vessels, locomotives, and nonroad engines. This rulemaking will allow creditable (i.e., surplus, permanent, quantifiable, and enforceable) reductions from certain mobile sources to qualify as ERC.

This rulemaking will also clarify that minor sources eligible to participate in the ERC Banking Program must have been operating under an air permit and subject to the emissions inventory reporting requirements of LAC 33:III.919 during the baseline period. On October 1, 2015, the Environmental Protection Agency (EPA) lowered the 8-hour national ambient air quality standard (NAAQS) for ozone to 0.070 parts per million (i.e., 70 parts per billion). EPA will designate areas as attainment, nonattainment, or unclassifiable with respect to the new standard in late 2017 based on 2014-2016 air quality data.

Based on current design values (2013 through 2015), Baton Rouge would be designated as a marginal nonattainment area. In addition, New Orleans has a design value of 70 ppb and could potentially fall out of compliance with the new standard before designations are made.

In order to encourage broad reductions in NO<sub>x</sub> and VOC emissions that will be needed to comply with the revised ozone NAAQS, LDEQ will amend Chapter 6 to allow creditable reductions from certain mobile sources to qualify as ERC and therefore be used as offsets under the nonattainment new source review (NNSR) program, LAC 33:III.504.

In order to construct a new major stationary source or major modification in an ozone nonattainment area, federal and state regulations require the owner or operator to offset significant increases in NO<sub>x</sub> and VOC emissions resulting from the new source or modification. If the necessary offsets cannot be secured, a permit for the project cannot be issued. Therefore, expanding the source types from which ERC can be generated may also serve to facilitate economic growth. The basis and rationale for this Rule are to allow creditable NO<sub>x</sub> and VOC reductions from certain mobile sources to qualify as ERC and therefore be used as offsets for NNSR purposes. 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.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 6. Regulations on Control of Emissions  
through the Use of Emission Reduction  
Credits (ERC) Banking**

**§603. Applicability**

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in nonattainment areas may submit ERC applications for purposes of banking, provided the source was operating under an air permit and submitted emissions inventories meeting the reporting requirements of LAC 33:III.919 during the baseline period. Sources located

in EPA-designated attainment areas may not participate in the emissions banking program, except as specified in Subsection C of this Section.

B. - C. ...

D. Eligible Sources. Sources for which emission reduction credits may be created and banked include the following source types:

1. stationary point sources;
2. on-road mobile sources, including cars, trucks, and motorcycles;
3. marine vessels;
4. locomotives; and
5. *nonroad engines* as defined in LAC 33:III.502.A.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 41:2320 (November 2015), LR 43:927 (May 2017).

#### §605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\* \* \*

*Allowable Emissions*—the emissions rate of a stationary point source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, hours of operations, or both) and the most stringent of the following:

- a. an applicable standard set forth in 40 CFR part 60, 61, or 63;
- b. any applicable state implementation plan (SIP) emission limitation, including those with a future compliance date;
- c. applicable emission limitations specified as an enforceable permit condition, including best available control technology (BACT) and lowest achievable emission rate (LAER) requirements, including those with a future compliance date;
- d. applicable acid rain SO<sub>2</sub> and NO<sub>x</sub> control requirements as defined under title IV of the 1990 Clean Air Act amendments and subsequent regulations; or
- e. any other applicable emission limitation or standard promulgated by the administrator.

\* \* \*

*Baseline Emissions*—the level of emissions during the baseline period, as calculated in accordance with LAC 33:III.607. A.3, that occur prior to an emission reduction, considering all limitations required by applicable federal and state regulations, below which any additional reductions may be credited for use as offsets.

*Baseline Period*—the period of time over which the historical emissions of a source are averaged. In general, this period shall be a two-year period that precedes the date of the emission change and that is representative of normal source operation. A different time period shall be allowed

upon a determination by the department that it is more representative of normal source operation.

*Emission Reductions*—the decreases in emissions associated with a physical change or change in the method of operation at, or attributed to, an eligible source.

\* \* \*

*Offset*—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing eligible source, which is used to compensate for a significant net increase in emissions from a new or modified stationary source in accordance with the requirements of LAC 33:III.504. To be valid, an offset must meet the definition of ERC.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:928 (May 2017).

#### §606. Creation of Emission Reduction Credits

A. Acceptable Methods of Creation. Methods of reducing emissions to receive credit under this Chapter include, but are not limited to, the following:

1. installation of add-on control equipment;
2. change in process(es);
3. change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);
4. shutdown of emission units or stationary sources;
5. production curtailment(s); and
6. reductions in operating hours; and
7. other methods that may be appropriate for on-road mobile sources, marine vessels, locomotives, or nonroad engines as described in LAC 33:III.611.

B. Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33:III.605.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:928 (May 2017).

#### §607. Determination of Creditable Emission Reductions from Stationary Point Sources

A. Procedures for Calculating the Surplus Emission Reduction. The following procedures shall be used in calculating the quantity of surplus air emission reductions.

1. Calculate actual emissions during the baseline period.
2. Calculate adjusted allowable emissions during the baseline period. Allowable emissions shall be adjusted to account for all new or revised federal or state regulations adopted that will require, or would have required, all or a

portion of the emission reductions that comprise the ERC application or ERC (in the case of a partial use of a previously approved ERC) at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.

3. Quantify Baseline Emissions. Baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph A.2 of this Section.

4. Calculate allowable emissions after the reductions occurred.

5. Calculate the surplus emission reduction by subtracting the allowable emissions after the reduction occurred from the baseline emissions.

B. Adjustments for Netting. Emission reductions used in a netting analysis (i.e., to determine the *net emissions increase* as defined in LAC 33:III.504 or 509, as appropriate) that prevented the increase from being considered “significant” are not eligible for use as offsets. The quantity of emission reductions utilized to “net out” shall not be considered creditable.

C. Emission reductions from stationary point sources may be creditable for use as offsets for up to 10 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:

### **§611. Determination of Creditable Emission Reductions from Mobile Sources**

#### **A. Eligibility**

1. In order to be eligible for ERCs, the mobile source must be capable of being used or operated for its intended purpose and registered and insured by the owner, if required by applicable law.

2. Eligible emission reduction strategies include:

a. exhaust control technologies in which a pollution control device, such as an oxidation catalyst, is installed in or connected to an engine’s exhaust system;

b. remanufacturing systems or kits, which entail the replacement of certain parts of an engine during a rebuild, resulting in reduced emissions;

c. EPA-verified idle reduction projects which involve the installation of a technology or device that reduces unnecessary idling of diesel-fired mobile sources and/or is designed to provide services (e.g., heat, air conditioning, and/or electricity) to such sources that would otherwise require the operation of the main or an auxiliary engine while the mobile source is temporarily parked or remains stationary;

d. engine repowers in which an existing engine is replaced with a newer or remanufactured engine certified to or configured to meet a more stringent set of emission standards or otherwise powered with an alternative fuel;

e. vehicle or equipment replacements in which an entire vehicle or other eligible source type is replaced with a newer vehicle or similar source certified to a more stringent set of emission standards, or otherwise powered with an alternative fuel;

f. clean alternative fuel conversions in which a mobile source or engine is permanently altered to operate on alternative fuels such as propane, natural gas, alcohol, or electricity. The conversion system must be certified by EPA in order to ensure that the project is exempt from the tampering prohibition in section 203(a) of the Clean Air Act.

3. On-road mobile sources must be part of a commercial, governmental, or institutional fleet. Privately-owned vehicles operated primarily for personal use may not participate in the emissions banking program.

4. On-road mobile sources and nonroad engines must be no more than 20 years old and marine vessels must be no more than 40 years old in order to participate in the emissions banking program.

5. Eligible emission reduction projects must generate at least 0.5 tons of NO<sub>x</sub> or VOC ERC.

#### **B. Procedures for Calculating the Surplus Emission Reduction**

1. Calculate Actual Emissions During the Baseline Period. The applicant shall demonstrate, to the satisfaction of the department, a reliable and accurate basis for calculating actual emissions. Such means may include, but are not limited to, EPA-approved emission modeling systems for mobile sources (e.g., MOVES) and EPA-approved test methods.

a. Actual emissions shall not be based on a rate which exceeds the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified, as applicable.

b. Actual emissions shall exclude any emissions realized when the mobile source was operating outside of the ozone nonattainment area during the baseline period.

c. The applicant shall provide sufficient documentation to substantiate the operational locations and utilization rate of the mobile source during the baseline period.

2. Calculate Projected Emissions. Projected emissions shall be based on the highest anticipated annual utilization of the modified or substitute mobile source after the emission reduction strategy has been put in place.

a. Projected emissions shall not be based on a utilization rate less than that realized by the mobile source during the year of the baseline period in which its utilization was higher.

b. Projected emissions shall not exclude periods during which the modified or substitute mobile source is anticipated to operate outside of the ozone nonattainment area.

3. The surplus emission reduction shall be calculated using the following equation:

$$\text{ERC} = \frac{(\text{Actual Emissions During the Baseline Period} - \text{Projected Emissions})}{1.2}$$

#### **C. Permanent, Quantifiable, and Enforceable**

1. The owner or operator shall operate and maintain the modified or substitute mobile source in accordance with the manufacturer’s emission-related operation and

maintenance instructions. Records of maintenance activities shall be retained for the life of the source at a location approved by the department and made available for inspection upon request.

2. A substitute mobile source shall be certified to meet applicable federal exhaust and evaporative emission standards. If no federal exhaust emission standards are applicable to the substitute mobile source, the testing requirements of Paragraph C.3 of this Section shall apply.

3. Testing. NO<sub>x</sub> and VOC emissions from a modified mobile source shall be verified via EPA-approved test methods in accordance with a protocol approved by the department.

a. In the event the emission reduction strategy is applied to a large group of identical or functionally equivalent mobile sources, a subset of the modified or substitute mobile sources may be tested as approved by the department.

b. Testing shall not be required:

i. if the modified mobile source must be re-certified with or configured to meet federal exhaust emission standards as a matter of federal law;

ii. if the owner or operator installs a diesel emission reduction technology verified by EPA or the California Air Resources Board (CARB), provided the percent reduction claimed is not in excess of that recognized by EPA or CARB;

iii. for a modified mobile source, which will be powered by a battery or fuel cell-powered electric motor; or

iv. for any pollutant for which ERCs are not being claimed.

4. If a mobile source is to be taken out of service as part of the emission reduction strategy, the mobile source (or engine associated with the mobile source) shall be rendered permanently inoperable.

a. Acceptable methods to render a mobile source (or engine associated with a mobile source) permanently inoperable include, but are not limited to:

i. scrapping the mobile source or engine using an automobile crusher licensed by the Louisiana Used Motor Vehicle Commission;

ii. making the engine unusable by drilling a hole through all of the cylinder bores on the engine block large enough to prevent its repair (i.e., 3 inches); or

iii. returning the engine to a remanufacturing facility either operated by the original engine manufacturer or authorized by the department. In this case, the remanufacturer of the engine must completely disassemble the engine components for recycling purposes, but may use the old block to build a remanufactured engine with a new serial number.

b. The applicant shall certify in writing and, if requested by the department, provide photographs that verify the mobile source (or engine associated with the mobile source) has been rendered permanently inoperable.

#### D. Prohibitions

1. Emission reductions from mobile sources funded through state or federal programs (e.g., the Diesel Emissions Reduction Act) shall not qualify as ERCs unless specifically allowed by that program.

2. Emission reductions from mobile sources shall not be considered creditable decreases for purposes of

determining whether a physical change or change in the method of operation constitutes a *major modification* as defined in LAC 33:III.504 or 509.

E. Emission reductions from mobile sources may be creditable for use as offsets for up to 5 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:929 (May 2017).

### §617. Procedures for Review and Approval of ERCs

A. The department's review and approval of an application for ERCs generally shall be conducted when a request is submitted to use the reductions as offsets. The review shall be conducted in accordance with LAC 33.III.607 or 611, as applicable.

B. ...

C. ERC Certificates

1. ...

2. Upon issuance of a permit that relies upon the use of approved ERCs as offsets, the department shall be responsible for recalculating the ERC balance for that entity and for providing that entity with an adjusted ERC certificate. In the case of a partial use of an ERC from an emission reduction project, the department shall issue a new certificate reflecting the available credits remaining. The remaining ERC(s) shall be reviewed again in accordance with LAC 33.III.607 or 611, as applicable, at the time a request is received to use the remaining portion.

C.3. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:304 (February 2002), amended by the Office of the Secretary, Legal Division, LR 43:930 (May 2017).

### §619. Emission Reduction Credit Bank

A. ...

B. ERC Certificates. Certificates shall be issued for approved ERCs. A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall, at minimum:

1. - 3. ...

4. state the name or description of the eligible source from which the emission reduction occurred;

B.5. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 28:305 (February 2002), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:

Herman Robinson  
General Counsel

1705#017

**RULE**

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

Fee Increase Authorized by Act 451 of the 2016 Regular Legislative Session (LAC 33:I.1119, 1151, 1409, 1411, 1413, 1701, 4501, 4503, 4701, 4703, 4705, 4707, and 5903; III.Chapters 2 and 3; V.Chapter 51; VII.1501, 1503, 1505, 1507, 1509, 1511, and 10535; IX.1309, 1507, 7301, 7315; and XI.307, 1305; XV.579, 2504, 2509, 2510, 2511 and 2599) (MM018)

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 regulations, LAC 33:I.1119, 1151, 1409, 1411, 1413, 1701, 4501, 4503, 4701, 4703, 4705, 4707, 5903; III.209, 211, 215, 217, 223, 307, 309, 311, 313, 315, 317, 319; V.5109, 5111, 5117, 5119, 5120, 5121, 5123, 5125, 5127, 5129, 5131, 5135, 5137, 5139, 5141, 5143, 5145, 5147, 5149.; VII.1501, 1503, 1505, 1507, 1509, 1511, 10535; IX.1309, 1507, 7301, 7315; XI.307, 1305; XV.579, 2504, 2509, 2510, 2511 and 2599 (MM018).

This Rule provides for the fee changes authorized in Act 451 of the 2016 Regular Legislative Session. The Act authorized certain fee increases, new fees and other changes to the regulations pertaining to fees. The basis and rationale for this Rule are to implement the fee changes authorized in Act 451 of the 2016 Regular Legislative Session. 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.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures**

**Chapter 11. Declaratory Rulings**

**§1119. Disposition of Petition**

A. ...

1. notify the applicant that the fee as specified in LAC 33:I.1151 is owed and issue a declaratory ruling;

2. ...

3. grant the request for a declaratory ruling, notify the applicant that the fee as specified in LAC 33:I.1151 is owed, and set a time within which the ruling will be issued; or

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997), amended by the Office of the Secretary, Legal Division, LR 43:931 (May 2017).

**§1151. Fees**

A. Fee for Declaratory Ruling

1. After a petition for a declaratory ruling has been received by the department, the appointing authority will determine how the department will proceed according to LAC 33:I.1119.A. If the department decides to proceed via LAC 33:I.1119.A.1 or LAC 33:I.1119.A.3, a minimum

\$1,500 nontransferable and nonrefundable fee shall be submitted to the department.

2. Prior to the issuance of the declaratory ruling, a final fee determination shall be made.

a. An appropriate fee shall be computed based on the maximum hourly overtime salary, including associated related benefits, of the department's civil service employee who issues the ruling.

b. The fee shall be computed by multiplying the salary figure calculated according to Subparagraph A.2.a of this Section by every overtime hour, or portion thereof, worked by the department employee on the declaratory ruling.

c. If the final fee based on these calculations exceeds \$1,500, the applicant shall be invoiced the final fee amount, less the \$1,500 already received paid. The declaratory ruling shall not be issued until this amount is paid.

B. Refunds. The fees in this Section are nontransferable and nonrefundable.

**C. Methods of Payment**

1. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

**2. Electronic Methods of Payment**

a. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:931 (May 2017).

**Chapter 14. Groundwater Fees**

NOTE: The information contained in Chapter 14 was previously located in LAC 33:XIII.Chapter 13. It was relocated and renumbered in November 1998.

**§1409. Groundwater Protection Fees**

A. Assessment Oversight (Annual). The fee listed below covers the cost of reviewing, evaluating, and approving plans and/or reports that assess groundwater contamination and draw conclusions as to the need for further assessment and/or corrective action.

Hazardous Waste Facilities	\$11,435
Solid Waste Facilities	\$7,623
Nonregulated Facilities	\$3,812

B. Corrective Action Oversight (Annual). The fee listed below covers the cost of reviewing, evaluating, and approving plans and/or actions to remediate groundwater that has been contaminated by a facility.

Hazardous Waste Facilities	\$15,246
Solid Waste Facilities	\$11,435
Nonregulated Facilities	\$3,812

C. Annual Report Review Fee. The fee listed below covers the cost of reviewing the groundwater annual reports required by Hazardous and/or Solid Waste regulations.

Hazardous Waste Facilities	\$1,525
Solid Waste Facilities	\$381

D. Groundwater Monitoring Systems Review. The fee listed below covers the cost of reviewing the geology and design of proposed groundwater monitoring systems to ensure compliance with department specifications.

Each well	\$726
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E. Groundwater Monitoring Systems Inspection Fee (Annual). The fee listed below covers the cost of inspecting monitoring systems to ensure that they are functioning properly and continue to maintain their integrity. The cost also includes other activities, such as the analysis of boring logs and site geology (cross sections, isopachs, etc.). The maximum fee that can be charged for this category is \$7,260.

Each well	\$363
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F. Facility Inspection Fee (Annual). The fee listed below covers the cost of inspecting the various facilities to ensure compliance with the groundwater protection requirements contained in the facilities' permits.

Hazardous Waste Facilities	\$1,452
With sampling	\$10,890
Solid Waste Facilities	\$726
With sampling	\$2,178

G. Oversight of Abandonment Procedures. The fee listed below covers the cost of reviewing plans to plug and abandon all non-permitted groundwater monitoring systems (monitoring wells, piezometers, observations wells, and recovery wells) to ensure that they do not pose a potential threat to groundwater.

Casing pulled	\$146 each well
Casing reamed out	\$291 each well
Casing left in place	\$726 each well

H. Maximum Total Fee per Facility. The maximum annual fee that can be assessed a facility under these regulations is \$45,739.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:671 (May 2003), LR 29:2041 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:931 (May 2017).

#### §1411. Methods of Payment

A. - B. ...

1. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), repromulgated LR 21:797 (August 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2178 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:932 (May 2017).

#### §1413. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee.

B. Any late payment fee shall be calculated from the due date indicated on the invoice.

C. Payments not received by the department by:

1. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

2. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

3. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:932 (May 2017).

### Chapter 17. Permit Qualifications and Requirements

#### §1701. Requirements for Obtaining a Permit

A. - A.2. ...

3. owe no outstanding monies including, but not limited to: fees, cost recovery, reimbursement costs, response costs, final judgments, or final penalties to the department; and

A.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:932 (May 2017).

#### Subpart 3. Laboratory Accreditation

### Chapter 45. Policy and Intent

#### §4501. Description and Intent of Program

A. Description and Intent of the Laboratory Accreditation Program

1. - 1.f. ...

2. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methods in the generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under this Subpart shall not be accepted by the department.

B. This accreditation covers the following matrices:

1. air emissions;
2. nonpotable water;
3. solid and chemical material; and

4. biological tissue.

C. Each *matrix*, as defined in LAC 33:I.4503, is divided into test categories. Applications for accreditation may be made for one or more test categories within specified matrices. The laboratory shall identify in the application the specific department-approved methods it will be using for each test category. The laboratory shall also have participated in all relevant department-approved proficiency testing programs and shall indicate this at the appropriate box or location on the application. Any variance from approved protocol or procedure is acceptable only with prior written confirmation by the department.

D. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), LR 29:312 (March 2003), amended by the Office of the Secretary, Legal Division, LR 43:932 (May 2017).

#### §4503. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

\*\*\*

*Field of Testing*—Repealed.

\*\*\*

*Matrix (Matrices)*—the substrate of a test sample that includes air emissions, nonpotable water, solid and chemical materials, and biological tissue.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:918 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), amended by the Office of Environmental Assessment, LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Division, LR 43:933 (May 2017).

### Chapter 47. Louisiana Environmental Laboratory Accreditation Program (LELAP) State Accreditation Requirements

#### §4701. Accreditation Process

A. - A.4. ...

B. When all requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of certification that lists those matrices, analytes, and methods for which the laboratory is certified. The certificate must be posted within public view in the laboratory setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2749 (November 2012), LR 43:933 (May 2017).

#### §4703. Application for Accreditation

A. ...

B. An application for environmental laboratory accreditation shall be made in writing to the Office of Environmental Services, using the current application provided by the department. This application shall include all requested information and be accompanied by the appropriate application fee. Supplemental information may be required.

C. ...

D. Each laboratory shall identify an official to represent it in all matters related to attaining and maintaining environmental laboratory accreditation. This official shall be the point of contact with the laboratory and shall be known as the laboratory representative. The laboratory representative may be any senior person from either the technical or managerial staff. The laboratory shall designate an individual in a position of authority to ensure that the laboratory complies with the criteria and conditions for accreditation. The laboratory shall also designate an individual who has the authority to bind the company in a legal manner.

E. In cases where all application requirements have been met, including review of all methods and quality assurance program data, a status of *interim status*, as defined in LAC 33:I.4503.A, may be granted at the discretion of the department on a case-by-case basis. Interim status may not exceed one year in length. Before a laboratory is granted full accreditation, all requirements of these regulations shall be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007), amended by the Office of the Secretary, Legal Division, Legal Division, LR 38:2749 (November 2012), LR 43:933 (May 2017).

#### §4705. Categories of Accreditation

A. At the time of application, each applicant shall clearly identify both the matrix (matrices) and the test categories for which accreditation is sought. A copy of each relevant test method documentation and the requisite equipment for the method shall be available at the laboratory. A current list of approved methods for each parameter/analyte shall be maintained by the Office of Environmental Services and shall be included as part of the application package. In cases where a method used by the laboratory is not listed, the laboratory shall submit documentation that verifies that the results obtained from the method in use are equal to or better than those results obtained from the approved method(s). The department shall review the data submitted by the laboratory and shall notify the laboratory in writing within 60 calendar days regarding whether the method is acceptable or unacceptable as an alternate method of analysis.

B. A laboratory may apply for accreditation in any one or more of the four *matrices*, as defined in LAC 33:I.4503.A, and in one or more of the 11 test categories

applicable to the matrix (matrices) selected. The laboratory shall be accredited in those parameters within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of the department accreditation program. The accreditation test categories are as follows:

1. - 11. ...

C. An accredited laboratory may request the addition of a matrix (matrices) and test category (categories) to its scope of accreditation at any time. Such a request shall be submitted on the current application to the Office of Environmental Services. Unless the previous on-site inspection can verify the competence of the laboratory to perform the additional tests, another on-site inspection may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended by the Office of Environmental Assessment, LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007), amended by the Office of the Secretary, Legal Division, Legal Division, LR 38:2750 (November 2012), LR 43:933 (May 2017).

**§4707. Fees**

A. Testing laboratories applying for accreditation or renewal of accreditation shall submit the appropriate fee calculated from the fee schedule along with the required application or update materials. Fees are nonrefundable. Fees are based on the number of test categories in each matrix (matrices).

B. - C. ...

D. The following basic fee structure shall be used in determining all application and annual fees due to the department.

Accreditation application fee payable every scope amendment and every three-year renewal	\$726*
Per major test category per matrix payable every year	\$363*
Minor conventional category payable every year	\$290*
Annual surveillance and evaluation applicable to minor conventional facilities and facilities applying for only one category of accreditation	\$363*
Proficiency samples biannually	to be purchased by the laboratory
Bioassay/biomonitoring annually	to be purchased by the laboratory
Third-party audit	to be billed directly to the laboratory
*The accreditation fees for laboratories receiving national accreditation (NELAP)	shall be one and one-half times the regular fee as stated above

E. Additional fees may be charged for the expansion of accreditation to include new test categories. Accreditation shall be granted only after fees have been received.

F. ...

**G. Methods of Payment**

1. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality and mailed to the department at the address provided on the invoice.

**2. Electronic Methods of Payment**

a. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method should contact the Office of Management and Finance for further instructions.

**3. Cash is not an acceptable form of payment.**

**H. Late Payment Fee**

1. Payments not received within 15 days of the due date will be charged a late payment fee.

2. Any late payment fee shall be calculated from the due date indicated on the invoice.

**3. Payments not received by the department by:**

a. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

b. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

c. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:920 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:672 (May 2003), LR 29:2041 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:934 (May 2017).

**Chapter 59. Accreditation for Laboratories Participating in the NELAP Certification Program**

**§5903. Categories of Accreditation**

A. A laboratory may apply for accreditation in any 1 or more of the 4 matrices and in 1 or more of the 11 test categories applicable to the matrix (matrices) selected. The laboratory shall be accredited in those parameters/analytes within the test category(ies) found in LAC 33:I.4705.B and *matrix (matrices)*, as defined in LAC 33:I.4503. The laboratory shall be accredited in those parameters/analytes within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000), amended by the Office of the Secretary, Legal Division, LR 43:934 (May 2017).

**Part III. Air**

**Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs**

**§209. Annual Fees**

A. ...

B. Additional Fees for Part 70 Sources. In addition to the annual maintenance fee required by Subsection A of this Section, the department may assess an additional annual fee not to exceed 20 percent of the annual maintenance fee on each *part 70 source*, as defined in LAC 33:III.502. This fee shall be used to fund the department’s ambient air monitoring operations and/or other air quality-related activities of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), amended by the Office of the Secretary, Legal Division, LR 43:935 (May 2017).

**§211. Methodology**

A. ...

\* \* \*

B. Fee Methodology

1. - 5. ...

6. If a process is not listed in the fee schedule and is not a source type exempted from fees by this regulation, then the department shall assign a fee using the negotiated fee set forth in fee number 1710 or 1712, as applicable. If a process or facility is specifically listed in the fee schedule, then fee number 1710 or 1712 cannot be utilized.

7. - 10. ...

11. Reserved.

12. - 14. ...

15. For permits issued under LAC 33:III.507 (title V permits), the following applies:

a. ...

b. the application fee for renewals of permits where no modifications are being made at the facility shall be the minimum minor modification fee as listed in LAC 33:III.223, or where no such fee is listed in the fee schedule, as calculated in accordance with Subparagraph B.13.d of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy,

Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007), LR 33:2620 (December 2007), LR 37:1145 (April 2011), amended by the Office of the Secretary, Legal Division, LR 43:935 (May 2017).

**§215. Methods of Payment**

A. - B. ...

1. Persons wishing to make payments using the electronic pay method should access the department’s website and follow the instructions provided on the website.

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:935 (May 2017).

**§217. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee.

B. Any late payment fee shall be calculated from the due date indicated on the invoice.

C. Payments not received by the department by:

1. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

2. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

3. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), LR 19:1373 (October 1993), LR 21:781 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:935 (May 2017).



**§223. Fee Schedule Listing**

A. Table 1—Fee Schedule Listing

Table 1						
Fee Schedule Listing						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
0010	Reserved.					
0015 *Note 20*	Iron Ore Processing per Million Dollars in Capital Cost	1011 MIN.	\$58.08 \$250.00	\$290.40 \$500.00	\$173.80 \$500.00	\$58.08 \$500.00
0020	Bituminous Coal and Lignite Mining	1211	\$832.00	\$4,158.00	\$2,497.00	\$832.00
0030	Coal Preparation	1211	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0040	Crude Oil and Natural Gas Production (Less than 100 T/Yr Source)	1311	\$250.00	\$500.00	\$500.00	\$500.00
0041	Crude Oil and Natural Gas Production (Equal to or Greater than 100 T/Yr and Less than 250 T/Yr Source)	1311	\$250.00	\$832.00	\$500.00	\$500.00
0042	Crude Oil and Natural Gas Production 250 T/Yr to 500 T/Yr Source	1311	\$514.00	\$2,569.00	\$1,540.00	\$514.00
0043	Crude Oil and Natural Gas Production Greater than 500 T/Yr Source	1311	\$855.00	\$3,425.00	\$2,569.00	\$855.00
0050	Natural Gas Liquids per Unit	1321	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0060	Construction Sand and Gravel	1442	\$250.00	\$832.00	\$500.00	\$500.00
0070	Industrial Sand	1446	\$250.00	\$832.00	\$500.00	\$500.00
0080	Salt Mining	1476	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0090	Sulfur Mining	1477	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0100	Commercial Rice Milling	2044	\$832.00	\$4,158.00	\$2,497.00	\$832.00
0110	Animal Feed Preparation	2048	\$832.00	\$4,158.00	\$2,497.00	\$832.00
0120	Cane Sugar, Except Refining Only	2061	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0130	Cane Sugar Refining per 1,000 Lb/Hr Rated Capacity	2062 MIN.	\$16.62 \$2,053.00	\$83.22 \$10,274.00	\$49.92 \$6,164.00	\$16.62 \$2,053.00
0140	Cottonseed Oil Mill	2074	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0150	Soybean Oil Mill	2075	\$292.00	\$1,457.00	\$875.00	\$500.00
0160	Animal and Marine Fats and Oil (Rendering) 10,000 or More Ton/Yr	2077	\$997.00	\$4,992.00	\$2,995.00	\$997.00
0170	Animal and Marine Fats and Oil (Rendering) Less than 10,000 Ton/Yr	2077	\$500.00	\$2,497.00	\$1,499.00	\$500.00
0180	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils	2079	\$250.00	\$1,041.00	\$623.00	\$500.00
0190	Malt Beverages	2082	\$250.00	\$1,041.00	\$623.00	\$500.00
0200	Coffee Roasting per 1,000,000 Lb/Yr Rated Capacity	2095 MIN. MAX.	\$165.53 \$395.00 \$10,445.00	\$832.00 \$1,975.00 \$52,228.00	\$498.04 \$1,185.00 \$31,337.00	\$165.53 \$500.00 \$10,445.00
0210 *Note 9*	Sawmill and/or Planing Less than 25,000 Bd Ft/Shift	2421	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0220 *Note 9*	Sawmill and/or Planing More than 25,000 Bd Ft/Shift	2421	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0230 *Note 9*	Hardwood Mill	2426	\$748.00	\$3,745.00	\$2,247.00	\$748.00
0240 *Note 9*	Special Product Sawmill N.E.C.	2429	\$748.00	\$3,745.00	\$2,247.00	\$748.00
0250	Millwork with 10 Employees or More	2431	\$748.00	\$3,745.00	\$2,247.00	\$748.00
0260	Hardwood Veneer and Plywood	2435	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
0270	Softwood Veneer and Plywood	2436	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
0280	Wood Preserving	2491	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0290	Particleboard/Waferboard Manufacture (O.S.B.)	2492	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
0300	Hardboard Manufacture	2499	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0310	Furniture and Fixtures: A) 100 or More Employees	2511	\$526.00	\$2,634.00	\$1,580.00	\$526.00
0320	Furniture and Fixtures: B) More than 10 and Less than 100 Employees	2511	\$250.00	\$1,248.00	\$748.00	\$500.00
0330	Pulp Mills per Ton Daily Rated Capacity	2611 MIN.	\$6.22 \$4,282.00	\$31.19 \$21,405.00	\$18.73 \$12,843.00	\$6.22 \$4,281.00
0340 *Note 1*	Paper Mill per Ton Daily Rated Capacity	2621 MIN.	\$6.22 \$4,282.00	\$31.19 \$21,405.00	\$18.73 \$12,843.00	\$6.22 \$4,281.00
0350	Paperboard Mills per Ton Daily Rated Capacity	2631 MIN.	\$6.22 \$4,282.00	\$31.19 \$21,405.00	\$18.73 \$12,843.00	\$6.22 \$4,281.00
0360	Paper Coating	2641	\$250.00	\$1,248.00	\$748.00	\$500.00
0365	Paper Bag Manufacture	2643	\$317.00	\$1,580.00	\$949.00	\$500.00
0370	Insulation Manufacture	2649	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0375	Folding Paper Board Boxes per Packaging Press Line	2651 MIN.	\$417.00 \$2,053.00	\$2,082.00 \$10,274.00	\$1,248.00 \$6,164.00	\$417.00 \$2,053.00
0380	Corrugated Boxes: Converters (with Boilers)	2653	\$623.00	\$3,119.00	\$1,874.00	\$623.00
0381	Corrugated Boxes: Sheet Plant	2653	\$263.00	\$1,317.00	\$790.00	\$500.00
0390	Building Board and Tile	2661	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0400	Commercial Printing: Black and White per Press	2752 MIN.	\$249.00 \$1,198.00	\$1,248.00 \$5,993.00	\$748.00 \$3,595.00	\$249.00 \$1,198.00
0410	Commercial Printing: Color per Press	2752 MIN.	\$415.80 \$2,053.00	\$2,079.00 \$10,274.00	\$1,249.00 \$6,164.00	\$415.80 \$2,053.00

**Table 1**  
**Fee Schedule Listing**

Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
0420 *Note 2*	Caustic/Chlorine per 1,000,000 Lb/Yr Rated Cap Posed on Chlorine	2812 MIN.	\$4.17 \$2,053.00	\$20.81 \$10,274.00	\$12.47 \$6,164.00	\$4.17 \$2,053.00
0440	Industrial Gases	2813	\$832.00	\$4,158.00	\$2,497.00	\$832.00
0450	Inorganic Pigments	2816	\$832.00	\$4,158.00	\$2,497.00	\$832.00
0460	Aluminum Sulfate Production per 100 Ton/Yr Rated Capacity	2819 MIN.	\$2.06 \$1,712.00	\$10.41 \$8,562.00	\$6.22 \$5,137.00	\$2.06 \$1,712.00
0470	Alumina per 1,000,000 Lb/Yr Rated Capacity	2819 MIN.	\$8.29 \$1,712.00	\$41.58 \$8,562.00	\$24.95 \$5,137.00	\$8.29 \$1,712.00
0480	Catalyst Mfg. and Cat. Regeneration per Line	2819	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
0490	Fluosilicates	2819	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0500	Industrial Inorganic Chemicals Mfg. N.E.C. per 1,000,000 Lb/Yr	2819 MIN.	\$2.06 \$1,198.00	\$10.41 \$5,993.00	\$6.22 \$3,595.00	\$2.06 \$1,198.00
0510	Industrial Inorganic Acids N.E.C. per 1,000,000 Lb/Yr Rated Capacity	2819 MIN.	\$20.81 \$2,053.00	\$104.01 \$10,274.00	\$62.40 \$6,164.00	\$20.81 \$2,053.00
0520	Nitric Acid Manufacture per 1,000 Ton/Yr Rated Capacity	2819 MIN.	\$8.29 \$2,053.00	\$41.58 \$10,274.00	\$24.95 \$6,164.00	\$8.29 \$2,053.00
0530	Phosphoric Acid Mfg. per Ton Daily Rated Capacity	2819 MIN.	\$2.06 \$1,712.00	\$10.41 \$8,562.00	\$6.22 \$5,137.00	\$2.06 \$1,712.00
0540	Sulphuric Acid Manufacture per Ton Daily Rated Capacity	2819 MIN.	\$2.06 \$1,712.00	\$10.41 \$8,562.00	\$6.22 \$5,137.00	\$2.06 \$1,712.00
0550	Polyethylene/Polypropolene Manufacture per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	\$16.62 \$2,053.00	\$83.22 \$10,274.00	\$49.92 \$6,164.00	\$16.62 \$2,053.00
0560	PVC Manufacture per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	\$20.81 \$2,053.00	\$104.01 \$10,274.00	\$62.40 \$6,164.00	\$20.81 \$2,053.00
0570	Synthetic Resins Manufacture N.E.C. per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	\$20.81 \$2,053.00	\$104.01 \$10,274.00	\$62.40 \$6,164.00	\$20.81 \$2,053.00
0580	Rubber Mfg. per 1,000,000 Lb/Yr Rated Capacity	2822 MIN.	\$20.81 \$2,053.00	\$104.01 \$10,274.00	\$62.40 \$6,164.00	\$20.81 \$2,053.00
0585	Paint Manufacturing and Blending	2851	\$775.00	\$3,870.00	\$2,323.00	\$775.00
0590	Charcoal per Oven	2861	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0600	Gum and Wood Chemicals per Unit	2861	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0610	Styrene Monomer per 1,000,000 Lb/Yr Rated Capacity	2865 MIN.	\$8.29 \$2,053.00	\$41.58 \$10,274.00	\$24.95 \$6,164.00	\$8.29 \$2,053.00
0620	Halogenated Hydrocarbons per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	\$12.47 \$2,053.00	\$62.40 \$10,274.00	\$37.44 \$6,164.00	\$12.47 \$2,053.00
0630	Organic Oxides, Alcohols, Glycols per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	\$8.29 \$2,053.00	\$41.58 \$10,274.00	\$24.95 \$6,164.00	\$8.29 \$2,053.00
0635	Olefins and Aromatics N.E.C. per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	\$8.29 \$2,053.00	\$41.58 \$10,274.00	\$24.95 \$6,164.00	\$8.29 \$2,053.00
0640	Ammonia Manufacture per Ton Daily Rated Capacity	2873 MIN.	\$4.16 \$2,053.00	\$20.82 \$10,274.00	\$12.47 \$6,164.00	\$4.16 \$2,053.00
0650	Fertilizer Manufacture per 1,000 Ton/Yr Rated Capacity	2873 MIN.	\$2.06 \$1,198.00	\$10.41 \$5,993.00	\$6.22 \$3,595.00	\$2.06 \$1,198.00
0660	Urea and Ureaform per 1,000 Ton/Yr Rated Capacity	2873 MIN.	\$4.16 \$1,198.00	\$20.82 \$5,993.00	\$12.47 \$3,595.00	\$4.16 \$1,198.00
0670	Pesticides Mfg. per Train	2879	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
0680	Carbon Black Manufacture per 1,000,000 Lb/Yr Rated Capacity	2895 MIN.	\$24.95 \$2,053.00	\$124.78 \$10,274.00	\$74.90 \$6,164.00	\$24.95 \$2,053.00
0690	Chemical and Chemical Prep. N.E.C. per 1,000,000 Lb/Yr	2899 MIN.	\$20.82 \$1,712.00	\$104.01 \$8,562.00	\$62.40 \$5,137.00	\$20.82 \$1,712.00
0695	Chemical and Chemical Prep. N.E.C. with Output Less than 1,000,000 Lb/Yr	2899	\$1,185.00	\$5,927.00	\$3,557.00	\$1,185.00
0700	Drilling Mud-Storage and Distribution	2899	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0710	Drilling Mud-Grinding	2899	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
715	Salt Processing and Packaging per 1,000,000 Lb/Yr	2899 MIN.	\$0.33 \$514.00	\$1.69 \$2,569.00	\$1.01 \$1,540.00	\$0.33 \$514.00
0720	Petroleum Refining per 1,000 BBL/Day Rated Capacity Crude Throughput	2911 MIN.	\$104.01 \$2,053.00	\$520.05 \$10,274.00	\$312.40 \$6,164.00	\$105.11 \$2,053.00
0730 *Note 4*	Asphaltic Concrete Paving Plants per Ton/Hr Rated Capacity	2951 MIN.	\$3.14 \$855.00	\$15.64 \$4,281.00	\$9.38 \$2,569.00	\$3.14 \$855.00
0740	Asphalt Blowing Plant (Not to be Charged Separately if in Refinery)	2951	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0760 *Note 5*	Blending, Compounding, or Refining of Lubricants per Unit	2992	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0770	Petroleum Coke Calcining per 1,000 Ton/Yr Rated Capacity	2999 MIN.	\$16.62 \$2,053.00	\$83.22 \$10,274.00	\$49.92 \$6,164.00	\$16.62 \$2,053.00
0773	Fiberglass Swimming Pools	N/A	\$292.00	\$1,457.00	\$875.00	\$500.00
0775	Plastics Injection Moulding and Extrusion per Line	3079	\$417.00	\$2,082.00	\$1,248.00	\$500.00
0780	Glass and Glass Container Mfg. Natural Gas Fuel per Line	3229	\$623.00	\$3,119.00	\$1,874.00	\$623.00
0790	Cement Manufacture per 1,000 Ton/Yr Rated Capacity	3241 MIN.	\$12.47 \$1,712.00	\$62.40 \$8,562.00	\$37.44 \$5,137.00	\$12.47 \$1,712.00

**Table 1**  
**Fee Schedule Listing**

Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
0800	Glass and Glass Container Mfg. Fuel Oil per Line	3241	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
0810	Brick Manufacture per 1,000 Ton/Yr Rated Capacity	3251	\$6.22	\$31.19	\$18.73	\$6.22
		MIN.	\$855.00	\$4,281.00	\$2,569.00	\$855.00
0815	Concrete Products	3272	\$422.00	\$2,107.00	\$1,263.00	\$500.00
0820	Ready-Mix Concrete	3273	\$1,041.00	\$3162.00	\$2,082.00	\$1,041.00
*Note 12*						
0830	Lime Manufacture per 1,000 Ton/Yr Rated Capacity	3274	\$12.47	\$62.40	\$37.44	\$12.47
		MIN.	\$1,198.00	\$5,993.00	\$3,595.00	\$1,198.00
0840	Gypsum Manufacture per 1,000 Ton/Yr Rated Capacity	3275	\$12.47	\$62.40	\$37.44	\$12.47
		MIN.	\$1,198.00	\$5,993.00	\$3,595.00	\$1,198.00
0850	Asbestos Products per Site or per Production Unit	3292	\$2,497.00	\$12,482.00	\$7,490.00	\$2,497.00
0860	Clay Kiln	3295	\$500.00	\$2,499.00	\$1,499.00	\$500.00
0870	Rock Crusher	3295	\$458.00	\$2,288.00	\$1,374.00	\$500.00
0880	Gray Iron and Steel Foundries: A) 3,500 or More Ton/Yr Production	3321	\$667.00	\$3,327.00	\$1,997.00	\$667.00
0890	Gray Iron and Steel Foundries: B) Less than 3,500 Ton/Yr Production	3321	\$332.00	\$1,665.00	\$997.00	\$500.00
0900	Malleable Iron Foundries: A) 3,500 or More Ton/Yr Production	3322	\$667.00	\$3,327.00	\$1,997.00	\$667.00
0910	Malleable Iron Foundries: B) Less than 3,500 Ton/Yr Production	3322	\$332.00	\$1,665.00	\$997.00	\$500.00
0920	Steel Investment Foundries: A) 3,500 or More Ton/Yr Production	3324	\$667.00	\$3,327.00	\$1,997.00	\$667.00
0930	Steel Investment Foundries: B) Less than 3,500 Ton/Yr Production	3324	\$332.00	\$1,665.00	\$997.00	\$500.00
0940	Steel Foundries N.E.C.: A) 3,500 or More Ton/Yr Production	3325	\$667.00	\$3,327.00	\$1,997.00	\$667.00
0950	Steel Foundries N.E.C.: B) Less than 3,500 Ton/Yr Production	3325	\$332.00	\$1,665.00	\$997.00	\$500.00
0960	Primary Smelting and Refining of Copper per 100,000 Lb/Yr Rated Capacity	3331	\$8.29	\$41.58	\$24.95	\$8.29
		MIN.	\$2,053.00	\$10,274.00	\$6,164.00	\$2,053.00
0970	Aluminum Production per Pot	3334	\$41.58	\$208.03	\$124.30	\$41.58
		MIN.	\$2,053.00	\$10,274.00	\$6,164.00	\$2,053.00
0980	Refining of Non-Ferrous Metals N.E.C. per 1,000 Lb/Yr Rated Capacity	3339	\$0.04	\$0.40	\$0.23	\$0.04
		MIN.	\$2,053.00	\$10,274.00	\$6,164.00	\$2,053.00
0990	Secondary Smelting of Non-Ferrous Metals per Furnace	3341	\$1,247.40	\$6,240.30	\$3,745.00	\$1,247.40
		MIN.	\$2,569.00	\$12,843.00	\$7,706.00	\$2,569.00
1000	Wire Manufacture	3357	\$832.00	\$4,158.00	\$2,497.00	\$832.00
1010	Aluminum Foundries (Castings) per Unit	3361	\$332.00	\$1,665.00	\$997.00	\$500.00
1020	Brass/Bronze/Copper-Based Alloy Foundry per Furnace	3362	\$417.00	\$2,082.00	\$1,248.00	\$500.00
1030	Metal Heat Treating Including Shotpeening	3398	\$250.00	\$1,248.00	\$748.00	\$500.00
1040	Metal Can Manufacture	3411	\$833.00	\$4,158.00	\$2,497.00	\$832.00
1050	Drum Manufacturing and/or Reconditioning	3412	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
1059	Fabricated Structural Steel with 5 or More Welders	3441	\$832.00	\$4,158.00	\$2,497.00	\$832.00
1060	Fabricated Plate Work with 5 or More Welders	3443	\$1,053.00	\$5,268.00	\$3,162.00	\$1,053.00
1070	Electroplating, Polishing and Anodizing with 5 or More Employees	3471	\$250.00	\$1,248.00	\$748.00	\$500.00
1080	Sandblasting or Chemical Cleaning of Metal: A) 10 or More Employees	3471	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
1090	Sandblasting or Chemical Cleaning of Metal: B) Less than 10 Employees	3471	\$623.00	\$3,119.00	\$1,874.00	\$623.00
1100	Coating, Engraving, and Allied Services: A) 10 or More Employees	3479	\$458.00	\$2,288.00	\$1,374.00	\$500.00
1110	Coating, Engraving, and Allied Services: B) Less than 10 Employees	3479	\$250.00	\$1,248.00	\$748.00	\$500.00
1120	Galvanizing and Pipe Coating Excluding All Other Activities	3479	\$500.00	\$2,497.00	\$1,499.00	\$500.00
1130	Painting Topcoat per Line	3479	\$417.00	\$2,082.00	\$1,248.00	\$500.00
1140	Potting per Line	3479	\$250.00	\$1,248.00	\$748.00	\$500.00
1150	Soldering per Line	3479	\$250.00	\$1,248.00	\$748.00	\$500.00
1160	Wire Coating per Line	3479	\$832.00	\$4,158.00	\$2,497.00	\$832.00
1170	Oil Field Machinery and Equipment	3533	\$417.00	\$2,082.00	\$1,248.00	\$500.00
1180	Power Chain Saw Manufacture per Line	3546	\$623.00	\$3,119.00	\$1,874.00	\$623.00
1190	Commercial Grain Dryer	3559	\$500.00	\$2,497.00	\$1,499.00	\$500.00
1193	Commercial Laundry, Dry Cleaning, and Pressing Machines	3582	\$623.00	\$3,119.00	\$1,874.00	\$623.00
1195	Electric Transformers per 1,000 Units/Year	3612	\$193.51	\$967.52	\$580.51	\$193.51
		MIN.	\$526.00	\$2,634.00	\$1,580.00	\$526.00
1200	Electrode Manufacture per Line	3624	\$582.00	\$2,910.00	\$1,747.00	\$582.00
1210	Telephone Manufacture per Line	3661	\$1,457.00	\$7,280.00	\$4,369.00	\$1,457.00
1220	Electrical Connector Manufacture per Line	3678	\$748.00	\$3,745.00	\$2,247.00	\$748.00
1230	Battery Manufacture per Line	3691	\$832.00	\$4,158.00	\$2,497.00	\$832.00
1240	Electrical Equipment per Line	3694	\$500.00	\$2,497.00	\$1,499.00	\$500.00
1245	Automobile, Truck, and Van Assembly per 1,000 Vehicles per Year Capacity	3711	\$208.03	\$1,040.05	\$624.03	\$208.03
		MIN.	\$1,317.00	\$6,598.00	\$3,952.00	\$1,317.00
		MAX.	\$41,612.00	\$208,060.00	\$124,836.00	\$41,612.00
1250	Ship and Boat Building: A) 5001 or More Employees	3732	\$6,241.00	\$31,202.00	\$18,722.00	\$6,241.00
1260	Ship and Boat Building: B) 2501 to 5000 Employees	3732	\$4,158.00	\$20,804.00	\$12,482.00	\$4,158.00
1270	Ship and Boat Building: C) 1001 to 2500 Employees	3732	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
1280	Ship and Boat Building: D) 201 to 1000 Employees	3732	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
1290	Ship and Boat Building: E) 200 or Less Employees	3732	\$417.00	\$2,082.00	\$1,248.00	\$500.00
1300	Playground Equipment Manufacture per Line	3949	\$623.00	\$3,119.00	\$1,874.00	\$623.00

**Table 1**  
**Fee Schedule Listing**

Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
1310	Grain Elevators: A) 20,000 or More Ton/Yr	4221	\$1,329.00	\$6,655.00	\$3,993.00	\$1,329.00
1320	Grain Elevators: B) Less than 20,000 Ton/Yr	4221	\$667.00	\$3,328.00	\$1,997.00	\$667.00
1330 *Note 6*	A) Petroleum, Chemical Bulk Storage and Terminal (over 3,000,000 BBL Capacity)	4226	\$12,482.00	\$62,406.00	\$37,444.00	\$12,482.00
1340 *Note 6*	B) Petroleum, Chemical Bulk Storage and Terminal (1,000,000-3,000,000 BBL Capacity)	4226	\$8,321.00	\$41,604.00	\$24,962.00	\$8,321.00
1350 *Note 6*	C) Petroleum, Chemical Bulk Storage and Terminal (500,001-1,000,000 BBL Capacity)	4226	\$4,158.00	\$20,804.00	\$12,482.00	\$4,158.00
1360 *Note 6*	D) Petroleum, Chemical Bulk Storage and Terminal (500,000 BBL Capacity or Less)	4226	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
1361 *Note 8*	Wholesale Distribution of Coke and Other Bulk Goods per 1,000 Ton/Yr Capacity	4463 MIN.	\$0.85 \$2,053.00	\$4.17 \$10,274.00	\$2.46 \$6,164.00	\$0.85 \$2,053.00
1362	Crude Oil Pipeline: Facility with Less than 100,000 BBL Storage Capacity	4612	\$922.00	\$4,611.00	\$2,767.00	\$922.00
1363	Crude Oil Pipeline: Facility with 100,000 to 500,000 BBL Storage Capacity	4612	\$1,317.00	\$6,587.00	\$3,952.00	\$1,317.00
1364	Crude Oil Pipeline: Facility with over 500,000 BBL Storage Capacity	4612	\$1,844.00	\$9,221.00	\$5,532.00	\$1,844.00
1366	Refined Oil Pipeline: Facility with Less than 100,000 BBL Storage Capacity	4613	\$790.00	\$3,952.00	\$2,370.00	\$790.00
1367	Refined Oil Pipeline: Facility with 100,000 to 500,000 BBL Storage Capacity	4613	\$1,053.00	\$5,268.00	\$3,162.00	\$1,053.00
1368	Refined Oil Pipeline: Facility with Over 500,000 BBL Storage Capacity	4613	\$1,580.00	\$7,904.00	\$4,741.00	\$1,580.00
1370	Railcar/Barge/Tank Truck Cleaning Heavy Fuels Only	4742	\$417.00	\$2,082.00	\$1,248.00	\$500.00
1380	Railcar and Barge Cleaning Other Than Heavy Fuels	4742	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
1390	Tank Truck Cleaning Other Than Heavy Fuels	4742	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
1400	A) Electric Power Gen. per MW (Over 0.7 Percent S in Fuel)	4911 MIN.	\$19.33 \$3,938.00	\$96.73 \$19,693.00	\$58.04 \$11,816.00	\$19.33 \$3,938.00
1410 *Note 7*	B) Electric Power Gen. per MW (0.7 Percent S or Less in Fuel)	4911 MIN.	\$11.58 \$1,884.00	\$58.04 \$9,419.00	\$34.82 \$5,651.00	\$11.58 \$1,884.00
1420	C) Electric Power Gen. per MW (Natural Gas Fired)	4911 MIN.	\$5.82 \$1,370.00	\$29.03 \$6,849.00	\$17.41 \$4,110.00	\$5.82 \$1,370.00
1430 *Note 11*	Natural Gas Comp per 100 H.P. (Turbines)	4922	\$8.29	\$41.58	\$24.95	\$8.29
1440 *Note 11*	Recip. Nat Gas Comp per 100 H.P.: A) 50,000 H.P.	4922	\$37.47	\$187.23	\$112.33	\$37.47
1450 *Note 11*	Recip. Nat Gas Comp per 100 H.P.: B) 20,000 to 50,000 H.P.	4922	\$41.58	\$208.03	\$124.78	\$41.58
1460 *Note 11*	Recip. Nat Gas Comp per 100 H.P.: C) 5,000 to 20,000 H.P.	4922	\$49.92	\$249.61	\$149.73	\$49.92
1470 *Note 11*	Recip. Nat Gas Comp per 100 H.P.: D) 2,500 to 5,000 H.P.	4922	\$58.26	\$291.18	\$174.72	\$58.26
1480 *Note 11*	Recip. Nat Gas Comp per 100 H.P.: E) 1,000 to 2,500 H.P.	4922	\$62.40	\$312.02	\$187.23	\$62.40
1490 *Note 11*	Recip. Nat Gas Comp: F) Less than 1,000 H.P.	4922	\$832.00	\$2,082.00	\$832.00	\$832.00
1500 *Note 10*	Coal Gassification per \$100,000 Capital Cost	4925 MIN. MAX.	\$8.29 \$1,317.00 \$66,614.00	\$41.58 \$6,598.00 \$333,067.00	\$24.95 \$3,952.00 \$199,840.00	\$8.29 \$1,317.00 \$66,614.00
1510 *Note 10*	Co-Generation per \$100,000 Capital Cost	4939 MIN. MAX.	\$8.29 \$1,317.00 \$41,612.00	\$41.58 \$6,598.00 \$208,060.00	\$24.95 \$3,952.00 \$124,836.00	\$8.29 \$1,317.00 \$41,612.00
1520	Incinerators: A) 1,000 Lb/Hr and Greater Capacity	4953	\$526.00	\$2,624.00	\$1,580.00	\$526.00
1521	Incinerators: B) Less than 1,000 Lb/Hr Capacity	4953	\$250.00	\$855.00	\$514.00	\$500.00
1525	Sanitary Landfill per Million Mg of Planned Capacity	4953 MIN.	\$145.20 \$291.00	\$726.00 \$1,452.00	\$436.00 \$872.00	\$145.20 \$500.00
1530	Municipal Incinerators	4953	\$4,158.00	\$20,804.00	\$12,482.00	\$4,158.00
1532	Commercial Hazardous Waste Incinerator per 1,000,000 Btu per Hour Thermal Capacity	4953 MIN.	\$239.75 \$5,268.00	\$1,198.70 \$26,345.00	\$719.22 \$15,807.00	\$239.75 \$5,268.00
1533	Noncommercial Hazardous Waste Incinerator (per 1,000,000 Btu/Hr Thermal Capacity)	4953 MIN.	\$119.87 \$3,425.00	\$600.17 \$17,124.00	\$359.60 \$10,274.00	\$119.87 \$3,425.00
1534	Commercial Hazardous Waste Disp. Facility N.E.C.	4953	\$34,249.00	\$171,244.00	\$102,746.00	\$34,249.00
1535	Commercial Hazardous Waste Underground Injection (Surface Facilities) per Location	4953	\$6,849.00	\$34,249.00	\$20,550.00	\$6,849.00
1536	Recoverable/Re-usable Materials Proc. Facility (per 1,000,000 Btu/Hr Thermal Capacity)	4953 MIN. MAX.	\$119.87 \$3,425.00 \$17,124.00	\$599.35 \$17,124.00 \$85,622.00	\$359.60 \$10,274.00 \$51,373.00	\$119.87 \$3,425.00 \$17,124.00
1540	Steam Gen. Units per 1000 Lb/Hr Steam Cap: Natural Gas or Comb Non-Fossil Fuels	4961 MIN.	\$2.06 \$341.00	\$10.41 \$1,711.60	\$6.22 \$1,027.00	\$2.06 \$500.00
1550	Steam Gen. Units per 1000 Lb/Hr Steam Cap: Fuels with 0.7 Percent S or Less	4961 MIN.	\$4.17 \$855.00	\$20.81 \$4,281.00	\$12.47 \$2,569.00	\$4.17 \$855.00

Table 1						
Fee Schedule Listing						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
1560	Steam Gen. Units per 1000 Lb/Hr Steam Cap: Fuels with More than 0.7 Percent S	4961 MIN.	\$6.22 \$1,198.00	\$31.19 \$5,993.00	\$18.73 \$3,595.00	\$6.22 \$1,198.00
1570	Cement (Bulk Distribution)	5052	\$1,665.00	\$8,321.00	\$4,992.00	\$1,665.00
1580	Wholesale Distribution of Coal per 1,000 Ton/Yr Throughput	5052 MIN.	\$0.40 \$1,198.00	\$2.06 \$5,993.00	\$1.22 \$3,595.00	\$0.40 \$1,198.00
1590	Automobile Recycling Scrap per 1000 Ton/Yr	5093 MIN. MAX.	\$17.12 \$855.00 \$41,612.00	\$85.61 \$4,281.00 \$208,060.00	\$51.37 \$2,569.00 \$124,836.00	\$17.12 \$855.00 \$41,612.00
1600	Bulk Loader: Over 100,000 Ton/Yr Throughput	5153	\$4,158.00	\$20,804.00	\$12,482.00	\$4,158.00
1610 *Note 14a*	Bulk Loader: Less Than or Equal to 100,000 and More Than 25,000 Ton/Yr Throughput	5153	\$2,082.00	\$10,401.00	\$6,241.00	\$2,082.00
1611 *Note 14a*	Bulk Loader: 25,000 Ton/Yr or Less Throughput	5153	\$1,185.00	\$5,927.00	\$3,557.00	\$1,185.00
1612 *Note 14a*	Bulk Loader: No Grain or Dusty Materials Transfer	5153	\$790.00	\$3,952.00	\$2,370.00	\$790.00
1620	Grain Elevators-Terminal per 10,000 BU/Yr Throughput	5153 MIN.	\$0.40 \$1,884.00	\$2.06 \$9,419.00	\$1.22 \$5,651.00	\$0.40 \$1,884.00
1630	Wholesale Distribution of Chemicals and Allied Products per Facility	5161	\$1,041.00	\$4,158.00	\$3,119.00	\$1,041.00
1640	Petroleum Bulk Plants	5171	\$250.00	\$500.00	\$500.00	\$500.00
1650	Petroleum Bulk Terminal	5171	\$832.00	\$4,158.00	\$2,497.00	\$832.00
1660	Petroleum Bulk Station	5171	\$250.00	\$500.00	\$500.00	\$500.00
1670	Storage Tank	5171	\$250.00	\$832.00	\$500.00	\$500.00
1680	Crude Oil Distribution	5172	\$1,248.00	\$6,241.00	\$3,745.00	\$1,248.00
1690	Tire Recapping Plant	7534	\$250.00	\$855.00	\$514.00	\$500.00
1700	Chemical Waste Disposal Facility for Nonhazardous Waste	9998	\$3,870.00	\$19,352.00	\$11,611.00	\$3,870.00
1710	Negotiated Fee for Minor Sources		\$291.00	\$1,452.00	\$872.00	\$500.00
1711	Research Fee for Alternate Disposal of Hazardous Waste		\$250.00	\$500.00	\$500.00	\$500.00
1712 *Note 21*	Negotiated Fee for Part 70 Sources	MIN.	\$291.00 + \$7.26/ton \$1,452.00	\$1452.00 + \$36.30/ton \$7,260.00	\$872.00 + \$21.78/ton \$4,356.00	\$291.00 + \$7.26/ton \$1,452.00
1720 *Note 15*	Small Business Sources	N/A	\$250.00	\$785.00	\$500.00	\$500.00
1722	Small Source Permit	N/A	\$250.00	\$785.00	\$500.00	\$500.00

B. Table 2—Additional Fees

Table 2		
Additional Fees		
Fee Number	Fee Description	Amount
2000	Name and Company Ownership/Operator Changes under LAC 33:I.Chapter 19	\$500.00
2010	The Issuance or Denial of Relocation, Administrative Amendments, Variances, Authorization to Construct, Change of Tank Service, Research and Development, and Exemptions. This fee shall be waived for sources operating under an air permit.	\$500.00
2015	Repealed.	
2016	New, Modified, or Renewed Acid Rain Permits	\$500.00
2020	The Issuance of an Asbestos Disposal Verification Form (ADVF)—(at least 10 working days notification given)—Fee is nontransferable and nonrefundable.	\$73.00
2030	The Issuance of an Asbestos Disposal Verification Form (ADVF)—(less than 10 working days notification given)—Fee is nontransferable and nonrefundable.	\$109.00
2040	Agent Accreditation for Asbestos: Includes Contractor/Supervisor, Inspector, Management Planner, or Project Designer—Normal Application Processing per Discipline (greater than five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$291.00
2050	Agent Accreditation for Asbestos: Includes Contractor/Supervisor, Inspector, Management Planner, or Project Designer—Emergency Application Processing per Discipline (less than or equal to five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$436.00
2060	Worker Accreditation for Asbestos—Normal Application Processing (greater than five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$73.00
2070	Worker Accreditation for Asbestos—Emergency Application Processing (less than or equal to five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$109.00
2080	Duplicate Certificate—Fee is nontransferable and nonrefundable.	\$37.00
2090	Asbestos Training Organization Recognition Plus Trainer Recognition per Trainer—Normal Application Processing (greater than five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$436.00 \$73.00

Table 2		
Additional Fees		
Fee Number	Fee Description	Amount
2100	Asbestos Training Organization Recognition Plus Trainer Recognition per Trainer—Emergency Application Processing (less than or equal to five working days after receipt of required documentation and fees)—Fee is nontransferable and nonrefundable.	\$654.00 \$109.00
*Note 13*	Air Toxics Annual Fee per Ton Emitted on an Annual Basis:	
	Class I Pollutants	\$156.82
	Class II Pollutants	\$78.41
	Class III Pollutants	\$39.20
*Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Non-Title V Facility):	\$13.91/ton
	Nitrogen oxides (NO <sub>x</sub> )	
	Sulfur dioxide (SO <sub>2</sub> )	
	Non-toxic organic (VOC)	
	Particulate (PM <sup>10</sup> )	
*Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Title V Facility):	\$13.91/ton
	Nitrogen oxides (NO <sub>x</sub> )	
	Sulfur dioxide (SO <sub>2</sub> )	
	Non-toxic organic (VOC)	
	Particulate (PM <sup>10</sup> )	
2400	An application approval fee for Stage II Vapor Recovery	\$146.00
	An annual facility inspection fee for Stage II Vapor Recovery	\$218.00
*Note 16*	2600 Accident Prevention Program Annual Maintenance Fee: Program 1	\$291.00
*Note 16*	2620 Accident Prevention Program Annual Maintenance Fee: Program 2	\$581.00
*Note 16*	2630 Accident Prevention Program Annual Maintenance Fee: Program 3	\$3,630.00
	2800 Repealed.	
	2810 An application fee for point source emissions banking (not applicable when filing application with a new permit or permit modification)	\$500.00
*Note 19*	2900 Lead Contractor License Evaluation Processing Fee—Fee is nontransferable and nonrefundable.	\$550.00
*Note 19*	2901 Lead Project Supervisor Accreditation Application Processing Fee—Fee is nontransferable and nonrefundable.	\$275.00
*Note 19*	2902 Lead Project Designer Accreditation Application Processing Fee—Fee is nontransferable and nonrefundable.	\$550.00
*Note 19*	2903 Lead Risk Assessor Accreditation Application Processing Fee—Fee is nontransferable and nonrefundable.	\$275.00
*Note 19*	2904 Lead Inspector Accreditation Application Processing Fee—Fee is nontransferable and nonrefundable.	\$165.00
*Note 19*	2905 Lead Worker Accreditation Application Processing Fee—Fee is nontransferable and nonrefundable.	\$55.00
*Note 19*	2906 Recognition Application Processing Fee for In-State Louisiana Lead Training Organizations per Training Organization—Fee is nontransferable and nonrefundable.	\$550.00
*Note 19*	2907 Recognition Application Processing Fee for Louisiana Lead Training Organizations per Instructor—Fee is nontransferable and nonrefundable.	\$55.00
*Note 19*	2908 Recognition Application Processing Fee for Out of State Lead Training Organizations per Out of State Training Organization—Fee is nontransferable and nonrefundable.	\$825.00
*Note 19*	2909 Recognition Application Processing Fee for Out of State Lead Training Organizations per Instructor—Fee is nontransferable and nonrefundable.	\$110.00
*Note 19*	2910 Lead Abatement Project Notification Processing Fee, 2000 Square Feet and under—Fee is nontransferable and nonrefundable.	\$220.00
*Note 19*	2911 Lead Abatement Project Notification Processing Fee for Each Additional Increment of 2000 Square Feet or Portion Thereof—Fee is nontransferable and nonrefundable.	\$110.00
*Note 19*	2912 Lead Abatement Project Notification Processing Fee (Fee Per Revision)—Fee is nontransferable and nonrefundable.	\$55.00
*Note 19*	2913 Soil Lead Abatement Project Notification Processing Fee, Half Acre or Less—Fee is nontransferable and nonrefundable.	\$220.00
*Note 19*	2914 Soil Lead Abatement Project Notification Processing Fee, Each Additional Half Acre or Portion Thereof—Fee is nontransferable and nonrefundable.	\$110.00

Explanatory Notes for Fee Schedule

- Note 1. - Note 2. ...  
 Note 3. Reserved.  
 Note 4. - Note 10. ...  
 Note 11. The maximum annual maintenance fee for Categories 1430-1490 is not to exceed \$41,612 total for any one gas transmission permit.  
 Note 12. The maximum annual maintenance fee for one location with two or more plants shall be \$1,883.  
 Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are invoiced as zero and parts of a ton equal to or greater than 0.50 are

invoiced as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$146.  
 Note 14. Fees will not be assessed for emissions of a single criteria pollutant over and above 4,000 tons per year from a facility. Criteria fees will be assessed on actual annual emissions that occurred during the previous calendar year. The minimum fee for this category shall be \$146.

Note 14.a. - Note 20. ...

Note 21. Tons shall refer to the permitted total of criteria pollutants, excluding PM<sub>2.5</sub>. The minimum fee applies only if the requirement for a Part 70 permit is triggered by criteria pollutant emissions.

Note 22. No fee shall be assessed when only the name of a facility is changed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2014, 2054, 2341, and 2351 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007), LR 34:2560 (December 2008), LR 37:1145 (April 2011), amended by the Office of the Secretary, Legal Division, LR 43:936 (May 2017).

### **Chapter 3. Regulatory Permits**

#### **§307. Regulatory Permit for Oil and Gas Well Testing**

A. - F.3. ...

G. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$500 (fee number 1710). There shall be no annual maintenance fee associated with this regulatory permit.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:457 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017).

#### **§309. Regulatory Permit for Release of Natural Gas from Pipelines and Associated Equipment**

A. - H.3. ...

I. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$500 (fee number 1710). There shall be no annual maintenance fee associated with this regulatory permit.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:458 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017).

#### **§311. Regulatory Permit for Stationary Internal Combustion Engines**

A. - L. ...

M. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$785. In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$250. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:780 (April 2014), LR 42:1884 (November 2016), LR 43:942 (May 2017).

#### **§313. Regulatory Permit for Portable Air Curtain Incinerators**

A. - E. ...

F. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$2,634 (fee number 1520). If emissions from the ACI are such that it qualifies for a small source permit as described in LAC 33:III.503.B.2, the fee is \$785 (fee number 1722), in accordance with LAC 33:III.211.B.13.e. In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$526, if fee number 1520 is applicable, or \$250, if fee number 1722 is applicable.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:460 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017).

#### **§315. Regulatory Permit for Concrete Manufacturing Facilities**

A. - G. ...

H. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$785 (fee number 1722). In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$250.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:1541 (July 2010), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017).

#### **§317. Regulatory Permit for Rock, Concrete, and Asphalt Crushing Facilities**

A. - J.3. ...

K. Fees. In accordance with LAC 33:III.223, Table 1, the new permit application fee for this regulatory permit shall be \$2,288 (fee number 0870). In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$458. If potential emissions from the crusher are such that it qualifies for a small source permit as described in LAC 33:III.503.B.2, then fee number 1722 located in LAC 33:III.223, Table 1 shall apply in accordance with LAC 33:III.211.B.13.e.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:1955 (August 2012), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017).

#### **§319. Regulatory Permit for Flaring of Materials Other than Natural Gas**

A. - H.2.c. ...

I. In accordance with LAC 33:III.223, Table 1, the fee for this regulatory permit shall be \$500 (fee number 1710).

There shall be no annual maintenance fee associated with this regulatory permit.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 39:1039 (April 2013), amended LR 43:942 (May 2017).

**Part V. Hazardous Waste and Hazardous Materials**  
**Subpart 1. Department of Environmental Quality—**  
**Hazardous Waste**

**Chapter 51. Fee Schedules**

**§5109. Application Fees**

**A. Treaters, Storers, and/or Disposers (TSD)**

1. A one-time application fee shall be paid to cover application, evaluation, and other related program costs.

2. Major amendments of applications for operating permits, closure/post-closure permits, and modifications of permits may be considered as separate applications for purposes of calculating fees.

3. The application fee shall be assessed subsequent to the receipt and review of an application or other request for permit action.

4. There shall be no refunds of TSD application fees.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2014 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 16:684 (August 1990), LR 18:724 (July 1992), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017).

**§5111. Treaters, Storers, and/or Disposers Application Fees**

A. ...

**B. Application Fee Schedule**

Item	Fee
Site Analysis—per acre site size	\$413 <sup>1</sup>
Process and Plan Analysis	\$1,650
Facility Analysis—per facility <sup>2</sup>	\$825
Management/Financial Analysis	\$1,650

NOTE: Fee equals total of the four items.

<sup>1</sup> Up to 100 acres, no additional fee thereafter.

<sup>2</sup> Incinerator, land farm, treatment pond, etc., each counted as a facility.

C. - D. ...

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2014 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:724 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:288 (March 2001), LR 29:685 (May 2003), LR 29:2048 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017).

**§5117. Annual Monitoring and Maintenance Fees**

A. All annual fees provided by this Chapter shall be paid within 30 days from receipt of billing.

B. Annual maintenance fees are not prorated. If a facility operates any part of a year or at a reduced rate during the year, the full annual maintenance fee is still charged.

C. The annual maintenance fee for a new or modified permit shall be paid during the fiscal year (July 1 to June 30) in which the process specified in the permit comes on line.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2014 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 14:621 (September 1988), LR 16:684 (August 1990), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017).

**§5119. Treaters, Storers, and/or Disposers Annual Maintenance Fees**

**A. Fee per Site**

Off-Site Disposer (Commercial)	\$131,670
Reclaimer (compensated for waste removed)	\$57,750
Reclaimer (uncompensated for waste removed or pays for waste removed)	\$41,250
Off-Site Disposer (Noncommercial)	\$33,000
On-Site Disposer	\$16,500

NOTE: The higher fee for off-site disposal is due to the cost of the manifest system and emergency response to transport spills (neither cost is applicable to on-site disposers).

**B. Fee per Hazardous Waste Facility Type**

Unit Type	Fee
Storage:	
Container/Tank/Waste Pile/etc.	\$5,400
Treatment:	
Incinerator/Boiler/Industrial Furnace/Filtration Unit/etc.	\$8,695
Disposal:	
Landfill/Miscellaneous Unit/etc.	\$13,645

**C. Fee Based on Volume**

Less than 1,000 tons	\$3,222
Less than 10,000 tons	\$8,092
Less than 100,000 tons	\$12,963
Less than 1,000,000 tons	\$17,834
More than 1,000,000 tons	\$22,704

D. ...

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E. Land Disposal Prohibitions Fee. The land disposal prohibitions fee includes treatment, processing (including use, reuse, recycling), and/or disposal facility annual fee (not on storage facilities). This fee applies to facilities handling wastes subject to the land disposal prohibitions in LAC 33:V.Chapter 22.

On-Site	\$1,650
Off-Site Noncommercial	\$3,300
Reclaimer	\$4,125
Off-Site Commercial	\$8,250

F. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee. This is an annual fee applied to defray the cost of annually inspecting the required continuous

monitors and recording devices for each incinerator, boiler, or industrial furnace to determine whether they are being properly maintained and calibrated. This fee will annually be a flat rate of \$1,650.

G. Annual Landfill Inspection and Monitoring Fee. An annual fee shall be charged for the inspection of the regulatory requirement for leak detection and leachate collection systems associated with hazardous waste landfills to determine operational status and degree of proper maintenance. For each landfill unit or cell with a separate leak detection and leachate collection system, the annual fee will be \$165.

H. Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee.

1. Semiannual Zone of Incorporation (ZOI) Inspection Fee. This fee covers the cost of inspection, random sampling and laboratory analysis of the zone of incorporation.

ZOI soil samples	\$1,650 each acre
Soil-pore liquid monitors (Lysimeters)	\$4,125 each monitor

2. Annual Land Treatment Unit Report Review Fee. This fee covers the cost of reviewing the report required by final permits for land treatment. Included in the annual land treatment unit report are the results of the unsaturated zone monitoring, semiannual soil core sample analyses, quarterly soil-pore liquid quality analyses from below the treatment zone, and soil moisture tensiometer readings of the ZOI.

Hazardous Waste Facilities	\$1,650 each report
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I. Formula to Apportion Fees

Annual Maintenance Fee = Fee per Site + Fee per Facility + Fee based on Volume + Administrative Cost Fee + Land Disposal Prohibitions Fee + Groundwater Protection Annual Fee + Incineration Inspection and Monitoring Fee + Boiler/Industrial Furnace Inspection and Monitoring Fee + Annual Landfill Inspection and Monitoring Fee + Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee
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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:684 (August 1990), LR 16:1057 (December 1990), LR 18:723 (July 1992), LR 18:1375 (December 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:685 (May 2003), LR 29:2049 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017).

**§5120. Land Disposal Prohibition Petition Fees**

A. Petitions submitted in accordance with R.S. 30:2193(E)(2) and/or LAC 33:V.Chapter 22 are subject to additional fees as noted below for each petition submitted. These fees must be submitted at the time a petition is submitted.

Variance	\$16,500
Exemption	\$74,250
Extension	\$8,250
No-Alternatives Determinations:	
Original Petition	\$16,500
Renewal Petition/Request	\$16,500
Request for determination for addition of a hazardous waste(s) not covered by existing determination	\$1,650

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1803 (October 1999), LR 29:686 (May 2003), LR 29:2049 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:944 (May 2017).

**§5121. Generators and Transporters of Hazardous Waste**

A. Registration

1. All generators of hazardous waste must file or have on file a notification of that facility, using Notification Form HW-1 available from the administrative authority (see LAC 33:V.303.A).

2. For generators of hazardous waste, the Notification Form HW-1 shall be deemed a registration upon acceptance and approval by the administrative authority.

B. Application Fees

1. Transfer Facilities

a. Hazardous Waste Transfer Facility Fee. All hazardous waste transfer facilities in Louisiana shall pay an application fee of \$1,900 to the department.

b. Used Oil Transfer Facility Fee. All used oil transfer facilities in Louisiana shall pay an application fee of \$1,300 to the department.

2. 90-day Storage Extension. Application for 30-day Extension of Accumulation Time Limit in LAC 33:V.1109.E.2 and LAC 33:V.31109.E.9. All requests for extension of accumulation time limit shall be accompanied by a \$500 application fee.

C. Annual Fees

1. Large Quantity Generators (LQG) or Small Quantity Generators (SQG)

a. Generators Annual Fee. Fee will annually be \$469, plus the prohibited waste fee.

b. Prohibited Waste Fee. Annual prohibited waste fee is \$165 for each generator who generates for land disposal as provided in LAC 33:V.Chapter 22. The generator will be subject to this fee if any waste generated is prohibited from disposal at any time during the year for which the fee is assessed.

2. Conditionally Exempt Small Quantity Generators (CESQG). Conditionally exempt small quantity generators (see LAC 33:V.108) shall pay a fee of \$83 per year to the department.

3. Transporters. All transporters of hazardous waste with a facility in Louisiana shall pay a fee of \$330 per year to the department. There will be only one fee regardless of the number of vehicles in the service of the transporter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 14:621 (September 1988), amended by the Office of the Secretary, Legal Division, LR 43:944 (May 2017).

**§5123. Annual Fee for Facilities with Closed Hazardous Waste Units in Post-Closure**

A. Post-Closure Annual Fee. This is an annual fee applied to defray the cost of annually inspecting the facilities with closed hazardous waste units in post-closure care. This fee shall be \$4,125 annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5125. Annual Monitoring and Maintenance Fee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq. HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 17:658 (July 1991), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:686 (May 2003), LR 29:2049 (October 2003), repealed by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5127. Methods of Payment**

A. - B. ...

1. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2180 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5129. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee.

B. Any late payment fee shall be calculated from the due date indicated on the invoice.

C. Payments not received by the department by:

1. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

2. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

3. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5131. Failure to Pay**

A. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE. Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5135. Transporter Fee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 14:622 (September 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:686 (May 2003), LR 29:2050 (October 2003), repealed by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5137. Conditionally Exempt Small Quantity Generator Fee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 14:622 (September 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:716 (May 2001), LR 29:687 (May 2003), LR 29:2050 (October 2003), repealed by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5139. Groundwater Protection Permit Review Fee**

A. Permit Review Fee. This fee covers the cost of reviewing permits for geology, geotechnical design, and groundwater protection aspects.

Hazardous Waste Facilities (1 time)	\$8,250 each
Permit Modifications:	
Class 1 and 2	\$330 each
Class 3	\$1,238 each
Solid Waste Facilities (1 time)	\$8,250 each
Permit Modifications:	
Major	\$825 each
Minor	\$330 each

B. Oversight of Abandonment Procedures. This fee covers the cost of reviewing plans to plug and abandon all permitted groundwater monitoring systems (monitoring

wells, piezometers, observations wells, and recovery wells) to ensure that they do not pose a potential threat to groundwater.

Casing pulled	\$165 each
Casing reamed out	\$330 each
Casing left in place	\$825 each

C. Groundwater Monitoring Systems Installation Permit. This fee covers the cost of reviewing the geology and design of proposed groundwater monitoring systems to ensure compliance with department specifications for units subject to permitting under these regulations

Each Well	\$825
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AUTHORITY NOTE: Promulgated in accordance with 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Groundwater Division, LR 14:621 (September 1988), amended LR 16:685 (August 1990), amended by the Hazardous Waste Division, LR 18:725 (July 1992), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:687 (May 2003), LR 29:2050 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:945 (May 2017).

**§5141. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee**

A. ...

1. This fee will be \$825 for each day of the test burn or trial burn.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 18:1375 (December 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2510 (November 2000), LR 29:687 (May 2003), LR 29:2050 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**§5143. Annual Landfill Inspection and Monitoring Fee**  
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 18:725 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2050 (October 2003), repealed by the Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**§5145. Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee**

A. Permit Review Fee. This fee covers the cost of reviewing permits for geology, geotechnical design, and hydrological separation requirements of these regulations.

Initial Permit	\$8,250 each
Permit Modifications:	
Class 1	\$330 each
Class 2 or 3	\$1,238 each

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2050 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**§5147. Fee for NHEM Determination for Contaminated Environmental Media**

A. A fee of \$4,125 shall be submitted at the time a request for a review of contaminated environmental media for a NHEM determination is made in accordance with LAC 33:V.106.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq. and, in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs Division, LR 33:455 (March 2007), amended by the Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**§5149. Annual Fee for Facilities with Closed Hazardous Waste Units in Post Closure**

A. Post Closure Annual Fee. This is an annual fee applied to defray the cost of annually inspecting the facilities with closed hazardous waste units in post-closure care. This fee shall be \$4,125 annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**Part VII. Solid Waste**

**Subpart 1. Solid Waste Regulations**

**Chapter 15. Solid Waste Fees**

**[Formerly Chapter 5, Subchapter D]**

**§1501. Standard Permit Application Review Fee**  
**[Formerly §525]**

A. Applicants for type I, I-A, II, and II-A standard permits shall pay a \$4,125 permit application review fee for each facility. The fee shall accompany each permit application submitted.

B. Applicants for type III standard permits or beneficial-use plans shall pay a permit application review fee of \$825 for each facility. The fee shall accompany each permit application submitted.

C. Permit holders providing permit modifications for type I, I-A, II, and II-A facilities shall pay a \$1,650 permit-modification review fee. The fee shall accompany each modification submitted. Permit holders providing mandatory modifications in response to these regulations shall pay a \$825 permit-modification fee. The fee shall accompany each mandatory modification submitted. Permit modifications required by LAC 33:VII.805.A will not be subject to a permit modification fee.

D. Permit holders providing permit modifications for type III facilities or beneficial use facilities shall pay a \$413 modification review fee. The fee shall accompany each modification submitted.

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended LR 37:3258 (November 2011), amended by the Office of the Secretary, Legal Division, LR 43:946 (May 2017).

**§1503. Closure Plan Review Fee**  
**[Formerly §527]**

A. Applicants for type I, I-A, II, and II-A closures shall pay a \$1,650 closure-plan review fee. The fee shall accompany each closure plan submitted.

B. Applicants for type III or beneficial-use facilities closures shall pay a \$413 closure-plan review fee. The fee shall accompany each closure plan submitted.

C. Permit holders providing closure-plan modifications for type I, I-A, II, and II-A facilities shall pay a \$825 closure-plan modification review fee. The fee shall accompany each modification submitted.

D. Permit holders providing closure-plan modifications for type III or beneficial-use facilities shall pay a \$207 closure-plan modification review fee. The fee shall accompany each modification submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended by the Office of the Secretary, Legal Division, LR 43:947 (May 2017).

**§1505. Annual Monitoring and Maintenance Fee**  
**[Formerly §529]**

A. - A.1. ...

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2. No fee is assessed for modifying an existing notification form. The fee shall accompany the notification form at the time of its filing.

Initial Fee	\$165
Fee Per Vehicle	\$42

B. - B.1. ...

a. \$9,900 for type I facilities (including facilities that handle both industrial and non-industrial waste);

b. \$2,475 for type II facilities; and

c. \$825 for type I-A, II-A, III, and beneficial-use facilities.

2. Tonnage fees will be based on the wet-weight tonnage, as reported in the previous year's disposer annual report, and are calculated as follows:

a. for industrial wastes (type I facilities, except surface impoundments), \$0.99/ton;

b. for non-industrial wastes (type II facilities, except surface impoundments), \$0.25/ton for amounts exceeding 25,000 tons;

c. for construction or demolition debris deposited at permitted construction or demolition debris facilities (type III facilities), \$0.25/ton; and the fee is only applicable to construction or demolition debris that is subject to a fee imposed by the facility;

d. - f. ...

3. The maximum annual monitoring and maintenance fee per facility for type I facilities (including facilities that handle both industrial and non-industrial solid wastes) is \$120,000. The maximum fee per facility for type II facilities is \$30,000. Surface impoundments, as noted above, are assessed only the base fee.

C. ...

D. Annual maintenance fees are not prorated. If a facility operates any part of a year or at a reduced rate during the year, the full annual maintenance fee is still charged.

E. The annual maintenance fee for a new or modified permit shall be paid during the fiscal year (July 1 to June 30) in which the process specified in the permit comes on line.

F. The annual fees prescribed herein shall be effective retroactive for the state fiscal year in which these fee regulations are published in the *Louisiana Register* as adopted and each state fiscal year thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:2241 (December 2006), repromulgated LR 33:1108 (June 2007), amended LR 35:2180 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:947 (May 2017).

**§1507. Methods of Payment**

A. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

B. Electronic Methods of Payment

1. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

2. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

C. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:947 (May 2017).

**§1509. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee.

B. Any late payment fee shall be calculated from the due date indicated on the invoice.

C. Payments not received by the department by the:

1. fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;
2. thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and
3. sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:947 (May 2017).

**§1511. Failure to Pay**

A. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:948 (May 2017).

**Subpart 2. Recycling**

**Chapter 105. Waste Tires**

**§10535. Fees and Fund Disbursement**

- A. - A.1. ...
- a. The transporter authorization application fee is \$125.
  - b. The transporter maintenance and monitoring fee is \$32 per vehicle annually payable on or before July 31 of each year. This fee is to be paid on each truck listed on the transporter application form, or if the vehicle used to transport tires is a tractor and trailer rig, the vehicle fee must be paid for each tractor.
  - c. The transporter modification fee is \$32 per vehicle transfer. This fee is charged each time a vehicle is added or substituted on a transporter authorization certificate.
2. The collection center permit application fee is \$1,000.
  3. The mobile processor annual application fee is \$750.
  4. The standard processor permit application fee is \$1,563.
  5. The permit modification fee is \$125.
  6. The high volume end use facility application fee is \$313.

B. - E.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR

22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228 (December 2001), amended by the Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:268 (February 2016), LR 43:948 (May 2017).

**Part IX. Water Quality**

**Subpart 1. Water Pollution Control**

**Chapter 13. Louisiana Water Pollution Control Fee System Regulation**

**§1309. Fee System**

- A. - B.3.a. ...
- i. \$162.80 per rating point as of July 1, 2017; and
  - b. for all other facilities:
    - i. \$299.16 per rating point as of July 1, 2017.

B.4. - E. ...

1. The minimum annual fee shall be \$380 as of July 1, 2017.
2. The maximum annual fee shall be \$150,000 as of July 1, 2017.

F. - G. ...

**H. Late Payment Fee**

1. Fee payments not received within 15 days of the due date will be charged a late payment fee.
2. Any late payment fee shall be calculated from the due date indicated on the invoice.
3. Payments not received by the department by:
  - a. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;
  - b. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and
  - c. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

I. - M.2. ...

- a. Persons wishing to make payments using the electronic pay method shall access the department's website and follow the instructions provided on the website.
- 2.b. - 3....

N. Other Fees

Permit Type	Amount
Gen-LAG 03-Barge Cleaner	I: \$379.50 II: \$2,750 III: \$5,500 IV: \$11,000
Gen-LAG11-Concrete/Asphalt	\$355
Gen-LAG26-Territorial Seas	\$1,750
Gen-LAG30-UST Dewatering	\$109
Gen-LAG33-Coastal	\$1,750
Gen-LAG38-Potable Water	\$380
Gen-LAG42-Short-Term/Emergency	\$550
Gen-LAG47-Auto Repair/Dealers	\$291
Gen-LAG48-Light Commercial	\$380
Gen-LAG49-Sand and Gravel	\$726
Gen-LAG53-Sanitary Class I	\$109

Permit Type	Amount
Gen-LAG54-Sanitary Class II	\$291
Gen-LAG56-Sanitary Class III	\$545
Gen-LAG57-Sanitary Class IV	\$654
Gen-LAG67-Hydrostatic Test	\$330
Gen-LAG75-Exterior Vehicle Wash	\$291
Gen-LAG78-C and D Landfills	\$726
Gen-LAG83- Petroleum UST Remediation	\$1,089
Gen-LAG119-Concrete/Asphalt (SW)	\$426
Gen-LAG309-UST Dewatering (SW)	\$937
Gen-LAG679-Hydrostatic Test (SW)	\$872
Gen-LAG759-Mobile Vehicle/Equipment Wash	\$349
Gen-LAG839-Petroleum UST (SW)	\$2,904
Gen-LAR04-Small MS4	Population: >1000 and <10,000: \$110 >10,000 and <50,000: \$550 >50,000 and <150,000: \$1,650
Gen-LAR05-Multi-Sector	\$109
Gen-LAR06-DOTD Construction	I: \$29,100 II: \$36,375 III: \$50,925 IV: \$58,000
Gen-LAR10-Construction	\$291

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B), and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1493 (August 2009), LR 35:2181 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:948 (May 2017).

**Chapter 15. Water Quality Certification Procedures**  
**§1507. Procedures for Issuance of Water Quality Certification**

A. - A.2. ...

a. A one-time processing fee will be assessed all applicants to help defray the costs of this expanded program. The fee schedule will be as follows.

Noncommercial Activities	\$37/application
Commercial Activities	\$385/application

A.2.b. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:496 (July 1984), amended by the Office of the Secretary, LR 22:345 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2027 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), LR 35:2181 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:949 (May 2017).

**Subpart 3. Louisiana Sewage Sludge and Biosolids Program**

**Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids [Formerly Chapter 69]**

**Subchapter A. Program Requirements**

**§7301. General Provisions [Formerly §6901]**

A. - F.1.c. ...

d. The fee for registration shall be an annual fee of \$110.

F.1.e. - I.2.k. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007), repromulgated LR 34:1028 (June 2008), amended LR 35:927 (May 2009), LR 37:2992 (October 2011), amended by the Office of the Secretary, Legal Division, LR 43:949 (May 2017).

**§7315. Fee Schedule**

A. Applicability. Fees established by these regulations shall be applicable to all facilities subject to regulation under this Chapter.

B. Annual Fee

1. The annual sewage sludge fee shall be \$2,000.

2. The billing period shall correspond with the state's fiscal year (July 1 through June 30).

C. General Permit Fee. At the discretion of the administrative authority, an annual fee may be assessed for facilities regulated by a general permit. In deciding to establish an annual fee for facilities covered by a general permit, the administrative authority should consider the resources involved in administering the general permit, the economic impact on the regulated community, and the economic impact on the fee program. If the decision is made to assess an annual fee for an activity covered by a general permit, then each facility involved in that activity and covered by the general permit shall be assessed the fee.

D. Other Fees

Permit Type	Amount
Gen-LAJ65-Disposal in Landfill	\$600

E. Due Date. Fees shall be received by the department by the due date indicated on the invoice.

F. Late Payment Fee

1. Payments not received within 15 days of the due date will be charged a late payment fee.

2. Any late payment fee shall be calculated from the due date indicated on the invoice.

3. Payments not received by the department by the:

a. fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

b. thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

c. sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

G. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

H. Refunds. The fees in this section are nontransferable and nonrefundable.

I. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

2. Electronic Methods of Payment

a. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:949 (May 2017).

**Part XI. Underground Storage Tanks**

**Chapter 3. Registration Requirements, Standards, and Fee Schedule**

**§307. Fee Schedule**

A. Applicability. These regulations apply to registered UST systems, regardless of their operational status.

B. Annual Fees

1. Fees shall be assessed for the State of Louisiana fiscal year (July 1 through June 30).

2. Any UST system shall be assessed the entire annual monitoring and maintenance fee for the fiscal year in which it is installed or permanently closed, regardless of the date during that year on which such action occurs.

3. The owner of record of the UST system on the date of invoicing by the department is responsible for payment of the annual monitoring and maintenance fees.

4. Fees are assessed according to the following schedule.

Fee Number	Annual Registration Fee	Amount
001	All registered UST systems	\$60
<b>Annual Maintenance and Monitoring Fees</b>		
002	UST systems containing any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under the department's Hazardous Waste Regulations, LAC 33:V.Subpart 1)	\$726

Fee Number	Annual Registration Fee	Amount
003	UST systems at federal facilities (all categories except USTs defined in Fee Number 002, which shall be assessed the higher fee)	\$174
004	UST systems containing petroleum products not meeting the definition of motor fuels	\$174
005	UST systems containing new or used motor oil (except USTs identified in LAC 33:XL1101.C and D)	\$303

C. Amended Registration Fees. The fee for amending or modifying a registration shall be \$60.

D. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality and mailed to the department at the address provided on the invoice.

2. Electronic Methods of Payment

a. Persons wishing to make payments using the electronic pay method should access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

3. Cash is not an acceptable form of payment.

E. Late Payment Fee

1. Fee payments not received within 15 days of the due date will be charged a late payment fee.

2. Any late payment fee shall be calculated from the due date indicated on the invoice.

3. Payments not received by the department by:

a. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

b. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

c. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

F. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, 2014, 2195, and 2195.3 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400

(December 1999), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2181 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:950 (May 2017).

**Chapter 13. Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems**

**§1305. Categories of Certification and Requirements for Issuance and Renewal of Certificates**

A. - D. ...

1. examination fee for individual certification, \$146; and

2. certification renewal fee, \$146.

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), LR 29:691 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), LR 43:951 (May 2017).

**Part XV. Radiation Protection**

**Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

**Subchapter B. Personal Radiation Safety Requirements for Radiographers**

**§579. Identification (I.D.) Cards for Radiographers or Radiographer Trainees**

A. - A.3. ...

4. Any individual who wishes to replace his/her I.D. card shall submit to the Office of Environmental Compliance a written request for a replacement I.D. card, stating the reason a replacement I.D. card is needed. A non-refundable fee of \$29 shall be paid to the department for each replacement of an I.D. card. The prescribed fee shall be submitted with the written request for a replacement I.D. card. The individual shall maintain a copy of the request in his/her possession while performing industrial radiographic operations until a replacement I.D. card is received from the department.

B. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:36 (January 2003), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017).

**Chapter 25. Fee Schedule**

**§2504. Application Fees**

A. ...

B. Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or

approval for which the fee is paid. License renewal applications must be filed in accordance with LAC 33:XV.333.A. The accompanying renewal fee must be submitted with a full license renewal application every nine years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1816 (September 2003), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017).

**§2509. Methods of Payment**

A. - B. ...

1. Persons wishing to make payments using the electronic pay method shall access the department's website and follow the instructions provided on the website.

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2182 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017).

**§2510. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee.

B. Any late payment fee shall be calculated from the due date indicated on the invoice.

C. Payments not received by the department by:

1. the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee;

2. the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee; and

3. the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended LR 21:791 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:428 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017).

**§2511. Failure to Pay**

A. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Environmental Quality Act including, but not limited to,

revocation or suspension of the applicable permit, license, registration, or variance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1013 (December 1984), amended by the Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:428 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017).

**§2599. Appendix A**

**A. Appendix A—Radiation Protection Program Fee Schedule**

<b>Appendix A—Radiation Protection Program Fee Schedule</b>		
	<b>New/Renewal Application Fee</b>	<b>Annual Maintenance Fee</b>
<b>I. Radioactive Material Licensing</b>		
<b>A. Medical licenses:</b>		
1. Therapy:		
a. Teletherapy	\$807	\$807
b. Brachytherapy	\$807	\$807
2. Nuclear medicine diagnostic only	\$995	\$995
3. Nuclear medicine diagnostic/therapy	\$1,067	\$1,067
4. Nuclear pacemaker implantation	\$400	\$400
5. Eye applicators	\$400	\$400
6. In-vitro studies or radioimmunoassays or calibration sources	\$400	\$400
7. Processing or manufacturing and distribution of radiopharmaceuticals	\$1,569	\$1,336
8. Mobile nuclear medicine services	\$1,569	\$1,336
9. "Broad scope" medical licenses	\$1,569	\$1,336
10. Manufacturing of medical devices/sources	\$1,830	\$1,525
11. Distribution of medical devices/sources	\$1,372	\$1,140
12. All other medical licenses	\$444	\$444
<b>B. Source material licenses:</b>		
1. For mining, milling, or processing activities, or utilization which results in concentration or redistribution of naturally occurring radioactive material	\$7,928	\$7,928
2. For the concentration and recovery of uranium from phosphoric acid as "yellow cake" (powered solid)	\$3,965	\$3,965
3. For the concentration of uranium from or in phosphoric acid	\$1,983	\$1,983
4. All other specific "source material" licenses	\$400	\$400
<b>C. Special nuclear material (SNM) licenses:</b>		
1. For use of SNM in sealed sources contained in devices used in measuring systems	\$610	\$610
2. SNM used as calibration or reference sources	\$400	\$400

<b>Appendix A—Radiation Protection Program Fee Schedule</b>		
	<b>New/Renewal Application Fee</b>	<b>Annual Maintenance Fee</b>
3. All other licenses or use of SNM in quantities not sufficient to form a critical mass, except as in I.A.4, I.C.1, and 2	\$400	\$400
<b>D. Industrial radioactive material licenses:</b>		
1. For processing or manufacturing for commercial distribution	\$7,841	\$5,903
2. For industrial radiography operations performed in a shielded radiography installation(s) or permanently designated areas at the address listed in the license	\$1,336	\$1,053
3. For industrial radiography operations performed at temporary jobsite(s) of the licensee	\$3,935	\$2,963
4. For possession and use of radioactive materials in sealed sources for irradiation of materials where the source is not removed from the shield and is less than 10,000 Curies	\$1,983	\$995
5. For possession and use of radioactive materials in sealed sources for irradiation of materials when the source is not removed from the shield and is greater than 10,000 Curies, or where the source is removed from the shield	\$3,935	\$1,968
6. For distribution of items containing radioactive material	\$1,983	\$1,983
<b>7. Well-logging and subsurface tracer studies:</b>		
a. Collar markers, nails, etc. for orientation	\$400	\$400
b. Sealed sources less than 10 Curies and/or tracers less than or equal to 500 mCi	\$1,184	\$1,184
c. Sealed sources of 10 Curies or greater and/or tracers greater than 500 mCi but less than 5 Curies	\$1,983	\$1,983
d. Field flood studies and/or tracers equal to or greater than 5 Curies	\$2,977	\$2,977
8. Operation of a nuclear laundry	\$7,856	\$3,935
9. Industrial research and development of radioactive materials or products containing radioactive materials	\$995	\$995
10. Academic research and/or instruction	\$807	\$807
<b>11. Licenses of broad scope:</b>		
a. Academic, industrial, research and development, total activity equal to or greater than 1 Curie	\$1,983	\$1,983
b. Academic, industrial, research and development, total activity less than 1 Curie	\$1,184	\$1,184
12. Gas chromatographs, sulfur analyzers, lead analyzers, or similar laboratory devices	\$400	\$400
13. Calibration sources equal to or less than 1 Curie per source	\$400	\$400
14. Level or density gauges	\$610	\$610

Appendix A—Radiation Protection Program Fee Schedule		
	New/Renewal Application Fee	Annual Maintenance Fee
15. Pipe wall thickness gauges	\$807	\$807
16. Soil moisture and density gauges	\$610	\$610
17. NORM decontamination/maintenance:		
a. at permanently designated areas at the location(s) listed in the license	\$4,574	\$3,812
b. at temporary jobsite(s) of the licensee	\$4,574	\$4,574
18. Commercial NORM storage	\$3,812	\$3,812
19. All other specific industrial licenses except as otherwise noted	\$807	\$807
20. Commercial NORM treatment	\$18,296	\$15,246
E. Radioactive waste disposal licenses:		
1. Commercial waste disposal involving burial	\$1,029,105	\$1,029,105
2. Commercial waste disposal involving incineration of vials containing liquid scintillation fluids	\$7,841	\$3,935
3. All other commercial waste disposal involving storage, packaging and/or transfer	\$3,935	\$3,935
F. Civil defense licenses	\$480	\$400
G. Teletherapy service company license	\$1,983	\$1,983
H. Consultant licenses:		
1. No calibration sources	\$196	\$114
2. Possession of calibration sources equal to or less than 500 mCi each	\$291	\$196
3. Possession of calibration sources greater than 500 mCi	\$400	\$291
4. Installation and/or servicing of medical afterloaders	\$531	\$458
II. Electronic Product Registration		
1. Medical diagnostic X-ray (per registration)	\$129	\$129
2. Medical therapeutic X-ray (per registration):		
a. below 500 kVp	\$305	\$305
b. 500 kVp to 1 MeV (including accelerator and Van deGraaf)	\$610	\$610
c. 1 MeV to 10 MeV	\$916	\$916
d. 10 MeV or greater	\$1,220	\$1,220
3. Dental X-ray (per registration)	\$115	\$106
4. Veterinary X-ray (per registration)	\$115	\$115
5. Educational institution X-ray (teaching unit, per registration)	\$190	\$115
6. Industrial accelerator (includes Van de Graaf machines and neutron generators)	\$610	\$610
7. Industrial radiography (per registration)	\$305	\$305
8. All other X-ray (per registration) except as otherwise noted	\$138	\$138
III. General Licenses		
A. NORM (Wellhead fee per field shall not exceed \$2,287 per operator. Operators reporting contamination by field will be invoiced for all wellheads in the field. Operators reporting contamination by wellhead will be invoiced only for contaminated units.)		

Appendix A—Radiation Protection Program Fee Schedule		
	New/Renewal Application Fee	Annual Maintenance Fee
1. 1-5 contaminated wellheads	\$153	\$153
2. 6-20 contaminated wellheads	\$763	\$763
3. >20 contaminated wellheads	\$2,287	\$2,287
4. Stripper wells-contaminated (\$763 maximum for strippers per field):	\$153	\$153
a. 1 to 5 contaminated stripper wells	\$153	\$153
b. > 5 contaminated stripper wells	\$763	\$763
5. NORM locations (other than fields):		
a. gas plants, pipeyards, chemical plant, refinery	\$458	\$458
b. warehouses, pipeline, manufacturing plant, NORM equipment storage site, etc.	\$458	\$458
6. Interim container storage per NORM Waste Management Plan of an approved location		\$1,525
7. NORM location as otherwise defined in LAC 33:XV.1403 and not exempted by LAC 33:XV.1404, not included in III.A.1-6 of this Appendix	\$153	\$153
B. Tritium sign	\$109	\$0
C. All other general licenses which require registration	\$153	\$153
IV. Reciprocal Recognition		
The fee for reciprocal recognition of a license or registration from another state or the NRC is the annual fee of the applicable category. The fee covers activities in the state of Louisiana for one year from the date of receipt.		
V. Shielding Evaluation (per room)		
A. Diagnostic	\$153	*
B. Therapeutic (below 500 kVp)	\$230	*
C. Therapeutic (500 kVp to 1 MeV)	\$378	*
D. Therapeutic (1 MeV to 10 MeV)	\$531	*
E. Therapeutic (10 MeV or greater)	\$1,148	*
F. Industrial and industrial radiography	\$531	*
VI. Device, Product, or Sealed Source Evaluation		
A. Device evaluation (each)	\$1,067	*
B. Sealed source design evaluation (each)	\$690	*
C. Update sheet	\$230	*
VII. Testing		
Testing to determine qualifications of employees, per test administered	\$196	*
VIII. Nuclear Electric Generating Station		
Located in Louisiana		\$432,696
Located near Louisiana (Plume Exposure Pathway Emergency Planning Zone—includes area in Louisiana)		\$313,632
Uranium Enrichment Facility		\$76,230
IX. La. Radiation Protection Program Laboratory Analysis Fees—Repealed.		

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, LR 10:1014 (December 1984), amended by the Nuclear Energy Division, LR 11:530 (May 1985), LR 12:674 (October 1986), LR 13:569 (October 1987), LR 14:622 (September 1988), LR 15:737 (September 1989), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), repromulgated LR 18:955 (September 1992), amended

LR 19:624 (May 1993), LR 21:792 (August 1995), repromulgated LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:952 (May 2017).

Herman Robinson  
General Counsel

1705#016

## RULE

### Office of the Governor Real Estate Commission

#### Broker Responsibilities (LAC 46:LXVII.Chapter 18)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has adopted LAC 46:LXVII.Chapter 18. The purpose of this Rule is to promote broker responsibility in the areas of supervision, record keeping, and compensation. The Rule is to ensure that brokers are taking the task of supervising their agents seriously to ensure that practicing agents are serving the public to the best of their abilities.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

#### Subpart 1. Real Estate

#### Chapter 18. Broker Responsibilities

#### §1801. Broker Supervision

A. A broker must provide a sponsored licensee with written notice and acknowledgement of the activities that the broker authorizes the sponsored licensee to engage in under R.S. 37:1431(24).

B. A broker who sponsors licensees or is a qualifying broker for a corporation shall have written policies and procedures to ensure the following:

1. each sponsored licensee maintains their license in the active status at all times while they are engaging in real estate activities as described in R.S. 37:1431(24).

2. each sponsored licensee complies with the advertising and team rules;

3. a method and process for the sponsored licensee to provide documents to the broker for compliance with record keeping.

C. Listings and other agreements for real estate brokerage services must be solicited under the name of the broker corporation or supervising broker. These agreements shall be signed by the broker or by a sponsored licensee acting under written authority of the sponsoring broker.

D. A broker must maintain the rental trust account, the sales escrow account, and the security deposits trust account with appropriate controls for deposits and disbursements of funds received on behalf of consumers; and

E. When the broker is a business entity, the qualifying broker is the person responsible for the broker responsibilities under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 43:954 (May 2017).

#### §1803. Record Keeping

A. In a format that is readily available to the commission and for a period of no less than five years a broker must maintain at minimum the following records:

1. disclosures;
2. listing agreements, buyer representation agreements, other written agreements that authorize licensees to advertise or represent property for sale or lease, other written agreements that authorize licensees to receive compensation;
3. contracts and related addenda;
4. receipts and disbursements of compensation for services as defined under R.S. 37:1431(24);
5. property management agreements;
6. appraisal, broker price opinions, and comparative market analyses;
7. sponsorship agreements and termination paperwork; and
8. independent contract agreements between brokers and sponsored salespersons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 43:954 (May 2017).

#### §1805. Compensation

A. Any and all compensation paid to a sponsored licensee for acts or services subject to R.S. 37:1431(24) shall be paid by, through, or with the written consent of the sponsoring broker. If written consent of the sponsoring broker is received it must specifically state the name(s) of the licensee(s) and the individual amount of compensation being paid.

B. Licensees who are part of a group or team shall not receive compensation for acts or services subject to R.S. 37:1431(24) from anyone within their team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 43:954 (May 2017).

Bruce Unangst  
Executive Director

1705#014

## RULE

### Department of Health Board of Dentistry

#### Certification Confirmation and Reconfirmation Fees; Display of Certificate (LAC 46:XXXIII.420 and 505)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), the Department of Health, Board of Dentistry has amended LAC 46:XXXIII.420 and 505.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXXIII. Dental Health Profession**

**Chapter 4. Fees and Costs**

**Subchapter E. Fees for Expanded Duty Dental Assistants**

**§420. Certificate Confirmation and Reconfirmation Fees**

A. - A.1. ...

2. certificate reconfirmation fee \$25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:207 (February 1993), amended LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 43:955 (May 2017).

**Chapter 5. Dental Assistants**

**§505. Expanded Duty Dental Assistant Certificate Confirmation Fee and Reconfirmations; Display of Certificate**

A. Expanded duty dental assistants shall be charged an initial certification confirmation fee. A certificate shall be reconfirmed biennially and will expire on December 31 of each calendar year of the renewal period. Said fees shall be determined according to Chapter 4 of these rules.

B. ...

C. Expanded duty dental assistant certificates become inactive following the failure of the holder to pay the reconfirmation fee by December 31. The expanded duty dental assistant may reactivate the certificate by paying the reconfirmation fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:206 (February 1993), amended LR 33:2652 (December 2007), amended by the Department of Health, Board of Dentistry, LR 43:955 (May 2017).

Arthur Hickham, Jr.  
Executive Director

1705#058

**RULE**

**Department of Health**  
**Board of Dentistry**

Fees and Costs; Anesthesia/Analgesia Administration;  
Continuing Education Requirements  
(LAC 46:XXXIII.415, 1503, 1504,  
1506, 1510, 1511, and 1611)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health, Board of Dentistry has amended LAC 46:XXXIII.415, 1503, 1504, 1506, 1510, 1511, and 1611.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXXIII. Dental Health Profession**

**Chapter 4. Fees and Costs**

**Subchapter C. Fees for Dentists**

**§415. Licenses, Permits, and Examinations (Dentists)**

A. - A.10. ...

11. application and permitting for general or moderate anesthesia permit—\$400;

12. ...

13. renewal of general moderate anesthesia permit—\$200;

14. - 18. ...

19. expungement of first-time advertising violation—\$500;

20. application and permitting for mobile or movable dental office—\$250;

21. annual fee to support well-being program—\$25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 37:2150 (July 2011), LR 37:3515 (December 2011) repromulgated LR 38:356 (February 2012), amended LR 39:89 (January 2013), LR 39:2278 (August 2013), LR 43:955 (May 2017).

**Chapter 15. Anesthesia/Analgesia Administration**

**§1503. Personal Permits for Sedation/Anesthesia**

A. - A.1. ...

2. moderate sedation;

3. general anesthesia/deep sedation.

B. In order to receive a personal permit, the dentist must show proof of completion of a training program pertaining to the level of permit sought, as described below.

1. In order to receive personal permit to administer nitrous oxide sedation, the dentist must show proof to the board of completion of a course on nitrous oxide sedation that consists of a minimum of 16 hours of didactic instruction, plus clinically-oriented experiences during which competency in nitrous oxide sedation techniques is demonstrated.

2. In order to receive a personal permit to administer moderate sedation, the dentist must show proof to the board of completion of a course on moderate parenteral sedation that includes:

a. a minimum of 60 hours of instruction plus the administration of sedation for at least 20 individually managed patients.

b. certification of competence in moderate sedation techniques.

c. certification of competence in rescuing patients from a deeper level of sedation than intended including managing the airway, intravascular or intraosseous access, and reversal medications.

d. provision by course director or faculty of additional clinical experience if participant competency has not been achieved in time allotted.

e. records of instruction and clinical experiences (i.e., number of patients managed by each participant in each modality/route) that are maintained and available for participant review.

3. In order to receive a personal permit to administer general anesthesia/deep sedation, the dentist must show proof to the board of having completed an advanced education program accredited by the Commission on Dental Accreditation that provided training in deep sedation and general anesthesia.

C. - D. ...

E. In addition to the requirements of Subsections B and D, in order to receive or renew a personal moderate sedation permit or a personal deep sedation/general anesthesia permit, the licensee must provide proof of current certification in advanced cardiac life support as defined by the American Heart Association or its equivalent. The board will only accept an ACLS course which includes a practical component which is personally attended. If a dentist's practice is restricted to treating only children, the certification in pediatric life support (PALS) described in §1504.A.4 will suffice as a substitute for ACLS.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, amended LR 42:53 (January 2016), amended LR 43:955 (May 2017).

#### **§1504. Pediatric Certification for Personal Permits**

A. - A.3. ...

4. In addition to the above requirements, in order to receive or renew a personal permit with a pediatric certification, the licensee must provide proof of current certification in pediatric life support (PALS), or its equivalent. The board will only accept a PALS course which includes a practical component which is personally attended. If a dentist's practice is restricted to treating only children under the age of 13, the PALS certification will suffice as a substitute for the ACLS required in §1503.E. If a dentist's practice is not restricted to treating only children, in order to receive a permit with a pediatric certification, both PALS and ACLS certifications are required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:54 (January 2016), amended LR 43:956 (May 2017).

#### **§1505. Personal Permit Renewals**

A. The licensee must obtain required continuing education as specified in §1611.J in order to renew any personally held general anesthesia or moderate sedation permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:54 (January 2016), amended LR 43:956 (May 2017).

#### **§1506. Intranasal Midazolam**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:54 (January 2016), repealed LR 43:956 (May 2017).

#### **§1510. Moderate Sedation**

A. In order to administer moderate sedation, the dentist shall:

A.1 - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:55 (January 2016), amended LR 43:956 (May 2017).

#### **§1511. Required Facilities, Personnel and Equipment for Sedation Procedures**

A. - A.7.e. ...

f. equipment to monitor partial pressure of carbon dioxide when moderate sedation, deep sedation, or general anesthesia is administered;

A.7.g. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:55 (January 2016), amended LR 43:956 (May 2017).

### **Chapter 16. Continuing Education Requirements**

#### **§1611. Continuing Education Requirements for Relicensure of Dentists**

A. - I.3 ...

J. Each licensee holding a general anesthesia or moderate sedation personal permit for at least two years must complete continuing education as listed below in order to renew the permit. All anesthesia or sedation specific continuing education may count toward the regular requirement listed in §1611.A.

1. ACLS and/or PALS recertification is required of all general anesthesia or moderate sedation personal permit holders as specified in §§1503 and 1504.

2. Six hours of continuing education per license renewal period on the administration of sedation specific to the level of sedation/anesthesia permit held or on medical emergencies associated with the administration of sedation/anesthesia specific to the level of sedation/anesthesia permit. If the permit has a pediatric certification, in addition to the above stated requirements, the continuing education must be pediatric-specific. The CPR, ACLS, and PALS courses required in §1611.J.1 may not count toward the requirements set forth in this Section.

3. The permit holder shall personally attend a course pertinent to the level of sedation permit held no less than once every six years. This personally attended course may, if at least six hours, count toward the requirement in §1611.J.2.

4. Recertification for deep sedation or general anesthesia as required by the American Association of Oral and Maxillofacial Surgeons every five years shall satisfy the requirements listed in §1611.J.2 and 3.

K. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 37:3515 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:817 (March 2012), LR 38:1959 (August 2012), LR 39:1282 (May 2013), LR 43:956 (May 2017).

Arthur Hickham, Jr.  
Executive Director

1705#059

**RULE**

**Department of Health  
Board of Nursing**

Prevention of Viral Infections (LAC 46:XLVII.Chapter 40)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:918, the Louisiana State Board of Nursing (LSBN) has repealed LAC 46:XLVII, Nurses: Practical Nurses and Registered Nurses, Subpart 2, Registered Nurses, Chapter 40. The expectations related to awareness and accountability have changed since the last revision of this Rule. The most recent revision of Chapter 40 was in November 2004. Several other nursing boards such as TX, MS, AL, AR, NY, IL, OK and CA do not have any rules similar to Chapter 40 in their regulatory guidelines. With the repeal of Chapter 40, The Louisiana State Board of Nursing is expecting all nurses in the state of Louisiana to follow the Centers for Disease Control and Prevention (CDC) guidelines for universal precautions.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses: Practical Nurses and Registered  
Nurses**

**Subpart 2. Registered Nurses**

**Chapter 40. Prevention of Transmission of Hepatitis  
B Virus (HBV), Hepatitis C Virus  
(HCV) and Human Immunodeficiency  
Virus (HIV)**

**§4001. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:341 (March 1993), amended LR 19:1150 (September 1993), LR 24:1293 (July 1998), LR 30:2482 (November 2004), repealed by the Department of Health, Board of Nursing, LR 43:957 (May 2017).

**§4003. Standard Precautions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:341 (March 1993),

amended LR 19:1151 (September 1993), LR 24:1293 (July 1998), LR 30:2484 (November 2004), repealed by the Department of Health, Board of Nursing, LR 43:957 (May 2017).

**§4005. Self-Reporting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:341 (March 1993), amended LR 19:1151 (September 1993), repromulgated LR 24:1293 (July 1998), amended LR 30:2484 (November 2004), repealed by the Department of Health, Board of Nursing, LR 43:957 (May 2017).

**§4007. Authorization to Perform or Participate in  
Exposure-Prone Procedures**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K) and R.S. 37:1746-1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:342 (March 1993), amended LR 19:1152 (September 1993), LR 24:1293 (July 1998), LR 30:2484 (November 2004), repealed by the Department of Health, Board of Nursing, LR 43:957 (May 2017).

Dr. Karen C. Lyon, E.D.  
Executive Director

1705#027

**RULE**

**Department of Health  
Board of Pharmacy**

Reinstatement of CDS License (LAC 46:LIII.2707)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §2707.C.4 of its rules. The Rule streamlines the process for the reinstatement of controlled dangerous substance (CDS) licenses for those medical practitioners whose primary professional licenses have been disciplined.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 27. Controlled Dangerous Substances**

**Subchapter B. Licenses**

**§2707. Licensing Procedures**

A. - C.3. ...

4. An application for the reinstatement of a CDS license for a pharmacy which was suspended or revoked by the board may only be approved by the full board following a hearing to determine whether the reinstatement of the license is in the public's best interest. For all other CDS licenses, the reinstatement may be approved by the joint consent of the chair of the reinstatement committee and the board president without the necessity of a hearing; when such approvals are issued, staff shall prepare a reinstatement order for the president's signature.

C.5. - D.5.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2131 (October 2008), amended by the Department of Health, Board of Pharmacy, LR 43:957 (May 2017).

Malcolm J. Broussard  
Executive Director

1705#012

## RULE

### Department of Health Board of Pharmacy

#### Standing Orders for Distribution of Naloxone (LAC 46:LIII.2541)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has added §2541 to its rules. As authorized by Act 370 of the 2016 Legislature, the Rule authorizes pharmacists to distribute naloxone and other opioid antagonists pursuant to non-patient specific standing orders issued by any medical practitioner with prescriptive authority for naloxone.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 25. Prescriptions, Drugs, and Devices

#### Subchapter D. Prescription Drugs

#### §2541. Standing Orders for Distribution of Naloxone and Other Opioid Antagonists

A. Given the current public health emergency relative to the misuse and abuse of opioid derivatives, public health officials have strongly recommended the widespread availability of naloxone and other opioid antagonists to addicts and their caregivers as well as first responders in the community.

B. For as long as naloxone and other opioid antagonists remain classified as prescription drugs by the federal Food and Drug Administration, pharmacists must secure a prescription or order from a prescriber with the legal authority to prescribe the drug product in order to dispense or distribute the drug product.

C. The Louisiana Legislature has adopted a number of laws designed to facilitate the distribution and dispensing of naloxone and other opioid antagonists beyond the person who would need the medication on an emergent basis to manage an opioid-related drug overdose, more specifically to first responders as well as caregivers and family and friends of potential patients.

1. Act 253 of the 2014 Legislature authorized prescribers to issue prescriptions for naloxone and other opioid antagonists to first responders, and further, authorized pharmacists to recognize such prescriptions as legitimate orders for the dispensing and distribution of naloxone and other opioid antagonist drug products, and further, authorized first responders to have and hold those drug products ready for administration in emergent conditions to manage opioid-related drug overdoses.

2. Act 192 of the 2015 Legislature authorized medical practitioners to prescribe naloxone or another opioid antagonist without having previously examined the

individual to whom the medication would be administered, but only under certain conditions specified in the legislation, including the requirement for the prescriber to provide the recipient of the drug with all training and education required for the safe and proper administration of the drug product.

3. Act 370 of the 2016 Legislature authorized medical practitioners to issue nonpatient-specific standing orders to pharmacists authorizing the distribution of naloxone and other opioid antagonists to anyone who might be in a position to assist a patient in the emergent management of an opioid-related drug overdose, but only in compliance with these rules.

a. A nonpatient-specific standing order for the facilitated distribution of naloxone or other opioid antagonist issued by a medical practitioner licensed by the state of Louisiana shall expire one year after the date of issuance.

b. A Louisiana-licensed pharmacist may distribute naloxone or other opioid antagonist according to the terms of the nonpatient-specific standing order issued by a Louisiana-licensed medical practitioner until the expiration date of the standing order. No pharmacist shall distribute naloxone or other opioid antagonist pursuant to a standing order more than one year after the date of issuance of the standing order.

c. Before releasing the naloxone or other opioid antagonist drug product to the recipient, the pharmacist shall verify the recipient's knowledge and understanding of the proper use of the drug product, including, at a minimum:

i. techniques on how to recognize signs of an opioid-related drug overdose;

ii. standards and procedures for the storage and administration of the drug product; and

iii. emergency follow-up procedure including the requirement to summon emergency services either immediately before or immediately after administering the drug product to the individual experiencing the overdose.

d. To comply with the recordkeeping requirements found elsewhere in the board's rules, the pharmacist shall attach a copy of the standing order to the invoice or other record of sale or distribution, and further, shall store these transaction documents with the other distribution records in the pharmacy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:958 (May 2017).

Malcolm J. Broussard  
Executive Director

1705#011

## RULE

### Department of Health Board of Social Work Examiners

#### Credentialed Social Workers—Standards of Practice and Minimum Supervision Requirements (LAC 46:XXV.111, 113, 115, 301, 317, 503, and 507)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2705(C)1, the Louisiana State Board of Social Work Examiners has promulgated rules relative to

signing off on work performed by social work student, as well as to prohibit social workers from accessing records of a person the social worker is not treating. It has amended the prohibition of sexual harassment to include colleagues. The board has revised §115.D.2 in response to changes to the *Children's Code* that exempts social workers on a legal defense team for juveniles as mandatory reporters. The board has added definitions to address electronic social work practice and to define sexual harassment. Additions to continuing education allow social workers in specific circumstances to complete all continuing education via distance learning, as well as add two more approved learning situations. Changes to Chapter 5 remove old language and clarify current requirements. In §507, the board's intention is to clarify that social workers that lose their BACS cannot supervise for LCSW, as well as add requirements for reissuing BACS that is less rigorous than to become a BACS.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXV. Credentialed Social Workers**

**Chapter 1. Standards of Practice**

**§111. Practice Requirements**

A. - G.3. ...

4. Social work students in field placement are specifically allowed to provide services under supervision. Social work supervisors who do cosign records shall indicate his/her supervisory function.

5. - 6. ...

7. A social worker shall not access records of a client they are not treating without legitimate purpose.

H. - H.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:296 (February 2000), amended LR 37:2615 (September 2011), amended by the Department of Health, Board of Social Work Examiners, LR 43:959 (May 2017).

**§113. Social Work Relationships**

A. - B.2. ...

3. Sexual Intimacy or Contact with a Client, Supervisee or Student. A social worker shall not engage in or request sexual intimacy or contact as defined in §113.B.5, with a client, a client's spouse or former spouse, any member of the client's immediate family or with any person with whom the client has a sexual relationship. The prohibition of this rule extends to supervisees and students during such times and under such circumstances where the social worker is in a supervisory or teaching relationship. This rule also expressly prohibits social workers from engaging in any behavior which a reasonable person would find sexually stimulating, seductive or sexually demeaning when such behavior is either directed toward or exhibited in the presence of any person with whom sexual contact is otherwise prohibited by this rule. Social workers shall not sexually harass a client, colleague, fellow workers, supervisee or student.

4. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:297 (February 2000), amended LR 29:2381 (November 2003), LR 34:246 (February 2008), amended by the Department of Health, Board of Social Work Examiners, LR 43:959 (May 2017).

**§115. Client Confidentiality**

A. - D.1. ...

2. where communications to the social worker reveal abuse or neglect of children and elders which impose an obligation on social workers as mandatory reporters under the *Children's Code* article 609, R.S. 14:403, and R.S. 14:403.2. A social worker shall not be considered a mandatory reporter in the limited circumstances specified in *Children's Code* article 603(b);

D.3. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:298 (February 2000), amended by the Department of Health, Board of Social Work Examiners, LR 43:959 (May 2017).

**Chapter 3. General Provisions**

**§301. Definitions**

\* \* \*

*Electronic Social Work Practice*—use of computers (including the internet, social media, on line chat, text, and email) and other electronic means (such as smart phones, landline telephones and video technology) to:

1. provide information to the public;
2. deliver social work services to clients;
3. communicate with clients;
4. manage confidential information and case records;
5. store and access information about clients; and
6. arrange payment for professional services.

\* \* \*

*In-Person*—interactions in which the social worker and the client are in the same physical space and does not include interactions that may occur through the use of technology.

\* \* \*

*Remote*—provision of social work services where the social worker is not physically located at the site where the services are received. The distance between the social worker and the recipient of services is not a consideration.

*Sexual Harassment*—sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:300 (February 2000), amended LR 34:247 (February 2008), LR 37:2616 (September 2011), amended by the Department of Health, Board of Social Work Examiners, LR 43:959 (May 2017).

**§317. Continuing Education Requirements**

A. - F.2. ...

3. The board may grant a social worker approval to complete more than 10 hours of continuing education via distance learning in the case of debilitating, disabling, or other medical conditions making travel impossible or extremely inconvenient. The licensee shall provide satisfactory documentation for the grant of approval.

4. The board may grant a social worker approval to complete more than 10 hours of continuing education via distance learning if the social worker resides out of United States territories where no in-person continuing education is available. The licensee shall provide satisfactory documentation for the grant of approval.

G. - L.I.c. ...

M. The following learning forums are approved for continuing education and must contain content applicable to social work practice:

1. - 11. ...

12. Reading books or journal articles with content applicable to social work and followed by a face-to-face discussion as part of an organized workshop. A maximum of one-hour credit can be obtained from reading a book if the social worker, signs a statement that he/she read the book, attends the discussion about the book, and passes the pre-test administered prior to the face-to-face discussion with at least 70 percent. The one-hour credit for reading is considered distance learning. Credit for the discussion counts as actual time spent in the discussion and counts as in-person continuing education.

13. Viewing documentary film with content applicable to social work practice not deemed for general public and followed by a face-to-face discussion. Film shall be pre-approved by LABSWE and must rate a 10 or higher on the guide for assessment of continuing education to qualify for continuing education credit.

14. social workers should be doing consistent independent study. However, such study does not meet the goal of increasing professional relationships and networks. Consequently independent study must receive pre-approval from the board.

N. - P. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C) and (G) and 37:2714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:305 (February 2000), amended LR 29:2385 (November 2003), LR 34:248 (February 2008), LR 37:2618 (September 2011), amended by the Department of Health, Board of Social Work Examiners, LR 43:959 (May 2017).

## **Chapter 5. Minimum Supervision Requirements**

### **§503. LMSWs Seeking the LCSW Credential**

A. - B. ...

C. LMSWs seeking the LCSW credential must complete a minimum of 5,760 hours of postgraduate social work practice and at least 3,840 hours of that postgraduate social work practice must be under the supervision of a board approved clinical supervisor (BACS).

D. The requirement for supervision is at least 2 hours of face-to-face supervision with a BACS during every 80 hours increment of postgraduate social work practice. This hourly supervision requirement applies to each consecutive increment of 80 hours of social work practice. Postgraduate social work practice which exceeds 80 consecutive hours of practice without at least two hours of face-to-face BACS supervision will not be credited to the 3,840 hours of supervised practice. To calculate supervision, take the number of hours worked in a given time, divide by 40 and that will equal the face-to-face supervision required for the time worked.

E. Face-to-face supervision for licensure must total at least 96 hours.

F. A minimum of 1 session per month is required. Supervision segments of no fewer than 30 minutes and no longer than 2 hours per day will be counted toward meeting the supervision requirement.

G. One-half (48 hours maximum) of the supervision requirement may be met through group supervision, occurring in increments of no more than two hours per group. No more than five supervisees may be involved in supervision groups.

H. School social workers shall count hours of postgraduate social work practice and supervision that occurs when they are employed in a social work position.

I. The supervisee and supervisor shall keep accurate records of both the dates of supervision sessions and the time spent in supervision. This information shall be submitted to the board office on the supervision form entitled *record of supervision*.

J. The supervisor has a professional responsibility to honor his/her commitment to supervise responsibly, which includes submitting forms on a timely basis. Should the supervisor fail to submit forms appropriately, and on a timely basis, the board reserves the right to withdraw the BACS designation from the supervisor.

K. A supervisory record shall include:

1. supervision agreement and plan for supervision;
2. learning assessment of supervisee;
3. record of all supervisory sessions, and any canceled or missed appointments;
4. overview of cases discussed, as well as significant decisions made;
5. any ethical concerns;
6. significant problems arising in supervision, and how they were resolved;
7. memos and correspondence;
8. for all above data, dates completed and person completing the item.

L. To register her/his intent to initiate supervision, the LMSW must submit the completed registration of supervision form.

M. The individual completing supervision shall:

1. use the following forms to submit their supervision to the board office:
  - a. supervision agreement/plan of supervision;
  - b. employment verification;
  - c. record of supervision;
  - d. evaluation of supervision;
  - e. professional experience verification record;
2. submit legible forms. Preferably, material on forms should be typed, but if not typed, the forms must be printed neatly and legibly. Forms which are not legible will be returned;
3. submit original, unaltered supervision forms to the board office. Copies, faxes, or forms with any alterations (such as white-out or mark-outs) will not be accepted.

N. The original supervision agreement/plan of supervision must be submitted to the board office within 60 days of the first supervision session. A supervision agreement shall be submitted on each supervision experience, such as a change in employment and/or a change in supervisor.

O. The supervision agreement/plan of supervision will be reviewed and revisions may be required. Revisions shall be submitted to the board office within 30 days of receipt by the supervisee/supervisor. The supervisee and supervisor will be mailed a letter confirming board approval of the supervision agreement/plan of supervision, as well as the beginning date of supervision credit.

P. When supervision is provided to a LMSW by a LCSW-BACS supervisor, not an agency employee, social work ethics require that the LCSW-BACS take responsibility for securing agency agreement to the plan of supervision, whether the fee for supervision is paid by the agency or the supervisee.

1. The LCSW-BACS is responsible for clarifying with the agency administration, the supervisory role responsibilities and the content of supervision.

2. Under such a plan the supervisee's written evaluation is made available to the agency if the agency is paying for the supervision. If the supervisee is paying the fee, the evaluation is the supervisee's property.

Q. The supervisee shall submit an employment verification form from each place of social work employment after she/he receives the MSW degree. The form shall be completed by the employer, not the supervisor (unless the employer and the supervisor are one and the same).

R. An evaluation of supervision form shall be submitted to the board office at the end of the supervisory period. Sometimes it is necessary for a supervisor to discontinue supervising a LMSW for licensure. When this occurs, no matter what length of time the supervisor actually supervised the supervisee, the supervisor must submit an evaluation of supervision form.

S. The professional experience verification record shall be submitted to the board office from each place of employment to verify dates employed and the hours of social work practice completed during the time employed. The professional experience verification record shall be completed by the employer(s).

T. If the LMSW receives supervision outside of the state of Louisiana, that supervision will be accepted if:

1. the supervisor has completed the authorized forms of the Louisiana State Board of Social Work Examiners; and

2. the supervisor is licensed at the time of supervision at a level substantially equivalent to a LCSW-BACS in the other state and submits the license verification of out-of-state supervisor form (available from board office).

U. The board's publication, *Supervision for Professional Development and Public Protection: A Guide*, provides more information relative to supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), amended LR 29:2387 (November 2003), LR 34:1402 (July 2008), LR 37:2620 (September 2011), amended by the Department of Health and Hospitals, Board of Social Work Examiners, LR 40:306 (February 2014), amended by the Department of Health, Board of Social Work Examiners, LR 43:960 (May 2017).

## §507. Board-Approved Clinical Supervisor

A. - B.3. ...

4. If LCSW loses BACS because of missed training, he/she must cease supervising LMSWs for LCSW.

C. To reinstate BACS designation, the social worker must:

1. complete three hours of continuing education in the area of clinical supervision;

2. complete a board orientation workshop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:308 (February 2000), amended LR 29:2388 (November 2003), LR 34:249 (February 2008), amended by the Department of Health, Board of Social Work Examiners, LR 43:961 (May 2017).

Emily DeAngelo  
Administrator

1705#024

## RULE

### Department of Health Bureau of Health Services Financing

Disproportionate Share Hospital Payments  
Louisiana Low-Income Academic Hospitals  
Payment Methodology  
(LAC 50:V.3103)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 31. Louisiana Low-Income Academic Hospitals

#### §3103. Payment Methodology

A. - A.1. ...

2. The department shall review cost data, charge data, lengths of stay and Medicaid claims data per the Medicaid management and information systems for reasonableness before payments are made.

B. Effective for dates of service on or after July 1, 2017, for payment calculations, the most recent Medicaid filed cost report, along with actual Medicaid and uninsured patient charge data from the most recently filed Medicaid cost report with Medicaid and uninsured charge data from the same time period, is utilized to calculate hospital specific uncompensated care costs. Costs and patient utilization from a more current time period may be considered in the calculation of the DSH payment if significant changes in costs, services, or utilization can be documented. This change in the time-period utilized must receive prior approval by the department.

1. - 2. Repealed.

C. Effective for dates of service on or after July 1, 2017, the first payment of each fiscal year will be made by October 30 and will be 25 percent of the annual calculated uncompensated care costs. The remainder of the payment will be made by January 30, April 30 and June 30 of each year.

1. Reconciliation of these payments to actual hospital specific uncompensated care costs will be made when the cost report(s) covering the actual dates of service from the state fiscal year are filed and reviewed.

2. Additional payments or recoupments, as needed, shall be made after the finalization of the Centers for Medicare and Medicaid Services (CMS) mandated DSH audit for the state fiscal year.

D. No payment under this Section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity.

D.1. - E.1. Repealed.

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, Bureau of Health Services Financing, LR 43:523 (March 2017), amended LR 43:961 (May 2017).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Rebekah E. Gee MD, MPH  
Secretary

1705#047

**RULE**

**Department of Health  
Bureau of Health Services Financing**

**Disproportionate Share Hospital Payments  
Qualifying Criteria (LAC 50:V.2503)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.2503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 3. Disproportionate Share Hospital Payments**

**Chapter 25. Louisiana Low-Income Academic  
Hospitals**

**§2503. Disproportionate Share Hospital Qualifications**

A. - A.4.b.ii. ...

5. effective November 3, 1997, be a *small rural hospital* as defined in §2705.A.2.a-m; or

6. ...

7. effective January 20, 2010, be a hospital participating in the low-income and needy care collaboration as defined in §2713.A;

8. effective January 1, 2013, be a public-private partnership hospital as defined in §2901.A;

9. effective May 24, 2014, be a Louisiana low-income academic hospital as defined in §3101.A-B;

10. effective June 29, 2016, be a major medical center located in the central and northern areas of the state as defined in §2715.A; and

11. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3294 (December 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:962 (May 2017).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Rebekah E. Gee MD, MPH  
Secretary

1705#048

**RULE**

**Department of Health  
Bureau of Health Services Financing**

**Family Planning Waiver  
Program Termination  
(LAC 50:XXII.Chapters 21-27)**

The Department of Health, Bureau of Health Services Financing has repealed LAC 50:XXII.Chapters 21-27 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXII. 1115 Demonstration Waivers**

**Subpart 3. Family Planning Waiver**

**Chapter 21. General Provisions**

**§2101. Purpose**

Repealed.

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 32:1461 (August 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:962 (May 2017).

**§2103. Enrollment**

Repealed.

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 32:1461 (August 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**Chapter 23. Eligibility**

**§2301. Recipient Qualifications**

Repealed.

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 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3027 (October 2011), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**Chapter 25. Services**

**§2501. Covered Services**

Repealed.

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 32:1461 (August 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**§2503. Service Limits**

Repealed.

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 32:1461 (August 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**§2505. Service Delivery**

Repealed.

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 32:1461 (August 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**Chapter 27. Reimbursement**

**§2701. Reimbursement Methodology**

Repealed.

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 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 2010), LR 37:2156 (July 2011), LR 39:506 (March 2013), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

Rebekah E. Gee MD, MPH  
Secretary

1705#049

**RULE**

**Department of Health  
Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Increase  
(LAC 50:V.Chapter 9)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospital Services**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§953. Acute Care Hospitals**

A. - J. ...

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must be located in LDH administrative region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

J.2. - L. ...

1. Qualifying Criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either LDH administrative region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

L.2. - N.3.g. ...

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health, Bureau of Health Services Financing.

N.5. - T. ...

U. Effective for dates of service on or after January 1, 2017, the inpatient per diem rate paid to acute care hospitals shall be increased by 7.03 percent of the per diem rate on file as of December 31, 2016.

1. Small rural hospitals as defined in R.S. 40:1300 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010),

LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017).

**§955. Long-Term Hospitals**

A. - D. ...

1. Qualifying Criteria. In order to qualify for the supplemental payment, the long-term hospital must have had at least 100 paid Medicaid days for state fiscal year 2008 service dates and must be located in one of the following LDH administrative regions:

D.1.a. - J. ...

K. Effective for dates of service on or after January 1, 2017, the inpatient per diem rate paid to long-term hospitals shall be increased by 7.03 percent of the per diem rate on file as of December 31, 2016.

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: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017).

**§959. Inpatient Psychiatric Hospital Services**

A. - E. ...

1. Qualifying Criteria. Non-rural, non-state free-standing psychiatric hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either LDH administrative region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

E.2. - K.2.b. ...

L. Effective for dates of service on or after February 10, 2012, a Medicaid-enrolled non-state acute care hospital that enters into a cooperative endeavor agreement (CEA) with the Department of Health, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of formerly state-owned and operated psychiatric hospitals/visits, shall be paid a per diem rate of \$581.11 per day.

M. Effective for dates of service on or after January 1, 2017, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by 2 percent of the per diem rate on file as of December 31, 2016.

1. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.L of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554

(July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017).

**§967. Children's Specialty Hospitals**

A. - K. ...

L. Effective for dates of service on or after January 1, 2017, the inpatient per diem rates paid to children's specialty hospitals for acute, neonatal intensive care units, pediatric intensive care units and burn units' services shall be increased by 7.03 percent of the per diem rate on file as of December 31, 2016.

M. Effective for dates of service on or after January 1, 2017, the prospective per diem rate paid to distinct part psychiatric units within children's specialty hospitals shall be increased by 2 percent of the per diem rate on file as of December 31, 2016.

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, Bureau of Health Services Financing, LR 36:2562 (November 2010), amended LR 37:2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 42:275 (February 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017).

Rebekah E. Gee MD, MPH  
Secretary

1705#050

**RULE**

**Department of Health  
Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and  
Children's Specialty Hospitals  
Reimbursement Rate Increase  
(LAC 50:V.5313, 5317, 5513,  
5517, 5713, 5719, 6115 and 6119)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.5313, 5317, 5513, 5517, 5713, 5719, 6115 and 6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5313. Non-Rural, Non-State Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, Bureau of Health Services Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017).

#### **§5317. Children's Specialty Hospitals**

A. - F. ...

G. Effective for dates of service on or after January 1, 2017, the reimbursement paid to children specialty hospitals for outpatient surgery shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

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, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

### **Chapter 55. Clinic Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§5513. Non-Rural, Non-State Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, Bureau of Health Services Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

##### **§5517. Children's Specialty Hospitals**

A. - F. ...

G. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

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, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§5713. Non-Rural, Non-State Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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, Bureau of Health Services Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

##### **§5719. Children's Specialty Hospitals**

A. - F. ...

G. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be increased by 7.03 percent of the rates on file as of December 31, 2016.

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, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§6115. Non-Rural, Non-State Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2017, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services, other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be increased by 7.03 percent of the rates in effect as of December 31, 2016.

1. Final reimbursement shall be at 71.13 percent of allowable cost through the cost settlement process.

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, Bureau of Health Services Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

##### **§6119. Children's Specialty Hospitals**

A. - F. ...

G. Effective for dates of service on or after January 1, 2017, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services, other than rehabilitation services and outpatient hospital facility fees,

shall be increased by 7.03 percent of the rates in effect as of December 31, 2016.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

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, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017).

Rebekah E. Gee MD, MPH  
Secretary

1705#051

**RULE**

**Department of Health  
Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
State Supplemental Rebate Agreement Program  
(LAC 50:XXIX.Chapter 11)

The Department of Health, Bureau of Health Services Financing has adopted LAC 50:XXIX.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 11. State Supplemental Rebate Agreement Program**

**§1101. General Provisions**

A. Effective October 1, 2013, the Department of Health, Bureau of Health Services Financing hereby establishes provisions for participation in The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement (SRA) Program. TOP\$ is a multi-state Medicaid state supplemental drug rebate pooling initiative approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services and administered by Provider Synergies, L.L.C/Magellan Medicaid Administration. The purpose of this program is to allow states the opportunity to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates and discounts from prescription drug companies than could be achieved independently.

B. Pursuant to R.S. 46:153.3, the department shall enter into a contractual agreement with Provider Synergies to participate in TOP\$. Provider Synergies/Magellan Medicaid Administration will act on the department's behalf to provide the necessary administration services relative to this agreement for the provision of state supplemental drug rebate contracting and preferred drug list administration services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:966 (May 2017).

Rebekah E. Gee MD, MPH  
Secretary

1705#052

**RULE**

**Department of Health  
Office of Public Health**

Sanitary Code—Sewerage Outfall Paths  
(LAC 51:XIII.308)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Louisiana Department of Health, Office of Public Health (DHH-OPH), has amended the below listed provisions of the *Sanitary Code* (LAC Title 51). Essentially, these provisions address the need for the owner of a sewerage system to provide evidence to the state health officer of appropriate servitudes or permissions for any portion of the sewerage system effluent outfall path lying between the boundaries of the system owner's property and the first suitable publicly maintained ditch, canal, or channel forming part of the outfall path, or the ultimate receiving navigable stream or body of water, whichever is encountered first.

**Title 51**

**PUBLIC HEALTH—SANITARY CODE**

**Part XIII. Sewage Disposal**

**Chapter 1. General**

[formerly Chapter 13 Subpart A]

**§101. Definitions**

[formerly Paragraph 13:001]

A. As used in this Part, the terms defined in this Chapter supplement any definitions which may be set forth in law and shall have the following meanings and/or applications, unless the context or use thereof clearly indicates otherwise, or more explicit definitions and/or applications are referenced. Terms not defined or referenced herein shall have the meanings as defined in the other Parts of the sanitary code of the state of Louisiana. In any instance where a term defined herein is also defined in one or more other Parts of this Code, the definition contained in this Part shall be given preference as it pertains to sewage disposal.

\*\*\*

*Outfall Path*—the path or course by which effluent leaving the final treatment unit of a community sewerage system or individual sewerage system reaches its ultimate receiving navigable stream or body of water.

\*\*\*

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 R.S. 40:4(A)(6) and R.S. 40:5(A)(2)(3)(9)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1343 (June 2002), amended by the Department of Health, Office of Public Health, LR 43:966 (May 2017).

**Chapter 3. General Requirements for Sewage Disposal**  
**[formerly Chapter 13 Subpart B]**

**§308. Outfall Paths**

A. In reviewing plans and specifications for a proposed community sewerage system or individual sewerage system, or modifications thereto, the state health officer shall require the system owner to provide evidence of appropriate servitudes or permissions for any portion of the outfall path lying between the boundaries of the system owner's property and the first suitable publicly maintained ditch, canal, or channel forming part of the outfall path, or the ultimate receiving navigable stream or body of water, whichever is encountered first. A publicly maintained ditch, canal, or channel shall be deemed suitable for use as an outfall path unless the public or governmental body maintaining same has explicitly notified the state health officer to the contrary in writing. Notwithstanding any other provision of this code, the state health officer shall not be obligated to review or analyze the suitability or ownership of any portion of an outfall path lying downstream of its confluence with the first suitable publicly maintained ditch, canal, or channel forming a part thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(6) and R.S. 40:5(A)(2)(3)(9)(20).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 43:967 (May 2017).

Jimmy Guidry MD  
State Health Officer  
and  
Rebekah E. Gee MD, MPH  
Secretary

1705#013

**RULE**

**Department of Public Safety and Corrections**  
**Liquefied Petroleum Gas Commission**

**Broker Permits and General Requirements**  
**(LAC 55:IX.Chapter 1)**

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 49:953(B) of the Administrative Procedure Act, has amended, supplemented and expanded and readopted portions of LAC 55:I.Chapter 1 as authorized by R.S. 40:1846.

In particular, LAC 55:IX.107 requires a permit for third-party brokers who are instrumental in the sale and service of liquefied petroleum. Filing fees for all applications are \$150.

**Title 55**

**PUBLIC SAFETY**

**Part IX. Liquefied Petroleum Gas**

**Chapter 1. General Requirements**

**Subchapter A. New Dealers**

**§107. Requirements**

A. Before any permit or registration may be issued from the office of the director, all applicants shall have complied with or agree to comply with the applicable requirements as follows.

1. Shall deposit filing fee of \$150 for classes and \$25 for all registrations. This fee shall accompany application.

2. - 5.b. ...

c. Each location of class I, class VI and class VIII dealers, which fill DOT specification cylinders of 200 lbs. or less, liquefied petroleum gas capacity, that are in commerce or transportation, shall provide a suitable weighing device (scales).

6. Applicants shall have paid a permit fee in the amount of \$150, except for class VII-E, which shall be \$100, and class III which shall be \$500 and R-1, R-2 registrations, which shall be \$37.50 and class VI-X shall be in the amount of \$150 for each location. For fiscal year 2014-2015, and for each subsequent fiscal year, the permit fee shall be 0.1369 of 1 percent of annual gross sales of liquefied petroleum gas with a minimum of \$150 for each location. For classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$150, except registrations shall be \$37.50 per year.

6.a. - 7. ...

8. All service and installation personnel, fuel transfer personnel, carburetion mechanics and tank truck drivers shall have a card of competency from the office of the director. All permit holders, except class III and VI-X permit holders, shall have at least one card of competency issued to their permit. The commission may waive the one card of competency until the dealer commences operations in the state. A card of competency shall be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal state's examination which contains substantially equivalent requirements. This shall be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees shall be paid prior to issuing the card.

a. - c.i.(d). ...

(e). Proof of a passing grade, for purposes of certification, shall be maintained in dealer employee file. The employer shall maintain this record until one year after the employment has terminated.

8.c.i.(f). - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:2201 (October 2009), LR 35:2465 (November 2009), LR 38:1256 (May 2012), LR 41:395 (February 2015), LR 42:427 (March 2016), LR 42:1671 (October 2016), LR 43:967 (May 2017).

**§113. Classes of Permits and Registrations**

A. - A.2.e. ...

3. Class III Brokers/Special Vendors. Holders of these permits may purchase liquefied petroleum gas only from liquefied petroleum gas dealers who hold a valid liquefied petroleum gas permit and resell the aforementioned

purchased liquefied petroleum gas product to end users utilizing floor maintenance machines/or industrial trucks (forklifts) on their premises. Holders of these permits shall not deliver gas or engage in repairing liquefied petroleum gas containers or systems.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

b. Shall submit a completed "location approval form" for each physical location being served, with a handling fee of \$150 for each location being served.

c. Compliance with all other rules and regulations is a mandatory requirement.

d. Shall provide 24 hour emergency contact information at each liquefied petroleum gas storage location. The person deemed the emergency contact shall have basic knowledge regarding liquefied petroleum gas emergencies and shall maintain contact information per the servicing liquefied petroleum gas supplier.

e. The class III permit holder shall post the servicing liquefied petroleum gas supplier's name (name on Louisiana liquefied petroleum gas permit) at each liquefied petroleum gas storage site and each end user's location.

4. - 13.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended and promulgated LR 3:315 (July 1977), amended LR 7:633 (December 1981), LR 8:53 (January 1982), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 12:841 (December 1986), LR 15:855 (October 1989), LR 16:1063 (December 1990), LR 19:904 (July 1993), LR 20:1400 (December 1994), LR 21:701 (July 1995), LR 24:461 (March 1998), LR 25:2411 (December 1999), LR 29:2509 (November 2003), LR 33:1141 (June 2007), effective July 1, 2007, LR 38:1259 (May 2012), LR 41:395 (February 2015), LR 43:967 (May 2017).

**Subchapter D. Forms and Reports**

**§159. Required Forms and Reports**

A. - A.7. ...

8. Location approval forms shall be in accordance with §113.A.3.b.

**Location Approval Form**

The submission of this form by a Class III dealer representative does not absolve the dealer of following the rules and regulations established by this Commission concerning the storage of liquefied petroleum gas. Due to the fact that all requisite details are not submitted regarding the storage locations referred to on this this form, it is, therefore assumed when approval is made on the information submitted, details regarding information not provided will comply with all regulations. Any changes to the cylinder location will require a new form to be submitted.

Name of Class III dealer submitting this form: \_\_\_\_\_  
Name of Dealer supplying gas: \_\_\_\_\_

Is storage location protected from vehicular impact? \_\_\_Yes \_\_\_No

Is storage location: \_\_\_\_\_ inside building or \_\_\_\_\_outside building?

Is storage location the proper distance from electrical equipment, ignition sources, doors and windows? \_\_\_\_\_Yes \_\_\_\_\_No

Is Name of Class III Dealer, Supplier and 24 hour Emergency Contact on storage location? \_\_\_Yes \_\_\_No

Is all the proper signage displayed at storage location? \_\_\_\_\_Yes \_\_\_\_\_No

Does the public have access to the cylinder storage location?

\_\_\_Yes \_\_\_No

If yes, please ensure sketch is submitted by properly permitted dealer.

Contact information for someone at cylinder location:

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Please give brief description of storage area including distances to permanent reference points:

\_\_\_\_\_  
\_\_\_\_\_

All information submitted on this form has been verified as correct, and it is understood that any changes to this form shall require a new form to be submitted.

Signed (person in charge of insuring correctness of this form)

X \_\_\_\_\_

Date: \_\_\_\_\_

**FEE \$150.00**

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 15:861 (October 1989), LR 24:466 (March 1998), LR 38:1265 (May 2012), LR 41:395 (February 2015), LR 43:968 (May 2017).

John W. Alario  
Executive Director

1705#028

**RULE**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal**

Code Enforcement and Building Safety  
Fire Protection  
(LAC 55:V.101, 103, Chapters 3 and 11, and 1501)

In accordance with the provisions of R.S. 40:1578.6(A), relative to the authority of the Office of State Fire Marshal to promulgate and enforce rules, the Office of State Fire Marshal has adopted the following Rule regarding the establishment of minimum standards.

**Title 55**

**PUBLIC SAFETY**

**Part V. Fire Protection**

**Chapter 1. Preliminary Provisions**

**§101. Request for Rule Change**

A. Anyone petitioning the assistant secretary of the Department of Public Safety, Office of the State Fire Marshal, commonly known as the Louisiana State Fire Marshal, for the adoption of, or change of, any rule shall submit in writing to the fire marshal at 8181 Independence Boulevard, Baton Rouge, LA 70806, an application containing the following basic information organized and captioned:

1. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 1563(F) and R.S. 40:1578.6(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 6:71 (February 1980), LR 23:1688 (December 1997), LR 43:968 (May 2017).

**§103. General Provisions**

A. It shall be the policy of the state fire marshal that in all instances or specifications provided in the statutes or in the codes referenced by the statutes, or by any specific references in administrative rulings by the state fire marshal, that the *Standard Building Code* published by the Southern Building Code Congress International, and the *International Building Code* published by the International Code Council, and the *National Fire Codes* and standards published by the National Fire Protection Association, the publications referenced by the *NFPA 1 Fire Code* and the *NFPA 101 Life Safety Code*, and the publications specifically identified in the following list, shall be used as the materials for determinations by the state fire marshal.

NFPA 1	2015 Edition	Fire Code
NFPA 18	2011 Edition	Standard on Wetting Agents
NFPA 32	2011 Edition	Standard for Dry Cleaning Plants
NFPA 37	2015 Edition	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
NFPA 51	2013 Edition	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
NFPA 53	2016 Edition	Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres
NFPA 99B	2015 Edition	Standard for Hypobaric Facilities
NFPA 101	2015 Edition	Life Safety Code
NFPA 495	2013 Edition	Explosive Materials Code
NFPA 664	2012 Edition	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
NFPA 820	2016 Edition	Standard for Fire Protection in Wastewater Treatment and Collection Facilities
NFPA 901	2016 Edition	Standard Classifications for Incident Reporting and Fire Protection Data
NFPA 1123	2014 Edition	Code for Fireworks Display
NFPA 1124	2017 Edition	Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles
NFPA 1221	2013 Edition	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems
NFPA 1402	2012 Edition	Guide to Building Fire Service Training Centers
NFPA 1403	2012 Edition	Standard on Live Fire Training Evolutions
NFPA 1961	2013 Edition	Standard on Fire Hose
NFPA 1962	2013 Edition	Standard for the Inspection, Care, and Use of Fire Hose, Couplings, and Nozzles and the Service Testing of Fire Hose

B. All inspections and other evaluations of buildings constructed or remodeled pursuant to plans submitted to the Office of State Fire Marshal for review shall be made utilizing new construction requirements set forth in the *Life Safety Code* published by the National Fire Protection Association, the *NFPA 1 Fire Code* published by the

National Fire Protection Association, the special provisions for high-rise building section of the *Standard Building Code* published by the Southern Building Code Congress International, the fire protection and life safety provisions of the *International Building Code* published by the International Code Council, and the *FGI Guidelines* published by the Facilities Guidelines Institute for facilities evaluated on behalf of the Department of Health as follows.

Building Constructed or Remodeled	Life Safety Code Edition	NFPA 1 Fire Code Edition	Section/ Building Code Edition	Sections/ International Building Code Edition	FGI Guidelines
prior to 1/1/1975	1967		-	-	
1/1/1975 to 12/31/1979	1973		518 / 1974 Chapter 4 revisions to 1973	-	
1/1/1980 to 8/31/1981	1976		518 / 1974 Chapter 4 revisions to 1973	-	
9/1/1981 to 8/31/1986	1981		506 / 1979	-	
9/1/1986 to 2/18/1989	1985		506 / 1985	-	
2/19/1989 to 5/31/1992	1988		506 / 1985	-	
6/1/1992 to 1/4/1995	1991		506 / 1988	-	
1/5/1995 to 5/31/1998	1994		506 / 1991	-	
6/1/1998 to 6/30/2001	1997		412 / 1994	-	
7/1/2001 to 12/31/2001	2000		412 / 1994	-	
1/1/2002 to 6/30/2004	2000		412 / 1997	-	
7/1/2004 to 9/30/2007	2003		-	-	
10/1/2007 to 6/30/2010	2006		-	-	
7/1/2010 to 12/31/2013	2009		-	-	
1/1/2014 to 6/30/2017	2012		-	9 and 10/2012	
after 7/1/2017	2015	2015		9 and 10/2015	2014

C. All references to performance based criteria in the *Life Safety Code* shall only be considered by the Office of State Fire Marshal after an appeal of a decision has been timely made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F), R.S. 40:1563(L), R.S. 40:1578.6(A), and R.S. 40:1578.7(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:145 (February 1975), amended LR 5:468 (December 1979), LR 6:71 (February 1980), amended by the Office of the State Fire Marshal, LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 15:96 (February 1989), LR 17:1114 (November 1991), LR 23:1688 (December 1997), LR 27:857 (June 2001), LR 27:2257 (December 2001), repromulgated LR 29:183 (February 2003), amended LR 30:1303 (June 2004), LR 33:671 (April 2007), LR 36:1564 (July 2010), LR 39:1478 (June 2013), LR 43:969 (May 2017).

### Chapter 3. Buildings

#### §301. Building Permits

A. ...

B. Accordingly, with the application for a building permit from any governmental subdivision of this state, proof of approval by the Office of the State Fire Marshal of the plans and specifications for which the building permit is being requested shall be provided with the permit application. Such proof may be provided electronically. This ruling shall not apply to one- and two-family dwellings.

C. Plans and specifications submitted in violation of R.S. 37:155(4) will be rejected by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F) and R.S. 40:1578.6(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), repromulgated LR 6:72 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 16:320 (April 1990), LR 23:1691 (December 1997), LR 43:970 (May 2017).

#### §303. Plans and Specifications for New Buildings

A. As of July 1, 2017, the plans and specifications for every structure built or remodeled in the state of Louisiana shall be submitted for review and must be drawn in accordance with the applicable requirements of the following publications:

1. the 2015 edition of the *NFPA 101 Life Safety Code* (excluding chapter 5, which may be used as a basis for equivalency determinations);

2. the publications referenced in chapter 2 of the *NFPA 101 Life Safety Code*;

3. the applicable provisions of the 2015 edition of the *NFPA 1 Fire Code*;

4. the fire protection and life safety provisions of the most recently adopted *International Building Code* (IBC) by the Louisiana State Uniform Construction Code Council;

5. the most recently adopted editions of the Louisiana State Uniform Construction Code (LSUCC) for *Industrialized Buildings* and for building code reviews performed on behalf of parishes and municipalities;

6. the 2016 editions of *NFPA 13 for Sprinkler Systems*, *NFPA 13D for Domestic Sprinkler Systems*, and *NFPA 13R for Residential Sprinkler Systems*;

7. and the 2016 edition of *NFPA 20 for Stationary Fire Pumps*.

B. In addition to the documents outlined above, plans and specifications for specific structure uses shall be drawn in accordance with the requirements of the following publications:

1. *NFPA 30A: Code for Motor Fuel Dispensing Facilities and Repair Garages*, 2015 Edition;

2. *NFPA 32: Standard for Drycleaning Facilities*, 2011 Edition;

3. *NFPA 33: Standard for Spray Application Using Flammable or Combustible Materials*, 2011 Edition;

4. *NFPA 37: Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines*, 2015 Edition;

5. *NFPA 51: Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes*, 2013 Edition;

6. *NFPA 59A: Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)*, 2013 Edition;

7. *NFPA 140: Standard on Motion Picture and Television Production Studio Soundstages, Approved Production Facilities, and Production Locations*, 2013 Edition;

8. *NFPA 400: Hazardous Materials Code*, 2016 Edition;

9. *NFPA 407: Standard for Aircraft Fuel Servicing*, 2012 Edition;

10. *NFPA 495: Explosive Materials Code*, 2013 Edition;

11. *NFPA 664: Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities*, 2012 Edition;

12. *NFPA 1221: Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems*, 2013 Edition.

C. As of July 1, 2017, the plans and specifications for facilities licensed, certified, or seeking licensure or certification by the Louisiana Department of Health and submitted to the state fire marshal for review in accordance with R.S. 40:1563(L) shall be drawn in accordance with the applicable requirements of the following publications:

1. the 2014 edition of the Facility Guidelines Institute publication titled *Guidelines for Design and Construction of Hospitals and Outpatient Facilities*, where required by rules published by the Louisiana Department of Health for hospitals and outpatient facilities;

2. the 2014 edition of the Facility Guidelines Institute publication titled *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*, where required by rules published by the Louisiana Department of Health for residential health, care, and support facilities;

3. rules published by the Louisiana Department of Health as applicable to the physical environment for licensed or certified facilities.

D. All unsprinkled dwelling units within apartment buildings shall be separated from one another by construction having a fire resistance rating of not less than one hour as required by the standard building code.

E. Portable fire extinguishers shall be required in all occupancies. The location, maintenance, and installation shall be in accordance with *NFPA Pamphlet Number 10*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F), R.S. 40:1563(L), and R.S. 40:1578.6(A).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:143 (February 1975), amended LR 5:468 (December 1979), LR 6:72 (February 1980), amended by the Office of the State Fire Marshal, LR 7:344 (July 1981), LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 12:116 (February 1986), LR 15:96 (February 1989), LR 17:1115 (November 1991), LR 23:1692 (December 1997), LR 30:1305 (June 2004), LR 33:673 (April 2007), LR 36:1565 (July 2010), LR 39:1480 (June 2013), LR 43:970 (May 2017).

#### §307. Observation of Construction; Final Inspection

A. ...

B. Upon completion of such work, where the law requires the owner to engage an architect or registered civil engineer, the owner shall furnish to the fire marshal a

certificate signed by a registered architect or registered civil engineer stating that the periodic observations have been made and that to the best of the architect's or engineer's knowledge, information and belief, the work was completed in accordance with those fire safety standards and regulations stipulated in the plans and specifications previously approved by the fire marshal. When the owner has not engaged an architect or registered civil engineer, and the same is not required by law, the owner must submit the certificate of completion when appropriate, but always under his signature. Electronic certification made through the state fire marshal online portal shall be acceptable.

C. ...

D. In order to comply with the requirements of §307.B, the owner must submit to the fire marshal the following certificate completed by the architect, civil engineer, or, if neither is required by law, the owner. In lieu of the following completed certificate, electronic certification made through the state fire marshal online portal shall be acceptable.

CERTIFICATE OF COMPLETION

Date:

TO: The Louisiana State Fire Marshal  
8181 Independence Blvd.  
Baton Rouge, Louisiana 70806

This is to certify that the \_\_\_\_\_  
(name of project by title)  
for \_\_\_\_\_ located at \_\_\_\_\_  
(type of use) (street/number/name)

as periodically observed by me, by my consultants, and/or by others in my employ during construction and, to the best of my knowledge, information and belief, has been completed in accordance with the safety provisions which were shown in the plans and specifications previously approved by the fire marshal.

Under penalty of law for false statement,

I \_\_\_\_\_ License Number: \_\_\_\_\_  
(name of architect/civil engineer  
or owner if architect or engineer  
is not required)

certify that all statements contained therein are, to the best of my knowledge, information and belief, true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 3:498 (December 1977), repromulgated LR 6:73 (February 1980), amended by the Office of the State Fire Marshal, LR 8:523 (October 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1692 (December 1997), LR 43:970 (May 2017).

**§309. Requirements for Connection of Electrical Power**

A. The installation and/or use of temporary or permanent electrical power in new construction shall be prohibited until plans and specifications for every structure built in the state of Louisiana are reviewed by the Office of the State Fire Marshal pursuant to R.S. 40:1574 and LAC 55:V.303 and found to comply with the requirements.

B. Proof of compliance shall be presented to utility companies upon request for temporary or permanent power.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 17:272 (March 1991), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1692 (December 1997), LR 43:971 (May 2017).

**Chapter 11. Modular Structures**

**§1101. Modular Structures Definition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1697 (December 1997), repealed LR 43:971 (May 2017).

**§1103. Applicability of the Fire Marshal's Act**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1697 (December 1997), repealed LR 43:971 (May 2017).

**§1105. Certificate of Manufacturer**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:364 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1697 (December 1997), repealed LR 43:971 (May 2017).

**§1107. Local Authority Supercedure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:364 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1697 (December 1997), repealed LR 43:971 (May 2017).

**Chapter 15. Public Places in General**

**§1501. Equal Access for Disabled Individuals**

A. Buildings, structures, public facilities, governmental facilities and improved areas built between January 1, 1978 and August 14, 1995 shall be covered by the standards put forward in ANSI 117.1. Such entities built on or after August 14, 1995 and before September 30, 2011 shall be covered by the ADAAG guidelines to the Americans with Disabilities Act in effect on September 1, 1994. Such entities built on or after October 1, 2011 shall be covered by the Americans with Disabilities Act and *Architectural Barriers Act Accessibility Guidelines* published July 23, 2004 (ADA-ABA).

B. Multi-family dwelling units of more than 15 dwelling units must have at least 5 percent but no fewer than 1 dwelling unit which meets the regulations specified by the Americans with Disabilities Act and *Architectural Barriers*

*Act Accessibility Guidelines* published July 23, 2004 (ADA-ABA) for residential facilities, sections 233 and F233 as applicable.

C. Any dwelling unit in a facility which incorporates four or more dwelling units shall be made accessible in accordance with the *HUD Fair Housing Accessibility Guidelines* published on March 6, 1991, 56 *Federal Register* 9472, 24 CFR chapter 1, subchapter A, appendix II and III (1991) and the *Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines*, published on June 28, 1994, and the *HUD Fair Housing Act Design Manual*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563(F) and R.S. 40:1734(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), repromulgated LR 6:74 (February 1980), amended by the Office of the State Fire Marshal, LR 7:588 (November 1981), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1698 (December 1997), LR 32:1906 (October 2006), LR 43:971 (May 2017).

Jason Starnes, LTC  
Chief Administrative Officer

1705#034

## RULE

### Workforce Commission Plumbing Board

Plumbers—Introductory Information; Licenses;  
Revocation and Related Administration Proceedings;  
Continuing Professional Education Programs  
(LAC 46:LV.101, 301, 303, 304, 309, 310, 311, 312,  
313, 314, 315, 316, 508, 901, 1001, 1003, 1005, and 1007)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, the Louisiana State Plumbing Board (board), has amended LAC 46:LV.101, 301, 303, 304, 310, 311, 312, 313, 314, 315, 316, 901, 1001, 1003, 1005, and 1007 and has adopted §§309 and 508 as are necessary to be in compliance with recent legislative changes designated as Act No. 515 of 2016. The amendments to §§101, 301, 303, 309, 310, 312, 901 and 1001 established the designation of tradesman plumbers and provides licensing requirements and procedures relative to the tradesman plumber classification, effective January 1, 2017. Adopted §508 established and maintains a registry of apprentice plumbers employed within the state of Louisiana. The addition of the tradesman plumber classification resulted in the insertion of a new Rule, causing a change in the Sections formerly numbered as §§307-313, as well as changing cross-referencing of Sections throughout the Rules.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LV. Plumbers

#### Chapter 1. Introductory Information

#### §101. Definitions

\* \* \*

*Tradesman Plumber*—a natural person who possess the necessary qualifications and knowledge to repair existing plumbing systems and is licensed by the board to repair

existing plumbing systems in one- and two-family dwellings at the direction of a master plumber, without the supervision of a journeyman plumber.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:49 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21:1348 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:575 (April 2016), LR 43:972 (May 2017).

#### Chapter 3. Licenses

#### §301. Licenses and Registration Required

A...

B. No natural person shall engage in doing the work of an apprentice unless he possesses a registration or renewal thereof issued by the board as established in §508. Registered apprentices may engage in the art of plumbing only when they are under the direct, constant on-the-job supervision of a licensed journeyman plumber. Direct, constant on-the-job supervision means that a licensed journeyman plumber will supervise no more than one apprentice on only one job at a time.

C. - W. ...

X. No natural person shall engage in doing the work of a tradesman plumber unless he possesses a tradesman plumber limited license or renewal thereof issued by the board. At the direction of a master plumber licensed by the board, a tradesman plumber may independently repair existing plumbing in one- and two-family dwellings without the supervision of a journeyman plumber.

Y. The board shall issue a limited license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a tradesman plumber if he passes a written and manual tradesman plumber's examination given by the board and pays the fees established by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:49 (January 1991), amended by the Department of Labor, Plumbing Board LR 19:897 (July 1993), LR 19:1593 (December 1993), LR 21:1348 (December 1995), LR 25:1857 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016), LR 43:972 (May 2017).

#### §303. Application for License

A. - E. ...

F. An application for medical gas and vacuum systems verifiers license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he has successfully completed a course of training and related certification testing described in §315.B of this Chapter by an organization certified by the board pursuant to R.S. 37:1368(I). The applicant must furnish whatever information relevant to his experience that is requested in the application form or specifically requested by the board.

G. - I. ...

J. Applications for tradesman plumber limited license shall be completed and sworn to before a notary public by the applicant. Each applicant must possess a current

apprentice registration certificate issued by the board and must furnish references from three journeyman and/or master plumbers licensed by this board, stating the period, to the best of their knowledge, that the applicant has worked at the manual labor of the trade of plumbing and is qualified to take the examination without assistance, and provide whatever other information is requested, on official board application form.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(D).

**HISTORICAL NOTE:** Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:50 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21:1348 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016), LR 43:972 (May 2017).

#### **§304. Medical Gas Piping Installer License**

A. - C. ...

D. An applicant for a medical gas piping installer license must attach to his application a money order or check for the appropriate fee established in §312 of this Chapter.

E. - K. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Plumbing Board, LR 21:1349 (December 1995), amended LR 25:1858 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:576 (April 2016), LR 43:973 (May 2017).

#### **§309. Requirements to Take Exam for Tradesman Plumber License**

A. Requirements

1. An applicant for tradesman plumber's examination shall have a current apprentice registration certificate issued by the board and have performed 4,000 hours of manual labor of plumbing under the direct, constant, on-the-job supervision of a journeyman or master plumber licensed by the board.

2. He shall have sufficient education to read and write the answers to the examination questions and shall understand the plumbing terms in regard to the installation or repair of plumbing.

3. He shall furnish a 2-inch by 2-inch photograph of himself with the application.

4. He shall submit his application and required documents to the office of the state Plumbing Board of Louisiana not less than 30 days before any scheduled examination. The board shall inform all interested persons of the examination schedule.

5. He must attach a money order or check for the appropriate fee to the application. The fee is established in §312.

6. No tradesman plumber certificate shall permit any tradesman plumber to do the work of a journeyman plumber.

B. Regular quarterly examinations will be held in the city of Baton Rouge, on such days specially set by the board. Regularly scheduled examinations are subject to postponement or relocation to accommodate legal holidays or other conditions beyond the control of the board.

C. Failure to report for examination will result in the forfeiture of the applicant's fee. This forfeiture may be reversed by the board upon showing a good cause by the

applicant explaining his failure to attend the scheduled examination.

D. Special examinations may be held at such times and places as the board may direct. Any person or persons may request that he be examined by the board at times and places other than the regularly scheduled examination dates, and the board shall examine such applicant or applicants as are qualified, at a reasonable time and place designated by the board after notice of such request, at the payment of a fee as established by the board.

E. The examination shall be given by one or more examiners. At least one board member shall be present.

F. The chairman of the board shall appoint the examiner or examiners, who may be representatives of a private professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board. If necessary, the chairman shall appoint additional examiners to conduct the special examination described in Subsection D of this Section or an examiner to conduct any special examination required as an accommodation to a qualified disabled individual under the Americans with Disabilities Act.

1. The chairman of the board shall appoint special examiners to assist these applicants in the completion of the written portion of their examinations. These special examiners will not provide any information or data to the applicants, but will only complete the written portion of any examination given to such applicants by writing the answers for the applicants as provided to the special examiner. These examiners will assist these applicants in such a manner as to prevent disclosure of answers to examination questions to any other applicant participating in the examination.

2. These applicants will be granted provisional licenses. This provisional and limited license shall permit any such applicant to engage in the work of a tradesman plumber, upon passing the special examination described herein, within the geographic areas to which the Louisiana state plumbing law has been made applicable. However, the license issued by the board shall state that the license was issued pursuant to these provisions.

3. Applicants under these special provisions will not be relieved of any other requirements or conditions associated with the issuance of a tradesman plumber's license by this board as established under the board's revised rules and regulations and the Louisiana state plumbing laws, R.S. 37:1365-37:1378.

G. Notwithstanding the foregoing provisions of this Section, any person or persons who at any time within three years of being cited by the board or its agents for engaging in the work of a tradesman plumber at a time when he did not possess a license or renewal thereof issued by the board, or was otherwise subject to civil or criminal prosecution for doing the work of a journeyman plumber without possessing a license or renewal thereof issued by the board, may request that he be examined by the board pursuant to this Section, but only after the payment of a special enforcement fee as established by the board, which shall be in addition to the regular license fee established by the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

**HISTORICAL NOTE:** Promulgated by the Workforce Commission, Plumbing Board, LR 43:973 (May 2017).

### §310. Renewals

#### [Formerly §307]

A. All plumbing and medical gas piping installer licenses, medical gas and vacuums systems verifier licenses, as well as water supply protection endorsements, expire December 31 of each year. Applications for renewal will be mailed out by the end of October. The issuance of renewals will commence November 1 of each year. The term "renewal application" as used in this Section shall refer to all licenses and endorsements issued by the board.

B. All renewal applications received at the board's office later than midnight the last day of December will be delinquent and will require a revival fee in addition to the renewal fee. Any license not renewed by the last day of December will pay a revival fee, in addition to the renewal fee, if renewed between January 1 and March 31. Any license renewed after March 31, will require an increased revival fee, in addition to the renewal fee. The fees are set forth in §312. Any person performing the work of a tradesman plumber, journeyman plumber or a master plumber without the appropriate license issued by the board after March 31 of any year without having renewed his license from the immediately preceding year shall be subject to the special enforcement fee established in §305.H or §306.G or §309.G.

C. A person who has allowed his previously issued tradesman plumber or journeyman plumber license to expire may be afforded the option, in lieu of re-examination, of paying a special revival fee of \$50 per year for each year the license was not renewed up to a limit of four consecutive years. However, any such person who performs the work of a journeyman plumber without possessing a license issued by the board during this period shall be subject to the special enforcement fee established in §305.H or §309.G.

D. A person who has allowed his previously issued master plumber license, inactive master plumber license or restricted master plumber license to expire may be afforded the option, in lieu of re-examination, of paying a special revival fee of \$250 per year for each year the license was not renewed up to a limit of four consecutive years. A person who qualifies for issuance of a restricted master plumber license by virtue of R.S. 37:1368(C) or (D), as amended by Act 752 of the 1990 Regular Session, must apply for such license on or before December 31, 1991. A first time application by any such person after December 31, 1991 will be subject to the revival fee provisions. Any person who performs the work of a master plumber without possessing a license issued by the board during any period of lapsed license or prior to applying for a restricted master plumber license as provided herein shall be subject to the special enforcement fee established in §306.G.

E. To be considered timely filed, any renewal application under this Section must actually be received at the office of the state Plumbing Board of Louisiana within the time specified for filing or be sent to that office by first-class mail, postage prepaid, and bearing a postmark showing that the application was mailed on or before the last day for filing.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated LR 2:419 (December 1976), amended LR 7:588 (November 1981), amended by Department of Employment and Training, Plumbing Board, LR 17:52 (January 1991), LR 18:30 (January 1992), amended by the Department of Labor, Plumbing Board, LR 21:1350 (December 1995), LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 43:974 (May 2017).

### §311. Insurance Requirements for Master Plumbers and Master Gas Fitters

#### [Formerly 308]

A. No master plumber, restricted master plumber, or master gas fitter license shall be issued, renewed, or revived until the applicant has provided proof acceptable to the board that insurance has been issued to the employing entity which is designated in accordance with R.S. 37:1367 by an insurer authorized to do business in this state.

B. The employing entity shall maintain:

1. worker's compensation insurance as required by law;
2. motor vehicle bodily injury and property damage liability insurance in the minimum amount required by law;
3. comprehensive general liability and property damage insurance in a minimum amount of \$100,000, except on plumbing work or gas fitting work done in parishes under 30,000 persons in population; on buildings, residences, or structures being no more than 6,000 square feet of interior space, the minimum aggregate amount shall be \$50,000.

C. The provisions of this Section shall not apply to master plumbers or master gas fitters applying for and being issued an inactive master plumber license or a master gas fitter license.

D. The certification of insurance shall contain a provision, and the policy so endorsed, that the insurance carrier shall notify the board, in writing, of any change in or cancellation of the insurance policy or policies at least 30 days prior thereto.

E. In the event a master plumber, or restricted master plumber, or master gas fitter changes his designation of an employing entity, the insurance requirements of this Subsection shall remain in effect.

F. A licensed journeyman plumber performing repairs as defined in §101 and §301.E shall be subject to the insurance requirements of this Subsection.

G. Any master plumber, restricted master plumber, or master gas fitter subject to the lesser comprehensive general liability and property damage insurance requirements in parishes described in paragraph B.3 of this Section on the type of work described therein shall be subject to the greater insurance requirements generally imposed on master plumbers, restricted master plumbers and master gas fitters when performing work in all other parishes or on buildings, residences or structures being more than 6,000 square feet of interior space in any parish.

H. The board is empowered to assess special enforcement fees on a daily basis at a rate not to exceed \$10 a day relative to any master plumber, master gas fitter or employing entity, individually or collectively, that fails or refuses, after due notice, to comply with the insurance requirements for master plumbers and master gas fitters as established in this Section. The daily enforcement fees

assessed by the board under this provision shall not exceed, in the aggregate, \$500. This special enforcement fee shall be in addition to any licensing fees required by law, or any other penalty or sanction assessed by a court of competent jurisdiction or by the board.

I. If an employing entity is exempt from the worker's compensation laws, as provided by applicable Louisiana law, it shall execute an affidavit of non-coverage on a form provided by the board. Failure to timely submit this affidavit may subject the employing entity to special enforcement fees under this Section of these regulations and/or an action for injunctive relief by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366 and R.S. 37:1377.

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended by Department of Employment and Training, Plumbing Board, LR 17:53 (January 1991), amended LR 18:30 (January 1992), amended by the Department of Labor, Plumbing Board, LR 19:897 (July 1993), LR 25:1856 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 43:974 (May 2017).

### §312. Fees

#### [Formerly 309]

A. The fees and charges of the board relative to apprentice plumbers shall be as follows:

1. initial registration fee—\$20;
2. renewal fee—\$10;
3. revival fee—\$15:
  - a. if renewed after March 31—\$30;
4. fee for N.S.F. or returned check—\$20;
5. special enforcement fee imposed under §301.B—\$500.

B. The fees and charges of the board relative to tradesman plumbers shall be as follows:

1. special examinations—\$500;
2. examinations—\$125;
3. illiterate examinations—\$150;
4. initial license fee (this fee to be paid after applicant has successfully passed the exam, in order to receive his first license)—\$40;
5. renewal fee—\$30;
6. revival fee—\$15:
  - a. if renewed after March 31—\$30;
7. temporary permits—\$75;
8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—\$62.50;
9. fee for N.S.F. or returned check—\$20;
10. special enforcement fee imposed under §309.G—\$500.

C. The fees and charges of the board relative to journeyman plumbers shall be as follows:

1. special examinations—\$500;
2. examinations—\$125;
3. illiterate examinations—\$150;
4. initial license fee (This fee to be paid after applicant has successfully passed the exam, in order to receive his first license.)—\$40;
5. renewal fee—\$40;
6. revival fee—\$15:
  - a. if renewed after March 31—\$30;
7. temporary permits—\$75;

8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—\$62.50;

9. fee for N.S.F. or returned check—\$20;

10. special enforcement fee imposed under §305.H—\$500.

D. The fees and charges of the board relative to master plumbers, restricted master plumbers and inactive master plumbers shall be as follows:

1. special examinations—\$500;
2. examinations—\$100;
3. initial license fee—\$180;
4. renewal fee—\$180;
5. revival fee—\$60:
  - a. if renewed after March 31—\$120;
6. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—50 percent of exam fee;
7. fee for N.S.F. or returned check—\$20;
8. special enforcement fee imposed under §306.G—\$500;
9. inactive master plumber fee—\$30;
10. fee for conversion of inactive master plumber license to active master plumber—\$150;
11. employing entity redesignation fee—\$150;
12. special daily enforcement fee imposed under §301.K—\$10/day, not to exceed \$500 in the aggregate;
13. special daily enforcement fee imposed under §308.H—\$10/day, not to exceed \$500 in the aggregate.

E. The fees and charges of the board relative to medical gas piping installers shall be as follows:

1. special examinations—\$500;
2. examination—\$95;
3. initial endorsement fee (this fee to be paid after applicant has successfully passed the exam)—\$30;
4. renewal fee—\$30;
5. revival fee—\$10:
  - a. if renewed after March 31—\$20;
6. administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)—50 percent of exam fee;
7. fee for N.S.F. or returned check—\$20;
8. special enforcement fee imposed under §304.K—\$500.

F. The fees and charges of the board relative to water supply protection specialist endorsements shall be as follows:

1. special examinations—\$500;
2. examination—\$95;
3. initial endorsement fee (this fee to be paid after applicant has successfully passed the exam)—\$30;
4. renewal fee—\$30;
5. revival fee—\$10:
  - a. if renewed after March 31—\$20;
6. administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)—50 percent of exam fee;
7. fee for N.S.F. or returned check—\$20;

8. special enforcement fee imposed under §304.K—\$500.

G. The fees and charges of the board relative to medical gas and vacuum systems verifier shall be as follows:

1. application fee—\$200;
2. renewal fee—\$200;
3. revival fee—\$65:
  - a. if renewed after March 31—\$130.

H. The fees and charges of the board relative to gas fitters shall be as follows:

1. special examinations—\$500;
2. examinations—\$125;
3. ADA accommodation examinations—\$150;
4. initial license fee (this fee to be paid after applicant has successfully passed the exam, in order to receive his first license)—\$40;
5. renewal fee—\$40;
6. revival fee—\$15:
  - a. if renewed after March 31—\$30;
7. temporary permit—\$75;
8. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—\$62.50;
9. fee for N.S.F. or returned check—\$35;
10. special enforcement fee imposed under §307.H—\$500.

I. The fees and charges of the board relative to master gas fitters, and inactive master gas fitters shall be as follows:

1. special examinations—\$500;
2. examinations—\$100;
3. initial license fee—\$180;
4. renewal fee—\$180;
5. revival fee—\$60:
  - a. if renewed after March 31—\$120;
6. administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)—50 percent of exam fee;
7. fee for N.S.F. or returned check—\$35;
8. special enforcement fee imposed under §306.G—\$500;
9. inactive master gas fitter fee—\$30;
10. fee for conversion of inactive master gas fitter license to active master gas fitter—\$150;
11. employing entity re-designation fee—\$150;
12. special daily enforcement fee imposed under §301.K—\$10/day, not to exceed \$500 in the aggregate;
13. special daily enforcement fee imposed under §308.H—\$10/day, not to exceed \$500 in the aggregate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366.D and R.S. 37:1371.

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated LR 7:588 (November 1981), amended LR 15:1089 (December 1989), amended by the Department of Employment and Training, Plumbing Board, LR 16:23 (January 1990), LR 17:53 (January 1991), amended by the Department of Labor, Plumbing Board, LR 19:898 (July 1993), LR 19:1594 (December 1993), LR 21:1351 (December 1995), LR 26:327 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43:975 (May 2017).

### §313. Water Supply Protection Specialist Endorsement [Formerly §310]

A. No natural person shall engage in the work of a water supply protection specialist unless he possesses an endorsement to either a master plumber license or a journeyman plumber license or renewals thereof issued by the board. The board shall issue such an endorsement to either form of license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a water supply protection specialist, if he passes an examination given by the board and pays the fees established by the board.

B. A person possessing a restricted master plumber license, who also possesses a water supply protection specialist endorsement to that license issued by the board, shall not be restricted geographically with respect to his work or business as a water supply protection specialist. However, the restrictions applicable to his restricted master plumber license shall remain in effect.

C. As authorized by R.S. 37:1368(H), the board shall recognize and certify certain programs of education and training of water supply protection specialist offered by private or public organizations or institutions compliant with *ASSE International, Cross-Connection Control Professional Qualifications Standard ASSE Series 5000* or a nationally recognized, board-approved program. A journeyman or master plumber licensed by this board who successfully completes any such program shall qualify for admission to an examination offered under §313.A of these regulations. Any such organization must satisfy the board that its program or programs includes training and testing as specified in the *ASSE International, Cross-Connection Control Professional Qualifications Standard ASSE Series 5000*, or a nationally-recognized, board-approved program.

D. Courses of instruction defined in Subsection C of this Section must be provided by a person or persons meeting the credentials and requirements of *ASSE Series 5000*, or a nationally-recognized board-approved program.

E. To be eligible for board certification pursuant to R.S. 37:1368(H), an interested organization providing water supply protection specialist training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used and offered by such organization. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(H) will be subject to the Administrative Procedure Act.

F. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered by an

organization certified pursuant to R.S. 37:1368(H) as evidence of successful completion of the examination referred to in R.S. 37:1368(H). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in Subsection C of this Section.

G. An applicant for a water supply protection specialist endorsement must attach to his application a money order or check for the appropriate fee established in §312 of this Chapter.

H. Regular quarterly examinations for water supply protection specialist endorsements may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

I. A water supply protection specialist endorsement application must be submitted to the office of the state Plumbing Board of Louisiana not less than 30 days before any scheduled examination.

J. The chairman of the board shall appoint an examiner or examiners to conduct water supply protection specialist endorsement examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

K. Any person, who at any time is cited by the board for working as a water supply protection specialist without possessing an endorsement to that effect, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(H).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21:1350 (December 1995), amended by the Department of Labor, Plumbing Board, LR 25:1859 (October 1999), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 43:976 (May 2017).

### **§314. Integrity of Examination** **[Formerly §311]**

A. The board may reject an examination for any license or endorsement under this Chapter, if the board determines that the applicant completed any portion of any such examination with the assistance of any other person or unauthorized written materials secreted into the examination site. Examinees will be allowed to utilize board approved resource or industry code materials or permitted by authorized third-party examiners. Examinees determined to have violated the prohibitions of this Section shall be notified in writing and, upon request by the examinee or at the direction of the executive director, an informal conference before the executive director or committee appointed by the board will be conducted. An affected examinee may appeal the determination reached in the informal conference by filing a written appeal with the board. Such appeal hearings shall comport with the provisions of R.S. 49:955(B). Based on the evidence adduced at any such hearing, the board may impose sanctions upon the examinee with respect to any

subsequently administered examination and related licensing.

B. The board is empowered to act upon reports of violation of Subsection A of this Section by examinees received from private or public organizations recognized as examiners under §§304.G, 306.F, 313.F, or 310.B and impose sanctions as described in Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366.D.

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 24:1948 (October 1998), amended LR 26:328 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43:977 (May 2017).

### **§315. Medical Gas and Vacuum Systems Verifier** **[Formerly §312]**

A. No natural person shall engage in the work of a medical gas and vacuum systems verifier unless he possesses a license or renewal thereof issued by this board. The board shall issue a medical and vacuum systems verifier license to any person who:

1. qualifies under the board's regulations;
2. desires to engage in the work or business of a medical gas and vacuum systems verifier;
3. passes a written and manual examination conducted by a nationally recognized organization for this purpose; and
4. pays the fees established by the board.

B. As authorized by R.S. 37:1368.I, the board shall recognize and certify certain programs of education and training of medical gas and vacuum systems verifiers offered by private or public organizations or institutions. A natural person's satisfactory completion of any such program and related exit examination shall qualify him for licensing under Subsection A of this Section of these regulations. Any such organization must satisfy the board that its program or programs meet the following criteria.

1. The program is conducted at a training facility and given to those persons that meet the requirements of American Society of Sanitary Engineering (ASSE) *Professional Qualifications Standard for Medical Gas Systems Personnel Series 6000, Standard 6030*, latest edition.

2. The program meets criteria prescribed by the board and American Society of Sanitary Engineering (ASSE), *Series 6000, Standard 6030*, latest edition.

3. Courses of instruction defined in this Subsection must be provided by a person or persons possessing a current medical gas system instructor certification in compliance with *ASSE Series 6000, Standard 6050*, latest edition.

C. To be eligible for board certification pursuant to R.S. 37:1368(I), an interested organization providing medical gas and vacuum systems verification training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used or offered by such organizations. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board

may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(I) will be subject to the Administrative Procedure Act.

D. An applicant for a medical gas and vacuum systems verifier license must attach to his application a money order or check for the appropriate fees established in §312 of this Chapter.

E. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered by an organization meeting the criteria of *ASSE Series 6000, Standard 6030*, §30-3.2.3, latest edition and certified pursuant to R.S. 37:1368(I), as evidence of successful completion of the examination necessary for the issuance of a license for medical gas and vacuum systems verifier. Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in *ASSE Series 6000, Standard 6030*, latest edition.

F. Any person, who at any time is cited by the board for working as a medical gas and vacuum systems verifier without possessing the necessary license issued by the board, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. The fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 26:329 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:577 (April 2016), LR 43:977 (May 2017).

### **§316. Standards for Medical Gas and Vacuum Systems Verifiers**

#### **[Formerly §313]**

A. A medical gas and vacuum systems verifier shall not certify to any party the results of any tests on medical gas pipeline systems or equipment installed or repaired by any person not licensed by the board as a medical gas piping installer.

B. As a condition for licensing and renewal thereof, and subject to the disciplinary powers of the board under R.S. 37:1378(3) and (8), any person licensed by the board as a medical gas and vacuum systems verifier shall be obligated to cooperate with the Louisiana state fire marshal and his agents in connection with his regulation of medical gas piping installation and systems verification.

C. The duties described in Subsection B of this Section include the responsibility of a medical gas and vacuum systems verifier to accurately report to the fire marshal prior to the fire marshal's inspection the following as to any gas and vacuum system subject to his verification:

1. the successful completion of pressure testing of all manufactured assemblies for both positive gases and vacuum systems, as supplied by the manufacturer of any such systems, prior to this installation;

2. satisfactory cleaning of piping and fittings from the cleaning agency in accordance with the standard "cleaning equipment for oxygen service" (CGA G-4.1);

3. documentation of each board-licensed medical gas piping installer's braze performance qualification in accordance with *NFPA 99, Health Care Facilities Code*, latest edition;

4. documentation of the medical gas contractor's braze procedure specification and procedure qualification record;

5. documentation of successful completion of the board-licensed installer's required testing, including a blowdown test, initial pressure test, cross-connection test, piping purge test and standing pressure test;

6. documentation of the verifier's successful completion of required testing, including cross-connection, valve test, outlet flow test, alarm testing, piping purge test, piping purity test, final tie-in test, operational pressure test, medical gas concentration test, medical air purity test and labeling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1336(D).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 26:330 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 42:578 (April 2016), LR 43:978 (May 2017).

## **Chapter 5. The Board**

### **§508. Duties of the Board**

A. The board shall recognize the system of qualification of registration of apprentices as administered by joint and nonjoint apprenticeship committees approved by the state of Louisiana.

B. Not later than January 1, 2017, the board shall establish and maintain a registry of all apprentice plumbers employed in Louisiana and shall issue a certificate to all registrants under R.S. 37:1366.

C. The board shall assist the Board of Supervisors of Community and Technical Colleges in developing training, program, and course requirements that will prepare individuals to meet the qualifications established by the board for a tradesman plumber.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1336(D).

HISTORICAL NOTE: Promulgated by the Workforce Commission, Plumbing Board, LR 43:978 (May 2017).

## **Chapter 9. Revocation and Related Administration Proceedings**

### **§901. Revocation, Suspension and Probation Procedures**

A. All adjudication proceedings initiated pursuant to R.S. 37:1378 and conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq. The term *licensee*, as used in this Section, shall refer, where applicable, to the holder of a tradesman plumber, journeyman plumber, restricted journeyman plumber, master plumber, restricted master plumber, inactive master plumber, gas fitter, master gas fitter, medical gas piping installer or medical gas and vacuum systems verifier license, and holder of a water supply protection specialist endorsement.

B. - K.3.a. ...

b. The definite time of suspension shall be stipulated by the board in the order to the licensee. Upon termination of the time period the licensee shall be entitled to receive his license upon payment of the required fee and

upon documented compliance with the conditions which may have been imposed by the board at the time of the original order. The reinstatement fee shall not exceed the special enforcement fee under §305.H, §306.G, or §309.G.

c. If a license is suspended for an indefinite term, the licensee may petition for reinstatement of his license only after one calendar year has lapsed from the date of the original order. The board may terminate the suspension and reinstate such license after a hearing is held and the board determines that the cause/causes for the suspension no longer exist or that intervening circumstances have altered the condition leading to the suspension. If reinstatement is granted the licensee shall pay the required reinstatement fee, which shall not exceed the amount established as the special enforcement fee under §305.H, §306.G, or §309.G.

L. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(D).

**HISTORICAL NOTE:** Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated by the Department of Employment and Training, Plumbing Board, LR 17:55 (January 1991), amended by Department of Labor, Plumbing Board, LR 21:1352 (December 1995), LR 26:331 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43:978 (May 2017).

## **Chapter 10. Continuing Professional Education Programs**

### **§1001. Tradesman, Journeyman and Master Plumbers**

#### **A. CPE Requirement**

1. All persons seeking to renew a tradesman license issued by the Louisiana State Plumbing Board are required to attend and show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE class in the prior calendar year, as set out in this Section.

2. All persons seeking to renew a journeyman license issued by the Louisiana State Plumbing Board are required to attend and show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE class in the prior calendar year, as set out in this Section.

3. All persons seeking to renew a master plumber's license or to convert an inactive master plumber's license to an active master plumber's license must attend and show proof of attendance at no less than six hours of a Louisiana State Plumbing Board-approved CPE class in the prior calendar year, as set out in this Section.

4. A holder of an inactive master plumber's license who seeks to renew said license must file an affidavit in a form provided by the Louisiana State Plumbing Board, that they have been inactive as a plumber in the previous year, and that they will remain inactive and not work as a plumber for the year for which they seek to renew their license. Upon such filing with the Louisiana State Plumbing Board, the holder of an inactive master plumber's license will not be required to meet the CPE requirements set out herein.

5. A holder of an inactive master plumber's license who seeks to function as a journeyman plumber is required to attend and show proof of attendance at no less than four hours of a Louisiana State Plumbing Board-approved CPE class in the prior calendar year, as set out in this Section.

#### **B. Course Materials**

1. The Louisiana State Plumbing Board will annually approve course materials to be used for the CPE required for

renewal of tradesman plumber, journeyman plumber and master plumber licenses. The course materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the licensees. Louisiana State Plumbing Board approval of course materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Louisiana State Plumbing Board in considering approval of course materials.

2. The course materials will provide the basis for a minimum of four classroom hours of study for tradesman plumbers and journeyman plumbers and a minimum of six hours for master plumbers. Two of the hours will be in the subjects of health protection, consumer protection or environmental protection, with the two of the remaining hours covering subjects which shall include information concerning the Act, Louisiana State Plumbing Board rules, current industry practices and codes, and subjects from lists of approved subjects published by the Louisiana State Plumbing Board. Two hours of the materials for master plumbers will be on business topics approved by the Louisiana State Plumbing Board.

3. - 19. ...

#### **C. Course Form and Content**

1. Course providers will offer classroom instruction in the course materials used for the CPE required for renewal of tradesman, journeymen and master licenses issued under the Act. Louisiana State Plumbing Board approval of course providers will be subject to all of the terms and conditions of this Section.

C.2. - D.9. ...

#### **E. Course Instructors**

1. The Louisiana State Plumbing Board will annually approve course instructors to provide the classroom instruction in the course materials used for the CPE required for renewal of tradesman plumber, journeyman plumber and master plumber licenses. Louisiana State Plumbing Board approval of course instructors will be subject to all of the terms and conditions of this Section. An individual who wishes to be approved by the Louisiana State Plumbing Board as a course instructor must apply to the Louisiana State Plumbing Board using an application form approved by the Louisiana State Plumbing Board. The following minimum criteria will be used by the Louisiana State Plumbing Board in considering approval of course instructors:

1.a. - 6. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(I).

**HISTORICAL NOTE:** Promulgated by the Department of Labor, State Plumbing Board, LR 30:2068 (September 2004), amended LR 37:2440 (August 2011), amended by the Workforce Commission, Plumbing Board, LR 43:979 (May 2017).

### **§1003. Water Supply Protection Specialists Recertification Requirements**

A. Effective January 1, 2015, in addition to the yearly renewal of their endorsement, every three years all persons holding a water supply protection specialist endorsement issued by the Louisiana State Plumbing Board are required to show proof of attendance at a board-approved industry related recertification program compliant with the guidelines of the American Society of Sanitary Engineers (ASSE)

*Series 5000* as defined in §313.D. Such recertification shall satisfy the endorsee's obligation to maintain continuing professional education relative to a water supply protection specialist endorsement, but shall not diminish or affect endorsee's obligation to fulfill continuing professional education requirements for journeyman or master plumbing licenses or medical gas installer or verifier endorsements, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2071 (September 2004), amended LR 37:905 (March 2011), LR 37:2441 (August 2011), amended by the Workforce Commission, Plumbing Board, LR 41:762 (April 2015), LR 43:979 (May 2017).

#### **§1005. Medical Gas Piping Installers and Medical Gas Verifiers**

##### **A. CPE Requirement**

1. Effective January 1, 2016, in addition to the yearly renewal of their license, all persons seeking to renew a medical as piping installer or medical gas verifier license issued by the Louisiana State Plumbing Board are required to show proof of attendance at a board-approved industry related recertification program, every NFPA 99 code cycle, compliant with the guidelines of the American Society of Sanitary Engineering International (ASSE) *Professional Qualification Standards Series 6000/6010 for Medical Gas Systems Installers or 6030 for Medical Gas Systems Verifiers*

or its equivalent as defined in §304 and §315. Such recertification shall satisfy the endorsee's obligation to maintain continuing professional education relative to the medical gas systems installer and medical gas systems verifier, but shall not diminish or affect licensee's obligation to fulfill continuing professional education requirements for journeyman or master plumbing licenses or water supply protection specialist endorsement, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, State Plumbing Board, LR 30:2074 (September 2004), amended LR 37:905 (March 2011), LR 37:2441 (August 2011), amended by the Workforce Commission, Plumbing Board, LR 42:578 (April 2016), LR 43:980 (May 2017).

#### **§1007. Effective Date**

A. The provisions of this Chapter shall become effective on January 1, 2006, subject to continuance of this date by the Louisiana State Plumbing Board, as noticed in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(I).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 30:2077 (September 2004), amended by the Workforce Commission, Plumbing Board, LR 43:980 (May 2017).

Ashley Jones Tullier  
Executive Director

1705#021

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Animal Health and Food Safety Egg Commission

Eggs (LAC 7:V.919 and 923)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through authority granted in R.S. 3:4271, notice is hereby given that the Department of Agriculture and Forestry (“department”) and the Louisiana Egg Commission intend to amend LAC 7:V.919 and 923. The amendment to §919 provides that a store may not repackage eggs unless it has an egg consolidation plan approved by USDA and the department. The amendment to §923 provides that for the sale of eggs and egg products produced out-of-state, the last dealer/wholesaler/processor to handle the eggs or egg products before they enter the state shall be responsible for paying all fees.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part V. Advertising, Marketing and Processing

#### Chapter 9. Market Commission—Poultry and Eggs

#### Subchapter B. Egg Grading and Marketing

#### §919. Sale or Offering for Sale of Eggs within

#### Louisiana

A. No person, firm, or corporation shall sell, traffic in, or deliver to the retail or consuming trade, any eggs unfit for human consumption or any eggs that do not meet Grade B requirements. A store may not repackage eggs unless it has an egg consolidation plan approved by USDA and LDAF.

B. - G. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122 (September 1993), amended LR 23:293 (March 1997), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, Egg Commission, LR 42:219 (February 2016), LR 43:

#### §923. Inspections; Fees; Failure to Meet Standards

A. - G. ...

H. Dealers-wholesalers shall be required to furnish evidence of origin by invoice on eggs which they handle. Dealers/wholesalers shall report volume of sales monthly on forms furnished by the department. On sale of eggs and egg products produced out-of-state, the last dealer/wholesaler/processor that handles the eggs or egg products before they enter the state shall be responsible for paying all fees. In-state producers/packers/processors are responsible for all fees of eggs or egg products they have sold in this state. Fees shall be paid not later than the fifteenth of the following month.

I. - J. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122

(September 1993), amended LR 23:294 (March 1997), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, Egg Commission, LR 43:

#### Family Impact Statement

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Jim Jenkins, Director of the Louisiana Egg Commission, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 4003, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on the 5th day of July 2017. No preamble is available.

Mike Strain, DVM  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Eggs**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will not result in any costs or savings to state or local governmental units.

The proposed rule requires that in order to repackage eggs for sale, a storeowner must have an egg consolidation plan approved by the USDA and the Louisiana Department of Agriculture and Forestry (LADF). The proposed rule also clarifies that on the sale of eggs and egg products produced out-of-state, the last dealer/ wholesaler/processor that handles the eggs or egg products before they enter the state shall be responsible for paying all assessment and inspection fees.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect revenue collections for state or local government units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Storeowners that currently repackage eggs under Rule 919 will no longer be permitted to repackage eggs until they have an egg consolidation plan approved by USDA and LADF. Failure to have an approved plan will result in the storeowner no longer being able to repackage and sell eggs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will not have an effect on competition and employment.

Lindsey Hunter  
General Counsel  
1705#055

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Forestry**

**Indian Creek Recreation Area (LAC 7:XXXIX.Chapter 5)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through authority granted in accordance with Act 591 of 1970 and R.S. 3:4402, notice is hereby given that the Department of Agriculture and Forestry (“department”), through the Office of Forestry, intends to amend and enact LAC 7:XXXIX.525-535, 539-541 and 545-547 relative to the use of the Indian Creek Recreation Area. The amendment to §525 clarifies that eviction from the site may be temporary or permanent. The amendment to §527 provides that two vehicle mirror hangtags will be provide to each campsite to assist employees in identifying paid guests. The Rule also addresses quiet hours. The amendments to §527.B permit a camper to occupy a site for 30 days or more during winter months (November 1-February 28), subject to availability. The amendment to §531 clarifies that the pavilion rental rate does not include the day-use fee. Section 533.A.1 and 2 have been combined to create a single rule regarding boating and Subsection B regarding pavilion rentals has been repealed and is being relocated to §545. The amendments to §535 add a 50 percent discount of day-use fees for veterans and an exemption from the day-use fee for disabled veterans. The amendments to §539 rename the

categories of campsites and remove the category “full hook up.” The fees in §539 remain the same. The amendments to §541 remove the service fee charged on all reservations and set forth a cancellation policy for monthly reservations. Section 545 is new and enacts a pavilion rental policy. Section 547 is also new and allows the park manager to impose mandatory minimum stays during peak usage times.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXXIX. Forestry**

**Chapter 5. Indian Creek Recreation Area**

**§525. Enforcement**

A. Persons violating these rules and regulations are subject to administrative sanctions to include fines for each violation, eviction from the site (temporary or permanent), and/or restitution to the department for damages incurred. If a person is delinquent in paying for damage incurred, the department reserves the right to refuse privileges to that person pending receipt of such restitution.

B. No person shall enter a site:

1. when the site is closed; or
2. without proper registration.

C. Site visitors may be required to furnish specific information upon registration, including but not limited to, vehicle license plate number and a driver's license number.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1505 (September 2016), amended LR 43:

**§527. Overnight Use**

A. - A.4. ...

5. Pass codes on entrance gates are issued for the personal use of the permittee, who is prohibited from allowing others to use the pass code, or otherwise making the facilities open so that others not covered by the permit may enter or leave the facility or area. Each campsite will be issued two temporary vehicle mirror hangtags to assist employees in identifying paid guests. The first vehicle is the RV or truck pulling the camper. The second vehicle is defined as a vehicle being towed behind the RV or driven by another occupant who is camping on the same campsite. Additional vehicles will be allowed by way of a general admission day-use entrance fee (see §531).

6. ...

7. Overnight users must maintain a reasonably quiet facility between the hours of 10 p.m. and 7 a.m. No generators are allowed to be operational between the aforementioned hours.

8. - 12. ...

B. Camping

1. With the exception of a campground host and campsites reserved at the 30-day off-season rate, overnight camping is limited to 14 consecutive days. After 14 consecutive days of occupancy at a site, the visitor must vacate the site for 7 consecutive days before occupancy may be resumed.

2. During winter rental (November 1-February 28), a camper may occupy a site for 30 or more days at a time, subject to availability. No campsite may be unattended for longer than a 48-hour continuous period under any permit agreement.

3. Indian Creek Recreation Area is intended for tents and recreational vehicles only. The term "recreational vehicles" includes but is not limited to camper trailers, travel trailers and fifth wheel trailers but does not include ATVs.

4. Campsite occupancy is limited to six persons. At designated group camping areas occupancy limits are set by the site manager or his designee.

5. The following are to be used as general guidelines to define a camping unit by the site manager or his designee:

- a. one camper with additional vehicle and one large tent or two small tents;
- b. two vehicles and tent combinations not to exceed three tents.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016), amended LR 43:

### **§531. Fees; Day-Use Fees**

#### **A. General Admission Day-Use Entrance Fees**

1. The day-use fee at Indian Creek Recreational Area is \$7 per vehicle. Pavilion rental does not include day-use fee.

2. ...

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016); amended LR 43:

### **§533. Fees; Boating**

A. Canoes, kayaks, flat bottom boats, paddleboats or other watercraft may be rented for \$30 per vessel per day. Rental of any watercraft includes paddles and two lifejackets. Additional life jackets are available for rental at fee of \$1 per day.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016), amended LR 43:

### **§535. Fees and Exemptions; Exemptions/Discounts**

A. Veterans. A veteran of the Armed Forces of the United States who shows proof of same and any person(s) accompanying him in a single, private, non-commercial vehicle, may receive a 10 percent discount on camp site rental fees. There is no discount on the winter rates or other rental rates (kayaks, boats, etc.). Veterans will also receive a 50 percent discount off day-use fees. Proper picture identification is required.

B. Disabled Veterans. A special veteran entrance permit allows any disabled Louisiana resident who is a veteran of the armed forces of the United States, and any person(s) accompanying him in a single, private, non-commercial vehicle exemption from the day-use entrance fee. Applications for a veteran permit may be made to the Louisiana Department of Veterans' Affairs service office serving the parish in which the applicant resides. Proper picture identification is required.

C. School Groups. Any child who is on a field trip conducted as part of the curriculum of the school and any classroom teacher, parent, bus driver and any other person accompanying a school child on such a field trip are exempt from paying the general admission charge to any site.

D. Senior Citizens. Any person age 50 or older may receive a 10 percent discount on camp site rental fees. There is no discount on the general entrance fee, winter rates or other rental rates (kayaks, boats, etc.).

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016), amended LR 43:

### **§539. Fees and Exemptions; Overnight Use**

#### **A. Camping**

1. Standard Campsite. A standard campsite rents for \$18 per night during the winter season (November 1-February 28) and \$22 per night during the summer season (March 1-October 31). A premium waterfront campsite rents for \$22 per night during the winter season (November 1-February 28) and \$28 per night during the summer season (March 1-October 31).

2. Pull-Thru Campsite. A pull-thru campsites consist of two sites.

a. Pull-Thru Non-Water Front Single Campsite (Standard Single Pull-Thru). A pull-thru single non-water front campsite rents for \$18 per night during the winter season (November 1-February 28) and \$22 per night during the summer season (March 1-October 31).

b. Pull-Thru Non-Water-Front Double Campsite (Standard Single Pull-Thru). A pull-thru non-water front double campsite rented for use by a single tenant camper rents for \$32 per night during the winter season (November 1-February 28) and \$42 per night during the summer season (March 1-October 31).

c. Pull-Thru Water-Front Single Campsite (Premium Single Pull-Thru). A pull-thru waterfront single campsite rented for use by a single tenant camper rents for \$22 per night during the winter season (November 1-February 28) and \$28 per night during the summer season (March 1-October 31).

d. Pull-Thru Water-Front Double Campsite (Ultra Pull-Thru). A pull-thru waterfront double campsite rented for use by a single tenant camper rents for \$42 per night during the winter season (November 1-February 28) and \$54 per night during the summer season (March 1-October 31).

3. Primitive Area. A primitive area campsite rents for \$14 per tent per day.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016), amended LR 43:

### **§541. Reservation Policy**

#### **A. General Provisions**

1. Reservations may be made for Indian Creek Recreational Area for an allotted number of campsites as determined by the site manager.

2. - 4. ...

5. Cancellation of a monthly reservation initiated by the site user and made up to 48 hours prior to the date of arrival will incur a \$50 charge. No cancellations will be accepted 48 hours prior to the date of arrival. A transfer of reservation dates will be treated as a cancellation and a new reservation, and is therefore subject to the cancellation policy. There is no charge to transfer a reservation from one

site to a different site on the same dates. Requests for waivers of the cancellation fee must be made in writing to the commissioner of agriculture and forestry or his designee and will be granted only in extreme circumstances.

6. In the event reservations must be canceled by LDAF staff (e.g., for maintenance or emergency reasons) the rental fee will be refunded in full.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 42:1506 (September 2016), amended LR 43:

#### **§545. Pavilion Use; Rate; Restrictions**

##### **A. Pavilion Rental**

1. Exclusive use of the pavilion can only be made by executing a rental agreement and payment of a rental fee.

2. The pavilion rental rate is \$100 per day for the large pavilion and \$30 per day for the small pavilion. Pavilion rental does not include day-use fee.

3. Full payment of the \$100 rental fee for the large pavilion and \$30 rental fee for the small pavilion is due at time of reservation. Prior to, or on the date of the reservation, a \$50 cleaning deposit is required for the large pavilion and \$15 cleaning deposit for the small pavilion. The party renting the pavilion is responsible for cleanup after the event and ensuring the pavilion is not damaged. The cleaning deposit will be refunded to the customer either electronically or by U.S. mail within 10 days of the event if sufficiently clean.

4. The pavilion may only be used between the hours of 8 a.m. and 7 p.m.

5. No inflatable jumpers/slides using water will be permitted for use in the park. No inflatable or plastic swimming pools will be allowed in the park.

6. All general park rules apply to the pavilion rental.

7. Any damage or destruction of property will be repaired or replaced at the expense of the renter.

8. Cancellation of a reservation initiated by the renter made up to 48 hours prior to the date of rental will incur a \$35 charge for the large pavilion, and a \$15 charge for the small pavilion. No cancellations will be accepted 48 hours prior to the date of arrival; therefore, the entire deposit will be retained by the Department of Agriculture and Forestry.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 43:

#### **§547. Mandatory Minimum Stays**

A. The park manager, at his discretion, may impose mandatory minimum stays during peak usage times.

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970 and R.S. 3:4402.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 43:

##### **Family Impact Statement**

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;

3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

##### **Poverty Impact Statement**

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

##### **Small Business Analysis**

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

##### **Provider Impact Statement**

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

##### **Public Comments**

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Wade Dubea, State Forester, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 6000, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on July 5, 2017. No preamble is available.

Mike Strain, DVM  
Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Indian Creek Recreation Area**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not result in any costs or savings to state or local governmental units.

This proposed rule allows a camper to occupy a site for more than 30 days at a time during the winter, adds a 50% discount off of day-use fee for veterans, exempts disabled veterans from day-use fee, adds a \$50 cancellation fee for monthly reservations, adds either a \$50 or \$15 cleaning deposit for pavilion rentals, adds either a \$35 or \$15 cancellation fee for pavilion rentals, and other general updates.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed amendments results in a decrease in revenue collections at the Louisiana Department of Agriculture and Forestry (LDAF) as it allows a discount on day-use fees for veterans. However, the amount of this decrease cannot be determined, as the number of veterans visiting Indian Creek is not currently tracked.

Any decrease will be offset by an increase in revenue collections as the rule also adds a cancellation fee on monthly reservations and pavilion rentals. Approximately 372 monthly reservations are cancelled annually. If the rule change is approved, it is anticipated that the LDAF will collect \$18,600 in fees (372 cancellations x \$50 cancellation fee). Approximately 8 pavilion rentals are cancelled annually. If the rule change is approved, it is anticipated that the LDAF will collect \$280 in fees (8 cancellations x \$35 cancellation fee)

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Because of discounting and exempting the day-use fee, veterans will benefit day saving \$3.50 per day that they use the park and disabled veterans will benefit by saving \$7 per day. To the extent that a monthly reservation is canceled up to 48 hours prior to the stay, the guest will result be charged a \$50 cancellation fee. To the extent that a pavilion rental is canceled, the guest will result be charged either a \$35 or \$15 cancellation fee. Cancellations will not be accepted 48 hours prior to the date of arrival; therefore, the entire deposit will be retained by the Department of Agriculture and Forestry. The remaining rules are not anticipated to result in an economic cost or benefit to persons visiting Indian Creek.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules are not anticipated to have an effect on competition or employment.

Lindsey Hunter  
General Counsel  
1705#054

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Culture, Recreation and Tourism  
Office of the State Museum**

**Public Access (LAC 25:III.Chapter 1)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and with the authority granted in R.S. 25:341 et seq., and R.S. 36:204(A)(3), notice is hereby given that the office of the state museum proposes to amend Chapter 1 of LAC 25:III.

Amending Chapter 1 adds a definitions section and adjusts terminology in accordance therewith; rearranges and clarifies provisions pertaining to public access and event rentals; allows for event rentals without a three-hour minimum; amends charges for event rentals, museum admission, and special programs; and authorizes discounts, annual passes, processing fees, and promotional rates.

**Title 25  
CULTURAL RESOURCES**

**Part III. Office of the State Museum**

**Chapter 1. Public Access**

**§101. Definitions**

A. As used in this Part, unless the content clearly provides otherwise, the following terms shall be defined as follows.

*Assistant Secretary*—the assistant secretary of the Office of the State Museum.

*Board*—the board of directors of the Louisiana State Museum.

*DCRT or Department*—the Department of Culture, Recreation and Tourism.

*Demonstration Collection*—objects are considered to be expendable and may be used by staff and patrons in the interpretive programs of the OSM.

*Louisiana State Museum*—a statewide complex of facilities under the management and supervision of the office of the state museum, an agency in the Department of Culture, Recreation and Tourism.

*Museum*—a single building that is open to the general public within the Louisiana State Museum.

*OSM or Agency*—Office of the State Museum.

*Permanent Collection*—objects relate directly to the mission of OSM and support its primary goals. These objects are subject to the highest levels of documentation and care.

*Study Collection*—objects supplement the permanent collection and are maintained in order to support the research and educational functions of the OSM. Included is material that is duplicative or of lesser quality, significance, interest or use than the permanent collection.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 25:341 et seq., and R.S. 36:204(A)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation, and Tourism, Office of the State Museum, LR 43:

**§103. Hours of Operation**

**[Formerly §101]**

A. Each museum will be open to the public in accordance with a published schedule established by the agency.

B. The agency is authorized to close museums or sections of museums as necessary.

C. As designated by the agency, there are buildings and sections of buildings under the jurisdiction of the agency that are not open to the general public due to the nature of the building or the nature of the use (e.g., security, collections management and storage, residential use, utilities, office, commercial tenants, etc.).

D. The agency is authorized to open museums on official state holidays provided that affected employees are compensated in accordance with applicable laws and Civil Service rules.

E. Due to staffing and other operational concerns, the agency may turn away a group that has not reserved its visit in advance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 25:342-348.

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation, and Tourism, Office of the State Museum, LR 11:684 (July 1985), amended LR 43:

**§105. Admission Fees**

**A. Minimum Admission Fees**

Building	Location	Standard	Student (7-17), Senior (62+), Active Military	6 Years of Age and Under
Cabildo with Arsenal	New Orleans	\$6	\$5	Free
Presbytere	New Orleans	\$6	\$5	Free
Old U.S. Mint	New Orleans	\$6	\$5	Free
Capitol Park Museum	Baton Rouge	\$6	\$5	Free
1850 House	New Orleans	\$3	\$2	Free
Madame John's Legacy	New Orleans	\$3	\$2	Free
Wedell-Williams Aviation and Cypress Sawmill Museum	Patterson	\$3	\$2	Free
Louisiana Sports Hall of Fame and Northwest Louisiana History Museum	Natchitoches	\$3	\$2	Free
E.D. White Historic House	Thibodaux	Free	Free	Free

B. Minimum admission fees do not include applicable taxes, processing fees, and charges for special exhibitions, programs, guided tours, and events.

**C. Discounts and Promotional Rates**

1. Groups. A 20 percent discount is available for groups of 15 or more visitors who are old enough to require an admission fee and who purchase the admission or arrange the visit with agency in advance.

2. Student Groups. Student groups are admitted to museums free-of-charge if:

- a. the student group has reserved its visit at least 48 hours in advance of its arrival;
- b. the student group is affiliated with a recognized public or private school system or recognized home school organization; and
- c. the student group includes at least one chaperone per every 10 students as a minimum. Chaperones will be admitted free, up to one per every 5 students. Additional chaperones may be required to pay the admission fee.

**3. Annual Pass**

- a. An annual pass, which entitles the bearer to admission to all museums that are open to the public, is \$40 per year.
- b. The annual pass is valid for one year from the date of issuance.
- c. The annual pass is not transferable.

**4. Special Promotions**

a. The OSM may, through the assistant secretary, enter into an agreement or promotion that discounts or waives admission fees on a defined basis for the purpose of

promoting visitation, public support and mission-related activities of the department.

b. A special promotion may include, but is not limited to, free admission for museum support organizations; promotional coupons such as buy-one-get-one free; discounts for recurring group visits; free admission with other museum activity attendance; promotional free days in conjunction with special events, anniversaries, festivals and the like.

c. A special promotion must promote the mission of the OSM or an affiliated entity and must not conflict with any applicable law or regulation.

d. Special promotions will be tracked and evaluated for achievement of the intended purpose. Special promotions will be reviewed and reauthorized annually.

5. Combination Admission. The OSM may agree to participate in programs that entitle a visitor to discounted admission to multiple museums or other attractions, including those that are not a part of the Louisiana State Museum.

D. All fees provided in this section may be adjusted to provide a single, tax and fee-inclusive price for the visitor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 25:341 et seq. and R.S. 36:204(A)(3).

**HISTORICAL NOTE:** Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Museum, LR 12:89 (February 1986), amended LR 13:82 (February 1987), LR 20:784 (July 1994), LR 24:2235 (December 1998), LR 30:1057 (May 2005), LR 43:

**§107. Building Use Policy for Events [Formerly §103]**

A. The Louisiana State Museum is an historical, cultural, and educational institution whose primary purpose shall be to collect, preserve, and present, as an educational resource, objects of art, documents, artifacts, and the like that reflect the history, art, and culture of Louisiana.

B. Use of the Louisiana State Museum facilities for functions and events may be permitted only insofar as such use does not compromise or put at risk the mission, accreditation, or integrity of the Louisiana State Museum and its collections and such use comports with applicable law and the regulations set forth herein.

C. Certain buildings and spaces within buildings in the Louisiana State Museum may be designated as being unavailable for functions and events.

D. The agency is authorized to determine whether the proposed use, user, and museum or space within a museum meet the eligibility criteria for the agency's building rental policy for events and whether the request complies with the procedures and requirements set forth in this chapter and applicable laws.

**E. Procedure**

1. Eligible Users. Requests for the use of a Louisiana State Museum building or space thereof for an event or function will be considered from:

- a. nonprofit organizations with purposes similar to the educational and historical museum purposes of the agency;
- b. governmental agencies for governmental purposes or events;
- c. groups, persons, or companies whose proposed use is, in the opinion of the assistant secretary, not in conflict with the purposes of the agency.

2. Eligible Use. Requests will be considered from eligible organizations, agencies, groups, persons, and companies only for use that does not compromise or put at risk the mission, accreditation, or integrity of the Louisiana State Museum and its collections. Such use generally falls into one of two types of events or functions:

a. receptions and sit-down meals, which must occur when the museum is closed to the public; or

b. business meetings and lectures, which may occur when the museum is open to the public.

3. Capacity. Requests shall state the reasonably anticipated attendance at the event, which attendance shall not exceed the maximum building capacity of the museum as established by the fire marshal.

4. All requests must be submitted in writing (at least 30 days prior to the date of the event is preferred) to allow for proper planning, coordination, and completion of all required paperwork, including but not limited to the required written event agreement.

5. The agency may deny an application if:

a. the applicant does not meet the eligibility criteria;

b. the applicant has requested to use a museum or space within a museum that is unavailable for use as a venue for an event or function;

c. the proposed use exceeds the capacity of the museum or space within the museum;

d. the proposed use may put the museum, its collections, or accreditation at risk;

e. the agency does not have sufficient staff or resources to support the proposed use;

f. the application is incomplete or is not submitted timely;

g. the proposed use will interfere with the exhibitions or other programs or activities of the museum;

h. the event agreement is not executed timely; or

i. the applicant fails to remit the deposit or other amounts when due and payable, fails to present certificates of insurance if required, or otherwise fails to comply with the terms of the event agreement.

#### F. Terms of Use—Event Agreement

1. The terms of use for the event will be established fully in a written agreement between the agency and the host or a legally authorized representative of the host. The event agreement should be completed and executed by both parties at least 30 days prior to the date of the use.

2. The event agreement is specific to the building and the approved use. Terms shall include, but are not limited to:

a. the agency will not remove collections or exhibition items to accommodate the event;

b. smoking and open flames are prohibited;

c. the host is responsible for choosing and making its own arrangements with caterers and vendors. However, the agency reserves the right to reject caterers and vendors that do not comply with the agency's instructions;

d. the host is responsible for its own parking arrangements staff, contractors, or guests;

e. the host is responsible for arrangements for tables, chairs, audio-visual and other equipment, which must be approved in advance by the agency. At some museums, such equipment may be available at an additional charge;

f. the host shall designate an authorized representative to be present for the entire duration of the use. The representative must have decision-making authority to act on behalf of the host. The representative will be responsible for all coordination with the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:341 et seq., and R.S. 36:204(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museums, LR 11:683 (July 1985), amended LR 13:83 (February 1987), LR 16:295 (April 1990), LR 20:783 (July 1994), LR 24:2233 (December 1998), LR 31:1055 (May 2005), LR 43:

### **§109. Building Use Agreement and Charges for Events [Formerly §103]**

A. Event Rental Fees and Costs. The written event agreement will designate the authorized museum space and time for the approved use and shall specify applicable costs and fees. The event fees include:

1. a base service charge, which is established based on the agency's cost of standard security, custodial, utilities, and administrative support required to service previous functions of a similar size and type;

2. a donation, which is a gift to a designated fund in the Louisiana Museum Foundation or another OSM-designated nonprofit organization whose primary purpose is to support the mission of the OSM, which fund is designated for OSM use for endowment, education, exhibits, acquisition, publications, conservation and building function support purposes;

3. additional charges based on the nature of the requested use and/or additional requirements as agreed upon. Such additional charges will be included in the written event agreement and may relate to fees and/or required donations;

4. additional charges for use that requires the closing of any portion of the museum prior to its normal closing time in the amount of \$250 per hour plus applicable fees and donation for the period closed during public hours;

5. additional charges imposed if, after the completion of the event, actual use exceeded the authorized use, e.g., the actual number of persons in attendance exceeded the planned number or the time and space used were greater than planned;

6. additional charges imposed if, after the completion of the event, there are any repairs necessary to the museum building, grounds, collections, property, or exhibitions that are the result of the use;

7. additional charges will be in addition to all other charges and fees and will be payable by the host to the OSM immediately upon notification.

B. A deposit of not less than 50 percent of the total indicated in the written agreement will be paid by the host to the OSM at least 30 days prior to the date of the use. The balance and any additional charges required will be payable upon billing by the OSM, at the time of or following the use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:341 et seq., and R.S. 36:204(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of the State Museums, LR 11:683 (July 1985), amended LR 13:83 (February 1987), LR 16:295 (April 1990), LR 20:783 (July 1994), LR 24:2233 (December 1998), LR 31:1055 (May 2005), LR 43:

**§111. Building Use Fee Schedule for Events  
[Formerly §103]**

**A. Base Service Charge Fees—All Buildings**

**1. Business meetings and lectures**

a. In New Orleans and Baton Rouge, maximum 200 persons.

Guests	First Hour	Each Additional Hour
1-100	\$500	\$150
101-200	\$750	\$200

b. In Natchitoches, Patterson and Thibodaux, maximum 200 persons.

Guests	First Hour	Each Additional Hour
1-100	\$200	\$100
101-200	\$250	\$150

c. An additional cleaning and repair fee of \$200 during public hours and \$300 during non-public hours will be charged for costs involved in preparation and post-function requirements.

**2. Receptions and similar functions. Minimum requirement will be one hour plus set-up and cleaning.**

a. In New Orleans and Baton Rouge

Guests	First Hour	Each Additional Hour
1-200	\$700	\$200
201-300	\$800	\$250
301-500	\$900	\$300
501+	\$1,000	\$350

b. In Natchitoches, Patterson and Thibodaux

Guests	First Hour	Each Additional Hour
1-200	\$200	\$150
201-300	\$250	\$200
301+	\$300	\$250

c. An additional cleaning repair fee of \$300 will be charged for costs involved in preparation and post-function responsibilities.

**3. Sit-Down Meals. Seated meals with wait staff will be charged an additional \$200 per hour.**

a. An additional cleaning repair fee of \$500 will be charged for costs involved in preparation and post-function requirements.

b. All sit-down dinners must be catered to include waiters serving dinners to each table. The ratio of waiters to diners must be at least 1 to 10.

B. The agency may only waive the base service charge fees for use by the agency, department, or use by an entity that is cooperating with the agency on an endeavor that fulfills a public purpose that comports with the agency's purposes.

C. Donation. Donations will be in accordance with the following schedule.

Location	Building	Rate (per hr.)
Baton Rouge	Museum	\$1,000
New Orleans	Cabildo	\$1,000
New Orleans	Presbytere	\$1,000

Location	Building	Rate (per hr.)
New Orleans	Old U.S. Mint	\$1,000
New Orleans	Arsenal	\$500
New Orleans	Mme. John's Legacy	\$500
Patterson	Museum	\$200
Natchitoches	Museum	\$350
Thibodaux	Historical Site with Grounds	\$200

NOTE: Time will be rounded to the next quarter hour for determination of donation requirements.

D. The agency may only waive all or part of the donation portion when he determines that to do so would be in the best interest of the OSM.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:341 et seq. and R.S. 36:204(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museums, LR 11:683 (July 1985), amended LR 13:83 (February 1987), LR 16:295 (April 1990), LR 20:783 (July 1994), LR 24:2233 (December 1998), LR 31:1055 (May 2005), LR 43:

**Family Impact Statement**

Amendment to this Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relations to individual or family poverty in relations to individual or community asset development as described in R.S. 49:973.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

Written comments may be addressed to Rennie Buras, II, Deputy Secretary, Department of Culture, Recreation and Tourism, P.O. Box 94361, Baton Rouge, LA 70804 until 4:30 p.m. on June 10, 2017.

Rennie S. Buras, II  
Deputy Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Public Access**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is not anticipated that there will be any implementation costs to State or local governmental units. The modifications to Title 25 Part III provide for the collection of pass-along fees, adjusted rental fees based on local markets, and the ability to capitalize on promotional opportunities in order to increase visitation and revenue. Other adjustments add definitions and clarify terms for consistency.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The estimated effect will be a net gain in revenue for the Office of the State Museum of \$28,875 beginning in FY 18 and \$33,750 in FY 19 and subsequent years to the extent the projected rentals occur. This will be generated by a larger portion of existing visitors paying for admission, and increased rentals and rental rates of certain museums.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated cost to individual museum visitors will be a modest increase to account for online ticket processing. Persons interested in renting facilities in Patterson, Thibodaux, and Natchitoches will see a decrease in fees and required donations to rent those facilities. However, the decreased rental rates are anticipated to result in a net gain in revenues for the OSM, as those sites are currently priced too high for local markets and generate little to no rental income. The reduced rates will generate new reservations for outside rentals and events.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Any negative effects on competition will be negligible. Events held in museums are a unique opportunity in very specific settings. The adjusted rental rates will improve the museums' competitiveness in specific markets. However, as the museum does not offer additional services, the increased use through event rentals will provide new opportunities in the private sector for caterers, event supply rentals, audio-visual companies, entertainers and other events related vendors.

Rennie S. Buras, II  
Deputy Secretary  
1705#022

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment  
Standards and Practices (LAC 28:XI.5909)

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 approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §305, Test Security Policy; §307, Change of District Test Coordinator Notification; §309, Erasure Analysis; §311, Addressing Suspected Violations of Test Security and Troubling Content in Written Responses; and §316, Cell Phones and Other Electronic Devices. The proposed revisions require local education agency (LEA) test security policies be reviewed once every three years, require that LEAs collect all student cell phones prior to students gaining access to secure test materials, require that all test administrators keep cell phones off while in the vicinity of secure materials, provide that test administrators may only access those electronic devices required for approved accommodations, online assessments, or to provide technical assistance during online assessments, and remove outdated procedures.

**Title 28**

**EDUCATION**

**Part XI. Accountability/Testing**

**Subpart 3. Bulletin 118—Statewide Assessment  
Standards and Practices**

**Chapter 59. Kindergarten Developmental Readiness  
Screening Program**

**§5909. State BESE-Approved Instruments  
[Formerly LAC 28:CXI.909]**

A. Instruments approved for use beginning with the 2017-2018 academic year. School districts may use any of these instruments.

Name of Instrument	Publisher
Developing Skills Checklist (DSC) (authorized through the 2017-2018 school year)	CTB McMillan/McGraw-Hill
GOLD Survey	Teaching Strategies, LLC
Desired Results Developmental Profile Assessments (DRDP)-K	California Department of Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 and R.S. 17:391.11.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1535 (July 2005), amended LR 43:

**Family Impact Statement**

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

**Poverty Impact Statement**

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

**Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered

and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until noon, June 8, 2017, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be an indeterminable impact to expenditures of local school districts and other local education agencies (LEA) as a result of the transition to new readiness assessments for kindergarten students. To the extent proposed assessments, some of which will be made available by the Department of Education at no charge, are used by districts and LEAs, savings may be realized.

Louisiana Revised Statute 17:391.11 requires the governing authority of each public school offering kindergarten classes to administer to every child entering kindergarten for the first time a valid and reliable readiness assessment. The statute further requires the Louisiana Department of Education (LDE) to review the available valid and reliable individually administered readiness tests and recommend to BESE those tests acceptable for use.

Currently, local education agencies (LEAs) administer Developing Skills Checklist (DSC) to incoming kindergarten students. DSC is no longer published and is in limited supply. Therefore, the proposed revisions add two new kindergarten entry assessments - Teaching Strategies Gold Survey (TS Gold) and Desired Results Developmental Profile (DRDP) - as acceptable kindergarten entry assessments. To the extent the per pupil cost of the TS Gold is higher than what is currently paid for the DSC, costs may increase. However, the DRDP will be provided at no cost to the districts and LEAs, which could result in a savings for those using this assessment.

LEAs may administer the DSC during the 2017-2018 school year. However, that assessment will not be available beginning with the 2018-2019 school year.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy change will have no anticipated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1705#025

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Board of Home Inspectors**

Education, Training and Testing (LAC 46:XL.Chapters 1-7)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 17:1475(4), that the Board of Home Inspectors proposes to amend this Part to provide for qualifying licensees and lead inspectors, to provide additional definitions, to address insurance requirements, to better facilitate education, training and testing, to comply with the provisions of R.S. 17:1478(B) and to further clarify the duties of special investigative entities.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part XL. Home Inspectors**

**Chapter 1. General Rules**

**§103. Domicile; Meetings; Quorum; Service of Process; Publication**

A. - B. ...

C. The board shall publish quarterly a bulletin, which shall be the official journal of the board. This bulletin shall contain notice of all applications filed, board agendas, minutes of open meetings, request for declaratory relief, and generally serve as the board's form notice to licensees and the public. All licensees shall receive the bulletin free of charge. Others may subscribe to the bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2857 (December 2010), LR 43:

**§109. Definitions**

\*\*\*

*Qualifying Licensee*—a licensed employee or member of a corporation, limited liability company and other in the business of providing home inspection services, designated

by the entity to ensure compliance with the requirements of these rules and the home inspector licensing law.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1473 and R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2739 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1686 (August 2004), LR 36:2858 (December 2010), LR 41:919 (May 2015), LR 43:

### **§113. Qualifications for Licensure and Application**

A. Applicants must have:

1. - 2. ..
3. passed the required training and licensing examinations;
4. - 7. ..
8. applied to the Louisiana State Police for a criminal background check, pay all costs associated therewith and submit the results to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 43:

### **§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status**

A. - C. ...

D. Any licensee who fails to timely renew his license may thereafter obtain renewal upon filing a renewal application and upon paying the appropriate renewal and delinquent fees. The period for delinquent renewal of an expired license shall be limited to the 12-month period immediately following the expiration date of the active license. Failure to renew an expired license during such 12-month period shall require the former licensee to pass the board approved licensing examination, pay the appropriate renewal and delinquent fees, file a renewal application, and complete all continuing education requirements accruing during the period of delinquency. Failure to renew an expired license within the 36-month period immediately following the expiration date of the active license shall, in addition to the above requirements, retake and pass 90 hours of classroom education as set forth in the board rules; obtain 10 hours of instruction and training from a certified infield trainer, as provided for in §119.C.3, and take the standards of practice and *Code of Ethics* report writing seminar offered by the board or other board approved education provider. Any home inspection performed during an expiration period is considered a violation and shall subject the licensee to disciplinary action by the board.

E. A licensee may hold inactive status by maintaining license renewals and continuing education requirements.-All insurance requirements for inactive licensees are waived. Licensees holding inactive status shall not perform home inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 36:2858 (December 2010), LR 37:2405 (August 2011), LR 41:919 (May 2015), LR 43:

### **§117. Fees; Submission of Report Fees; Timeliness of Filings**

A. - A.7. ...

B. Each home inspection performed by a home inspector under these rules shall be subject to a \$5 state inspection fee per home inspection. This fee is to be made payable to the Louisiana state Board of Home Inspectors and is to be remitted monthly in the following manner.

1. A reporting form, approved by the board, must be filed by the fifteenth day of the month following the inspection. The form shall list the inspections performed and total fees due. The home inspector is required to file a reporting form whether or not any inspections are performed during a calendar month.

2. ...

3.a. Failure to timely file a monthly inspection report and/or pay inspection report fees, shall result in a fine of \$25 plus an additional \$5 per inspection reported and/or performed.

b. Three or more untimely monthly filings in a calendar year may result in a suspension of license and/or additional fines.

B.4. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 34:1926 (September 2008), LR 36:2858 (December 2010), LR 41:920 (May 2015), LR 43:

### **§121. Continuing Education; Instructors**

A.1. - A.2. ...

B. Continuing Education Courses

1. - 9. ...

10. Continuing education courses must be taught by continuing education providers who meet the criteria set forth in §121.F.1. Qualified guest lecturers may teach courses on behalf of continuing education provider instructors. The continuing education provider shall be responsible for confirming the qualifications of the guest lecturer.

B.11. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477 and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2860 (December 2010), LR 37:2405 (August 2011), LR 38:2531 (October 2012), LR 40:1003 (May 2014), LR 43:314 (February 2017), LR 43:

### **§127. Insurance**

A. - A.2. ...

B. Each licensee shall file with the board a certificate of coverage showing compliance with the required terms and conditions of insurance coverage by the inspector's annual license renewal date. The home inspector shall identify the LSBHI as a certificate holder with the inspector's insurance company. The certificate, notice of cancellation, renewal or suspension shall be provided to the board directly by the insurance company.

C. - D. ...

E. Upon cancellation of any insurance where a gap in coverage may occur, the licensee shall immediately inform

the board and cease performing home inspections. When replacement coverage is obtained, evidence shall be immediately transmitted to the board in accordance with §127.B.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1477 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1688 (August 2004), LR 41:921 (May 2015), LR 43:

### §129. Reciprocity

A. ...

B. Prior to being granted reciprocity, the applicant shall attend the LSBHI report writing seminar conducted by the board or its approved representative and pass the LSBHI-approve standards of practice and code of ethics examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1484.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 43:

### §133. Report of Address Changes

A. Every licensee shall report any change in office address, residence address, office phone, residence phone, and/or email address to the board, on the board approved change-of-information form posted on the board's website, within 15 days of such change. The board shall acknowledge any change, in writing, and shall update all records accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 41:921 (May 2015), LR 43:

### §135. Display of License

A. - C. ...

D. All correspondence, inspection reports and advertisements shall identify the licensee with the term *licensed home inspector* or the acronym "LHI" along with the license number of the inspector.

E. All general advertising of home inspections by a corporation, limited liability, or other entity shall include at a minimum the license number of the qualifying licensee on the advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 41:921 (May 2015), LR 43:

### §139. Prohibited Acts: Penalties and Costs

A. The board may suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include but not be limited to the following:

1. - 9. ...

10. engaging in conduct or advertising or holding oneself out as engaging in or conducting the business or acting in the capacity of a home inspector without

possessing a valid license or while possessing a license that is inactive, suspended, expired or revoked;

11. ...

12. providing fraudulent documentation or information regarding continuing education requirements.

B. - B.3. ...

C. Violators of any of the provisions of these rules or the law may be fined by the board in an amount not to exceed \$1,000 per each separate violation.

1. All fines issued under this Chapter shall be due and payable within 30 days of the date of the imposition of the fine, unless the party fined submits a request, in writing, to the board within 30 days of the imposition of the fine requesting a defined extension of time to pay the fine or to make periodic payments.

2. If the fine imposed is not paid in full within 30 days as prescribed in §139.C.1 above, or as extended by the board after timely written request, the licensee's license shall be automatically suspended without further action from the board until the fine is paid in full.

D. ...

E. The board, as a probationary condition or as a condition of a revocation or suspension of a license, may require a licensee to pay all costs of the board proceedings, including but not limited to those expenses related to the services of investigators, stenographers and attorneys, and any court costs.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1486-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1688 (August 2004), LR 41:921 (May 2015), LR 43:

## Chapter 3 Standards of Practice

### §303. Definitions

A. The definitions in §109 of this Part are incorporated into this Chapter by reference. The following definitions apply to this Chapter.

\*\*\*

*Deficient*—a condition of a system or component that, in the inspector's professional opinion, may be in need of repair.

\*\*\*

*Home Inspector*—any person licensed under these rules who holds himself out to the general public and engages in the business of performing home inspections on resale residential buildings for compensation and who examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences.

\*\*\*

*Lead Inspector*—licensee responsible for being in compliance with board requirements when multiple licensed home inspectors perform on an inspection.

\*\*\*

*Serviceable*—a state in which the system or component is functioning as intended.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1689 (August 2004), LR 36:2861 (December 2010), LR 38:2532 (October 2012), LR 41:922 (May 2015), LR 41:1487 (August 2015), LR 43:

**§305. Purpose and Scope**

- A. ...
- B. Home inspectors shall:
  - 1. provide the client with a written pre-inspection contract, whenever possible, which shall:
    - a. - d. ...
    - e. state the name and license number, and contain the signature of the licensed home inspector, lead inspector, and/or qualifying licensee performing the inspection.
  - 2. ...
  - 3. submit a written report to the client within five days of the inspection which shall:
    - a. - c. ...
    - d. state the name, license number, and contain the signature of all licensed home inspectors conducting the inspection and identify the lead inspector or the qualifying licensee performing the inspection.

C. - C.4. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 38:2532 (October 2012), LR 43:

**§309. General Exclusions**

- A. Home inspectors are not required to inspect or report on:
  - 1. - 5. ...
  - 6. any component or system that was not inspected and so stated in the home inspection report or pre-inspection agreement.

A.7. - C.6. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1478.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 36:2862 (December 2010), LR 38:2532 (October 2012), LR 41:922 (May 2015), LR 43:

**§319. Electrical System**

- A. - C. ...
- D. The home inspector shall report on the presence or absence of smoke detectors.
- E. The home inspector is not required to:
  - 1. - 3. ...
  - 4. inspect or test;
    - a. ...
    - b. central security systems, including but not limited to heat detectors, motion detectors, control pads, carbon monoxide detectors, smoke detectors or any associated devices.

4.c. - 5. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2748

(December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1691 (August 2004), LR 36:2863 (December 2010), LR 38:2533 (October 2012), LR 41:923 (May 2015), LR 43:

**Chapter 5. Code of Ethics**

**§501. Code of Ethics**

- A. ...
- B. Ethical Obligations
  - 1. - 6. ...
  - 7. The LHI shall not solicit to repair, replace or upgrade for compensation, any system or component of the home which the inspector noted as deficient or unsafe in his home inspection report, or any other type of service on the home upon which he has performed a home inspection from the time of the inspection until the date of the act of sale on the home inspected.
  - 8. - 10. ...
  - 11. The LHI shall not disclose inspection results or a client's personal information without approval of the client or the client's designated representative. At his discretion, the LHI may immediately disclose to occupants or interested parties safety hazards observed to which they may be exposed.

12. - 13. ...  
14. The LHI shall report substantial and willful violations of this Code to the LSBHI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 36:2863 (December 2010), LR 37:2406 (August 2011), LR 41:924 (May 2015), LR 43:

**Chapter 7. Disciplinary Actions**

**§703. Complaints**

A. Anyone with knowledge that a licensee or member of the public is or has been engaged in any conduct proscribed by the law or these rules, may file a written complaint with the board against that person. Complaints filed by members of the public must be filed within one year of the conduct alleged to be proscribed by the law or these rules. This shall not apply to complaints filed by the board.

B. An information memorandum approved by the board containing instructions for filing a complaint shall be mailed or emailed to anyone requesting such information from the board and shall be made available on the board's official website.

C. - E. ...  
F. The board shall not consider complaints against those performing services that are under the jurisdiction of other regulatory agencies or licensing boards, such as, wood destroying insect inspections, appraisals, or services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services may have violated the provisions of these rules and/or the home inspector licensing law.

G. Based upon a review of the records of the board kept in the ordinary course of business, the chief operating officer of the board may initiate a complaint against a licensee based upon the delinquency or failure of the licensee to make timely payment of fees, fines, or assessments, upon the failure of the licensee to timely and properly renew a license,

or upon the failure of the licensee to comply with reporting requirements, continuing education requirements, insurance requirements, or other requirements of the licensee. In all such cases, the chief operating officer shall send the licensee notification by email or certified mail specifically outlining the delinquency or violation, including any amounts due, if applicable. The chief operating officer may also initiate a complaint in accordance with this Section. The licensee shall either, pay any fees and fines due, provide proof of compliance or, in the event a complaint is filed, respond, in writing, within 14 days of receipt of the notice disputing the claim or amounts due. A licensee's failure to respond within the delays shall be prima facie proof of his noncompliance subjecting the licensee to immediate suspension after hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1483, and R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 40:1004 (May 2014), LR 43:

#### **§707. Investigations; Special Investigating Entity; Board Review**

A. - B. ...

C. The SIE shall make an investigation of the charges and responses, with the sole purpose of determining whether or not the allegations listed in the complaint indicate a possible violation of these rules or the home inspector licensing law. The SIE shall not visit or inspect the property at issue during the investigative process, but may contact the parties involved, and any third parties, to discuss the matter, or to request any further information or documentation needed to conduct the investigation. The SIE may review photographs, reports, correspondence and other documentation submitted by any party or third party in conducting the investigation. The SIE shall prepare and file a report of its findings with the board within 30 days of the completion of the investigation.

D. - D.4. ...

E. The report shall state whether each specific allegation of the complaint indicates a possible violation of these rules or the home inspector licensing law.

F. If the report states that any or all allegations of the complaint lack sufficient evidence to indicate a possible violation of these rules or the licensing law, the chief operating officer shall advise the complainant and respondent in writing that the evidence submitted was insufficient to support a particular allegation or all allegations in the complaint. The chief operating officer shall also advise the complainant and respondent that, in order for any of the lacking allegations of the complaint to be reviewed by the board, the complainant must make a written request for review by the board within 15 days of mailing of the report, must support the complaint with additional documentation or evidence and must set forth specific reasons why the SIE's determination on each allegation is incorrect.

G. If the complainant makes a written request for review by the board, the board shall review the report and the complainant's documentation. If the board finds that the allegations are unsupported by the evidence, the chief operating officer shall advise the complainant in writing that

the board has concurred with the special investigating entity's conclusion that the complaint lacks sufficient evidence to support a possible violation of these rules or the home inspector licensing law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1694 (August 2004), LR 36:2863 (December 2010), LR 40:1004 (May 2014), LR 43:

#### **§709. Disciplinary Hearing; Procedure**

A. If the special investigating entity's report or the board's review finds that there is sufficient evidence to indicate a possible violation of these rules or the home inspector licensing law, the board shall fix a time and place for a disciplinary hearing and give notice to the licensee and complainant. The disciplinary hearing shall be held in accordance with the adjudication provisions of the Administrative Procedure Act.

B. - B.5. ...

C. In all contested case hearings before the board, the chairman of the board shall serve as presiding officer. In the absence of the chairman, the vice chairman shall serve as presiding officer, or a presiding officer shall be selected by the board. No presiding officer of a hearing shall participate in the consideration or decision of the matter or confection of the board's decision, order or opinion.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1695 (August 2004), LR 36:2863 (December 2010), LR 43:

#### **§713. Hearing Procedure; Decision; Notice; Effective Date; Rehearing**

A. - D. ...

E. A board decision or order may be reconsidered by the board at the next board meeting on its own motion, or on motion by a party of record, for good cause shown pursuant to a written request filed at the board's office within 10 days following the date of the mailing of the final board order or decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2751 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1695 (August 2004), LR 38:2533 (October 2012), LR 41:924 (May 2015), LR 43:

#### **Family Impact Statement**

The proposed Rule amendments have no know impact on family formation, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested parties may submit written comments to Morgan Dampier, Chief Operating Officer, Louisiana State Board of Home Inspectors, 5211 Essen Lane, Baton Rouge, LA, 70809 or by facsimile to (225) 248-1335. Comments will be accepted through the close of business on June 10, 2017.

### Public Hearing

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on June 30, 2017 at 9 a.m. at the office of the state Board of Home Inspectors, 5211 Essen Lane, Suite 9, Baton Rouge, LA.

Albert J. Nicaud  
Board Attorney

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Education, Training and Testing

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will generate a cost savings to the Board of Home Inspectors. In the past the board would pay the fee of \$120 in order to run a criminal background check through state police for new applicants, which will now be paid by the applicants. Over the past few years, the board has averaged 44 applicants per year. This would present a savings of \$5,280 annually.

The proposed rule adds qualifications for those seeking to become home inspectors as well as delinquent renewals. The proposed rule codifies the current practices of collecting fines for untimely filings, aligns the language of the rule to current law, and provides for other technical adjustments. The proposed rule makes changes to the procedures for special investigative entities to help clarify, and provide structure and consistency with investigations. The proposed changes provide new definitions for qualifying licensees and lead inspectors.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units, as no increase in fees will result from the amendments.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be a cost for individuals applying to become home inspectors. Applicants will now incur a cost of \$120 in order to have the LA State Police conduct a criminal background check as a part of the application process, which was previously paid by the board.

A licensee who fails to renew within the allotted time period will now have an additional qualification of obtaining 10 hours of instruction and training from a certified in-field trainer

which may have an unknown associated fee depending on which course they choose. The board offers some free courses, but some inspectors may choose to obtain this qualification from an outside source.

The proposed administrative rules will require those from other states seeking reciprocity to take the report writing seminar sponsored by the board and pass a test on the Louisiana standards of practice and code of ethics which the board offers free of charge.

Home inspectors will no longer have to wait 1 year after a home inspection in order to perform work on a house they inspected, the proposed change aligns the rule with language in the law which allows inspectors to conduct work after the act of the sale on the home inspected.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rules have no effect on competition and employment.

Albert H. Nicaud  
Board Attorney  
1705#006

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Employee Benefits  
(LAC 32:I.315, 319, 323, 510, and 1109;  
III.Chapter 1; and V.203, 205, 207,  
305, 307, 405, 505,and 507)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(1), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to chapter 12 of title 42 of the *Louisiana Revised Statutes*, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend several provisions of Title 32 in the *Louisiana Administrative Code*. In order to stabilize the OGB fund balance, OGB intends to adopt two surcharges: 1) a spousal surcharge as to spouses enrolled in a self-insured health plan offered by OGB, who do not avail themselves of employer-sponsored health insurance available to them; and 2) a tobacco/nicotine surcharge imposed on enrollees and their eligible dependents who use tobacco or nicotine products. OGB also finds it necessary to change plan design for two of the self-insured health plans. The out-of-pocket maximum for the Magnolia Local Plus and Magnolia Open Access plans will be increased by \$1,000, and the copayment for the emergency room facility fee will be increased by \$50 in the Magnolia Local Plus plan. Furthermore, prior authorization, subject to deductible, and/or time restriction requirements will be removed for certain services and added for certain other services, and several rule clarifications will be made, to comport with applicable law, federal medical management guidelines, and OGB procedures. These actions will enhance member clarification and provide for the administration, operation, and management of health care benefits effectively for the program and member. Accordingly, OGB

hereby gives Notice of Intent to adopt the following rules to become effective January 1, 2018, unless promulgated thereafter, in which case they would become effective upon promulgation.

**Title 32**  
**EMPLOYEE BENEFITS**  
**Part I. General Provisions**

**Chapter 3. Uniform Provisions—Participation in the Office of Group Benefits**

**§315. Dependent Coverage Termination**

A. - C.2. ...

3. upon discontinuance of all dependent coverage under OGB plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 41:2351 (November 2015), effective January 1, 2016, amended LR 43:

**§319. Continued Coverage**

A. - C.4. ...

D. Over-Age Dependents. If a dependent child who is the natural or adopted child of the enrollee is incapable of self-sustaining employment by reason of mental or physical incapacity and became incapable prior to attainment of age 26, the coverage for that dependent child may be continued for the duration of incapacity.

D.1. - E.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 43:

**§323. Employer Responsibility**

A. ...

B. A participating employer shall immediately inform OGB when a retiree with OGB coverage returns to benefit-eligible employment. The enrollee shall be placed in the re-employed retiree category for premium calculation. The re-employed retiree premium classification applies to retirees with and without Medicare. The premium rates applicable to the re-employed retiree premium classification shall be identical to the premium rates applicable to the classification for retirees without Medicare. If the re-employed retiree suspends retirement benefits and returns to benefit-eligible employment with the agency from which the re-employed retiree originally retired, the employee portion of the premium shall be withheld by payroll deduction and the employing agency shall remain responsible for the employer portion of the premium. If the re-employed retiree suspends retirement benefits and returns to benefit-eligible employment with an OGB participating agency other than the agency from which the re-employed retiree originally retired, the employee portion of the premium shall be withheld by payroll deduction, and the employing agency shall be responsible for the employer portion of the premium throughout the duration of employment. If the re-employed retiree returns to benefit-eligible employment, yet does not suspend retirement benefits as allowed by law, the employee portion of the premium shall be withheld by payroll deduction, and the employing OGB participating agency shall be responsible for the employer portion of the premium throughout the duration of employment. When the re-

employed retiree separates from employment with the OGB participating employer, the employer shall notify OGB of such separation within 30 days. After the re-employed retiree again separates from employment with an OGB participating employer, the agency from which the re-employed retiree originally retired shall again be responsible for the employer portion of the premium.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:345 (February 2015), effective March 1, 2015, amended LR 41:2351 (November 2015), effective January 1, 2016, LR 43:

**Chapter 5. Uniform Provisions—Plan Administration**

**§510. Tobacco and Spousal Surcharges**

A. Uniform Provisions

1. These surcharges are applicable to enrollees and their dependents, as applicable, who participate in the self-insured health plans. These surcharges shall be assessed monthly and collected and assessed in the same manner as monthly premiums are collected; provided, the employer shall not pay any portion of the surcharges.

2. In the event that an enrollee does not execute the applicable affidavit(s) as set forth in this section, the surcharge shall be assessed and collected. If the enrollee provides false information to OGB, coverage for the enrollee and his/her eligible dependents may be cancelled retroactive to January 1 of the current plan year, and the enrollee shall be liable to OGB for all benefits paid after January 1 of that plan year.

B. Tobacco Surcharge

1. There shall be a surcharge of \$50 per month assessed against each enrollee and each of his/her dependents 18 years of age or older or who reaches the age of 18 prior to the start of the plan year for which certification is made, who use tobacco or nicotine products.

2. Tobacco/nicotine use is the use of any tobacco or nicotine product four or more times a week within the six months prior to the execution of a tobacco use affidavit, excluding use for religious reasons. The use of nicotine gum or patches as part of a smoking cessation program is excluded.

3. Every enrollee shall be required to execute an affidavit during each annual enrollment period declaring whether he/she or his/her dependent(s) uses tobacco or nicotine products. If the enrollee or a dependent becomes a tobacco or nicotine user or ceases to use tobacco or nicotine for over 6 months, the enrollee shall execute and submit an affidavit to OGB within 30 days of the change in tobacco or nicotine use status, and such enrollee shall begin or cease, as the case may be, paying the surcharge the first of the following month. If coverage is beginning or a dependent is being added to coverage due to a plan-recognized qualified life event, the execution and submission of an affidavit is required within the applicable timeframe to apply for such coverage, and the enrollee shall begin paying the surcharge as of the date the enrollee's/dependent's health plan participation is effective, if the surcharge is applicable.

4. An enrollee or dependent user who is an OGB health plan participant as of January 1 may obtain a refund of tobacco surcharge paid since January 1 of that plan year if

the enrollee/dependent successfully completes a smoking cessation program covered by the OGB self-insured health plans by June 30 of that plan year. For those enrollee or dependent users who become OGB health plan participants after January 1 of a plan year, such enrollee or dependent may obtain a refund of tobacco surcharge paid since January 1 of the present plan year that OGB health plan participation began if the enrollee/dependent successfully completes a smoking cessation program covered by the OGB self-insured health plans within 180 days of the date OGB health plan participation began. The enrollee or his/her dependent must present evidence of the successful completion of the smoking cessation program to OGB within 30 days of completion to obtain the refund.

5. OGB reserves the right to test enrollees and dependents for tobacco/nicotine use.

**C. Spousal Surcharge**

1. There shall be a surcharge of \$50 per month assessed against each enrollee who covers a spouse as a dependent under a self-insured OGB health plan, when that spouse is eligible for health insurance through an employer-sponsored plan but has declined this coverage.

2. Every enrollee covering a spouse as a dependent under a self-insured OGB health plan shall be required to execute an affidavit during the annual enrollment period declaring whether his/her spouse is eligible for such employer-sponsored coverage and, if so, shall provide such other information as OGB deems necessary and reasonable. If the spouse is added to health insurance coverage during the plan year as a result of a plan-recognized qualified life event, the execution and submission to OGB of a spousal affidavit is required within 30 days of the event, and the enrollee shall pay the applicable surcharge as of the date the spouse's OGB health plan coverage is effective, as applicable. If the spouse later becomes eligible for employer-sponsored health coverage and declines such coverage, the affidavit shall be executed and submitted within 30 days of the change in eligibility, and the surcharge shall be charged as of the first of the month following the affidavit submission, as applicable. If the spouse later becomes eligible for employer-sponsored health coverage and accepts such coverage, but remains on the OGB self-insured health plan, the spousal affidavit shall be executed and submitted within 30 days of the change in status, and the surcharge shall cease as of the first of the month following the affidavit submission.

3. This section shall not apply in instances wherein both spouses are eligible as enrollees for coverage provided by OGB.

4. This section shall not apply to spouses enrolled in Parts A and B of Medicare, provided OGB is not primary payer for either Part A or Part B claims.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:347 (February 2015), effective March 1, 2015, amended LR 43:

**Chapter 11. Contributions**

**§1109. Retirees with Medicare Parts A and B**

A. Employees who retire on or after July 1, 1997, and who are not rehired retirees in a benefit-eligible position, shall receive a reduced premium rate when enrolled in Medicare Parts A and B.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 24:496 (March 1998), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:350 (February 2015), effective March 1, 2015, amended LR 43:

**Part III. Primary Plan of Benefits**

**Chapter 1. Operation of Primary Plan**

**§105. Out of Pocket Maximums**

<b>Out-of-Pocket Maximum Per Benefit Period (Includes All Eligible Copayments, Coinsurance Amounts and Deductibles)</b>		
<b>Individual:</b>	<b>Network</b>	<b>Non-Network</b>
Active Employee/Retirees on or after March 1, 2015	\$3,500	No Coverage
Retirees prior to March 1, 2015 (With and Without Medicare)	\$2,000	No Coverage
<b>Individual, Plus One Dependent:</b>		
Active Employee/Retirees on or after March 1, 2015	\$6,000	No Coverage
Retirees prior to March 1, 2015 (With and Without Medicare)	\$3,000	No Coverage
<b>Individual, Plus Two or More Dependents:</b>		
Active Employee/Retirees on or after March 1, 2015	\$8,500	No Coverage
Retirees prior to March 1, 2015 (With and Without Medicare)	\$4,000	No Coverage

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:350 (February 2015), effective March 1, 2015, amended LR 43:

**§107. Schedule of Benefits**

**A. Benefits, Copayments, and Coinsurance**

	<b>Copayments and Coinsurance</b>	
	<b>Network Providers</b>	<b>Non-Network Providers</b>
Physician Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	\$25 Copayment per Visit	No Coverage
Allied Health/Other Professional Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Retail Health Clinics</li> <li>• Physician Assistants</li> </ul>	\$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	\$50 Copayment per Visit	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Ambulance Services – Ground (for Emergency Medical Transportation only)	\$50 Copayment	\$50 Copayment
Ambulance Services - Air (for Emergency Medical Transportation only) Non-Emergency requires prior authorization <sup>2</sup>	\$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	\$100 Copayment	No Coverage
Birth Control Devices – Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan)	100% - 0%	No Coverage
Cardiac Rehabilitation (limit of 36 visits per Plan Year)	\$25/\$50 Copayment per day depending on Provider Type <sup>2</sup> \$50 Copayment - Outpatient Facility <sup>2</sup>	No Coverage
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	Office - \$25 Copayment per Visit Outpatient Facility 100% - 0% <sup>1,2</sup>	No Coverage
Diabetes Treatment	80% - 20% <sup>1</sup>	No Coverage
Diabetic/Nutritional Counseling - Clinics and Outpatient Facilities	\$25 Copayment	No Coverage
Dialysis	100% - 0% <sup>1</sup>	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Emergency Room (Facility Charge)	\$200 Copayment; Waived if admitted to the same facility	
Emergency Medical Services (Non-Facility Charges)	100% - 0% <sup>1</sup>	100% - 0% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames – Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	No Coverage
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older.)	80% - 20% <sup>1,3</sup>	No Coverage
Hearing Impaired Interpreter Expense	100% - 0%	No Coverage
High-Tech Imaging—Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	\$50 Copayment <sup>2</sup>	No Coverage
Home Health Care (limit of 60 Visits per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage
Hospice Care (limit of 180 Days per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Injections Received in a Physician's Office (when no other health service is received)	100% - 0% <sup>1</sup>	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Inpatient and Outpatient Professional Services for Which a Copayment Is Not Applicable	100% - 0% <sup>1</sup>	No Coverage
Mastectomy Bras—Ortho-Mammary Surgical (limited to three (3) per Plan Year)	80% - 20% <sup>1</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Mental Health/Substance Abuse—Inpatient Treatment and Intensive Outpatient Programs	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Mental Health/Substance Abuse—Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	\$25 Copayment per Visit	No Coverage
Newborn - Sick, Services excluding Facility	100% - 0% <sup>1</sup>	No Coverage
Newborn - Sick, Facility	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Oral Surgery	100% - 0% <sup>1,2</sup>	No Coverage
Pregnancy Care – Physician Services	\$90 Copayment per pregnancy	No Coverage
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.)	100% - 0% <sup>3</sup>	No Coverage
Rehabilitation Services – Outpatient: <ul style="list-style-type: none"> <li>• Speech</li> <li>• Physical/Occupational (Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.) (Visit limits do not apply when services are provided for Autism Spectrum Disorders.)</li> </ul>	\$25 Copayment per Visit	No Coverage
Skilled Nursing Facility (limit of 90 days per Plan Year)	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Sonograms and Ultrasounds (Outpatient)	\$50 Copayment	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Urgent Care Center	\$50 Copayment	No Coverage
Vision Care (Non-Routine) Exam	\$25/\$50 Copayment depending on Provider Type	No Coverage
X-ray and Laboratory Services (low-tech imaging)	Hospital Facility 100%-0% <sup>1</sup> Office or Independent Lab 100%-0%	No Coverage

<sup>1</sup> Subject to Plan Year Deductible, if applicable  
<sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary.  
<sup>3</sup> Age and/or Time Restrictions Apply

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:350 (February 2015), effective March 1, 2015, amended LR 43:

### §109. Prescription Drug Benefits

#### A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1-Generic	50% up to \$30
Tier 2-Preferred	50% up to \$55
Tier 3-Non-preferred	65% up to \$80
Tier 4-Specialty	50% up to \$80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable copayment
<b>Co-Payment after the Out Of Pocket Amount of \$1,500 Is Met</b>	
Tier 1-Generic	\$0
Tier 2-Preferred	\$20
Tier 3-Non-preferred	\$40
Tier 4-Specialty	\$40
Prescription drug benefits-31 day refill Plan pays balance of eligible expenses	
Diabetic supplies are not subject to a copayment if enrolled in the In-Health/Disease Management Program.	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the \$1,500 out of pocket maximum.	
Medications available over-the-counter in the same prescribed strength are not covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	

This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:352 (February 2015), effective March 1, 2015, amended LR 43:

### Part V. Additional Plans and Operations Chapter 2. PPO Plan Structure—Magnolia Open Access Plan

#### §203. Out of Pocket Maximums

	Includes All Eligible Copayments, Coinsurance Amounts and Deductibles				
	Active Employee/Retirees on or after March 1, 2015		Retirees prior to March 1, 2015 Without Medicare		Retirees prior to March 1, 2015 With Medicare
	Network	Non-Network	Network	Non-Network	Network and Non-Network
Individual Only	\$3,500	\$4,700	\$2,300	\$4,300	\$3,300
Individual Plus One (Spouse or Child)	\$6,000	\$8,500	\$3,600	\$7,600	\$5,600
Individual Plus Two	\$8,500	\$12,250	\$4,900	\$10,900	\$7,900
Individual Plus Three	\$8,500	\$12,250	\$5,900	\$13,700	\$9,900
Individual Plus Four	\$8,500	\$12,250	\$6,900	\$13,700	\$11,900
Individual Plus Five	\$8,500	\$12,250	\$7,900	\$13,700	\$13,700
Individual Plus Six	\$8,500	\$12,250	\$8,900	\$13,700	\$13,700
Individual Plus Seven	\$8,500	\$12,250	\$9,900	\$13,700	\$13,700
Individual Plus Eight	\$8,500	\$12,250	\$10,900	\$13,700	\$13,700
Individual Plus Nine	\$8,500	\$12,250	\$11,900	\$13,700	\$13,700
Individual Plus Ten	\$8,500	\$12,250	\$12,900	\$13,700	\$13,700
Individual Plus Eleven or More	\$8,500	\$12,250	\$13,700	\$13,700	\$13,700

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:355 (February 2015), effective March 1, 2015, amended LR 43:

**§205. Schedule of Benefits**

**A. Benefits and Coinsurance**

	Coinsurance		
	Active Employees/Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)
	Network Providers	Non-Network Providers	Network and Non-Network Providers
Physician Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Allied Health/Other Professional Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Retail Health Clinics</li> <li>• Physician Assistants</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Specialist (Physician) Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services—Ground (for Emergency Medical Transportation only)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services—Air (for Emergency Medical Transportation only) Non-emergency requires prior authorization <sup>2</sup>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulatory Surgical Center and Outpatient Surgical Facility	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Birth Control Devices—Insertion and Removal (as listed in the Preventive and Wellness Care Article in the Benefit Plan)	100% - 0%	70% - 30% <sup>1</sup>	Network Providers 100% - 0%
			Non-Network Providers 80% - 20% <sup>1</sup>
Cardiac Rehabilitation (limit of 36 visits per Plan Year)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Diabetes Treatment	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Diabetic/Nutritional Counseling—Clinics and Outpatient Facilities	90% - 10% <sup>1</sup>	Not Covered	80% - 20% <sup>1</sup>
Dialysis	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Emergency Room (Facility Charge)	\$150 Copayment <sup>1</sup> ; Waived if admitted to the same facility		
Emergency Medical Services (Non-Facility Charges)	90% - 10% <sup>1</sup>	90% - 10% <sup>1</sup>	80% - 20% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames—Limited to a Maximum Benefit of \$50 <sup>1</sup>		
Flu shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	100% - 0%	100% - 0%
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older)	90% - 10% <sup>1,3</sup>	70% - 30% <sup>1,3</sup>	80% - 20% <sup>1,3</sup>
Hearing Impaired Interpreter Expense	100% - 0%	100% - 0%	100% - 0%
High-Tech Imaging—Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Home Health Care (limit of 60 Visits per Plan Year)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	Not Covered
Hospice Care (limit of 180 Days per Plan Year)	80% - 20% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	Not Covered
Injections Received in a Physician's Office (when no other health service is received)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>

	Coinsurance		
	Active Employees/Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)
	Network Providers	Non-Network Providers	Network and Non-Network Providers
Inpatient Hospital Admission, All Inpatient Hospital Services Included <i>Per Day Copayment</i> <i>Day Maximum</i> <i>Coinsurance</i>	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>
Inpatient and Outpatient Professional Services	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Mastectomy Bras—Ortho-Mammary Surgical ( <i>limit of three (3) per Plan Year</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Mental Health/Substance Abuse—Inpatient Treatment and Intensive Outpatient Programs <i>Per Day Copayment</i> <i>Day Maximum</i> <i>Coinsurance</i>	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>
Mental Health/Substance Abuse—Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Newborn—Sick, Services Excluding Facility	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Newborn—Sick, Facility <i>Per Day Copayment</i> <i>Day Maximum</i> <i>Coinsurance</i>	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>
Oral Surgery for Impacted Teeth	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Pregnancy Care—Physician Services	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Preventive Care—Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. ( <i>For a complete list of benefits, refer to the Preventive and Wellness Care Article in the Benefit Plan.</i> )	100% - 0% <sup>3</sup>	70% - 30% <sup>1,3</sup>	Network 100% - 0 <sup>3</sup>
			Non-Network 80% - 20% <sup>1,3</sup>
Rehabilitation Services—Outpatient: <ul style="list-style-type: none"> <li>Speech</li> <li>Physical/Occupational</li> </ul> <i>(Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.)</i> <i>(Visit limits do not apply when services are provided for Autism Spectrum Disorders)</i>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Skilled Nursing Facility ( <i>limit 90 days per Plan Year</i> )	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Sonograms and Ultrasounds ( <i>Outpatient</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Urgent Care Center	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Vision Care (Non-Routine) Exam	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
X-ray and Laboratory Services ( <i>low-tech imaging</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>

<sup>1</sup>Subject to Plan Year Deductible, if applicable  
<sup>2</sup>Pre-Authorization Required, if applicable. Not applicable for Medicare primary.  
<sup>3</sup>Age and/or Time Restrictions Apply

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:356 (February 2015), effective March 1, 2015, amended LR 43:

## §207. Prescription Drug Benefits

### A. Prescription Drug Benefits

Network Pharmacy	Member Pays
Tier 1-Generic	50% up to \$30
Tier 2-Preferred	50% up to \$55
Tier 3-Non-preferred	65% up to \$80
Tier 4-Specialty	50% up to \$80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable copayment

Co-Payment after the Out-of-Pocket Amount of \$1,500 is Met	
Tier 1-Generic	\$0
Tier 2-Preferred	\$20
Tier 3-Non-preferred	\$40
Tier 4-Specialty	\$40
Prescription drug benefits-31 day refill	
Plan pays balance of eligible expenses	
Diabetic supplies are not subject to a copayment if enrolled in the In-Health/Disease Management Program.	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug and the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the \$1,500 out of pocket maximum	

Medications available over-the-counter in the same prescribed strength are not covered under the pharmacy plan.
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:358 (February 2015), effective March 1, 2015, amended LR 43:

**Chapter 3. Narrow Network HMO Plan Structure—Magnolia Local Plan (in certain geographical areas)**

**§305. Schedule of Benefits**

A. Benefits, Copayments, and Coinsurance

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Physician Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	\$25 Copayment per Visit	No Coverage
Allied Health/Other Professional Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural</li> <li>• Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Retail Health Clinics</li> <li>• Physician Assistants</li> </ul>	\$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	\$50 Copayment per Visit	No Coverage
Ambulance Services—Ground (for Emergency Medical Transportation only)	\$50 Copayment	\$50 Copayment
Ambulance Services—Air (for Emergency Medical Transportation only) Non-emergency requires prior authorization <sup>2</sup>	\$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	\$100 Copayment	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Birth Control Devices—Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan.)	100% - 0%	No Coverage
Cardiac Rehabilitation (limit of 36 visits per Plan Year)	\$25/\$50 Copayment per day depending on Provider Type <sup>2</sup> \$50 Copayment-Outpatient Facility <sup>2</sup>	No Coverage
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	Office – \$25 Copayment per Visit Outpatient Facility 100% - 0% <sup>1,2</sup>	No Coverage
Diabetes Treatment	80% - 20% <sup>1</sup>	No Coverage
Diabetic/Nutritional Counseling—Clinics and Outpatient Facilities	\$25 Copayment	No Coverage
Dialysis	100% - 0% <sup>1</sup>	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Emergency Room (Facility Charge)	\$150 Copayment; Waived if admitted to the same facility	
Emergency Medical Services (Non-Facility Charges)	100% - 0% <sup>1</sup>	100% - 0% <sup>1</sup>
Eye-glass Frames and One Pair of Eye-glass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eye-glass Frames—Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	No Coverage
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older.)	80% - 20% <sup>1,3</sup>	No Coverage
Hearing Impaired Interpreter Expense	100% - 0%	No Coverage
High-Tech Imaging—Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	\$50 Copayment <sup>2</sup>	No Coverage
Home Health Care (limit of 60 Visits per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage
Hospice Care (limit of 180 Days per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage
Injections Received in a Physician's Office (when no other health service is received)	100% - 0% <sup>1</sup>	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Inpatient and Outpatient Professional Services for which a Copayment is Not Applicable	100% - 0% <sup>1</sup>	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Mastectomy Bras ( <i>limited to three (3) per Plan Year</i> )	80% - 20% <sup>1</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Mental Health/Substance Abuse—Inpatient Treatment and Intensive Outpatient Programs	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Mental Health/Substance Abuse—Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	\$25 Copayment per Visit	No Coverage
Newborn—Sick, Services excluding Facility	100% - 0% <sup>1</sup>	No Coverage
Newborn—Sick, Facility	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Oral Surgery	100% - 0% <sup>1,2</sup>	No Coverage
Pregnancy Care—Physician Services	\$90 Copayment per pregnancy	No Coverage
Preventive Care—Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. ( <i>For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.</i> )	100% - 0% <sup>3</sup>	No Coverage
Rehabilitation Services—Outpatient: <ul style="list-style-type: none"> <li>• Speech</li> <li>• Physical/Occupational</li> </ul> ( <i>Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.</i> ) ( <i>Visit limits do not apply when services are provided for Autism Spectrum Disorders.</i> )	\$25 Copayment per Visit	No Coverage
Skilled Nursing Facility ( <i>limit of 90 days per Plan Year</i> )	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Sonograms and Ultrasounds ( <i>Outpatient</i> )	\$50 Copayment	No Coverage
Urgent Care Center	\$50 Copayment	No Coverage
Vision Care (Non-Routine) Exam	\$25/\$50 Copayment depending on Provider Type	No Coverage
X-ray and Laboratory Services ( <i>low-tech imaging</i> )	Hospital Facility 100% - 0% <sup>1</sup> Office or Independent Lab 100% - 0%	No Coverage

<sup>1</sup> Subject to Plan Year Deductible, if applicable  
<sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary.  
<sup>3</sup> Age and/or Time Restrictions Apply

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:359 (February 2015), effective March 1, 2015, amended LR 43:

### §307. Prescription Drug Benefits

#### A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1-Generic	50% up to \$30
Tier 2-Preferred	50% up to \$55
Tier 3-Non-preferred	65% up to \$80
Tier 4-Specialty	50% up to \$80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable copayment
<b>Co-Payment after the Out-of-Pocket Amount of \$1,500 is Met</b>	
Tier 1-Generic	\$0
Tier 2-Preferred	\$20
Tier 3-Non-preferred	\$40
Tier 4-Specialty	\$40
Prescription drug benefits—31 day refill Plan pays balance of eligible expenses	
Diabetic supplies are not subject to a copayment if enrolled in the In-Health/Disease Management Program.	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug and the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the \$1,500 out of pocket maximum.	
Medications available over-the-counter in the same prescribed strength are not covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

#### B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:360 (February 2015), effective March 1, 2015, amended LR 43:

### Chapter 4. PPO/Consumer-Driven Health Plan Structure—Pelican HSA 775 Plan

#### §405. Schedule of Benefits

##### A. Benefits and Coinsurance

	Coinsurance	
	Network Providers	Non-Network Providers
Physician's Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Allied Health/Other Office Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Retail Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Physician's Assistants</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>

	Coinsurance	
	Network Providers	Non-Network Providers
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>Physician</li> <li>Podiatrist</li> <li>Optometrist</li> <li>Midwife</li> <li>Audiologist</li> <li>Registered Dietician</li> <li>Sleep Disorder Clinic</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Ambulance Services - Ground (for Emergency Medical Transportation Only)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services—Air (for Emergency Medical Transportation Only) Non-emergency requires prior authorization <sup>2</sup>	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulatory Surgical Center and Outpatient Surgical Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Birth Control Devices—Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan)	100% - 0%	60% - 40% <sup>1</sup>
Cardiac Rehabilitation (limited to 36 visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Diabetes Treatment	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Diabetic/Nutritional Counseling—Clinics and Outpatient Facilities	80% - 20% <sup>1</sup>	Not Covered
Dialysis	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Emergency Room (Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Emergency Medical Services (Non-Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames—Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu Shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	100% - 0%
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older)	80% - 20% <sup>1,3</sup>	Not Covered
Hearing Impaired Interpreter Expense	100% - 0%	100% - 0%
High-Tech Imaging—Outpatient <ul style="list-style-type: none"> <li>CT Scans</li> <li>MRA/MRI</li> <li>Nuclear Cardiology</li> <li>PET Scans</li> </ul>	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Home Health Care (limit of 60 Visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Hospice Care (limit of 180 Days per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Injections Received in a Physician's Office (when no other health service is received)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Inpatient Hospital Admission (all Inpatient Hospital services included)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Inpatient and Outpatient Professional Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>

	Coinsurance	
	Network Providers	Non-Network Providers
Mastectomy Bras (limited to three (3) per Plan Year)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Mental Health/Substance Abuse—Inpatient Treatment and Intensive Outpatient Programs	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Mental Health/Substance Abuse—Office Visits and Outpatient Treatment (Other than Intensive Outpatient Programs)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn—Sick, Services excluding Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn—Sick, Facility	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Oral Surgery	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Pregnancy Care—Physician Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Preventive Care—Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the Benefit Plan.)	100% - 0% <sup>3</sup>	100% - 0% <sup>3</sup>
Rehabilitation Services—Outpatient: <ul style="list-style-type: none"> <li>Speech</li> <li>Physical/Occupational (Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.)</li> </ul> (Visit limits do not apply when services are provided for Autism Spectrum Disorders.)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Skilled Nursing Facility (limit 90 Days per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Sonograms and Ultrasounds - Outpatient	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Urgent Care Center	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Vision Care (Non-Routine) Exam	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
X-Ray and Laboratory Services (low-tech imaging)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
<sup>1</sup> Subject to Plan Year Deductible, if applicable <sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary. <sup>3</sup> Age and/or Time Restrictions Apply		

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by the Office of the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:361 (February 2015), effective March 1, 2015, amended LR 43:

**Chapter 5. PPO/Consumer-Driven Health Plan Structure—Pelican HRA 1000 Plan**

**§505. Schedule of Benefits**

**A. Benefits and Coinsurance**

	Coinsurance	
	Network Providers	Non-Network Providers
Physician's Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>General Practice</li> <li>Family Practice</li> <li>Internal Medicine</li> <li>OB/GYN</li> <li>Pediatrics</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>

	Coinsurance	
	Network Providers	Non-Network Providers
Allied Health/Other Office Visits: <ul style="list-style-type: none"> <li>Chiropractors</li> <li>Federally Funded Qualified Rural Health Clinics</li> <li>Retail Health Clinics</li> <li>Nurse Practitioners</li> <li>Physician's Assistants</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>Physician</li> <li>Podiatrist</li> <li>Optometrist</li> <li>Midwife</li> <li>Audiologist</li> <li>Registered Dietician</li> <li>Sleep Disorder Clinic</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Ambulance Services—Ground (for Emergency Medical Transportation Only)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services—Air (for Emergency Medical Transportation only) Non-emergency requires prior authorization <sup>2</sup>	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulatory Surgical Center and Outpatient Surgical Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Birth Control Devices—Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan)	100% - 0%	60% - 40% <sup>1</sup>
Cardiac Rehabilitation (limited to 36 visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Diabetes Treatment	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Diabetic/Nutritional Counseling—Clinics and Outpatient Facilities	80% - 20% <sup>1</sup>	Not Covered
Dialysis	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Emergency Room (Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Emergency Medical Services (Non-Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames— Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu Shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	100% - 0%
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older)	80% - 20% <sup>1,3</sup>	Not Covered
Hearing Impaired Interpreter Expense	100%-0%	100%-0%
High-Tech Imaging—Outpatient <ul style="list-style-type: none"> <li>CT Scans</li> <li>MRA/MRI</li> <li>Nuclear Cardiology</li> <li>PET Scans</li> </ul>	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Home Health Care (limit of 60 Visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Hospice Care (limit of 180 Days per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Injections Received in a Physician's Office (when no other health service is received)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Inpatient Hospital Admission (all	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>

	Coinsurance	
	Network Providers	Non-Network Providers
<i>Inpatient Hospital services included)</i>		
Inpatient and Outpatient Professional Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Mastectomy Bras (limited to three (3) per Plan Year)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Mental Health/Substance Abuse—Inpatient Treatment and Intensive Outpatient Programs	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Mental Health/Substance Abuse—Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn—Sick, Services excluding Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn—Sick, Facility	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Oral Surgery	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Pregnancy Care—Physician Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Preventive Care —Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the Benefit Plan.)	100% - 0% <sup>3</sup>	100% - 0% <sup>3</sup>
Rehabilitation Services—Outpatient: <ul style="list-style-type: none"> <li>Speech</li> <li>Physical/Occupational (Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.)</li> </ul> (Visit limits do not apply when services are provided for Autism Spectrum Disorders.)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Skilled Nursing Facility (limit 90 Days per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Sonograms and Ultrasounds - Outpatient	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Urgent Care Center	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Vision Care (Non-Routine) Exam	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
X-Ray and Laboratory Services (low-tech imaging)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
<sup>1</sup> Subject to Plan Year Deductible, if applicable		
<sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary.		
<sup>3</sup> Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:364 (February 2015), effective March 1, 2015, amended LR 43:

### §507. Prescription Drug Benefits

#### A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1-Generic	50% up to \$30
Tier 2-Preferred	50% up to \$55
Tier 3-Non-preferred	65% up to \$80
Tier 4-Specialty	50% up to \$80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment

<b>Co-Payment after the Out-of-Pocket Amount of \$1,500 Is Met</b>	
Tier 1-Generic	\$0
Tier 2-Preferred	\$20
Tier 3-Non-preferred	\$40
Tier 4-Specialty	\$40
Prescription drug benefits-31 day refill	
Maintenance drugs: not subject to deductible; subject to applicable copayments above.	
Plan pays balance of eligible expenses	
Diabetic supplies are not subject to a copayment if enrolled in the In-Health/Disease Management Program.	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug and the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the \$1,500 out of pocket maximum.	
Medications available over-the-counter in the same prescribed strength are not covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:365 (February 2015), effective March 1, 2015, amended LR 43:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this Rule will have no net impact on family functioning, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

Because the impact of the proposed action is based on the plan selected by each individual enrollee and the enrollee's personal circumstances, the impact is indeterminable as to:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors, has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail to Tommy Teague, Chief Executive Officer, Office of Group Benefits, P.O. Box 44036, Baton Rouge, LA 70804. All comments must be received no later than 4:30 p.m. on June 9, 2017.

#### **Public Hearing**

A public hearing on this proposed Rule may be scheduled for June 28, 2017, at 10 a.m. in the Louisiana Purchase Room, located on the first floor of the Claiborne Building, located at 1201 North Third Street, Baton Rouge, LA 70802, if requested by June 9, 2017.

Tommy Teague  
Chief Executive Office

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Employee Benefits**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes are anticipated to result in an indeterminable net savings to the Office of Group Benefits (OGB).

The proposed rule change will enable OGB to offer insurance coverage to unmarried grandchildren of an enrollee who resides with the grandparent, until age 24 (LAC 32:I.315). Current OGB practice is to extend coverage to grandchildren only when an enrollee has court-ordered legal custody of the grandchild or has adopted the grandchild until the child reaches the applicable attainment age, or, if the parent of the grandchild is also a covered dependent on the enrollee's plan, the grandchild may be covered only until the parent reaches attainment age. This change is expected to cost the Office of Group Benefits (OGB) an indeterminable amount in additional medical claims expenditures associated with an unknown number of grandchildren who may gain or extend their coverage under this revised rule.

Proposed rule changes to LAC 32:III.105 and LAC 32:V.203 will result in an increase to existing annual out-of-pocket maximum (OOPM) amounts for the Magnolia Local Plus and Magnolia Open Access plans, respectively, by \$1,000.

One of the proposed rule changes to LAC 32:III.107 will result in an increase to the existing emergency room copayment amount for the Magnolia Local Plus plan by \$50 per visit.

Together, the increases in the out-of-pocket maximum and in the emergency room copayments are expected to save OGB approximately \$5.8 million in medical claims expenditures for FY18 and approximately \$11.5 million for FY19.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes are anticipated to result in approximately \$6.9 million in FY 18 and \$13.7 million in FY 19 in additional revenues from premium changes to OGB.

Proposed rule change to LAC 32:I.315 will enable OGB to offer insurance coverage to unmarried grandchildren of an enrollee who resides with the grandparent, until age 24. Current OGB practice is to extend coverage to grandchildren only when an enrollee has court-ordered legal custody of the grandchild or has adopted the grandchild until the child reaches the applicable attainment age, or, if the parent of the grandchild is also a covered dependent on the enrollee's plan, the grandchild may be covered only until the parent reaches attainment age. This change is expected to generate an indeterminable amount in additional premium revenues. However, it cannot be estimated how many grandchildren may gain or extend coverage under the revised rule.

Proposed adoption of LAC 32:I.510 will result in the implementation of a tobacco use surcharge of \$50 per month for each enrollee and covered dependent 18 years of age and older who uses tobacco or nicotine products and a spousal surcharge of \$50 per month for each enrollee who covers a spouse who is eligible for health insurance through an employer-sponsored plan but who has declined such coverage.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes are anticipated to impact various OGB enrollees and dependents that meet specific criteria. The proposed rule changes extend coverage to grandchildren in certain situations, increase the out-of-pocket costs to specific health plans, assess a surcharge to enrollees or dependents that use tobacco products, and assess a surcharge to enrollees whose covered spouse is eligible for health insurance through an employer-sponsored plan but who has declined such coverage.

As a result of the proposed change to LAC 32:I.315, an OGB enrollee with a qualifying grandchild who enroll such a grandchild in OGB coverage can expect to incur additional monthly premium costs, if the coverage of such a grandchild causes an enrollee's plan to change from "enrollee only" to "enrollee + child" or from "enrollee + spouse" to "family." In instances where the enrollee already covers dependent children, or covers the spouse and dependent children, extending coverage to a grandchild will not result in an increase in monthly premium costs. It is anticipated these OGB enrollees will incur additional out-of-pocket costs including copays, coinsurance amounts, and deductibles associated with the covered services the grandchild receives.

As a result of the proposed changes to LAC 32:III.105, OGB enrollees in the Magnolia Local Plus plan can expect to incur up to an additional \$1,000 and OGB enrollees in the Magnolia Open Access plan can expect to incur up to an additional \$2,000 as a result of in-network and non-network services both increasing by \$1,000 in out-of-pocket costs per family, beginning in plan year 2018. Out-of-pocket costs consist of all copays, coinsurance amounts, and deductibles applicable to the plan. This proposed increase will apply to all existing coverage levels (enrollee only, enrollee plus one covered dependent, enrollee plus two or more covered dependents) and enrollee types (active employees, retirees with and without Medicare who retired prior to March 1, 2015, retirees with and without Medicare who retired on or after March 1, 2015). With the exception of certain Affordable Care Act essential health benefits, the Magnolia Local Plus plan provides benefit coverage for in-network services only.

As a result of one of the proposed changes to LAC 32:III.107, OGB enrollees and dependents in the Magnolia Local Plus plan can expect to incur an additional \$50 in out-of-pocket costs for each emergency room visit they make, beginning in plan year 2018. This proposed increase will apply to all enrollees in the plan (active employees, retirees with and without Medicare who retired prior to March 1, 2015, retirees

with and without Medicare who retired on or after March 1, 2015, covered dependents). The emergency room copayment is waived if the enrollee/dependent is admitted to the facility they visit.

The proposed rule (LAC 32:I.510) will charge OGB enrollees in the self-insured (Magnolia and Pelican) health plans \$50 each month for each enrollee and dependent that has either attested to tobacco/nicotine product use or who have failed to execute an affidavit declaring they do not use tobacco/nicotine products. These surcharges are in addition to their monthly premium payment amount. The proposed tobacco use surcharge will apply to all enrollees and dependents enrolled in the self-insured health plans who are age 18 or older (active employees, retirees with and without Medicare who retired prior to March 1, 2015, retirees with and without Medicare who retired on or after March 1, 2015, covered dependents).

This proposed rule will charge OGB enrollees in any of the self-insured health plans \$50 each month in the event the enrollee's covered spouse is eligible for health insurance through an employer-sponsored plan but has declined such coverage. These surcharges are in addition to their monthly premium payment amount. The proposed spousal surcharge will apply to all enrollees in the self-insured health plans (active employees, retirees with and without Medicare who retired prior to March 1, 2015, retirees with and without Medicare who retired on or after March 1, 2015, covered dependents), except in instances where both spouses are eligible for enrollee-only coverage through OGB (i.e. both are employed by an OGB-participating agency), and in instances when the covered spouse is enrolled in his/her employer-sponsored health insurance or where OGB is not the primary payer for Medicare Part A and Part B claims.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment is unknown. The proposed rule changes are anticipated to impact a significant component of the compensation package of state and certain local public sector employment. Individuals consider compensation packages across alternative private and public sector employment opportunities, and for some, these changes make the compensation package less beneficial. The proposed rule changes may influence the decisions to seek and accept employment in both the public and private sectors.

Tommy D. Teague  
Chief Executive Officer  
1705#056

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Public Defender Board

#### Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases (LAC 22:XV.Chapter 21)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 21, as authorized by R.S. 15:148. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of this Rule is to establish policies and procedures to ensure that public defenders, assistant public defenders, and assigned counsel perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants.

R.S. 15:148 directs the Louisiana Public Defender Board to adopt rules to: 1) create mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) create separate performance standards and guidelines for attorney performance in capital case representation, juvenile delinquency, appellate, and any other subspecialties of criminal defense practice as well as children in need of care cases determined to be feasible, practicable, and appropriate by the board. In compliance with the directives of R.S. 15:148, the Public Defender Board proposes to adopt these performance standards for attorneys representing indigent capital defendants.

## **Title 22**

### **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

#### **Part XV. Public Defender Board**

#### **Chapter 21. Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases**

##### **§2101. Purpose**

A. The standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of juveniles facing a possible sentence of life without parole or serving a sentence of life without parole. For the purpose of these standards, pursuant to *Roper v. Simmons*, *Graham v. Florida* and *Miller v. Alabama*, the term juvenile includes any individual who was under the age of 18 at the time of the alleged offense.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word “shall.” In those instances where a particular action is usually necessary to providing quality representation, the standards use the word “should.” Even where the standards use the word “shall,” in certain situations, the lawyer’s best informed professional judgment and discretion may indicate otherwise.

D. These standards are intended to adopt and apply the Louisiana Rules of Professional Conduct, Louisiana Public Defender Board (LPDB) Performance Standards for Criminal Defense Representation in Indigent Capital Cases, LPDB Capital Defense Guidelines, LPDB Trial Court Performance Standards for Delinquency Representation, the Campaign for the Fair Sentencing of Youth (CFSY) Trial Defense Guidelines for Representing a Child Client Facing a Possible Life Sentence, the guidelines for capital defense set

out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*. In these standards, the ABA guidelines have been adapted and applied to meet the specific needs and legal requirements applicable to lawyers representing juveniles facing a possible sentence of life without parole in Louisiana while seeking to give effect to the intention and spirit of the ABA guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

##### **§2103. Obligations of Defense Counsel**

A. Since the representation of children facing a possible sentence of life without parole in adult court is a highly specialized area of legal practice, defense counsel should make extraordinary efforts on behalf of his or her client to ensure that trial proceedings “take into account how children are different, and how those differences counsel against irrevocably sentencing [children] to a lifetime in prison” [*Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012)] and that “[s]entences imposed without parole eligibility [are] reserved for the worst offenders and worst cases.” [La.C.Cr.P. art. 878.1].

B. The primary and most fundamental obligation of the attorney representing a child facing a possible sentence of life without parole in adult court is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney’s duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of Court, and to properly document case files to reflect adherence to these standards.

C. To ensure the preservation, protection and promotion of the client’s rights and interests, counsel should:

1. be proficient in the applicable state, federal, and international law substantive and procedural—governing juvenile transfer, prosecution of juveniles in adult court, mitigation, sentencing, appeals, and state and federal post-conviction relief;
2. acquire and maintain appropriate experience, skills and training;
3. devote adequate time and resources to the case;
4. ensure that the defense team is appropriately staffed in accordance with these standards (See Performance Standard 2105, Training and Experience of Defense Counsel; Performance Standard 2107, Resources and Caseloads; and Performance Standard 2115, Assembling the Defense Team);
5. engage in the preparation necessary for high quality representation;
6. endeavor to establish and maintain a relationship of trust and open communication with the client;
7. make accommodations where necessary due to a client’s special circumstances, including but not limited to age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and/or circumstances of incarceration.

D. Counsel assigned in any case in which the client is a juvenile and life without parole (LWOP) is a possible punishment should, even if the prosecutor has not transferred the case to adult court and/or has not indicated that LWOP will be sought, begin preparation for the case as one in which LWOP will be sought while employing strategies to avoid transfer and/or have the case designated as non-LWOP. Even if the case has not been filed as an LWOP case, if there exists a reasonable possibility to believe that the case could be amended to an LWOP charge, counsel should be guided by these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment and any political factors that may impact the charging decision.

E. The attorney who provides legal services for a juvenile owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

F. A child facing LWOP retains all decision-making authority granted to an adult client. The client's rights to make important decisions is not diminished by the client's status as a child (see Perf. Standard 2113, Allocation of Authority between Counsel and Client).

G. The attorney should communicate with the child in a trauma-informed and developmentally and age-appropriate manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion for funding to hire a foreign language or sign language interpreter to be present at the initial interview, all subsequent interviews and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2105. Training and Experience of Defense Counsel**

A. Before agreeing to defend a juvenile facing a possible life without parole sentence in adult court, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer zealous and high quality legal representation.

B. Counsel should have a mastery of any substantive criminal law and laws of juvenile and criminal procedure that may be relevant to counsel's representation, including ethical obligations for juvenile representation, adolescent development, juvenile transfer, obligations for juvenile representation in adult court (including these standards), mitigation, the process for sentencing juveniles facing life without parole, appeals and state and federal post-conviction. Counsel should also be familiar with the prevailing customs or practices of the relevant court and the policies and practices of the prosecuting agency.

C. Prior to representing a juvenile facing a possible life without parole sentence, at a minimum, counsel should have sufficient experience or training to provide high quality representation.

1. At least one attorney must have specialized training and relevant substantive experience representing child clients and shall annually complete at least six hours of training relevant to the representation of juveniles. In particular, at least one attorney must have experience interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Additional training may include, but is not limited to:

- a. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;
- b. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to, those involving issues of consent and competency relating to Miranda warnings, searches and waivers;
- c. normal childhood development (including brain development), developmental delays and intellectual disability;
- d. educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to, those related to consent and competency issues;
- e. immigration issues regarding children;
- f. gang involvement and activity;
- g. factors leading children to delinquent behavior.

2. At least one attorney must have specialized training and relevant substantive experience representing individuals charged with homicide offenses in adult court, including, but not limited to, the investigation and presentation of sentencing mitigation. When possible, one attorney should have experience investigating and presenting death penalty mitigation at a capital sentencing hearing. Additional training may include, but is not limited to:

- a. identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits;
- b. long-term consequences of deprivation, neglect and maltreatment during developmental years;
- c. social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior;
- d. effects of substance abuse;
- e. the presence, severity and consequences of exposure to trauma;
- f. sensitivity to issues of sexual orientation and gender identity;
- g. identifying, developing and documenting institutional mitigation.

D. If, after being assigned a case, counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

E. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community, juvenile defenders and certified capital defenders.

F. Defense counsel should complete a comprehensive training program in the defense of juvenile life without parole cases as required by these guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of juveniles facing life without parole sentences. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of juveniles facing life without parole sentences.

G. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

H. If personal matters make it impossible for defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2107. Resources and Caseloads**

A. Counsel should not accept assignment to represent a juvenile facing life without parole unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, research tools and access to expert assistance.

B. In assessing whether counsel has sufficient resources to accept an appointment, counsel should adhere to these standards as well as the case load standards set out by the Louisiana Public Defender Board.

C. If, after being assigned a case, counsel discovers that he or she does not have available sufficient resources, then counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief. Counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

D. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with these performance standards, counsel should exhaust all avenues for reasonable resolution. If the excessive workload issue is not resolved, counsel should move to withdraw from the case or cases in which representation of a juvenile facing life without parole in compliance with these performance standards cannot be provided.

E. Counsel should never give preference to retained clients over indigent clients and should give priority to *Miller* cases over other cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2109. Professionalism**

A. Counsel has an obligation to ensure that the case file is properly documented to demonstrate adherence to these standards. Counsel's file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel's file should be maintained in a fashion that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

B. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client's rights from being forfeited due to error. Counsel should be present, alert and focused on the client's best interests during all critical stages of the proceedings.

C. Counsel's obligation to provide high quality representation to the client continues until counsel formally withdraws or an order relieving counsel becomes final. Unless required to do so by law or the Louisiana Rules of Professional Conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

D. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

1. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;
2. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;
3. sharing potential further areas of investigation and litigation with successor counsel; and
4. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

E. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

1. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

2. discovering potential further areas of investigation and litigation; and

3. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

F. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

G. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

H. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any improper influence arising from a desire to assist the client or to protect him or herself.

I. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this Standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel nor limit the ability of counsel to communicate confidential or privileged information to the client or his legal representatives within the protection of the lawyer-client relationship.

J. While ensuring compliance with the Louisiana Rules of Professional Conduct in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such

statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

K. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity and compassion. Counsel should avoid disparaging the victim directly or indirectly unless necessary and appropriate in the circumstances of the particular case. Counsel should undertake victim outreach through an appropriately qualified team member or the use of an expert in defense initiated victim outreach.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2111. Conflicts of Interest**

A. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, counsel may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team. Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s) and the names of any important witnesses.

C. Where a juvenile life without parole case involves multiple defendants, because of the unique nature of the sentencing hearing, a conflict will be presumed between the defendants and separate representation will be required.

D. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child.

E. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the Louisiana Rules of Professional Conduct.

F. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the Louisiana Rules of Professional Conduct. Defense counsel should fully disclose to the client at the earliest feasible opportunity any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

G. Where the client files a motion, complaint or grievance against counsel in regard to the quality of his or her representation, counsel should notify the district defender or the agency responsible for the assignment of counsel to the case.

H. Any waiver of conflict that is obtained should comply with the requirements of the Louisiana Rules of Professional Conduct and should be obtained through and after consultation by the client with independent counsel who has explained: that a conflict of interest exists; the consequences to his defense from continuing with conflict-laden counsel; and that he has a right to obtain other counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2113. Allocation of Authority between Counsel and Client**

A. The allocation of authority between counsel and the client shall be managed in accordance with the Louisiana Rules of Professional Conduct, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

B. Counsel serves as the representative of the client and shall abide by the express wishes of the client regarding the objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

C. Counsel shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

D. Counsel should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law,

are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decision.

E. In order to ensure that consultation with the client is meaningful, counsel should communicate in a trauma-informed and developmentally and age-appropriate manner and make accommodations where necessary due to a client's special circumstances, such as age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and circumstances of incarceration.

F. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

G. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

H. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should utilize other defense team members in his or her efforts to resolve a dispute.

I. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the district defender or responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

J. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

K. A juvenile client's capacity to make adequately considered decisions in adult court when facing a possible sentence of life without parole may be diminished, whether because of age and its attendant circumstances, mental impairment or for some other reason. Where counsel reasonably believes that the child client has diminished capacity, he or she should:

1. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

2. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

3. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

L. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should consider consultation with additional counsel experienced and skilled in this area.

M. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring files to successor counsel. Upon the termination of the representation, the client will ordinarily be entitled to counsel's entire file upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2115. Assembling the Defense Team**

A. Counsel are to be assigned in accordance with these standards. A minimum of two counsel shall be assigned to each case. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these performance standards. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these standards, unless the Standard specifically imposes the duty on "lead counsel."

C. As soon as practical after assignment and at all stages of a juvenile life without parole case, lead counsel should assemble a defense team by:

1. requesting at least one additional counsel in accordance with these standards;

2. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

a. at least one mitigation specialist and one fact investigator;

b. at least one member with specialized training and knowledge in adolescent development, including but not limited to, developmental science and other research that informs specific legal questions regarding capacities, responsiveness to treatment and culpability;

c. at least one member with specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment in adolescents, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

d. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

e. sufficient support staff, such as secretarial, clerical and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

f. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

D. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

E. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with these standards and are sufficient to permit high quality representation.

F. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and if such a witness is necessary, a separate expert mitigation specialist should be retained.

G. Team members should be fully instructed on the practices and procedures to be adopted by the team,

including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

H. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation and to ensure that all components of the defense team are in place. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make a complete record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

I. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these performance standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2117. Scope of Representation**

A. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

B. Ordinarily, counsel representing a juvenile facing a life without parole sentence should assume responsibility for the representation of the client in all pending criminal and collateral proceedings involving the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case and for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions or delinquency adjudications of the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

C. Where it is not appropriate for counsel to assume the representation of the client in other proceedings due to a lack of appropriate experience or qualifications, a lack of sufficient resources or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client.

D. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his JLWOP proceedings and is conducted in a manner that best serves the client's interests in light of the JLWOP proceedings.

E. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain, in a trauma informed and age and developmentally appropriate manner, the exact limits of the scope of the representation, including both those purposes for which the client will and will not be represented. Where possible the agreement to provide representation that is limited in its scope should be communicated in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2119. Relations with Client**

A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a child facing a sentence of life without parole in adult court should proceed in a trauma-informed and developmentally and age-appropriate manner with a strong emphasis on the relationship between the defense team and the client.

B. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the child's special circumstances, such as age and its attendant circumstances, trauma, incompetence, mental or physical disability/illness, language barriers, cultural differences, circumstances of incarceration, prior experiences in the criminal justice system and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

C. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. All members of the team should be trained on interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member.

D. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

E. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a child facing a possible sentence of life without parole, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

F. In a trial level case, a JLWOP client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a JLWOP client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once every month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during and following trial.

G. In an appellate or post-conviction case, a JLWOP client may be visited less frequently but regular communication and actual visits remain critical to effective representation.

H. Counsel at all stages of the case need to monitor the client's physical, mental and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional and mental condition throughout the representation both personally, through the observations of other team members and experts and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

I. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

1. the progress of and prospects for the investigation and what assistance the client might provide;
2. current or potential legal issues;
3. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;
4. the development of a defense theory;
5. presentation of the defense case;
6. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;

7. litigation deadlines and the projected schedule of case-related events; and

8. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

J. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

K. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

L. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

M. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

N. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential or potentially damaging conversations are not conducted during any monitored or recorded calls.

O. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel. Counsel should take special care to ensure such crucial information is communicated in a trauma-informed and age appropriate manner.

1. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and to counsel. Counsel should specifically advise the client to assert his rights to silence and to counsel if approached by any state actor seeking to question him about the charged offense, any other offense or any other matter relevant to guilt, penalty or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights. Counsel should especially consider the client's age, development and familiarity with the criminal justice system in considering how to support the client in effectively asserting his rights.

2. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters or any matter that may prove relevant in a sentencing hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family

members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

3. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

P. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client to prevent any potentially harmful statements from being made or alleged.

Q. Beginning at the outset and continuing throughout representation, counsel should endeavor to connect the client with all possible educational and programming opportunities whether the client is in or out of custody. Counsel should advise the client about the importance of good behavior during the pendency of his criminal matter and seek to find solutions to any impediment to the client's good behavior. Counsel should keep in mind that demonstrating a client's ability and potential to change, grow and be rehabilitated is central to a *Miller* sentencing hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2121. Counsel's Initial Interviews with Client**

A. Recognizing that first contact with a juvenile client facing a possible life without parole sentence is an extremely important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights and begin the development of a relationship of trust and confidence.

B. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

C. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

D. An initial interview of pre-trial clients should be conducted within 24 hours of counsel's assignment to the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

##### **E. Preparing for the Initial Interview**

1. Prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

b. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available;

c. request mental health, juvenile assessment center, detention center or education records, including any screenings or assessments, that may help in the initial interview with the client; and

d. consult with any predecessor counsel to become more familiar with the case and the client.

2. In addition, where the pre-trial client is incarcerated, counsel should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail.

d. be familiar with the requirements of PREA and IDEA and utilize any failure to follow these laws to advocate for release or, in the alternative, placement in a more appropriate facility.

e. advocate for placement in a juvenile detention facility.

3. Prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

a. be familiar with the procedural posture of the case;

b. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;

c. consider consulting with any predecessor counsel to become more familiar with the case and the client.

##### **F. Conducting the Interviews**

1. Counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in representing a juvenile client in a life without parole case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

2. Counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

3. Counsel should take all reasonable steps to ensure at the initial interview and in all successive interviews and proceedings that barriers to communication and trust are overcome.

4. The scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client and the circumstances under which the interviews occur.

5. Information to be provided to the client during initial interviews includes, but is not limited to:

a. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;

b. describing the other persons who are members of the defense team, how and when counsel, or other appropriate members of the defense team, can be contacted; and when counsel, or other members of the defense team, will see the client next;

c. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, the potential penalties, and available defenses;

d. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs; e.g., medical or mental health attention, education, other conditions of confinement issues, contact with family or employers;

e. realistic answers, where possible, to the client's most urgent questions;

f. an explanation of the availability, likelihood and procedures that will be followed in setting the conditions of pretrial release;

g. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations;

h. assess whether there may be some question about the child's competence to proceed or the existence of a disability that would impact a possible defense or mitigation;

i. an understanding of the conditions of incarceration:

i. whether the child is being held in an adult jail or juvenile detention center;

NOTE: if the child is being held in an adult jail, counsel should advocate that the child be placed in a juvenile detention center.

ii. if the child is being held in an adult jail, whether the child has any contact with adult inmates;

iii. whether the child is being provided education in compliance with state and federal law;

iv. whether the child is receiving adequate medical, dental and mental health care;

v. whether the child has adequate clothing, bedding and personal hygiene products;

vi. whether the child has been exposed to or is at risk of physical violence, sexual assault or self-harm;

vii. whether the child has adequate access to physical exercise and natural light.

6. Information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

a. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;

b. whether the client has any pending proceedings, charges or outstanding warrants in or from other jurisdictions or agencies (and the identity of any other appointed or retained counsel);

c. the ability of the client to meet any financial conditions of release or afford an attorney;

d. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve.

7. Appreciating the unique pressure placed upon juvenile defendants facing the possibility of a life without parole sentence and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a relationship of trust and confidence has been established that will permit full and frank disclosure.

8. Where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

9. Counsel should observe and consider arranging for documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2123. Procedures that Subject Client to the Jurisdiction of Criminal Court**

A. Where a child's prosecution begins in juvenile court, counsel should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought.

B. Counsel should fully explain the procedures by which a child can be transferred to adult court and the consequences of transfer to the child and the child's parents.

C. Counsel should advocate for the child to remain in the jurisdiction of juvenile court but should only do so after assessing the strategic advantages and disadvantages and the need to present facts and mitigating evidence to the district attorney in an effort to persuade the district attorney to keep the child in juvenile court.

D. Where a continued custody hearing will be held, counsel shall not, except in extraordinary circumstances, waive the continued custody hearing. Counsel shall fully prepare for the continued custody hearing in accordance with Performance Standard 2125, Continued Custody Hearings.

E. If the child has already been transferred to adult proceedings and counsel did not represent the child in juvenile court, counsel should obtain the juvenile court records and files and the juvenile court attorney's entire file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2125. Continued Custody Hearings**

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law for establishing probable cause;
3. factual information that is available concerning probable cause;
4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;
5. the child's custodial situation, including all persons living in the home;
6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and
7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2127. Investigation**

#### **A. Counsel's Responsibility to Investigate**

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, sentencing phase, any possible agreed upon disposition, any potential claim for relief and any possible reduction of the case to a non-JLWOP prosecution. A high quality, exhaustive investigation will be prompt, thorough and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement

by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the sentencing phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or sentencing phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and sentencing phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

#### **B. Conduct of the Investigation**

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include: information obtained from the client; information and statements obtained from witnesses; discovery obtained from the state; records collected; physical evidence; and direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be

obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to the guilt and sentencing phases, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and the particular offense charged and include an investigation of: other charged or uncharged bad acts that may be alleged directly or as impeachment; any co-defendant or alleged co-conspirator; any alternate suspects; any victim or victims; relevant law enforcement personnel and agencies; and, forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following:

a. interviews with the client should be conducted in accordance with Performance Standard 2121. In particular, counsel should be conscious of the need for trauma-informed and age and developmentally appropriate interviews, multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews;

b. when interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

ii. potential alibi witnesses;

iii. members of the client's immediate and extended family;

iv. neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;

v. persons familiar with the communities where the client and the client's family live and have lived;

vi. former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;

vii. correctional, probation or parole officers;

viii. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and

ix. government experts who have performed the examinations, tests, or experiments;

c. discovery should be conducted in accordance with Performance Standard 2131.F;

d. counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Louisiana Public Records Act, the Freedom of Information Act, statutory entitlements to records such as medical treatment, military service, social security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media;

e. counsel should strive to obtain records by means least likely to alert the prosecution to investigative steps being taken by the defense or the content of the records being obtained;

f. where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought;

g. unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date;

h. counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available;

i. counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for

government witnesses, for possible use at trial for impeachment purposes.

9. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing but also the legitimacy of the methods used to conduct the testing and the qualifications of those responsible for the testing.

10. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

11. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely and accurately document the condition of any relevant scene using the most appropriate and effective means, including, audio-visual recordings, diagrams, charts, measurements and descriptive memoranda. The condition of the scenes should always be documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as, maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

12. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

13. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant and the similarities and differences between a co-defendant's defense and the client's.

14. Counsel should also attend potentially relevant hearings involving state or defense witnesses.

#### C. Duty of Counsel to Conduct Sentencing Phase Investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the strategy for sentencing with the guilt phase strategy. In doing so, counsel must ensure the defense team

is adequately supported by a mitigation expert in accordance with Performance Standard 2115, Assembling the Defense Team.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the sentencing phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for the sentencing phase. All information obtained in the guilt phase investigation should be assessed for its significance to sentencing and where possible the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than life without parole.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings and parents, and other family members extending back at least three generations, including but not limited to: medical history consisting of complete prenatal, pediatric and adult health information (including hospitalizations, mental and physical illness or injury, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage); exposure to harmful substances in utero and in the environment; substance abuse and treatment history; mental health history; history of maltreatment and neglect; trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences); educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof); social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability); immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile criminal and correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective *Voir dire*, motions *in limine*, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family. Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state at sentencing to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the sentencing phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) or delinquency adjudications which may be alleged against the client should include an investigation of any legal basis for overturning the conviction or adjudication, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with Performance Standard 2117, Scope of Representation.

c. Counsel should investigate the facts of any alleged prior bad acts, including any alleged prior convictions or uncharged misconduct or bad acts, the state may seek to introduce in either the guilt or sentencing phases to determine how the evidence may be excluded, rebutted or mitigated.

d. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at sentencing and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate grounds for arguing that the state should be precluded from seeking a life without parole sentence in the case because the client is not the worst offender or the crime is not the worst offense. Grounds might include, for example, age, intellectual disability, mental illness, cognitive impairment, felony murder, guilt as a principal not directly responsible for the death or any other basis for asserting that the client is not the worst offender. When the client is charged with second degree murder, counsel should argue that the state is precluded from seeking a life without parole sentence in the case because the crime is, by definition, not the worst offense.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than life without parole. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a *Miller* sentencing proceeding.

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, criminal and juvenile incarceration, and social service records, in order to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, exemplify the client's immaturity due to age, explain his inability to appreciate risks and consequences, demonstrate his susceptibility to peer or familial pressure, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than life without parole. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the judge or jury, educate the jury and the court on adolescent development and the biological limitations of the adolescent mind, particularly a child's inability to appreciate risks and consequences, demonstrate the child's diminished culpability, reflect a child's unique capacity for rehabilitation, inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. Counsel should endeavor, with the help of a mitigation expert, to create opportunities for the client to

learn, grow and change during the pendency of his criminal case. A client's custodial status should not preclude counsel from seeking out such opportunities. Counsel should ensure that the client is receiving a free and appropriate education and any and all other supports and services that he is entitled to under state and federal law (including those provided in prior IEP's) and advocate to remedy any violation these laws.

15. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:

i. the client's family and those familiar with the client;

ii. the client's friends, teachers, classmates, co-workers, and employers, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history and religious, racial, and cultural experiences and influences upon the client or the client's family;

iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

vi. former or current correctional officers or employees or others who may be able to testify as to the good conduct, education and growth of the client while in custody;

b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, speech language pathologists, social workers and persons with specialized knowledge of adolescent development, medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

iv. persons with specialized knowledge about gangs and gang culture;

v. persons with specialized knowledge and expertise in adolescent development; and

vi. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

16. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

#### D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

a. an adequate understanding of adolescent development;

b. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

c. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

d. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, and diminished capacity; and

e. obtaining an agreed upon disposition or assisting the client in making a decision to accept or reject a possible agreed upon disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the

areas to be canvassed. Counsel should determine whether an expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should also consider whether a teaching expert is more appropriate for the case to educate the fact-finder or sentencing body. An example of the use of a teaching expert might be to educate the jury or the court on adolescent development. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

#### E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, sentencing phase, agreed upon disposition, litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at

both the guilt and sentencing phases and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible.

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings should be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should lay out a comprehensive strategy for both guilt and sentencing phases – detailing the needed fact investigation as well as the plan for collecting and creating mitigating evidence. The plan for both guilt and mitigation investigation should include a timeline for the completion of investigatory tasks. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file.

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### **§2129. Agreed Upon Dispositions**

#### A. Duty of Counsel to Seek an Agreed Upon Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive

review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal, factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client, with special attention to the age and abilities of the client, that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed upon disposition and promptly convey to the client, in an age and developmentally appropriate manner, any offers made by the prosecution for an agreed upon disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed upon disposition that is in the client's best interest. Consideration of an agreed upon disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

#### B. Formal Advice Regarding Agreed Upon Disposition

1. Counsel should be aware of, and fully explain to the client in an age and developmentally appropriate manner:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than life without parole including but not limited to forfeiture of assets, deportation or the denial of naturalization or of reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in sentencing phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than life without parole, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

f. available drug rehabilitation programs, psychiatric treatment, and health care;

g. the possible and likely place of confinement;

h. credit for pretrial detention;

i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;

j. eligibility for correctional programs, work release and conditional leaves;

k. deferred sentences, conditional discharges and diversion agreements;

l. probation or suspension of sentence and permissible conditions of probation;

m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and

n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client in an age and developmentally appropriate manner.

a. Concessions the client may make as part of an agreed upon disposition, including:

i. to waive trial and plead guilty to particular charges;

ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel;

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or

profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. that life without parole will not be sought;

ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (1)-(9) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. Art I, §25, La. R.S. 46:1841 et. seq., or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or

her guilt (*North Carolina v. Alford*, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (*State v. Crosby*, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain, in an age and developmentally appropriate manner, all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and sentencing and on appellate, post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial, appellate and post-conviction process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed upon disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of age and its attendant circumstances, intellectual disability, mental illness, cognitive impairment, language impairment, trauma, family

dysfunction, third party interference or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

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**§2131. Pre-Trial Litigation**

A. Obligations Regarding Court Hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on the client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court.

Counsel should advise the client on appropriate demeanor and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation. Counsel should plan, with the client, the most convenient system for conferring throughout any court proceeding.

3. Prior to any court hearing, counsel should explain to the client, in an age and developmentally appropriate manner, what is expected to happen before, during and after each hearing. Where the client may be directly addressed by the court or asked to speak on the record, counsel should warn the client in advance and both advise the client on how to proceed and prepare the client for any potential colloquy or testimony. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using age and developmentally appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample.

b. counsel shall represent the client at the continued custody hearing in order to contest transfer to adult court in accordance with Performance Standard 2125;

c. where possible, ensuring that counsel shall represent the client at a first appearance hearing conducted under La. C. Cr. P. art. 230.1 in order to contest transfer to adult court, contest probable cause for a client arrested

without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), and will invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health, education and security needs are being met and that the jail is in full compliance with PREA.

a. Counsel should consider requesting the client be held in a facility intended for juveniles rather than an adult jail;

b. Counsel shall advocate for the client to be provided a free and appropriate educational plan as required by the PREA, including special education as appropriate. Maintenance of the client's education may result in the development of positive mitigation evidence, and may be beneficial to the client's mental health;

c. Counsel shall consult with the client about requesting sight and sound isolation from adults, taking reasonable steps to explain the potential positive and negative consequences of such isolation.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the Louisiana case and the ramifications for the case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana. Counsel should not wait for the client to be extradited before commencing active representation of the client.

#### C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all cases in a timely fashion, having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment. Counsel shall move for a preliminary hearing even when a continued custody hearing has been held and even where counsel represented the client at a continued custody hearing. If counsel is denied a preliminary hearing, counsel shall move for an adversarial bond hearing where counsel shall ensure his ability to examine witnesses.

2. In the event the client is subject to the jurisdiction of the juvenile court, in the absence of exceptional circumstances, counsel shall enforce the client's right to a continued custody hearing. Counsel should consider the strategic benefit of negotiating or requesting a continuance of the continued custody hearing, having regard for prosecution practices in the particular jurisdiction, the opportunity to conduct pre-hearing investigation, the opportunity to negotiate retaining juvenile jurisdiction over the case and the likely timing of any indictment. A continued custody hearing shall not substitute for a preliminary hearing.

3. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by: creating a transcript of cross-examination of state's witnesses for use as an impeachment tool; preserving testimony favorable to the client of a witness who may not appear at trial; providing discovery of the state's case; allowing for more effective and earlier preparation of a defense; and, persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

4. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

5. In preparing for the preliminary hearing, the attorney should be familiar with:

- a. the elements of each of the offenses alleged;
- b. the requirements for establishing probable cause;
- c. factual information which is available concerning the existence of or lack of probable cause;
- d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;
- e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and
- f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

6. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

#### D. Counsel's Duties at Arraignment

1. Where possible, qualified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary

circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's Fifth and Sixth Amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health educational and security needs are being met.

5. Counsel should move for discovery at or immediately following arraignment and shall reserve the right to file all other pretrial motions in accordance with the rules of criminal procedure. See Performance Standard 2131.F, Formal and Informal Discovery.

#### E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. Art. 331, and, where appropriate, to make a proposal concerning conditions of release.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

5. Absent extraordinary circumstances, counsel shall advocate for the client to be held in the juvenile detention center. Whether the client is in juvenile or adult custody, counsel shall advocate for PREA and, where appropriate, IDEA compliant conditions of confinement. See Performance Standard 2131.B, Obligation of Counsel Following Arrest.

#### F. Formal and Informal Discovery

1. Counsel should pursue discovery, including filing a motion for discovery, a bill of particulars and conducting appropriate interviews. Counsel has a duty to pursue, as soon as practicable, discovery procedures provided by statute, by the rules of the jurisdiction, and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

2. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations. Counsel shall be familiar with the rules regarding reciprocal discovery and be aware of any potential obligations and time limits regarding reciprocal discovery.

3. Counsel should consider seeking discovery, at a minimum, of the following:

a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that

may be relied upon by the prosecution to establish first degree murder under La. R.S. 14:30;

b. any aggravating circumstances that may be relied upon by the prosecution in support of a sentence of life without parole;

c. any evidence that may be relied upon by the prosecution in support of the argument that the client is the "worst offender";

d. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

e. any record of the client's arrests and convictions and those of potential witnesses;

f. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

g. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

h. any documents or tangible evidence obtained from or belonging to the client, including a list of all items seized from the client or from any place under the client's dominion;

i. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

j. one-half of any DNA sample taken from the client;

k. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

l. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

m. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

n. any other adjudicated or unadjudicated conduct that may be relied upon by the prosecution in the sentencing phase;

o. any victim impact information that may be relied upon by the prosecution in the sentencing phase, including any information favorable to the client regarding the victim or victim impact;

p. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

q. any statements of co-conspirators;

r. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

s. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

4. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

5. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in Rule 3.8(d) of the Louisiana Rules of Professional Conduct.

6. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

7. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

8. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

9. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

10. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

11. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where

appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional information available from inspection of the original that may not be available from the reproduction.

12. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

13. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

14. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

15. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information. Counsel should be wary of discussing any confidential matters over the recorded jail phones.

16. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars, lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel

should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

#### G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these standards should consider all legal and factual claims potentially available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a JLWOP case when determining the motions to be filed in the particular case, including motions to proceed *ex parte*. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than *pro forma* or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

- a. the unique characteristics of juvenile law and practice;
- b. the unique characteristics of a sentencing hearing for a juvenile facing a possible sentence of life without parole;
- c. the potential impact of any pretrial motion or ruling on the strategy for the sentencing phase;
- d. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a life without parole sentence;
- e. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;
- f. the significant limitations placed upon factual development of claims in subsequent stages of the case; and
- g. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

- a. matters potentially developed in early stages of investigation and discovery, including:
  - i. the pretrial custody of the accused – including the appropriate bond amount and the need for an adversarial hearing to explore the same;
  - ii. the need to divest the criminal court of jurisdiction or the improper or unwarranted transfer of the client to criminal court;
  - iii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;
  - iv. the need for a preliminary hearing, including a post-indictment preliminary hearing;

v. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;

vi. the need for and adequacy of a bill of particulars;

vii. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or sentencing phase of trial;

viii. the need for and adequacy of notice of any victim impact evidence;

ix. the preservation of and provision of unimpeded access to evidence and witnesses;

x. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

xi. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal, state or local law or is contrary to the interests of the client;

xii. access to experts or resources required by, among other things, these standards which may be denied to an accused because of his indigence;

xiii. the client's right to a speedy trial;

xiv. the client's right to a continuance in order to adequately prepare his or her case;

xv. the need for a change of venue;

xvi. the need to obtain a gag order;

xvii. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xviii. the dismissal of a charge on double jeopardy grounds;

xix. the recusal of the trial judge, the prosecutor and/or prosecutor's office;

xx. competency of the client;

xxi. intellectual disability;

xxii. the nature, scope and circumstances of any testing or assessment of the client;

xxiii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiv. requiring the state to respond to motions in writing;

b. matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes;

ii. the constitutionality of a juvenile life without parole sentence generally, as applied in Louisiana, and as applied to the client's case;

iii. the potential defects in the grand jury composition, the charging process or the allotment,

iv. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

v. any basis upon which the indictment may be quashed;

vi. the adequacy and constitutionality of any aggravating factors or circumstances;

vii. the propriety and prejudice of any joinder of charges or defendants in the charging document;

- viii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of sentence or by the defense in mitigation of sentence;
- ix. abuse of prosecutorial discretion in seeking a sentence of life without parole;
- x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions with special attention to the particular issues raised by the client's age and attendant circumstances;
- xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law with special attention to the particular issues raised by the client's age and attendant circumstances;
- xii. the admissibility of evidence of other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase with special attention to the particular issues raised by the client's age and attendant circumstances;
- xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the sentencing phase with special attention to the particular issues raised by the client's age and attendant circumstances;
- xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;
- xv. notices of affirmative defenses with all required information included; and
- xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence;
- c. matters likely arising later in pretrial litigation and in anticipation of trial, including:
  - i. *in limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;
  - ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;
  - iii. the competency of a particular witness or class of witnesses;
  - iv. the nature and scope of victim impact evidence;
  - v. *in limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;
  - vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;
  - vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of *ex parte* communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;
  - viii. challenges to the process of establishing the jury venire;
  - ix. the desirability of jury determination of sentence;

- x. the use of a jury questionnaire;
- xi. the manner and scope of *Voir dire*, the use of cause and peremptory challenges and the management of sequestration;
- xii. the desirability and circumstances of the jury viewing any scene; and
- xiii. the instructions to be delivered at guilt and sentencing;
- d. counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:
  - i. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;
  - ii. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and
  - iii. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

5. Counsel should timely file motions according to the applicable rules and caselaw, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

6. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

7. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. See Performance Standard 2127.E, Development of a Strategic Plan for the Case.

#### H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all witnesses with information pertinent to the instant or future proceedings;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

#### I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

#### J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant Rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### §2133. Special Circumstances

##### A. Duties of Counsel at Re-Trial

The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt

or sentencing phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

#### B. Continuing Responsibility to Raise Issue of Client's Incompetence

1. Competence is a common issue for a juvenile facing a possible sentence of life without parole due to age and its attendant circumstances, including adolescent brain development, the nature of the charge, complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk that, given the nature of the charge, the complexity of the case, the unique nature of the sentencing hearing, and the possibility of a life without parole sentence, a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and sentencing phase and how each affects the other; the consequences of each available plea on both guilt and sentencing; and, the range of possible verdicts and the consequences of those verdicts at guilt and sentencing.

3. In considering a juvenile client's ability to assist counsel in a JLWOP case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the sentencing phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than life without parole. The possibility of a sentence of life without parole and the necessity to prepare for and present a sentencing phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a juvenile life without parole case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by

the reality that a life without parole sentence has been imposed, as well as by the effects of confinement on a juvenile, particularly prolonged confinement, such as the development or progression of depression or other mental illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every JLWOP case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or sentencing phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are

independent and appropriately qualified to evaluate an adolescent. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found irrestorably incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never untimely to raise a question concerning a client's competence.

21. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. Art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake; and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately request that an attorney with experience representing juveniles consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not

obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel. Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with these performance standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a juvenile facing a possible sentence of life without parole has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, counsel should request additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with these performance standards to the extent possible within the limitations of their role as standby counsel. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5. With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *Voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se

defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony that the defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and sentencing phases of the trial, as appropriate.

#### D. Counsel's Additional Responsibilities when Representing a Foreign National

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest Consulate;

c. with the permission of the client, contact the nearest Consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the Consulate;

d. where contact is made with the relevant Consulate, counsel should discuss what specific assistance the Consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client

requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals.

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### §2135. Trial

#### A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence:

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing *ex parte* procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail.

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.):

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made.

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant matters, including relevant prior testimony, before deciding whether or not to present them at trial.

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses;

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense;

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and sentencing phases that may be necessary or of assistance at trial, including:

i. copies of all relevant documents filed in the case;

ii. relevant documents prepared or obtained by investigators;

iii. *Voir dire* questions, topics or plans;

iv. outline or draft of opening statements for both guilt and sentencing phases;

v. cross-examination plans for all possible prosecution witnesses;

vi. direct examination plans for all prospective defense witnesses;

vii. copies of defense subpoenas and proof of service;

viii. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

ix. prior statements of all defense witnesses;

x. reports from defense experts;

xi. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

xii. exhibits, including originals and copies of all documentary exhibits;

xiii. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

xiv. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and

xv. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the sentencing phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the continuance, explaining the incomplete preparation,

unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

## B. Jury Selection

### 1. Preparing for *Voir dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire, including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate, should submit a request for a jury questionnaire by a pretrial motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *Voir dire* questions in advance of trial. Counsel should tailor *Voir dire* questions to the specific case. *Voir dire* should be integrated into and

advance counsel's theory of the case for both guilt and sentencing. Creative use of *Voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *Voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards sentencing a juvenile to a sentence of life without parole; in particular, each juror's willingness and capacity to return a verdict that could result in a sentence of life without parole if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *Voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary *Voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process. Recognizing the scope of the task of adequately recording all relevant information during the *Voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

## 2. Examination of the Prospective Jurors

a. Counsel should personally *Voir dire* the panel

b. If the court denies counsel's request to ask questions during *Voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *Voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *Voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *Voir dire*, particularly in cases where the *Voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *Voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *Voir dire* as to sensitive questions.

d. In a group *Voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *Voir dire* to elicit responses in a way that will minimize any negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *Voir dire*.

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually

phrase questions in an open-ended fashion that elicits substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the case law.

4. Counsel should determine the extent to which a juror's views on juvenile life without parole or mitigation may substantially impair his or her ability to make an impartial decision at guilt or sentencing. Counsel may consider exploring factors such as the strength of the juror's views on life without parole for a juvenile, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

5. Counsel should apply techniques of *Voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law;

6. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on sentencing a juvenile to life without parole or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

7. Counsel should apply techniques of *Voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of a life without parole sentence on a juvenile.

8. Counsel should apply techniques of *Voir dire* designed to ensure that each prospective juror understands and accepts:

a. that each juror is entitled to their own opinion and vote;

b. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others; and

c. that each juror is entitled to the assistance of the court in having his or her opinion respected.

9. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to life without parole and mitigation.

#### C. Other challenges for Cause and Peremptory Challenges

1. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

2. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

3. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

4. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

5. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

#### D. Unconstitutional Exclusion of Jurors

1. In preparation for trial, during *Voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have with regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

2. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

3. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

#### E. *Voir dire* After the Jury has been Impaneled

1. Counsel should consider requesting additional *Voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *Voir dire*, or jurors otherwise violated the court's instructions.

2. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

3. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

#### F. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

- a. the admissibility or exclusion of evidence and the use to which evidence may be put;
- b. the form or content of prosecution questioning, including during *Voir dire*;
- c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;
- d. the form or content of prosecution argument, including the scope of rebuttal argument;
- e. jury instructions and verdict forms; and
- f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the Attorney-General; and, the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible.

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

- a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense;
- b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important;
- c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction;
- d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

#### G. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each other, counsel should consider discussing their relationship and previous activities to create a context for the alleged offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the

government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and *Giglio* evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify or present evidence.

#### H. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically

analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

- a. consider the need to integrate cross-examination, the theory of the defense and closing argument;
- b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination.
- c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
- d. prepare a cross-examination plan for each of the anticipated witnesses;
- e. be alert to inconsistencies, variations and contradictions in a witness' testimony;
- f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;
- g. be alert to significant omission or deficiencies in the testimony of any witnesses;
- h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
- i. have prepared a transcript of all audio or video tape recorded statements made by the witness;
- j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;
- k. be alert to and raise, where appropriate, issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;
- l. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as

prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *Voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age (chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

- a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;
- b. exclusion of the witness' testimony and all evidence affected by that testimony;
- c. a mistrial;
- d. dismissal of the case; and/or
- e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

#### I. Presenting the Client's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where

necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to proceed to sentencing phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the sentencing phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to sentencing phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client, in an age and developmentally appropriate manner, all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense;

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that all evidence introduced at guilt may be relied on at sentencing, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

#### J. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

#### K. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel normally should request a poll as to each count on which the jury has convicted.

#### L. The Defense Case Concerning Sentencing

1. Preparation for the sentencing phase should begin immediately upon counsel's entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon sentencing and to seek information that supports mitigation, explains the offense, or rebuts the prosecution's case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant's guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning sentencing that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the sentencing phase.

6. Counsel should present all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client's life story that serves to humanize the client and offers a cohesive theory for a sentence other than life without parole rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client's life and the mitigation case that is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case at sentencing, counsel should seek to integrate the defense theories at guilt and sentencing into a complimentary whole or, where this is not possible, seek to

minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the sentencing phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client's moral culpability for the offense; demonstrate the client's capacity for rehabilitation; demonstrate the client's remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client's life; humanize the client; engender sympathy or empathy in the jury; or would otherwise support a sentence less than life without parole. Counsel should always consider and seek to address the likely concern the sentencer has regarding the possibility that the client will represent a future danger if released from prison.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, would demonstrate the client's capacity for growth and rehabilitation or would otherwise support a sentence less than life without parole;

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide developmental, medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation; to explain possible treatment programs; or otherwise support a sentence less than life without parole; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining how and why this mitigation is relevant;

c. witnesses who can testify about the adverse impact of a sentence of life without parole on the client's family and loved ones;

d. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses;

e. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than life without parole.

11. Among topics counsel should consider presenting through evidence and argument are:

a. youth and its attendant circumstances;

b. adolescent development;

c. positive character evidence and evidence of specific positive acts, including evidence of positive

relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, prospects for rehabilitation and reputation evidence;

d. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

e. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

f. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

g. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

h. employment and training history (including skills and performance, and barriers to employability);

i. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

j. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

k. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning sentencing, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning sentencing is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the sentencing phase, any adjudicated or unadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to introduce in the sentencing phase may appropriately

be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

a. carefully consider:

i. what legal challenges may appropriately be made to the interview or the conditions surrounding it; and

ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;

b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing); and

c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why life without parole is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain the significance of the mitigation presented and why it supports a sentence other than life without parole. Counsel's closing argument should be more than a general attack on juvenile life without parole and should not minimize the jury's verdict at guilt.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

### **§2137. Post-Verdict Motions and Formal Sentencing**

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a life without parole sentence is imposed. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence

not discovered during the trial that would likely have changed the verdict at either guilt or sentencing phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and

b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that life without parole is not a legally permissible penalty in the circumstances of the case, including that the sentence would be constitutionally excessive, where such arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either the guilt or sentencing phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

#### B. Preparation for Formal Sentencing and the Sentence Investigation Report

1. In preparing for sentencing, counsel should:

a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the

possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview;

iii. obtain a copy of the sentence investigation report, once completed, and review the completed report with the client;

iv. file a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

#### C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Counsel should continue to actively advocate for a disposition other than the imposition of a life without parole sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of a life without parole sentence and in support of an argument that life without parole, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a sentence of life without parole, counsel should prepare and file a motion for reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. the minutes of all of the proceedings connected with the case;

b. the indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. the transcript of arraignment;

d. the transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. the transcript of any proceeding in which allotment of the case occurred;

f. the transcript of any joint proceedings held with another defendant(s);

g. the transcript of the entirety of *Voir dire*, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. the transcript of all bench conferences, in chambers hearings or charge conferences;

i. the transcript of all argument and instruction;

j. the transcript of all testimony, including testimony at the sentencing phase of the trial;

k. any and all exhibits introduced in connection with the case;

l. the jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of life without parole and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence investigation report. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

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### **§2139. Direct Appeal**

#### **A. Duties of Appellate Counsel**

1. Appellate counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and,

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme

Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including

any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality juvenile life without parole representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all Rules of Court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further

hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. The issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case and the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of appellee's brief and before filing a reply brief, a second case review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the original brief, appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming

the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

25. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

26. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

27. If pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention to the court by letter or, where appropriate, should seek leave to file a supplemental brief.

28. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

29. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

30. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

31. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

32. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure

and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review.

33. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

34. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

35. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2141. State Post-Conviction and Clemency**

##### **A. Duties of Post-Conviction Counsel**

1. Post-conviction counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality JLWOP representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high quality, independent, exhaustive investigation and should not assume that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the Constitution or laws or treaties of the United States;

b. the conviction was obtained in violation of the constitution of the state of Louisiana;

c. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

d. the court exceeded its jurisdiction;

e. the conviction or sentence subjected the defendant to double jeopardy;

f. the limitations on the institution of prosecution had expired;

g. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

h. the conviction or sentence constitute the *ex post facto* application of law in violation of the constitution of the United States or the state of Louisiana;

i. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted;

j. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for a sentence of life without parole; or

k. a sentence of life without parole is unconstitutional for a juvenile.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or sentencing in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on *Voir dire* examination; and

e. the possibility that the client is innocent of the offense charged or not eligible for a sentence of life without parole.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these standards are intended to reflect accepted minimum standards for performance in juvenile life without parole cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these standards as they describe the responsibilities of trial and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C. Cr. P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all Rules of Court and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an

argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition.

23. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

24. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

25. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, and the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

26. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

27. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

28. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

29. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

30. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual

investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

31. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

32. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant Rules of Court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

33. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

34. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

35. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; and the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

38. Counsel shall take all necessary steps to preserve the client's right to federal review.

39. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited.

40. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

41. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

#### **§2143. Supervision, Review and Consultation**

##### **A. Supervision of the Defense Team**

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:

##### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

##### **Poverty Impact Statement**

The proposed Rule has no known impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### Provider Impact Statement

The proposed Rule has no impact on providers as defined in HCR 170 of 214.

### Public Comments

Written comments may be addressed to James T. Dixon, Jr., State Public Defender, Louisiana Public Defender Board, 301 Main Street, Suite 700, Baton Rouge, LA 70825 until 4:30 p.m. on July 10, 2017.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Monday, July 26, 2017 at 2 p.m., 301 Main Street, Suite 700, Baton Rouge, LA 70825. At that time, all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

James T. Dixon, Jr.  
State Public Defender

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no expenditure increases or decreases for the LA Public Defender Board (LPDB) explicitly associated with the proposed rules, because they codify provisions associated with existing decisions by the Supreme Court of the United States and the Louisiana Supreme Court. As a result, the LPDB would incur these expenditures regardless of the proposed rules being promulgated. However, the Legislative Fiscal Office must note that providing counsel associated with the court decisions and proposed rules would create another obligation for limited resources within the statutorily dedicated LA Public Defender Fund.

The proposed rules codify performance standards for the defense of juveniles facing a life without parole (LWOP) sentence are required by present law, as well as various rulings by the Supreme Court of the United States and a Louisiana Supreme Court decision. The proposed rules are intended to alert defense counsel to courses of action that are necessary, advisable, or appropriate in LWOP cases. The standards are designed to assist attorneys in deciding upon courses of action that should be taken in each case to ensure that the juvenile client facing a LWOP sentence receives constitutionally effective assistance of counsel, with emphasis on the individualized sentencing hearing mandated by the United States Supreme Court in *Miller v. Alabama* and *Montgomery v. Louisiana*, the Louisiana Supreme Court in *State v. Montgomery* and Louisiana Code of Criminal Procedure (CCRP) Article 878.1.

Because the courses of action outlined in these standards are required to effectively prepare for an individualized sentencing hearing pursuant to *Miller*, *Montgomery* and CCRP Article 878.1, any additional costs will be incurred with or without the standards in order to provide constitutionally effective assistance of counsel under prevailing professional norms, including the hiring of experts such as investigators, mitigation specialists, and other professional experts, which is the primary cost driver in LWOP cases.

The LPDB estimates that the median cost of experts in cases in which LWOP was sought but resulted in a plea would total approximately \$45,000 per case; and in cases in which a

life without parole sentence was sought that proceeded to an individualized sentencing hearing, the median cost of experts would be approximately \$100,000. Approximately 60% of these costs would be attributable to investigators and mitigation specialists. While the LPDB would bear the costs in absence of the proposed rules as a result of providing constitutionally effective counsel as determined by court decisions and present law in LWOP cases for indigent defendants, the Legislative Fiscal Office must note that providing constitutionally effective counsel in such cases would require an obligation of resources within the statutorily dedicated LA Public Defender Fund.

Implementation of these standards may also result in the avoidance of resentencing hearings due to assistance of counsel deemed constitutionally ineffective, and a resulting savings for the LA Public Defender Board. However, any avoidance of resentencing hearings specifically as a result of the proposed rules is uncertain, as the Legislative Fiscal Office assumes that counsel in LWOP cases were similarly aware of professional norms associated with the various court decisions setting precedents for "constitutionally effective counsel." As a result, any savings associated with the avoidance of resentencing hearings because of the proposed rules are speculative.

In addition, the LPDB reports a onetime expense of approximately \$6,000 will be expended in FY 17 for the administrative costs to promulgate the proposed rules. This expense will be absorbed utilizing current resources and budget authority.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not impact revenue collections for state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will benefit indigent juvenile defendants facing LWOP who rely on the public defender system as a result of the quality of representation and professionalism set out in the proposed rules. Public defender attorneys will also benefit from the standards outlined in the proposed rules set out as guidelines for constitutionally effective representation. The extent of the economic benefit is indeterminable.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not impact competition or employment.

James E. Dixon, Jr.  
State Public Defender  
1705#029

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

Managed Care for Physical and Behavioral Health  
Louisiana Health Insurance Premium Payment Program  
Behavioral Health Recipient Participation  
(LAC 50:I.3103)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing will provide coverage to eligible Medicaid recipients through the Louisiana Health Insurance Premium Payment Program (LaHIPP) by establishing or maintaining a third party resource as the primary payer of the recipient's medical expenses in order to reduce costs to the Medicaid Program (*Louisiana Register*, Volume 43, Number 4). The department promulgated a Rule to exclude LaHIPP participants from participation in managed care for physical and behavioral health services (*Louisiana Register*, Volume 43, Number 4).

The department has now determined that it is necessary to amend the provisions governing managed care for physical and behavioral health in order to allow Medicaid recipients enrolled in the LaHIPP Program to access behavioral health services only through the managed care organizations that participate in the Healthy Louisiana (formerly Bayou Health) Program.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part I. Administration**

#### **Subpart 3. Managed Care for Physical and Behavioral Health**

#### **Chapter 31. General Provisions**

#### **§3103. Recipient Participation**

A. - G. ...

#### **H. Participation Exclusion**

1. The following Medicaid and/or CHIP recipients are excluded from participation in an MCO and cannot voluntarily enroll in an MCO. Individuals who:

a. - e. ...

f. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

EXCEPTION: This exclusion does not apply to LaHIPP enrollees eligible to receive behavioral health services only through the managed care organizations.

I. ...

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, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:2258 (November 2014), LR 41:929 (May 2015), LR 41:2363 (November 2015), LR 42:754 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:663 (April 2017), LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will ensure continued access to behavioral health services through the MCOs for recipients enrolled in LaHIPP.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this

proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it reduces the financial burden for families with Medicaid recipients enrolled in LaHIPP who are in need of behavioral health services through MCOs.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, June 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Managed Care for Physical and Behavioral Health—Louisiana Health Insurance Premium Payment Program—Behavioral Health Recipient Participation**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in net estimated state general fund costs of approximately \$216 for FY 16-17, \$222,939 for FY 17-18 and \$493,317 for FY 18-19. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$216 for FY 16-17, \$385,187 for FY 17-18 and \$885,818 for FY 18-19. It is anticipated that \$216 will be expended in FY 16-17 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing managed care for physical and behavioral health in order to allow Medicaid recipients enrolled in the LaHIPP Program to access behavioral health services only through the managed care organizations that participate in the Healthy Louisiana (formerly Bayou Health) Program. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid program by approximately \$608,126 for FY 17-18 and \$1,379,135 for FY 18-19.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

Jen Steele  
Medicaid Director  
1705#045

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

**Pharmacy Benefits Management Program  
Provider Participation and Reimbursement  
(LAC 50:XXIX.Chapters 1 and 9)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.Chapters 1 and 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing provides coverage and reimbursement for prescription drugs to Medicaid eligible recipients enrolled in the Medicaid Program. The department promulgated a Notice of Intent to amend the provisions governing the Pharmacy Benefits Management Program in order to clarify requirements regarding 340B-covered entities, and to revise the reimbursement methodology to include federal upper limits (FUL), new copayment exemptions and over-the-counter medications added for expansion benefits pursuant to CMS recently released regulations (*Louisiana Register*, Volume 43, Number 1).

The department now proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to clarify the provisions of the January 20, 2017 Notice of Intent and to: 1) revise the definitions for usual and customary charge and general public; 2) clarify billing/reimbursement requirements for 340B entities that are carved-out of Medicaid; 3) revise the reimbursement language for federal supply schedule and nominal price; 4) revise the definition for contract pharmacy; and 5) clarify professional dispensing fee provisions.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 1. General Provisions**

**§105. Medicaid Pharmacy Benefits Management  
System Point of Sale—Prospective Drug  
Utilization Program**

A. - G. ...

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 therapeutic modules in accordance with the standards of the National Council of Prescription Drug Programs. The purpose of prospective drug utilization review is to reduce duplication of drug therapy, prevent drug-to-drug interactions, and assure appropriate drug use, dosage and duration. The prospective modules may screen for drug interactions, therapeutic duplication, improper duration of therapy, incorrect dosages, clinical abuse/misuse and age restrictions. Electronic claims submission inform pharmacists of potential drug-related problems and pharmacists document their responses by using interventions codes. By using these codes, pharmacists will document prescription reporting and outcomes of therapy for Medicaid recipients.

I. - I.4. ...

5. Prescribers and pharmacy providers are required to participate in the educational and intervention features of the pharmacy benefits management system.

J - L. ...

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), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

**§109. Medicare Part B**

A. The Department of Health, Bureau of Health Services Financing pays the full co-insurance and the Medicare deductible on outpatient pharmacy claims for services reimbursed by the Medicaid Program for 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), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

**§111. Copayment**

A. - A.2.d. ...

B. The following population groups are exempt from copayment requirements:

1. - 3. ...

4. Native Americans and Alaskan Eskimos;

5. ...

6. home and community-based services waiver recipients.

C. - C.4. ...

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), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

## **Chapter 9. Methods of Payment**

### **Subchapter A. General Provisions**

#### **§901. Definitions**

\* \* \*

*Usual and Customary Charge*—the price the provider most frequently charges the general public for the same drug.

\* \* \*

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), amended LR 34:87 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

### **Subchapter B. Professional Dispensing Fee**

#### **§915. General Provisions**

A. The professional dispensing fee shall be set by the department and reviewed periodically for reasonableness, and when deemed appropriate by the Medicaid Program, may be adjusted considering such factors as fee studies or surveys.

*Adjustment Factors*—Repealed.

*Base Rate*—Repealed.

*Base Rate Components*—Repealed.

*Maximum Allowable Overhead Cost*—Repealed.

*Overhead Year*—Repealed.

B. Provider participation in the Louisiana cost of dispensing survey shall be mandatory. A provider's failure to cooperate in the survey shall result in his/her removal from participation as a provider of pharmacy services in the Medicaid Program. Any provider removed from participation shall not be allowed to re-enroll until a professional dispensing fee survey document is properly completed and submitted to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§917. Maximum Allowable Overhead Cost Calculation**

Repealed.

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, Bureau of Health Services Financing, LR 36:1559 (July 2010), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§919. Parameters and Limitations**

Repealed.

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, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§921. Interim Adjustment to Overhead Cost**

Repealed.

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, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§923. Cost Survey**

Repealed.

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, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§925. Dispensing Fee**

Repealed.

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), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:

### **Subchapter D. Maximum Allowable Costs**

#### **§949. Fee for Service Cost Limits**

A. - A.2. ...

a. For purposes of these provisions, the term *general public* does not include any person whose prescriptions are paid by third-party payors, including health insurers, governmental entities, and Louisiana Medicaid.

i. - iii. Repealed.

B. - B.3. ...

a. For purposes of these provisions, the term *general public* does not include any person whose prescriptions are paid by third-party payors, including health insurers, governmental entities, and Louisiana Medicaid.

i. - iii. Repealed.

C. - D.2.c. ...

E. Fee for Service 340B Purchased Drugs. The department shall make payments for self-administered drugs that are purchased by a covered entity through the 340B program at the actual acquisition cost which can be no more than the 340B ceiling price plus the professional dispensing fee, unless the covered entity has implemented the Medicaid carve-out option, in which case 340B drugs should not be billed to or reimbursed by Medicaid. 340B contract pharmacies are not permitted to bill 340B stock to Medicaid. Fee for Service outpatient hospital claims for 340B drugs shall use a cost to charge methodology on the interim and settled at cost during final settlement. Federally qualified health center (FQHC) and rural health clinic (RHC) claims for physician administered drugs shall be included in the all-inclusive T1015 encounter rate.

F. Fee-for-Service Drugs. Drugs acquired at federal supply schedule (FSS) and at nominal price shall be

reimbursed at actual acquisition cost plus a professional dispensing fee.

G - K. ...

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), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **Subchapter E. 340B Program**

##### **§961. Definitions**

\* \* \*

*Contract Pharmacy*—a pharmacy under contract with a covered entity that provides services to the covered entity's patients, including the service of dispensing the covered entity's 340B drugs, in accordance with Health Resources and Services Administration (HRSA) guidelines (75 FR 10272, March 5, 2010). Contract pharmacies are not allowed to bill Medicaid for pharmacy claims.

\* \* \*

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), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **Subchapter H. Vaccines**

##### **§991. Vaccine Administration Fees**

A. Effective for dates of service on and after October 10, 2009, the reimbursement to pharmacies for immunization administration (intramuscular or intranasal) performed by qualified pharmacists, is a maximum of \$15.22. This fee includes counseling, when performed.

B. Repealed.

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, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 40:82 (January 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

##### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, June 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Pharmacy Benefits Management Program—Provider Participation and Reimbursement**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 16-17. It is anticipated that \$1,404 (\$702 SGF and \$702 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 16-17. It is anticipated that \$702 will be collected in FY 16-17 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule amends the provisions governing the Pharmacy Benefits Management Program in order to clarify the provisions of the January 20, 2017 Notice of Intent and to: 1) revise the definitions for usual and customary charge and general public; 2) clarify billing/reimbursement requirements for 340B entities that are carved-out of Medicaid; 3) revise the reimbursement language for Federal Supply Schedule and Nominal Price; 4) revise the definition for contract pharmacy; and 5) clarify professional dispensing fee provisions. It is anticipated that implementation of this proposed rule will not have economic costs, but will be beneficial to pharmacy providers in FY 16-17, FY 17-18 and FY 18-19 by providing clear and concise Pharmacy Program provisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1705#046

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Licensed Professional Counselors Board of Examiners**

Academic Requirements and  
Definitions for PLMFTs and LMFTs  
(LAC 46:LX.3105, 3107, 3309, 3311, 3315, and 3317)

In accordance with the applicable provisions of the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) and through the authority of the Mental Health Counselor Licensing Act (R.S. 37:1101 et seq.), the Louisiana Licensed Professional Counselors Board of Examiners hereby gives notice of its intent to adopt rules and to amended existing rules to clarify practice definitions for provisional licensed marriage and family therapists (PLMFTs) and licensed marriage and family therapists (LMFTs), to clarify academic standards for PLMFTs and LMFTs, and to implement new academic requirements as set forth in Act 736 of the 2014 Regular Legislative Session.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LX. Licensed Professional Counselors Board of  
Examiners**

**Subpart 2. Professional Standards for Licensed  
Marriage and Family Therapists and Provisional  
Licensed Marriage and Family Therapists**

**Chapter 31. License of Title for Marriage and Family  
Therapy**

**§3105. Definitions for Licensed Marriage and Family  
Therapists and Provisional Licensed Marriage  
and Family Therapists**

\* \* \*

*Marriage and Family Therapy*—the professional application of psychotherapeutic and family systems theories and techniques in the prevention, diagnosis, assessment, and treatment of mental, emotional, and behavioral disorders in an individual and relational disorders in couples and families.

*Practice of Marriage and Family Therapy*—the rendering of professional marriage and family therapy and psychotherapy services, limited to prevention, assessment, diagnosis, and treatment of mental, emotional, behavioral, relational, and addiction disorders to individuals, couples, and families, singularly or in groups, whether such services are offered directly to the general public or through either public or private organizations for a fee, monetary or otherwise in accordance with professional training as prescribed by R.S. 37:1116 and the code of ethics/behavior involving the application of principles, methods, or procedures of the marriage and family therapy profession.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1101-1123.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), amended LR 29:2784 (December 2003), LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

**§3107. Serious Mental Illness**

A. Introduction. Act 736 of the 2014 Regular Session of the Louisiana Legislature amended the Louisiana Marriage and Family Therapists Practice Act as follows.

1. A licensee may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated, unless the licensee consults and collaborates with a practitioner who is licensed or holds a permit with the Louisiana state Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana state Board of Nursing who is certified as a psychiatric nurse practitioner.

2. Applicability. The requirement for collaboration and consultation set forth above shall apply only if any of the following conditions are assessed, diagnosed, or treated by the licensee:

- a. schizophrenia or schizoaffective disorder;
- b. bipolar disorder;
- c. panic disorder;
- d. obsessive-compulsive disorder;
- e. major depressive disorder, moderate to severe;
- f. anorexia/bulimia;
- g. intermittent explosive disorder;
- h. autism;
- i. psychosis NOS (not otherwise specified) when

diagnosed in a child under 17 years of age;

- j. Rett's disorder;
- k. Tourette's disorder;
- l. dementia.

B. Definitions

1. As used herein:

*practitioner*—an individual who is licensed or holds a permit with the state Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana state Board of Nursing who is certified as a psychiatric nurse practitioner.

2. As used herein:

*medication is indicated*—when the client has been diagnosed with a serious mental illness and:

- i. when the client or legal guardian discloses the prescribed use of psychiatric medication;
- ii. when the licensee, client, or legal guardian believes that the use of prescribed psychiatric medication may facilitate treatment goals and improve client functioning.

3. As used herein:

*consultation and collaboration*—may be specific or general in nature.

i. Specific Consultation and Collaboration. When medication is indicated for clients who have been diagnosed with a serious mental illness and if the client assents to consultation, the licensee must attempt to consult with the client's practitioner within a reasonable time after receiving the consent for the purpose of communicating the diagnosis and plan of care.

(a). If the licensee's attempts to consult directly with the practitioner are not successful, the licensee must notify the practitioner with a reasonable time that he or she is providing services to the client. Also, the licensee must document in the client's file the date of client consent, the date of consultation, or, if attempts to consult did not succeed, the date and manner of notification to the practitioner. The licensee will inform the client of the inability to consult directly with the practitioner and will discuss and document additional options with the client, including that of general consultation and collaboration. The licensee will provide information to the practitioner regarding client progress as conditions warrant. Consultation and collaboration, for purpose of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

(b). If attempts to consult directly with a practitioner for a specific consultation are successful, the licensee must document in the client's file the information obtained in the specific consultation. The licensee will provide information to the practitioner regarding client progress as conditions warrant.

ii. General Consultation and Collaboration. When medication is indicated for clients who have been diagnosed with a serious mental illness and when the client does not assent to a specific consultation, the licensee must attempt to consult with a practitioner within a reasonable time for a general consultation without releasing any identifying information about the client.

(a). If the licensee's attempts to consult directly with a practitioner are not successful, the licensee must document in the client's file the date of client refusal for consent to consult, the date of general consultation, or if attempts to consult did not succeed, the date and manner of notification to a practitioner.

(b). If attempts to consult directly with a practitioner for a general consultation are successful, the licensee must document in the client's file the information obtained in the general consultation. The licensee will provide general information to the practitioner regarding client progress as conditions warrant.

iii. Consultation and collaboration, for purposes of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

### **Chapter 33. Requirements for Licensure and Provisional Licensure**

#### **§3309. Academic Requirements for MFT Licensure or Provisional Licensure**

A. The board, upon recommendation of the advisory committee, shall provisionally license a person for postgraduate clinical experience who applies on the required

application forms, completed as the board prescribes and accompanied by the required fee. Additionally, applicants must meet one of the four following academic options:

1. ...

2. a master's or doctoral degree in marriage and family therapy or marriage and family counseling or a related clinical mental health field from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in a regionally-accredited educational institution with a minimum of six courses in marriage and family therapy, including coursework on the AAMFT code of ethics. The degree must include:

a. - b.

3. a master's or doctoral degree in marriage and family therapy or a related clinical mental health field from a regionally accredited institution of higher education or a certificate from a postgraduate training institute in marriage and family therapy. Applicants with a school counseling degree would need to meet the requirements in §3311. The qualifying degree or certificate program must include coursework, practicum, and internship in marriage and family therapy that is determined by the advisory committee to be substantially equivalent to a graduate degree or post-graduate certificate in marriage and family therapy from a program accredited by COAMFTE. To be considered substantially equivalent, qualifying degrees or post graduate certificates must include:

a. - c. ...

4. a master's degree or a doctoral degree in marriage and family therapy from a regionally accredited institution of higher education whose program and curriculum was approved by the board through the advisory committee at any time prior to July 1, 2010. The master's or doctoral degree for this option must include:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face-to-face supervision. The training of the supervisor must be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee.

B. Pursuant to Act 736 of the 2014 Regular Legislative Session and effective January 1, 2018, all applicants whose academic background has not been previously approved by the board as of January 1, 2018, must have completed a minimum of six credit hours in diagnostic psychopathology. Courses in this area shall provide academic instruction from a systemic/relational perspective in psychopharmacology, physical health and illness, traditional psycho-diagnostic categories including the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) as published by the American Psychiatric Association on May 18, 2013 and/or the *International Statistical Classification of Diseases and Related Health Problems*, Tenth Edition, published in 1992 (ICD-10) as published by World Health Organization, and the assessment and treatment planning for the treatment of mental, intellectual, emotional, or behavioral disorders within the context of marriage and family systems.

C. Required coursework in marriage and family therapy for academic options 1, 2, 3 and 4 may be completed during

the qualifying master's or doctoral degree programs or may be taken as post-graduate work at a regionally-accredited college, university, or qualifying postgraduate marriage and family therapy training institute as determined by the advisory committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:1113 (June 2009), LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1965 (August 2012), repromulgated LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

**§3311. Coursework and Academic Supervision Requirements, for Options 2, 3, and 4**

A. - A.8. ...

9. Up to 220 of the required 500 hours of supervised direct client contact and 44 of the required 100 hours of face-to-face supervision not completed during a practicum and/or internship during the completion of the qualifying degree program or postgraduate training institute may be completed once an applicant is provisionally licensed as a provisional licensed marriage and family therapist and is under the supervision of an LMFT board-approved supervisor. These hours shall be added to the required 1500 hours of supervised direct client contact required for licensure.

B. Specific Coursework Requirements—Option 3

1. - 1.b. ...

c. Assessment and Treatment in Marriage and Family Therapy—prior to January 1, 2018, a minimum of six credit hours, three in assessment and three in diagnosis are required. As of January 1, 2018, a minimum of nine credit hours are required, three in assessment and six in diagnosis pursuant to Act 736 of the 2014 Regular Legislative Session. Courses in this area shall provide academic instruction from a systemic/relational perspective in psychopharmacology, physical health and illness, traditional psycho diagnostic categories including the use of the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) as published by the American Psychiatric Association on May 18, 2013 and/or the *International Statistical Classification of Diseases and Related Health Problems*, Tenth Edition, published in 1992 (ICD-10) as published by World Health Organization, and the assessment and treatment planning for the treatment of mental, intellectual, emotional, or behavioral disorders within the context of marriage and family systems. Any additional coursework may be completed as post-graduate work in accordance with §3309.C.

1.d. - 2....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1966 (August 2012), LR 41:742 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

**§3315. Application, Practice, and Renewal Requirements for Provisional Licensed Marriage and Family Therapists**

A. - A.7. ...

B. Definitions for Supervision

\*\*\*

*Qualified Supervision*—supervision of the clinical services of a provisional licensed marriage and family therapist by a board-approved supervisor or supervisor candidate for the purpose of qualifying the provisional licensed marriage and family therapist for licensure as an LMFT in Louisiana in accordance with the plan of supervision approved by the advisory committee. Under no circumstances shall any contact that is not face-to-face (such as interaction by conventional correspondence, telephone, e-mail, instant message, etc.) between an LMFT board-approved supervisor or supervisor candidate and a provisional licensed marriage and family therapist be considered qualified supervision unless such contact is pre-approved by the advisory committee as part of the supervisee's plan of supervision. Up to 25 of the 100 face-to-face supervision hours may be conducted via synchronous videoconferencing.

a. - c. ...

\*\*\*

*Supervision*—the professional relationship between a supervisor and supervisee that nurtures the professional self of the supervisee, promotes the development of the supervisee's therapeutic knowledge and skill, contributes to the supervisee's development of sound ethical judgment, and reasonably ensures that the therapeutic services delivered by the supervisee meet a minimum standard of clinical and ethical quality. The supervisor provides guidance and instruction that is of such quality, frequency, and regularity that the clinical and professional development of the supervisee is promoted and the supervisee's service delivery is adequately monitored. Supervision involves the clinical review of the supervisee's work with clients that may utilize therapist self-report and review of clinical documentation, review of audiotapes or videotapes, or direct observation of live therapy sessions.

\*\*\*

C. PLMFT Supervision Requirements for Licensure

1. A PLMFT must complete qualified postgraduate clinical experience under the supervision of a board-approved supervisor or registered supervisor candidate that consists of work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups. An out-of-state applicant may transfer up to 2100 hours of supervised experience towards licensure (a maximum of 1200 direct client contact hours, a maximum of 815 indirect hours, and a maximum of 85 hours of face-to-face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of PLMFTs set forth by the advisory committee. The decision to approve transfer of hours and supervisors from out of state shall be made at the discretion of the advisory committee.

a. At least 1500 hours must qualify as direct work experience. Up to 500 hours of direct work experience received during the completion of a graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 2000 hours.

b. The remaining 1,000 hours may be indirect work experience or other professional activities that may include but are not limited to qualified supervision, workshops, public relations, administrative tasks, consulting with referral sources, etc. as approved by the advisory committee.

c. - d. ....

2. The postgraduate clinical experience must include at least 200 hours of qualified supervision, of which at least 100 hours must be individual supervision. The remaining 100 hours may be group supervision.

a. Up to 100 hours of face-to-face supervisor contact received during the completion of the applicant's qualifying academic experience graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 200 hours of qualified supervision. Of these 100 hours, only 50 hours may be counted as individual supervision. Up to 25 of the 100 face-to-face supervision hours may be conducted via synchronous videoconferencing.

3. - 7.e. ...

D. Renewal Requirements for Provisional Licensed Marriage and Family Therapists

1. - 1.e. ...

2. The board chair, upon recommendation of the advisory committee, shall issue a document renewing the provisional license for a term of two years. The provisional license of any licensee who fails to have his/her provisional license renewed every two years during the month of October shall lapse. An individual with a lapsed license may not practice mental health counseling, identify his/herself as a provisional licensed marriage and family therapist or accrue any supervised experience hours. A lapsed provisional license may be renewed within a period of 90 days or postmarked by January 31 upon payment of all fees and arrears and presentation of all required documentation. After 90 days, the licensee will forfeit all supervised experience hours accrued during that renewal period and must reapply for provisional licensure under current requirements and submit recent continuing education hours (CEHs) as part of reapplication. Out of state PLMFT applicants will need to complete any additional psychopathology coursework as required pursuant to §3309.B.

D.3. - F.4 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:1966 (August 2012), LR 39:1806 (July 2013), LR 41:742 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

**§3317. Qualifications of the LMFT-Approved Supervisor, LMFT-Registered Supervisor Candidate, Board-Approved Supervisor, and Registered Supervisor Candidate**

A. - D.3. ...

E. Renewal of Certification as a Board-Approved Supervisor

1. The board-approved supervisor shall renew his or her board certification to supervise PLMFTs every four years. Supervisors will receive a renewal announcement from the board providing them with their required renewal date and will receive a renewal notice every four years thereafter.

2. To qualify for renewal, board-approved supervisors must:

a. maintain an active LMFT license in good standing as defined by this Rule. Applicants for renewal of their board-approved supervisory status that are under a consent order as a licensee may be renewed only at the discretion of the advisory committee.

b. complete six clock hours of continuing education in clinical MFT supervision prior to each renewal date for current renewal period. These continuing education hours may also count toward the board-approved supervisor's renewal requirements and toward the LMFT licensure renewal requirements;

i. - ii. ...

c. successfully complete the board-approved orientation/renewal workshop for supervisors. The orientation may count as either the orientation workshop or a renewal workshop toward the required six hours of required continuing education for board-approved supervisors;

2.d. - 3.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1969 (August 2012), amended LR 41:746 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:

**Family Impact Statement**

There will be no family impact in regard to issues set forth in R.S. 49:972.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Provider Impact Statement**

The proposed rulemaking should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect of the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments on these proposed rule changes to Mary Alice Olsan, Executive Director, Louisiana LPC Board of Examiners, 8631 Summa Avenue, Baton Rouge, LA 70809. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice.

### Public Hearing

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Mary Alice Olsan  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Academic Requirements and Definitions for PLMFTs and LMFTs

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is estimated to cost the Louisiana Licensed Professional Counselors Board of Examiners \$1800 for the publication of the notice. It is not anticipated that any other state or local governmental units will incur costs or savings from this rule change. The proposed rule change amends the academic requirements for Licensed Marriage and Family Therapists (LMFT) and Provisional Licensed Marriage and Family Therapists (PLMFT) and updates definitions and other requirements to conform to Act 736 of the 2014 Regular Session of the Louisiana Legislature. Additionally, the proposed amendments implement the following: (1) clarify that 500 of the 2,000 required hours of supervisor direct client contact can be earned during the completion of a qualified degree program; (2) adds that 25 of the 100 required hours of face to face supervision may be conducted via videoconferencing; (3) for an out of state PLMFT applicant, reduces the number of hours of supervised experienced hours that can be transferred for licensure from 2500 to 2100; and (4) for Board-Approved Supervisors, allows the 6 required hours of continuing education in MFT supervision to counts towards the renewal of both the Board-Approved Supervisor's certification and LMFT licensure renewal.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change may result in an increased number of in-state applications for provisional licensure as a Provisional Licensed Marriage and Family Therapist (PLMFT) given that more individuals will be eligible to apply. Specifically, this rule expands the academic option for individuals graduating from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) accredited program. The Board expects an increase in revenue of approximately \$500 per year (five in-state PLMFT applicants x \$100).

Conversely, this rule change may result in a decreased number of out-of-state PLMFT and Licensed Marriage and Family Therapist (LMFT) applications given the additional course requirement that is unique to Louisiana. The Board expects a decrease in revenue of approximately \$1050 per year (one out-of-state PLMFT applicant (\$150), three out-of-state LMFT applicants (\$300 x 3).

The net impact is anticipated to reduce annual revenue collections of \$550 per year.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is an economic benefit to individuals with a master's or doctoral degree from a CACREP accredited program in a clinical mental health field related to marriage and family therapy or marriage, in that their degree will now meet the education requirements for PLMFT licensure. Additionally, the new academic requirement for PLMFT licensure requires a minimum of six credit hours in diagnostic psychopathology. Individuals seeking PLMFT licensure, but who do not have the required minimum of six credit hours in diagnostic psychopathology, will need to obtain these credits.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes should not impact competition; however, employment may be affected in that more in-state individuals may become eligible for provisional or full licensure.

Mary Alice Olsan  
Executive Director  
1705#033

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Public Safety and Corrections Office of Motor Vehicles

Driving Schools and Driver Education  
(LAC 55:III.143-159)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles, hereby proposes to repeal sections 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157 and 159 and create sections 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159 under Chapter 1 to implement a more comprehensive version of Title 55 as it relates to the rules governing driving schools and the driver education program. The headings generally remain the same throughout but the content within each section has been reworded and rearranged to be more user friendly. In addition to a more comprehensive version of the rules governing driving schools and the driver education program, the Office of Motor Vehicles anticipates an increase in the penalty (monetary assessment) for violations (by driver education providers) of prohibited activities and procedures. Furthermore, the promulgation of these rules will require the driver education providers to obtain a complete medical examination prior to licensing or upon application for renewal as well as requiring that all driver education providers complete a standard first aid or CPR certification and a training course on the prevention of sexual harassment.

## Title 55

### PUBLIC SAFETY

#### Part III. Motor Vehicles

##### Chapter 1. Driver's License

##### Subchapter A. General Requirements

##### §143 Commercial Driving Schools

##### Chapter 1. Driver's License

##### Subchapter A. General Requirements

A. Definitions. As used in this Chapter, the following terms have the meanings described below.

*Adult*—a person 18 years of age or older.

*Background Check*—a secure and reliable way to initiate a criminal check on potential owners, instructors, employees and other types of applicants.

*Behind the Wheel Instruction*—a course which shall consist of a minimum of eight hours of instruction with a student as the operator of a dual controlled motor vehicle. The course is also referred to as BTW.

*Classroom Instruction*—a driver education course that is administered in a classroom environment that enables a student to learn through various instructional methods, under the direct guidance of a properly licensed driver education instructor.

*Commissioner*—the assistant secretary of the Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles.

*30 Hour Classroom Course*—a program which shall consist of a course of not less than 30 hours of classroom instruction required of first-time driver's license applicants' age 15 through 17 excluding lunch breaks. This course shall be conducted utilizing the curriculum contained in this Subchapter.

*DPS*—the Louisiana Department of Public Safety and Corrections, Public Safety Services, acting directly or through its duly authorized officers and representatives.

*Driver Education Certificate of Completion*—proof of completion of any portion of the driver education course or the pre-licensing course required by law. The course is administered by a certified and approved driving school in the form designated by the DPS.

*Driver Education Course*—a formal class or program that prepares a new driver to obtain a learner's permit or driver's license. The course of study may be administered in a classroom, in a vehicle, online or a combination thereof. Individuals are instructed on the techniques of driving a vehicle, safety precautions and traffic regulations and laws.

*Driver Educational Instructional Document*—a document issued by the driving school on a form approved and provided by DPS. Driving instruction details, behind the wheel assessment and other information will be documented on this form.

*Driving School*—an entity licensed by DPS that offers instruction for the purpose of educating and training an individual, by offering a 38 hour driving course or a 14 hour pre-licensing course, or both.

*Eight Hour behind the Wheel Course Assessment*—a program which shall consist of a minimum of eight hours of instruction with the student as the operator of a dual-controlled motor vehicle. If under the age of 18, the student's parent or guardian shall sign, authorizing the instruction. A test is conducted or given at the end of the eight hour driver education course to determine a student's driving ability.

*Fees*—the monetary amount for a school license, tester license or instructor license. All fees shall be submitted in the form of a money order, certified check or secondary school system checks.

*Instructor*—a person who is licensed to provide the driver education curriculum through classroom or behind the wheel instruction.

*Instructor License*—a license issued by DPS that authorizes the holder of the license to provide instruction in driver education courses.

*Knowledge Test*—final test for the driver education and pre-licensing classroom courses. This test is provided to the driving school by the Office of Motor Vehicles.

*Letter of Warning*—identification of a violation. The letter will provide that the violation must be corrected and may provide directions and a timeframe of the plans for the suggested corrections.

*Major Offense*—an infraction of major regulations and policies outlined within this chapter, which may include but not be limited to, driving schools not adhering to all applicable federal and state laws or engaging in any form of unlawful discrimination or other activities. The Commissioner maintains discretion to determine any violations which will amount to a major offense and any monetary penalty to be assessed.

*Minor Offense*—an infraction of minor regulations and policies outlined within this chapter, which may include but not be limited to, failure to notify students of grievance procedures, accompanying students to OMV with the purpose of assisting the student in completion of the driver's license exam, failure to display the driving school license at the place of business, failure to maintain lesson plans and schedules for the driving school. The Commissioner maintains discretion to determine any violations which will amount to a minor offense and any monetary penalty to be assessed.

*Minor*—a person under the age of 18.

*Motor Vehicle*—automobiles, trucks, truck-tractors, trailers and semi-trailers and motorcycles, propelled by steam, gasoline, electricity, or any other source of energy other than muscular power, except farm implements temporarily operated or moved on a roadway or vehicles operated only on rails or tracks constructed therefor.

*OMV*—any reference herein to OMV shall be construed as referring to the Office of Motor Vehicles, Training and Certification Unit, P.O. Box 64886, Baton Rouge, LA 70896.

*Operator*—every person who is in actual physical control of a motor vehicle upon a roadway.

*Owner*—a person or provider who has the principle responsibility for a driver education program.

*Penalty*—monetary assessment for violation of prohibited activities and procedures outlined in this Chapter. Fine amounts will be based on the nature of the offense, the number of previous offenses, the number of rules violated and the number of times the violations occurred and will be determined by the Commissioner. Any penalty assessed shall be between \$100 and \$1,500 per violation.

*Person*—every natural person, firm, co-partnership, association or corporation.

*Pre-Licensing Course*—a program which shall consist of six hours of classroom instruction and an eight hour behind the wheel course required of first-time driver's

license applicants eighteen years of age or above, if a 30-hour classroom course is not completed.

*Revocation*—termination of license to operate a driving school or to instruct at a driving school as provided in these rules and regulations.

*Road Skills Test*—a driving test that demonstrates the applicant's ability to safely operate and maneuver a vehicle in traffic.

*Secretary*—the deputy secretary of the Department of Public Safety and Corrections, Public Safety Services, or his appointed designee.

*School License*—a license issued by DPS authorizing the holder of the license to provide driver education courses.

*Street or Roadway*—the entire width between the boundary lines of every publicly maintained thoroughfare when any part thereof is open to the use of the public for purposes of vehicular travel.

*Student*—a person who is enrolled or seeking enrollment in a driver education course or a pre-licensing course.

*Supervision*—the action or process of watching or directing what someone does or how something is done, or both.

*Suspension*—the temporary withdrawal of a school or instructor's license for violations of the laws and rules pertaining to driver's education, or both.

*Teaching Certificate*—a certificate issued by Louisiana Department of Education indicating the holder is qualified to teach in the secondary schools of this state.

*Temporary Instructional Permit*—a Class "E" temporary instructional permit (TIP) obtained from OMV prior to the student's participation in the classroom permitting an unlicensed student to receive instruction on public roadways from a licensed instructor and be administered a road skills test.

*Third Party Examiner*—an individual who has been licensed to administer road skills test through a third party tester.

*Third Party Tester*—for purposes of this Chapter, a driving school with which DPS has perfected a contract with to administer knowledge and road skills tests required by Louisiana law for driver's license issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1974 (August 2012), amended LR 38:3234 (December 2012), amended LR 43:

#### **§144. Driver Education and Driving Schools**

A. DPS shall establish a driver education and training program to be utilized by secondary school systems and private driving schools of this state. A driver education course for any person under the age of eighteen shall consist of a minimum of thirty hours of classroom instruction and no less than eight hours of actual driving instruction.

B. Any application received and approved for a driving school will be issued a license that provides for the administration of a 38-hour driver's education course, a 6-hour pre-licensing course, and the administration of written and road skills test as a third party tester. Any DPS approved driving school licensed to only offer the six hour pre-licensing course as of August 15, 2011, will be licensed to

continue to offer only the six hour pre-licensing course, but will be required to become a third party tester, and is responsible for complying with the new requirements set forth in these rules. No other applications for only providing the six hour pre-licensing course will be accepted. A pre-licensing course shall consist of a minimum of six hours of classroom instruction and no less than eight hours of actual driving instruction.

C. Every person licensed or contracted by DPS to operate a private driving training school or agency, or providing driving courses, shall also be licensed or contracted as a third party tester pursuant to R.S. 40:1461.

D. Every person engaged in the operation of a private driving school shall apply for and procure a license from DPS. No driving school shall advertise without having first obtained a contract with DPS. No person shall for remuneration hold himself as a qualified or licensed instructor without obtaining a license and contract from DPS.

E. Every licensed and contracted third party tester shall administer both the knowledge and road skills tests required for the issuance of a Class "D" or "E" license in Louisiana in accordance with R.S. 32:408.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1975 (August 2012), amended LR 43:

#### **§145. Qualifications for Private Driving School Owners and Instructors**

A. Qualifications for a Private Driving School Owner. To become a driving school owner, the applicant shall:

1. be a citizen of the United States or be lawfully present in the United States, and be a resident of the state of Louisiana;
2. be at least 21 years of age and have at least five years of driving experience;
3. hold at least a valid Class "E" Louisiana driver's license;
4. have earned at least a high school diploma or GED;
5. not have had driving privileges suspended/disqualified for a DUI/DWI within the last ten years;
6. possess any required occupational license and business license;
7. within the last three years, not have any of the convictions listed below:
  - a. three or more moving violations on the driving record;
  - b. driving under suspension;
  - c. two or more citations for seatbelt violations;
  - d. two or more citations for following too closely;
  - e. one or more citations for child restraint violations;
  - f. three or more exceeding the posted speed limit;
  - g. one or more citations for texting while driving;
  - h. two or more citations for driving without insurance or security within three years; or,
  - i. two or more citations for reckless or careless operation or careless driving.
8. not have three or more insurance cancellations within the last 12 months on his driving record;

9. not have been convicted of any offenses related to the operation of a driving school or other business regulated by DPS;

10. not a current or previous owner of a driving school or any other business regulated by DPS whose license or contract has been revoked;

11. not have been convicted of a crime involving violence, dishonesty, deceit, indecency or an offense involving moral turpitude, and have not been convicted of any misdemeanor or felony offenses involving controlled dangerous substance(s) or driving while intoxicated within the last ten years;

12. not be convicted of any crime enumerated in R.S. 15:587.1(C) (the Child Protection Act), R.S. 15:587.1 et seq.;

13. has not provided false information with the application or falsified or withheld documents or information from representatives of DPS;

14. attend and complete the training course for school owners provided by DPS. The applicant must pass a test on his knowledge of LAC 55:III.143-160;

15. maintain a valid email address for correspondence sent electronically from DPS; and

16. submit a completed application package as outlined in this Subchapter.

B. Qualifications for Classroom Instructor. In addition to meeting the qualifications of a driving school owner (with the exception of Paragraphs 14-15 above), a classroom instructor applicant shall:

1. not previously have been a licensed instructor whose instructor's license has been suspended or revoked;

2. hold a 30 hour driver education course certificate of completion issued within the past five years or a valid teaching certificate from the Department of Education with the following specialized education courses:

a. hold a current valid teaching certificate issued within the past five years with all of the following specialized education courses:

i. general safety education course—three hours;

ii. basic information course in driver education course—three hours;

iii. curriculum innovations and instructional devices course (three hours) in-depth study of driver education and traffic safety curricular materials and familiarization with related instructional devices; and

iv. first aid—one hour; or.

b. a certificate of completion of a driver education course at least equivalent to a 30-hour classroom course which has been approved by DPS;

3. at the time of application, within the last three years, shall not have any convictions listed in §145.A.7-8;

4. have at least five years driving experience;

5. possess a current completed Medical Examination Form (DPS 2032).

C. Qualifications for Eight-Hour Behind the Wheel Instructor. In addition to meeting the qualifications of a driving school owner (with the exception of Paragraphs 14-15 in §145.A), an eight hour behind the wheel instructor shall:

1. meet the qualifications of a classroom instructor;

2. hold at least a valid Class "D" Louisiana chauffeur's license;

3. not be missing an eye, hand or foot; and

4. have visual acuity not worse than 20/40 in each eye, with or without corrective lenses and not have any restrictions which indicate less than 20/40 vision or has physical impairment restrictions on his driver's license.

D. All instructors shall be approved by DPS and obtain an instructor's license prior to providing instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1975 (August 2012), amended LR 43:

#### **§146. Application Process and Fees for Private Driving Schools and Instructors**

A. Application Process for Initial Driving School License. The application process is a two-step approval process.

1. An applicant for an initial driving school license shall submit the following:

a. completed initial application for driving school owner approval (DPSMV6710);

b. non-refundable \$50 certified check or money order made payable to DPS;

c. completed criminal history background check forms for each owner, including two fingerprint cards along with separate certified check or money order made payable to Department of Public Safety and Corrections, for each background check to be conducted;

d. lesson plan containing:

i. beginning and ending time of each class day, including lunch and break periods;

ii. number of class days in the course;

iii. material sources;

iv. how information is presented, (i.e. handouts, videos, lectures);

v. title of audio visual sources to be utilized; and

vi. current e-mail address.

2. Once the background check is completed and the initial application is approved, the applicant shall submit the following:

a. completed driving school initial application (DPSMV 2147). This form is furnished by OMV and shall be signed by the owner and notarized;

b. copy of any required occupational and business license(s);

c. completed background check forms on any other employees responsible for the supervision of students;

d. certificate of insurance in the company name stating that all vehicles utilized in the behind the wheel course are currently insured and that upon cancellation or expiration, DPS will be notified. This certificate shall be from the issuing insurance carrier, not the agency; identify (by description and vehicle identification number) the vehicle(s) covered. The limits shall be from a company authorized to do business in this state in the amount of at least the minimum amount required by R.S. 32:900;

e. address of and specification of classrooms utilized to conduct the classroom course, including room size and capacity as determined by the state fire marshal or local authority;

f. completed driving school instructor application package for each instructor;

g. course specifications as defined in this Subchapter;

h. copies of unit tests and final examination;

i. lesson plan for the behind the wheel course which outlines the stages of the course based on the student's progression and specifies the types of roads traveled, the traffic signals and signs encountered on the routes taken, and the average time frame students are exposed to various types of roads. Written documentation or GPS mapping may be included;

j. completed application package for third party tester certification;

k. a surety bond in the amount of \$20,000; and

l. a written document between the student and school, as defined in LAC 55:III.147.B.3.

B. All applications for driving schools and instructors must be mailed to:

Office of Motor Vehicles  
Attention: Training and Certification Unit  
P.O. Box 64886  
Baton Rouge, LA 70896

C. Application for Instructor License for a Driving School

1. An applicant shall submit:

a. an application for instructor of a driving school (DPSMV 2148);

b. a completed background check document (DPSSP 6696) and background check fee;

c. a 30 hour driver education training certificate of completion or valid teaching certificate as defined in §145.B;

d. a copy of a high school diploma, GED or higher education certificate;

e. an application fee of \$20 for a two year period which shall be non-refundable;

f. a completed third party examiner package as outlined in §156 if the instructor is applying to be a third party examiner.

D. Licenses

1. Licenses shall be issued on a biennial basis. The initial license shall be valid from the date of issuance until December 31 of the following even numbered calendar year.

2. Licenses shall be nontransferable. In the event of a change of ownership, application for a new license shall be made and the old license shall be surrendered to DPS before a new license will be issued to the new owner.

3. If a driving school license is lost or destroyed, a duplicate shall be issued for a \$25 application fee upon receipt of a statement of fact or, in the case of mutilation, upon surrender of such license.

4. If an instructor license is lost or destroyed, a duplicate shall be issued for a \$10 application fee upon receipt of a statement of fact or, in the case of mutilation, upon surrender of such license.

E. School/Tester License Fees

1. Every application or renewal for a school license shall be accompanied by an application fee or renewal fee of \$25 per year, collected biennially, per location.

2. A \$25 fee shall be assessed when a school relocates and a new license is issued or if a duplicate license is required.

3. The license fee for an additional location is \$25 per year, collected biennially, and shall be submitted with the new application.

4. Every application or renewal for a third party tester license shall be accompanied by an application fee or renewal fee of \$50 per year, collected biennially, per location.

5. License Fees pursuant to this Section may be prorated.

F. Instructor/Examiner License Fees

1. Every application or an instructor license shall be accompanied by an application fee or renewal fee of \$10 per year, collected biennially, or if a duplicate license is required.

2. Every application for an examiner license shall be accompanied by an application fee or renewal fee of \$25 per year, collected biennially, or if a duplicate license is required.

3. License Fees pursuant to this Section may be prorated.

G. Office Staff

1. Every employee involved in the supervision over the students or who has access to student information shall have a background check performed.

2. School owners may employ persons who have not passed a background check for other duties that do not involve access to, care of, or supervision of students and/or minors. These employees will not have access to the records or information of students and/or minors at any time. Furthermore, these employees may not be allowed on the premises of a driving school while students and/or minors are present. In the case of a driving school that has a shared business, these employees shall not be in the same room at any time with students and/or minors, or have access to the records or information of students and/or minors.

H. Renewal

1. Prior to the beginning of the renewal period, a renewal invitation will be offered to eligible schools by email. Previous compliance reviews will determine eligibility.

2. Application for renewal shall be made on the form prescribed by OMV at a minimum of 120 days prior to license expiration.

3. All renewal applications for privately owned schools shall be submitted to OMV before the close of business on October 1 of the expiration year.

4. Applications received after October 1 will be deemed untimely and may cause delay in renewal of the license.

5. A school that submitted an untimely renewal application and whose renewed license is not issued prior to December 31, shall not be authorized to conduct any classes after December 31, until the license is renewed.

6. Incomplete renewal applications will be returned and may result in a delay of the licensing process.

7. Proof of continuing education for each instructor shall be submitted with the renewal packet as outlined in §151.

8. The following documents shall be submitted as part of the renewal packet:

a. completed application for each school location, indicating the instructors and vehicles utilized at each location;

b. completed application packet for any new instructors added;

c. certificate of insurance in the school's name stating that all vehicles utilized in the behind the wheel course are currently insured and that upon cancellation or expiration, DPS will be notified. The certificate shall be from the issuing insurance carrier and not the agency and identify (by description and vehicle identification number) the vehicle(s) covered. The limits shall be from a company authorized to business in Louisiana for at least the minimum amount required by R.S. 32:900;

d. appropriate fees as outlined in §146.E or F; and

e. successful passing of an initial fingerprint background check for each owner, instructor and any other employee involved in the supervision of the students or who has access to student information.

#### I. Change of Name of Driving School

1. If the school desires to change the operating name of the business, the owner shall submit a written request to OMV (or DPS) for the name change.

2. Upon approval of the name change, the applicant must submit the following documentation:

a. an application for change of name for a driving school, which may be downloaded from the OMV website;

b. copy of any required occupational or business license(s) in the new name;

c. a name change document if the company is on file with the Louisiana Secretary of State;

d. a surety bond in the new business name in the amount of \$20,000 from a company qualified to do business in Louisiana; and

e. a \$25 application fee.

3. Certificates of completion cannot be issued under the new name until the new contract and license is issued.

#### J. Change of Address of Driving School

1. Prior approval is required for any classroom or business address change. OMV shall be notified 30 days prior to any change in address to allow for site inspection and verification.

2. Upon approval of the address change, the applicant must submit the following documentation to OMV:

a. an application for change of address for a driving school which may be downloaded from the OMV website;

b. a \$25 application fee collected biennially. A one year fee will be collected if the application is made during the second year of the license period.

c. documentation listed in Section D of this Chapter applicable to the new address; and

d. a behind the wheel lesson curriculum for the new address.

3. If the location is to be certified as a third party tester site, the location shall meet the requirements for a tester site as listed in §156.

4. Classes cannot be conducted at the new address until a new contract is signed by OMV and the owner.

#### K. Additional Location of Driving School

1. A school owner may make application to open an additional location if he has successfully operated the initial (or last) location for at least two years and has submitted two

consecutive compliance reviews that did not result in a letter of warning, a fine, a suspension or a revocation.

2. The school owner must submit the following:

a. a completed Additional Location Application which may be downloaded from the OMV website;

b. a \$25 application fee collected biennially. A one year fee will be collected if the application is made during the second year of the license period;

c. documentation listed in Section A of this Chapter applicable to the new location; and

d. a behind the wheel lesson curriculum for the new location.

3. If the location is to be certified as at third party tester site, the location shall meet the requirements for a tester site as listed in §156.

4. Classes cannot be conducted at the new location until a new license is issued by OMV.

#### L. Transfer of Ownership of a Private Driving School

1. The seller shall notify DPS of the pending transfer of ownership. School and instructor licenses are nontransferable as stated in §146.

2. The new owner shall follow the guidelines as prescribed in §146.

3. The commissioner has the final authority in the approval of all transfers of ownership.

4. If the previous owner does not desire a transition phase for the new school owner(s), the currently licensed owner(s) must complete instruction to the current students prior to the transfer of ownership and the new owner(s) must make application for a new driving school. New classes cannot be held by the previous owner(s) or new owner(s) until the transfer of ownership is completed and the new owner(s) is licensed. Once the bill of sale or transfer of ownership is executed, the previous owner(s) must return his original school license and all instructor licenses along with a copy of the bill of sale or transfer of ownership to OMV.

5. If the school is to remain operational during the transition to the new owner(s), the following guidelines covering businesses sold while maintaining the current location must be adhered to.

a. The new owner of the school shall an application to own a driving school.

b. The new owner must meet the qualification outlined in §145.

c. If the new owner currently maintains a driving school license, he may purchase a driving school with multiple locations, if approved by the commissioner.

d. If the new owner does not currently maintain a driving school license, multiple locations of a driving school may be purchased, but the new owner shall be licensed for a period of at least 60 days at one location, prior to administering driver's education at multiple locations, and upon approval by the commissioner.

6. OMV may require an interview and a sample of the lesson instruction with the potential new driving school owner(s).

7. The following documents must be submitted when a school has transferred ownership:

a. copy of the bill of sale or transfer of ownership;

b. all items as outlined in §146.E; and

c. copy of the lesson plan and course guide, including the new unit tests and final examination. If a new

lesson plan and course guide are utilized; these documents shall be based on the curriculum as outlined in §154.

i. DPS shall approve if the same lesson plan can be utilized.

ii. In the event the same curriculum will be used, a modified course guide must be submitted along with a statement signed by the buyer and the seller that the same curriculum will be utilized, if not specified in the bill of sale or transfer of ownership documentation.

8. If the vehicles utilized in the school are being sold and are registered in the school owner's name rather than the school's name, the title must be transferred to the new owner and the following documents must be submitted:

a. proof of registration of vehicles in the new owner's name;

b. certificate of insurance in the school's name stating that all vehicles utilized in the behind the wheel course are currently insured and that upon cancellation or expiration, DPS will be notified. This certificate shall be from the issuing insurance carrier and not the agency and identify (by description and vehicle identification number) the vehicle(s) covered. The limits shall be from a company authorized to do business in Louisiana in the amount of at least the minimum amount required by R.S. 32:900;

9. If the same instructors will remain with the school, a notification of employment of a currently licensed instructor form (DPSMV 6711) shall be completed and submitted along with a \$10 application fee, in lieu of the instructor application packet.

10. All new instructors must complete the application process as outlined in §146.

11. A surety bond in the amount of \$20,000 from a company qualified to do business in Louisiana shall be submitted.

12. A copy of any required occupational license or business license(s) in the new owner(s) name shall be submitted.

13. The new owner(s) shall have the location certified as a third party tester site. The new owner shall obtain a new certificate of general liability insurance in the school's name. The certificate of general liability insurance shall list the school's address and the current policy dates. This certificate shall be from the issuing insurance carrier and not the agency. The limits shall be \$1,000,000 per occurrence in general liability.

a. The certificate of general liability insurance must show OMV's address as a certificate holder or additional insured with the following address:

Office of Motor Vehicles  
Attention: Training and Certification Unit  
P.O. Box 64886  
Baton Rouge, LA 70896

b. For any cancellations or expirations, the insurance carrier shall notify OMV.

14. A minimum of one instructor must be certified as a third party tester examiner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 40:1461 and R.S. 40:1462.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1976 (August 2012), amended LR 40:2603 (December 2014), LR 41:2665 (December 2015), amended LR 43:

## §147. General Regulations for Private Driving Schools

A. All approved private driving schools shall operate from an office in the following manner:

1. The school shall provide a written document to the prospective student detailing the course to be provided and the fee charged for each service. This document shall be signed by the parent (if the student is a minor) or a student (if over the age of eighteen) and the school owner. A copy of this document and the paid receipt shall be provided to the person that signs the document.

2. DPS shall first approve any name to be used by a driving school. A school shall not use the word "state" or "education" in a part of the school name.

3. A school shall not use any name other than its approved name for advertising or publicity purposes, nor shall a school make any false or misleading statements in any of its advertisements or publications. A school shall not advertise or imply the school is "accredited" by any national or state organization for driving schools, when such accreditation does not exist.

4. A driving school shall not advertise in any way until the contract is offered by DPS to the driving school.

5. The school's license shall be conspicuously displayed in the business during operational hours. In the case of rented or leased space, the license shall be displayed at that location while the space is being utilized by the driving school.

6. In the event a school owner or instructor's license is revoked, that person shall not be involved in the administrative duties of the school without prior approval from the commissioner.

7. All schools shall post a sign within the classroom stating that anyone who wishes to file a complaint against the school may contact the Training and Certification Unit at the Office of Motor Vehicles, P.O. Box 64886, Baton Rouge, LA, 70896, Attn.: Training and Certification Unit.

8. Driving schools may employ instructors currently licensed by DPS without repeating the application process. A notification of employment of a currently licensed instructor (DPSMV6711) form shall be completed and submitted along with an application fee of \$10, in lieu of the instructor application packet.

9. The driving school shall adhere to all applicable federal, state and local laws and shall not engage in any form of unlawful discrimination or other activities. The owner or instructor shall not knowingly present to DPS false or misleading information relating to the licensing process.

10. Driving school owners shall not allow any person associated with the driving school, who has not passed a background check and whose background check is not on file with OMV, to be responsible for or to have direct care over minor students. The responsibility or direct care over the minor students shall be any contact with a student, including but not limited to, monitoring students, or transporting students to and from instruction. This rule applies to all driving school employees, including instructors and administrative staff, and any other associates of the driving school.

11. Driving school owners are responsible for all actions that occur in association with their driving school. This includes actions of instructors, school employees and

employees of other businesses the owner may be involved with.

12. Driving school owners shall ensure that each student or potential student that contacts the school is treated respectfully and professionally at all times, regardless of their age, race, sex, sexual orientation, religious affiliation, etc., in accordance with Louisiana law regarding discrimination.

13. Driving school owners are responsible for ensuring all instructors are familiar with the rules and regulations covering driver education providers and are aware of the consequences of violating these rules.

#### B. Surety Bond

1. School owners shall be required to maintain a \$20,000 surety bond while maintaining a license to operate a driving school.

2. OMV shall be listed as the obligee.

3. Students (over eighteen) or parents (of minor students) may file with DPS for reimbursement of all or part of the course fee when the school or its instructors fail to provide the instruction as required by statute and these rules.

4. If the school is unable to complete a student's course, a parent or adult student may request a refund for the uncompleted portion of the course. This refund should be made available within 10 days of the request. If a reasonable request for a refund is not granted, the student and/or the parent may apply against the school's surety bond.

5. The parent/student must complete a claim form and submit the form and supporting documents with the claim to OMV for consideration. Supporting documents may include:

- a. copy of paid receipt for course;
- b. copy of any contract signed by parent/student and school; or
- c. any documents for course scheduling.

C. A school shall have a commercially established primary location where records shall be kept in a secure manner. Records shall be available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. All schools must secure a business location for record keeping and test administration by September 1, 2017.

1. Classrooms utilized shall meet at least the minimum state, OSHA and ADA requirements for all classrooms.

a. All locations must be licensed prior to the classroom instruction.

b. A classroom location may be obtained by renting space from facilities in the form of a conference room or a meeting room. Photographs of these meeting rooms must be submitted with the license application for that location.

c. No classes are to be held in a room that is designed for temporary residence.

d. No facilities may be rented or leased from an establishment that restricts entrance by age (no minors).

e. No driving school shall be allowed to conduct business or instruction from a private residence. Any classroom located on private property shall not be attached to a private residence.

f. Classrooms shall begin and end at the same location, unless prior approval has been obtained from the commissioner.

2. The classroom shall be equipped with any current standards of equipment to properly instruct the classroom course.

3. The classroom may also be equipped with instructional software, traffic boards(s), state/local maps, laser pointer and traffic templates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 40:1461 and R.S. 40:1462.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1977 (August 2012), amended LR 40:2604 (December 2014), LR 41:2665 (December 2015), amended LR 43:

### **§148. Secondary/Alternative School Driver Education Program**

#### A. Qualifications for Secondary Schools and Instructors

1. The school shall have an established physical location where the driver education program will be administered.

2. The applicant for a classroom instructor shall meet the qualifications for instructors listed in §145.B.

3. Qualifications for Eight Hour behind the Wheel Instructor. To be an eight hour behind the wheel instructor the applicant shall:

a. meet all of the qualifications for a secondary school classroom instructor;

b. meet all of the qualifications in §145.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1978 (August 2012), amended LR 43:

### **§149. Application Process and Fees for Secondary/Alternative Schools and Instructors**

A.1. Application process for individual secondary schools in which the driver education program is controlled at the school level, shall submit the following:

1. complete application package. Incomplete application packages shall be returned;

2. complete initial application for secondary school driver's education program (DPSMV6714);

3. non-refundable \$50 application fee;

4. completed lesson plan as listed §146.A;

5. current e-mail address;

6. certificate of insurance in the school/system's name stating that all vehicles utilized in the behind the wheel course are currently insured and that upon cancellation or expiration, DPS will be notified. This certificate shall be from the issuing insurance carrier, not the agency; identify (by description and vehicle identification number) the vehicle(s) covered. The limits shall be from a company authorized to do business in this state in the amount of at least the minimum amount required by R.S. 32:900.

B. Application process for parish school system driver education programs which are controlled at the system level, shall include the following:

1. completed initial application for parish-wide driver education program application (DPSMV6713).

2. completed package as listed above in §146.A.3-6 in this chapter for individual secondary school application process.

C. Application for a Secondary School Driver Education Instructor License. Incomplete application packages shall be returned. Applicants shall submit a completed secondary school driver education instructor application (DPSMV2148) and the documents as listed in §146.

D. Licenses

1. School/Tester licenses shall be issued on a biennial basis. The initial license shall be valid from the date of issuance until August 31 of the current odd numbered year or next odd numbered year.

2. Every application for license shall be accompanied by a non-refundable application fee or renewal fee of \$25 per year, collected biennially, per location or per school system.

3. Instructor/Examiner License shall be issued on a biennial basis. The initial license shall be valid from the date of issuance until August 31 of the current odd numbered year or next odd numbered year.

4. If the completed application including all fees is not received by August 31, the license shall expire.

E. School/Tester License Fees

1. Every application or renewal for a school license shall be accompanied by an application fee or renewal fee of \$25 per year, collected biennially, per location.

2. Every application or renewal for a third party tester license shall be accompanied by an application fee or renewal fee of \$50 per year, collected biennially, per location.

3. Every application for license shall be accompanied by a non-refundable application fee or renewal fee of \$10 per year, collected biennially, for each individual instructor for the school or if a duplicate license is required.

4. If a school license or instructor license is lost or destroyed, a duplicate will be issued for a \$10 application fee upon a statement of fact or, in the case of mutilation, upon surrender of such license.

F. Instructor/Examiner License Fees

1. Every application for an instructor license shall be accompanied by an application fee or renewal fee of \$10 per year, collected biennially, or if a duplicate license is required.

2. Every application for an examiner license shall be accompanied by an application fee or renewal fee of \$25 per year, collected biennially, or if a duplicate license is required.

3. Every application for license shall be accompanied by a non-refundable application fee or renewal fee of \$10 per year, collected biennially, for each individual instructor for the school or if a duplicate license is required.

4. If a school license or instructor license is lost or destroyed, a duplicate will be issued for a \$10 application fee upon a statement of fact or, in the case of mutilation, upon surrender of such license.

G. Renewal

1. Application for renewal of a license shall be made on the prescribed renewal form (renewal application), by the close of business on June 1 of the expiration year, and accompanied by the appropriate fees.

2. The fees shall be submitted in the form of a money order, certified check or check from a school.

3. Applications received after June 1, will be deemed untimely and may cause delay in renewal of the license. If the license is not issued prior to August 31, the school shall not be authorized to conduct any classes until the license is renewed.

4. Documents shall be submitted for the renewal process in the same manner as §147.B.8.

5. Any school that fails to renew their license within six months of expiration shall be required to begin the initial application process again.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1979 (August 2012), amended LR 38:3235 (December 2012), amended LR 43:

**§150 Regulations and Policies for Secondary and Alternative School Driver Education Courses**

A. General Regulations for Secondary and Alternative Schools. All approved secondary and alternative schools shall operate from an office in the following manner.

1. In parishes where one or more instructors provide driver education instruction for all schools in the parish, the parish school system shall make application to provide driver education. The instructor shall be issued a parish-wide license for instruction.

2. If oversight for the driver education program is provided at the system level, the system shall determine the location where the records shall be kept. All records shall be maintained at a central location which provides DPS access to the records during daytime business hours.

3. Individual secondary schools shall apply to DPS for the approval of its driver education courses prior to the administration of same.

4. In school systems where the oversight for driver education is provided at the individual school level, the records shall be maintained at the individual school and shall be made available to DPS during daytime business hours.

5. Classroom instruction shall be provided at an approved and certified driving school. Home study is not permitted for any portion of the classroom instruction.

6. The school superintendent/principal shall share the responsibility for all acts performed by instructors or employees that are within the scope of employment and which occur during the course of employment.

7. Principals/superintendents shall be responsible for ensuring instructors complete continuing education courses in an effort to stay abreast of the latest trends and standards of driver education.

8. Secondary schools shall have the option to provide a six hour pre-licensing course.

9. Secondary schools shall have the option to administer the knowledge and road skills tests to students who are currently enrolled in its school system or have completed the system's driver education course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1980 (August 2012), amended LR 43:

#### **§151. Regulations for All Driver Education Providers**

A. General Regulations. The rules and requirements listed in the remainder of this section shall apply to both private driving schools and driver education programs administered by secondary and alternative schools.

1. Prior to enrollment in a driver education or pre-licensing course, a student shall obtain a temporary instructional permit from OMV as required by R.S. 32:402.1. School owners will verify that the permit has been obtained prior to the student's participation in any driver's education course.

2. Employees of DPS whose duties relate in any way to the issuance of a driver's license shall not be connected with any driving school.

3. Failure to receive notification of information due to an improper e-mail address or filter setting is the owner's responsibility to correct.

4. The school shall notify DPS by e-mail at [ladrivingschools@dps.la.gov](mailto:ladrivingschools@dps.la.gov) of any change(s) in their contact information within 10 business days of such change.

5. Any additional instructors hired during the license period shall be properly licensed prior to administering any instruction.

6. The school shall permit DPS representatives to inspect the school and shall make available to DPS, when requested to do so, all information and records pertaining to the driver education program. Upon request, the school shall provide photo copies of the school records required by DPS.

7. The school shall not, by advertisement or otherwise, state or imply that a driver's license is guaranteed or assured upon completion of a driver education training course or the road skills test.

8. The school shall maintain adequate standards of instruction, qualified instructors, and equipment sufficient to adequately maintain the school and classes.

9. Instructors shall maintain a professional demeanor at all times when dealing with students.

10. Instructors shall not accompany any student into any examining office rented, leased or owned by DPS, for the purpose of assisting students in taking a driver's license examination.

11. Instructors shall not loiter, advertise or personally solicit any individual on the premises rented, leased or owned by DPS, and operated for the purpose of issuing driver's licenses.

12. Instructors shall not use the space provided on the premises of any office rented, leased or owned by DPS, for parallel parking or any other behind the wheel instruction during normal OMV business hours.

13. Each school shall maintain a minimum of one properly licensed instructor who is trained to administer road skills tests.

14. Home study is not permitted for any portion of the classroom instruction.

15. A school that is operating at a location without a current license may have its license and contract revoked or suspended, or a fine may be assessed.

16. All grievances or complaints made against the school and/or instructor shall be addressed within 10 business days and the resolution shall be documented.

17. The school shall notify OMV of any licensed instructor who leaves the employment of the school within 10 business days. The instructor license shall be returned to OMV for cancellation. OMV shall provide the school e-mail notification that the license has been received within three business days.

18. A licensed owner or instructor who is arrested for any offense which would disqualify him shall notify OMV in writing within three days of the arrest. Failure to notify OMV may result in suspension or revocation of the school and/or instructor license.

19. Owners/principals/superintendents are responsible for ensuring that instructors complete the required continuing education courses in an effort to stay abreast of the latest trends and standards of driver education.

20. Driver education instructors shall participate in and provide evidence of completion of at least two separate courses from the following list to obtain credit for continuing education on an annual basis. Credit shall be given only for courses that were completed during the appropriate licensing period. The same course cannot be submitted in consecutive years. The list includes:

a. post-secondary course that pertains to driver education as provided by an accredited college or university. A passing grade is required;

b. an approved defensive driving instructor development course;

c. a course provided by national, state, or regionally sponsored in-service workshops, seminars, or conferences that pertain to subject matters relative to the practice of driver education or teaching techniques; and

d. a course that pertains to subject matters relative to driving safety.

21. Each instructor shall once every two years provide proof of completion of:

a. a standard first aid or CPR certification, and

b. a training course on the prevention of sexual harassment.

22. In the event of a voluntary school closure, the school must notify OMV within 10 business days of closing by submitting the Notification of Facility Closure form approved and provided by DPS/OMV. The original license shall be attached to the notification form.

a. The school may reapply within 180 days of closure (upon approval by DPS). A replacement license shall be issued with a new issuance date upon payment of a \$25 fee.

b. If a new location is selected, the school shall not conduct any classes until the new location has been inspected and approved.

c. If the school has been closed for 180 consecutive calendar days, a new school application with applicable fees must be submitted.

23. An instructor may be eligible to apply to another licensed school if the school where the instructor is currently employed has its license or contract revoked.

24. Any person who engages in prohibited activity, such as, administering classroom instruction, behind the wheel instruction, issuing certificates of completion or advertising as a licensed, authorized or approved driving school, or holding oneself out as an authorized or approved driving school or instructor without a license, authorization or approval by DPS shall be subject to the issuance of a cease and desist order.

25. Approved driver education providers shall be listed on OMV's website upon license issuance.

26. School owners shall ensure students are enrolled in the correct course according to age and eligibility.

27. An instructor shall not request a student go to any location that is not in the scope of the driver education instruction or program.

28. An instructor shall not take a student to any location that is not in the scope of the driver education instruction or program.

29. The school owner may designate a representative (licensed instructor of the school) to oversee and assume responsibility for the operation of the school and to sign school documents, except for the third party tester agreement. The completed Assignment of Designated Representative form must be on file with DPS.

#### B. Records Regulations.

1. A school shall have a primary location where records shall be kept in a secure manner. Records shall be available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Only schools which are currently licensed by June 30, 2012 and currently maintain records at the owner's residence are allowed to do so. If the physical location where records are kept is the owner's residence, the owner agrees to make the records available for inspection. All schools licensed from this point forward will be required to maintain a primary location for the records.

2. Any forms approved and provided by OMV/DPS shall not be modified without prior written approval from OMV, with the following exceptions.

a. Schools shall place the school name and license number on the heading of the document.

b. Portions of the document may be highlighted for ease of use for the instructor and student.

3. All schools shall make available records and necessary data required for licensing for inspection by authorized DPS representatives.

a. DPS may require a licensee to submit any original records and data that are necessary for the facilitation and/or completion of an investigation pertaining to a violation of these rules or the Child Protection Act.

b. All documents shall contain the required information or they shall be considered incomplete.

c. Any records that are required to be submitted from the school to DPS upon request from DPS, are then considered DPS records.

4. All records and necessary data pertaining to the operation of the school shall be maintained in the office for five years. A hard copy original shall be maintained for one year. Records may be electronic after one year.

5. Records shall include, but are not limited to:

a. a file including the name, address and contact information of all guest lecturers;

b. a file on all instructors containing a copy of the instructor's license and employment records including time and attendance records as well as address and contact information.

c. a copy of lesson plans and other resources utilized for classroom instruction. Written documentation of the lesson plan for the behind the wheel portion of the course;

d. class schedules and sign in rosters from classes held;

e. copies of all written complaints and grievances filed with the school along with written documentation of the resolution.

6. Every driving school shall maintain the following records on the individual student who is administered either the driver's education or pre-licensing course:

a. official name and address of the school;

b. completed enrollment form which shall include, but is not limited to, the following:

i. a copy of the temporary instruction permit, telephone number and physical address (other than P.O. Box);

ii. parental/guardian consent for minor applicants, including identification presented;

iii. date of enrollment;

iv. any funds received from, or on behalf of, a student;

v. dates of classroom instruction;

c. date and reason why instruction terminated, if applicable;

d. copy of certificate of completion.

7. Every driving school shall maintain a class schedule and shall notify DPS of the classes scheduled, including the type of course to be administered. This schedule may be submitted biannually. DPS shall be notified of any changes in the schedule after submission to DPS. The driving school may post the class schedule on its website.

#### C. Minimum Course Standards

1. A minimum of one instructor is required for each classroom.

2. No more than eight hours of instruction, including unit tests or final examination, shall be conducted per day.

3. Administrative procedures, such as registration, shall not be included in instructional time. Registration shall be completed prior to the start of the first class session.

4. Lunch periods shall be proportionate to instructional time but shall not be considered as part of the instructional time for a driver education course.

5. Allotted break times shall not exceed 15 minutes per each 2 hours of instruction. All break periods shall be provided prior to the final examination.

6. The driver education course shall provide a minimum of 30 hours of classroom instruction. The formalized instruction, a minimum of 22 1/2 hours (75 percent), will consist of lecture, computer format and classroom discussion. The instruction provided with audio visuals may include films, slides, videos or demonstrations specifically designed to supplement the formalized instruction. A maximum of 7 1/2 hours (25 percent) may consist of audio visuals.

7. The driver education course and the pre-licensing course shall not be conducted simultaneously in the same classroom setting.

8. DPS reserves the right to attend any classroom course provided by the school to ensure full compliance with administrative code and course content.

9. The pre-licensing course shall provide a minimum of six hours of classroom instruction. The formalized instruction, a minimum of four and half hours (75 percent), will consist of lecture, computer format and classroom discussion. The instruction provided with audio visuals may include films, slides, videos or demonstrations specifically designed to supplement the formalized instruction. A maximum of one and half hours (25 percent) may consist of audio visuals.

10. Unit tests shall be administered to measure the effectiveness of instruction during the classroom course. Unit tests given shall not replace the final test.

11. A student may opt to complete the behind the wheel instruction at a different school. The school shall provide the student with the appropriate certificate of completion for requirements met by the student.

12. A school owner, instructor or employee shall not give a student the impression, by advertisement or otherwise, that a driver's license, learner's permit, or certificate of completion is guaranteed or assured.

13. A school owner, instructor or employee shall not give any impression that Carnegie credits will be given upon completion of this course, without the expressed written approval of the Louisiana Department of Education.

#### D. Classroom Setting Standards

1. The classroom capacity shall meet the stipulations as defined in §147.C.

2. Classroom settings shall be conducive for learning and shall include seating in the form of tables and chairs or desks.

3. Multiple classrooms shall be separated by solid walls which are made of materials that reduce noise transfer between classrooms.

4. Schools which share locations with other businesses shall take all means necessary to ensure the security and safety of minor students and shall ensure the location is free of interruptions during scheduled class times.

#### E. Exam Standards

1. A final examination, provided by DPS, shall be administered to all students at the completion of the course. Students may not be given credit for the classroom course unless they score at least 80 percent on the final examination.

2. Passing the final examination in the driver education course shall qualify the student for a driver's license or a learner's permit without the administration of a knowledge test by OMV.

3. Every 120 days DPS shall furnish the school with a new version of the knowledge test. The school shall shred all previous versions of the tests upon receipt of the new updated versions.

4. All copies of the tests and answer keys shall be kept under lock and key at all times. In order to deter theft, photocopies of the test shall not be produced in bulk. Photocopies of the test should be produced at the completion

of the course and only sufficient numbers photocopied for the enrolled students. Any unused tests should be shredded.

5. Lost or stolen knowledge tests shall be reported to OMV immediately. The local law enforcement agency shall also be notified and a police report shall be submitted to OMV immediately.

6. Each student who is administered the final knowledge test shall be notified, prior to testing, that he is subject to being re-tested by OMV at any time.

7. The classroom instructor shall ensure that students seated next to each other have different versions of the test to complete.

8. Any student who fails the final exam shall be allowed to re-test once the same day. If the student does not pass the test on the second attempt, the student may return any day thereafter and re-test twice each day until the test is passed.

9. Students who cheat on the test will have the test destroyed and shall wait 30 days before re-testing.

10. The completed test shall be attached to the Certificate of Completion for surrender to DPS at the time of license application. Both documents shall be placed in a sealed envelope.

11. Students may not leave the classroom during the final examination. Electronic devices (tablets, PDAs, cell phones) for personal use shall not be allowed in the classroom during examinations. Electronic devices used for test administration are acceptable.

12. Schools and/or instructors that provide students with the answers to the test, teach only the information contained on the test, do not properly secure the tests, and assist a student to pass the final exam by deceptive practices, or accept bribes to give a student a passing score shall have their license/certification/agreement revoked.

#### F. Insurance and Safety Requirements

1. Every motor vehicle used for behind the wheel instruction shall be properly registered in Louisiana and display a current Louisiana inspection sticker. The vehicle shall be equipped with the following special equipment:

a. securely installed dual controls of the foot brake (and clutch on vehicles with manual transmission), capable of bringing the vehicle to a stop and otherwise equipped, in accordance with Louisiana laws;

b. interior rearview mirrors attached to the windshield, one for the driver and one for the instructor to monitor traffic;

c. appropriate cushions for proper seat in seating, and brake and accelerator pedal extensions available for students when necessary;

d. instructor's eye check mirror to monitor eye movement of students;

e. first aid kit; and

f. fire extinguisher (at least UL rated 5B:C).

2. All vehicles utilized in the behind the wheel instruction shall be properly insured in the school's name. A certificate of auto liability insurance shall be provided to DPS identifying (by description and vehicle identification number) the vehicle(s) covered. This certificate shall be from the issuing insurance carrier, not the agency. The limits shall be from an insurance company authorized to do business in this state in the amount of at least the minimum

amount required by R.S. 32:900. Upon cancellation or expiration of the policy, DPS shall be notified by the insurance carrier.

3. Every vehicle used for behind the wheel instruction shall contain a conspicuously displayed, securely fastened sign to the rear stating "student driver." A sign bearing the name of the driving school under which it is licensed may be used in lieu of the student driver sign. The sign shall be in plain view and shall have contrasting letters not less than 3 1/2 inches in height, readable from a distance of not less than 100 feet. A decal or sign listing the school name, address and phone number shall be displayed on each side of the vehicle.

4. DPS shall be advised via e-mail at [la.driving.schools@dps.la.gov](mailto:la.driving.schools@dps.la.gov) within 10 business days of a vehicle that is removed from service and shall be provided the required information on replacement vehicles. OMV shall provide the school e-mail notification within three business days that the information has been received. The school shall send the odometer reading of vehicles for the first and last day of service and proof of registration for the vehicle(s) removed or added to service:

5. Motor vehicles utilized for behind the wheel instruction shall have less than 300,000 miles recorded on the odometer and shall be maintained in safe mechanical and physical condition at all times. Vehicles utilized should be of a type that is not intimidating to a novice driver. It is recommended that vehicles used are in the "compact" or "intermediate" size classification.

6. Fleet Policies. If the driving school is covered under a fleet policy and desires to add another vehicle to its fleet, it must advise the insurance company to notify DPS that this unit (specifying the make, model and vehicle identification number) has been added. The insurance company shall furnish the department a copy of the certificate of auto liability insurance with the addition of the vehicle.

#### H. Behind the Wheel Instruction Requirements

1. A student shall be at least 15 years of age to participate in the behind the wheel instruction.

2. The domiciliary parent/guardian of a minor student shall sign the consent prior to any behind the wheel instruction. The consent shall be signed in the presence of the owner or an instructor.

3. Prior to each behind the wheel driving session, the school shall verify that the student's temporary instructional permit is in his possession at all times while driving. The permit shall be presented upon request to any law enforcement officer.

4. No more than two students shall be allowed in a school vehicle during the behind the wheel instruction. Only the student driver and the driving instructor shall be allowed in the front seat of such vehicle. Students shall not receive credit for riding time.

5. The behind the wheel instructor shall use and complete the driver education vehicle monthly log each time a student operates the driver education vehicle. The log shall not be utilized to record a student's riding time. At the end of each month the log shall be filed in the primary office of the school.

6. The eight hour behind the wheel instruction shall be completed within 90 days of the end of the classroom instruction for the 6 hour classroom course. The eight hour behind the wheel instruction shall be completed within 120 days of the end of the classroom instruction for the 30 hour classroom course.

a. It is the responsibility of the driving school, (not the parent/student) to schedule acceptable times for the student's behind the wheel instruction and to finish it within the 90 day or 120 day time frame.

b. Behind the wheel instruction shall not be performed before 6 am or after 10 pm or during any time that would result in an unexcused absence from school as defined by Louisiana Department of Education.

c. The school must provide documentation satisfactory to DPS that a student has not completed the behind the wheel course for reasons that are beyond the control of the school. Acceptable reasons include, but are not limited to, the following:

i. the student was given sufficient notice and opportunity to complete the course;

ii. the student was provided a certificate of completion for the classroom portion;

iii. the student has been issued a refund of the fee, if any, specifically for the eight hour behind the wheel course;

iv. the student has been removed from the active class roster for documented cause.

d. If the driving school has not completed behind the wheel instruction within the requisite time frame, DPS may issue an order to the driving school to not begin any classroom instruction until all outstanding behind the wheel instruction is complete. DPS will notify the school when the order has been lifted. Violations of this Section may be subject to a fine.

e. If the behind the wheel driving portion of the class is terminated or cannot be completed within the required time frame, documentation with details explaining the reason shall be maintained in the student's file. OMV may contact the student, parent or guardian to verify the reason listed is accurate.

f. Upon DPS' request, the driving school must provide records of the behind the wheel instruction to DPS.

7. Electronic communication devices shall not be utilized by any occupant of the vehicle during a driving session, except in emergency type situations or when the vehicle is stopped and off the road in a safe location.

8. The student shall not engage in any activity unrelated to driving instruction during behind the wheel instruction.

9. Behind the wheel instructors shall remain alert during the student's driving session.

10. An instructor shall not perform any other activity not pertaining to supervising behind the wheel driving instruction.

11. The behind the wheel instruction shall expose the student to as many types of roadways as possible, based on the student's skill level progression. At least one hour of instruction on the following types of roadways is recommended:

- a. rural roads;
- b. city roads;
- c. major highways;
- d. interstate;
- e. to and from a student's home and school; or,
- f. additional time may include traveling roadways

where the student exhibits any weakness.

12. A student's driving progress shall be documented in the student's record.

13. The beginning and ending odometer reading on the vehicle shall be recorded prior to each student's driving session. Any odometer reading shall not be altered without an accompanying explanation.

14. Students shall score at a minimum of 70 percent on the eight hour behind the wheel course to receive a certificate of completion for the course.

#### I. Driver Education Certificate of Completion Requirements

1. The driver education certificate of completion will expire five years after the completion date.

2. Every driving school approved by DPS, shall be required to serially number and complete the uniform driver education certificate of completion. Each certificate shall display a distinguishing seal, consisting of the driving school's name, affixed to the specified area of the form, not to obscure any of the required signatures.

3. The certificate of completion shall be completed in its entirety by school personnel prior to issuance to the student.

4. Upon request, driving schools shall provide photocopies or duplicates of driver education certificate of completion upon a student's request for a minimum of five years from the date of issuance. Such duplicates shall be signed and dated by the owner of the driving school.

5. Every driving school shall maintain an ascending numerical accounting record of all certificates issued.

6. Unissued driver education certificates of completion shall be safeguarded at all times. The certificates shall be kept in a secure place under lock and key and shall be made available to those representatives of the driving school authorized to issue such certificates, DPS representatives, and any law enforcement agency during normal business hours.

7. Unissued lost or stolen certificates of completion shall be reported to DPS immediately. If a theft or suspected theft has occurred, the local law enforcement agency shall also be notified and a police report submitted to OMV.

8. A student may opt to complete the behind the wheel instruction at a different driving school. The school shall provide the student with the appropriate certificate of completion for requirements met by student.

9. Schools shall complete a student assessment including any comments relevant to the student's proficiency and shall attach the assessment to the driver education certificate of completion to advise the parent(s) of the student's driving proficiency

#### J. Code of Conduct of Driving Schools

1. All driving schools shall comply with all applicable federal, state, and local laws and regulations.

2. All driving schools shall conduct themselves in a professional manner when communicating with the public, students and representatives of DPS.

3. All driving schools shall encourage their employees to perform their duties conscientiously, honestly and in accordance with the best interests of DPS and the students.

4. All driving schools are representatives of DPS and shall conduct themselves in such a manner that reflects positively on the mission statement set forth with DPS.

5. All driving schools shall demonstrate the core values of integrity, respect, performance excellence and accountability.

6. The driving school shall adhere to applicable federal, state, and local laws and shall not engage in any form of unlawful discrimination or other illegal activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1980 (August 2012), amended LR 41:151 (January 2015), amended LR 43:

### §152. School Policies and Course Specifications

A. Every driving school shall furnish each student/parent with the school policies prior to the beginning of any instruction. The following information shall be contained in the school policies.

1. The total fee for the course of instruction shall be listed by classroom fee and behind the wheel fee. This fee shall cover all expenses including the cost of the original and at least one copy of the driver education certificate of completion provided to each student.

2. Any additional charge for the use of a school vehicle in taking behind the wheel instruction or for transporting a student to/from instruction.

3. In the event of a school's closure, either by voluntary measures or by action of DPS, a refund will be issued upon request. All refunds will be processed within 30 days after the effective date of termination or request, whichever occurs first;

4. The school's standards of required behavior including but not limited to:

a. an absolute prohibition against cheating as well as the consequences which will result if these standards are violated;

b. the school's policy on students' use of electronic communication devices in the classroom; and

c. the school's policy pertaining to absence and rescheduling procedures.

#### B. Course Specifications

1. The purpose for course specification is to explain the documentation and procedures for the student/parent required for the course.

2. DPS' grading policy, indicating that a passing score of 80 percent on the classroom and 70 percent behind the wheel shall be achieved in order to be issued a driver education certificate of completion;

3. Explanation of instruction the student will receive including:

a. number of mandated classroom instruction hours;

b. number of mandated behind the wheel instruction hours; and

c. how the student's performance will be evaluated and the requirements necessary to complete the course.

4. Identification of alternative testing techniques to be used for students with hearing, speech or learning

disabilities. This information should be made available prior to the student's enrollment.

### C. School Policies

1. If the school is unable to complete a student's course, a parent or adult student may request a refund for the uncompleted portion of the course. This refund should be made available within 10 days of the request. If a reasonable request for a refund is not granted, the student and/or the parent may apply against the school's surety bond.

2. In the event of a school's closure, either by voluntary measures or by action of DPS, a refund will be issued upon request. All refunds will be processed within 30 days after the effective date of termination or request, whichever is sooner.

3. Any student(s) trained by an unlicensed instructor may shall be entitled to a refund of tuition and fees as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A) (1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1984 (August 2012), amended LR 43:

## §153. Parental Orientation

### [Formerly §154]

A. Upon enrollment of a minor student, the school shall conduct a parental orientation responsibility segment with the parents/guardian of the student. The school shall maintain a roster of the parents/guardian who attended the parental responsibility segment. The segment shall include, but not be limited to the following:

1. a review of the course content;
2. a review of the leading factors involved in teen driver collisions;
3. the graduated driver license program;
4. determining the readiness of the teen to begin the driving process;
5. the parent's responsibility to enhance the teen's driving experience;
6. supervising the teen's driving to determine his readiness to advance to the next licensing stage;
7. the parent/guardian's responsibility to provide a minimum of 50 hours supervised practice driving including 15 hours night time practice; and
8. parent/teen agreement.

B. The parental segment shall not count as part of the 30 hours of classroom instruction and shall be conducted prior to the first day of class.

C. In lieu of the school requirement, DPS may approve and designate a third party to provide the parental responsibility segment. The parent/guardian shall be required to attend the third party segment and provide proof of attendance to the driving school prior to the minor's participations in any classroom instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A) (1) and R.S. 40:1461.

HISTORICAL NOTE: HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1985 (August 2012), amended LR 38:3235 (December 2012), LR 43:

## §154. Driver Education Curriculum

### [Formerly §153]

A. The curriculum contained in this subchapter was obtained from documents provided by National Highway

Traffic Safety Administration (NHTSA) for Novice Teen Driver Education and Training Administrative Standards. It was prepared by the Driving School Association of the Americas and meets the current recommended national standards.

1. The curriculum as provided in these rules shall be covered in its entirety.

2. The order in which the topics are presented and the manner in which they are presented are left up to the discretion and teaching strategies of each school.

3. Each school will be responsible for utilizing its creative license to present the course in such a manner the students will absorb and retain the information presented.

4. Media resources may be used to augment the program's curriculum. All media resources shall relate to the topic presented and shall not contain any offensive or inappropriate subject matter. A master list of media resources shall be maintained in the school's records.

B. The Louisiana Driver Guide for Class D/E License will include the curriculum utilized in the 30 and six hour classroom course and will be made available to students and/or schools from DPS.

### C. Core Curriculum

1. Chapter 1 Introduction to Driving. This chapter will describe the requirements to obtain a Louisiana driver's license and general nature of the driving task in the complex Highway Transportation System (HTS), while recognizing the importance and seriousness of the highway safety problem. The many interactions of the three major elements of the HTS, roads, vehicles and people, result in a large number of diverse traffic situations and problems.

a. Louisiana process for earning the privilege to drive:

- i. age requirements;
- ii. organ donation;
- iii. selective service;
- iv. graduated license program; and

b. Highway Transportation System

i. The traffic safety problem (instructional objective—to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution):

(a). identification of the overall traffic problems in the United States and Louisiana, as well as the local jurisdiction where the course is being taught;

(b). death, injuries and economic loss resulting from motor vehicle crashes in Louisiana; and

(c). five leading causes of motor vehicle crashes in Louisiana as identified by the Department of Public Safety and Corrections, Public Safety Services;

- ii. careless and/or reckless operation;
- iii. failure to yield;
- iv. following too closely;
- v. speeding;
- vi. unknown/unspecified;
- vii. each year the current statistics can be obtained

from <http://datareports.lsu.edu>.

c. Driving in the Highway Transportation System (instructional objective—understanding highway traffic systems and the driver's responsibilities)

- i. Make-up of a complex system:
  - (a). number and types of elements;

- (b). continuous interaction of elements; and
- (c). need for regulations and control.
- ii. Number and types of traffic units:
  - (a). kinds of vehicles and its condition;
  - (b). characteristics of drivers;
  - (c). pedestrians and animals; and
  - (d). traffic volumes and congestion.
- iii. Number and types of highways:
  - (a). design features;
  - (b). conditions and maintenance; and
  - (c). environmental settings.
- iv. Number and types of traffic controls:
  - (a). signs and signals;
  - (b). roadway markings; and
  - (c). written laws.

2. Chapter 2 Vehicle Components and Operation.

What can a motor vehicle do or not do in a given situation? The more drivers know about a car's maneuvering and performance capabilities, the better they can handle emergencies. Drivers will also be better prepared to predict the probable actions of other drivers.

- a. Proper use of safety restraint systems:
  - i. law of physics:
    - (a). momentum;
    - (b). inertia;
    - (c). kinetic energy;
    - (d). gravity;
    - (e). friction; and
    - (f). force of impact;
  - ii. proper safety belt position; and
  - iii. jurisdictional laws and driver responsible for compliance of all passengers in the vehicle
- b. Safe and proper use of basic vehicle equipment:
  - i. control devices;
  - ii. instruments and warning indicators;
  - iii. devices that aid visibility;
  - iv. safety devices;
  - v. comfort devices;
  - vi. anti-theft devices;
  - vii. communication devices; and
  - viii. traction control devices.
- c. Safe and proper pre-trip checks:
  - i. maintaining your vehicle (instructional objective—a well maintained vehicle is safer to drive):
    - (a). vehicle inspection;
    - (b). preventive maintenance—brakes, tires, steering/suspension, under the hood;
    - (c). fuel economy—vehicle choice and maintenance, driving habits; and
    - (d). planning a trip—preparing vehicle and yourself;
  - ii. friction:
    - (a). speed for conditions;
    - (b). effect of road surfaces on stopping;
    - (c). seasonal changes and road surfaces; and
    - (d). tire types and conditions.
- d. Vehicle Handling. Safe and responsible vehicle control:
  - i. controlling the vehicle safely and responsibly:
    - (a). hand position;
    - (b). visual tracking;

- (c). steering control and over steering and understeering;
- (d). seating position;
- (e). starting and accelerating;
- (f). speed control;
- (g). deceleration and braking and comparison of ABS systems, power brakes and standard actions;
- (h). changing lanes;
- (i). parking brake;
- (j). parking;
- (k). changing direction and turns;
- (l). passing;
- (m). following distance;
- (n). right-of-way maneuvers;
- (o). turns;
- (p). cornering;
- (q). highway and freeway driving; and
- (r). urban and rural driving;

ii. safe and responsible handling of the vehicle under various conditions:

- (a). weight management;
  - (b). time management;
  - (c). space management;
  - (d). stopping distances;
  - (e). braking distances;
  - (f). following too closely;
  - (g). speed for conditions;
  - (h). effect of road surfaces on stopping;
  - (i). seasonal changes and road surfaces; and
  - (j). tire types and conditions;
- iii. safe and responsible driving to avoid crashes:
- (a). crash avoidance habits and basic evasive maneuvers.

3. Chapter 3 Perception and Risk Management—to Develop Knowledge, Appreciation, and Skills Related to Perception and Risk Management and How They Contribute to Safe and Responsible Driving

- a. Safe and proper observation skills:
  - i. what and where to observe and when:
    - (a). 360 degree vision;
    - (b). distance scanning and judgment;
    - (c). peripheral vision;
    - (d). blind spots;
    - (e). visual obstructions; and
    - (f). limits of observation;
  - ii. how to observe:
    - (a). active attention;
    - (b). shoulder checks;
    - (c). peripheral vision; and
    - (d). mirrors;
  - iii. visual search and scanning to detect potential hazards:
    - (a). distinguish hazards from typical occurrences;
    - (b). scanning patterns under all conditions; and
    - (c). detecting potential path deviations;
  - iv. potential hazards of driving and effective responses:
    - (a). vehicle malfunctions;
    - (b). weather/environmental conditions;
    - (c). road conditions;

- (d). railroad crossings;
  - (e). vehicle conditions;
  - (f). distractions inside the vehicle;
  - (g). distractions outside the vehicle;
  - (h). other road users and air turbulence from large vehicles;
  - (i). unpredictable driving behavior;
  - (j). driving error resulting in danger to self and to other road users; and
  - (k). detection and recovery from skidding and sliding—principles of skid control and slide control.
- b. Effective decision making to ensure safe driving:
- i. hazard perception, decision making, and judgment:
    - (a). scan, identifying problems, predicting outcomes, deciding action and executing decisions (SIPDE);
    - (b). using the SIPDE process—avoiding, separating and handling hazards, managing time, speed and space, following and stopping distance; and
    - (c). trouble spots limiting use of SIPDE process—limited visibility, traction, space;
  - ii. using decision making skills to drive safely:
    - (a). evaluate whether or not to drive;
    - (b). anticipate what might happen;
    - (c). predict possible solutions;
    - (d). prioritize situations and solutions;
    - (e). make appropriate choices under pressure;
    - (f). identify consequences;
    - (g). make multiple decisions quickly; and
    - (h). develop a hierarchy of responses to various situations and alternative responses.

4. Chapter 4 Traffic Laws. Without good traffic laws and enforcement, the safe and efficient movement of traffic on our highways would not be possible. Traffic laws are of little value if they are not understood and voluntarily followed.

- a. Safety
  - i. Traffic laws for safety (instructional objective—familiarization with traffic and vehicle laws and to influence drivers to comply with laws on a voluntary basis):
    - (a). seat belt usage and child restraints;
    - (b). right-of-way rules;
    - (c). speed laws;
    - (d). special safety laws—DWI, implied consent, open container, post-collision procedures;
    - (e). texting/cell phone usage;
    - (f). driving while fatigued/under duress or stress;
    - (g). emergency vehicles; and
    - (h). multi-lane highways and left lane usage.
  - ii. Compliance with traffic control devices as a foundation for safe and responsible driving and traffic control devices:
    - (a). signs;
    - (b). signals;
    - (c). markings; and
    - (d). railroad crossings.
  - iii. Major traffic law violations:
    - (a). reckless homicide;
    - (b). reckless driving;
    - (c). driving under the influence of alcohol or drugs; and

- (d). driving without a license.
- b. Other Issues
  - i. Other law violations:
    - (a). financial responsibility/compulsory insurance;
    - (b). littering; and
    - (c). possessing, obtaining, or using a fraudulent driver's license, or identification card.
  - ii. Alcohol, other drugs, and driving:
    - (a). drug use and abuse—dangers, cautions, effects;
    - (b). alcohol and the driver—effects; and
    - (c). responsibilities as a driver, passenger, host, person.

5. Chapter 5 Driver Behavior—to Develop Knowledge, Appreciation, and Skills Related to Driver Behavior and How It Contributes to Safe, Responsible, and Incident-Free Driving

- a. Assessment and reactions:
  - i. accurate assessment of driving environments, road conditions and appropriate adjustment of driving behavior:
    - (a). adjusting driving behavior for different driving conditions;
    - ii. controlled emotional reactions related to driving:
      - (a). potential effects on driver decision making; and
      - (b). recognizing internal cues and control responses;
    - iii. positive driving attitudes and behavior.
  - b. Personal factors and influence:
    - i. personal driving values and beliefs;
    - ii. motives that influence driving;
    - iii. how motives change under different circumstances; and
    - iv. how values, beliefs, and motives influence attitudes toward driving.
  - c. Social factors and influence:
    - i. influence of advertising;
    - ii. social attitudes towards cars and driving;
    - iii. influence of other people's driving habits; and
    - iv. peer pressure and driving.
  - d. Resisting negative pressures:
    - i. personal value of resisting negative pressures;
    - ii. resist negative informal pressures;
    - iii. resist negative media and commercial messages; and
    - iv. entertainment media use of driving imagery.
  - e. Positive driving attitudes:
    - i. driving is a privilege not a right;
    - ii. overcoming negative motives;
    - iii. driving courteously;
    - iv. cooperative driving; and
    - v. impact of driver behavior on other road users.
  - f. Responsible and informed decision making:
    - i. how formal rules of the road, common safe practices of road users, and informed decision making contribute to safe and responsible driving;
    - ii. approaches to decision making;
    - iii. importance of good decision making; and
    - iv. consequences of poor decision making.

- g. Environmentally conscious and efficient driving behavior:
  - i. fuel efficiency;
  - ii. mandatory emissions testing (inspection stickers);
  - iii. proper disposal of cars, fluids, batteries, and tires;
  - iv. littering;
  - v. planning safer and more efficient activities and routes; and
  - vi. economic benefits of driving efficiently.

6. Chapter 6 Sharing the Road. To develop knowledge, appreciation, and skills to related to effectively interacting with other road-users and how it contributes to safe, responsible, and incident-free driving.

- a. Cooperative driving:
  - i. sharing the road in a safe and considerate manner;
  - ii. understanding other road-users needs;
  - iii. passing safely;
  - iv. space management;
  - v. benefits of cooperative and courteous driving;
  - vi. pedestrians, animals and bicycles;
  - vii. sharing the road with school buses;
  - viii. sharing the road with motorcycles and mopeds;
  - ix. sharing the road with commercial vehicles;
  - x. sharing the road with law enforcement and emergency vehicles; and
  - xi. cooperative interstate driving;.
- b. Appropriate communication with other road users:
  - i. communicating effectively with other road users; and
  - ii. habits and attitudes related to effective communication:
    - c. consistently communicate driving intentions;
    - d. adjusting communication based on observation of the driving environment and other road users.
    - e. towing a vehicle; and
    - f. safety tips for driving with a trailer.

7. Chapter 7 Attention—to Develop Knowledge, Appreciation, and Skills Related to Attention and How It Contributes to Safe, Responsible, and Incident-Free Driving

- a. Safe and responsible actions related to impaired driving:
  - i. types of impairment:
    - (a). drug;
    - (b). alcohol;
    - (c). fatigue;
    - (d). drowsy driving;
    - (e). illness;
    - (f). medication;
    - (g). mental stress; and
    - (h). combination of multiple impairments.
  - ii. effects of impairment:
    - (a). impaired judgment; and
    - (b). lack of attention/alertness.
  - iii. myths and facts related to impairment; and
  - iv. consequences of impaired driving;
    - (a). personal and social consequences—responsibilities of a driver, passenger, host and person; and
    - (b). legal and economic consequences.

- b. Managed driver distraction:
  - i. distracted driving:
    - (a). distraction inside the vehicle; and,
    - (b). distractions outside the vehicle;
  - ii. managing attention:
    - (a). switching attention;
    - (b). divided attention;
    - (c). focused attention; and
    - (d). sustained attention;

8. Chapter 8 Respect and Responsibility—to Develop Knowledge, Appreciation, and Skills Related to Respectful and Responsible Driving Attitudes and How They Contribute to Safe, Responsible, and Incident-Free Driving

- a. Safe and Responsible Response to Emergency Situations
  - i. Responding to emergency situations:
    - (a). minor or major motor vehicle crashes;
    - (b). arriving at the scene of a crash;
    - (c). being stopped by a law enforcement officer, including, but not limited to the following:
      - [i]. instruction concerning law enforcement procedures for traffic stops;
      - [ii]. instruction on the importance of officers, drivers, and passengers maintain integrity and respect during traffic stops;
      - [iii]. demonstrations of appropriate interactions with law enforcement; and
      - [iv]. demonstrations of the proper actions to be taken during traffic stops.
    - (d). yielding to an emergency vehicle; and
    - (e). vehicle malfunctions.
  - b. Leadership in Promoting Safe Driving
    - i. Being a safe, respectful, and responsible drive:
      - (a). being a leader in safety restraint use and promote it in others;
      - (b). being fit to drive and promote it in others; and
      - (c). being caring and empathetic towards other road-users.
    - ii. Conflict avoidance regardless of fault:
      - (a). respecting other road-users' safety margins; and
      - (b). avoiding road rage in yourself and others.
- c. Respect for the Environment as it Relates to Operating a Vehicle
  - i. Environmentally conscious and efficient driving behavior:
    - (a). fuel efficiency;
    - (b). mandatory emissions testing;
    - (c). proper disposal of cars, fluids, batteries, and tires;
    - (d). littering;
    - (e). planning safer and more efficient activities and routes; and
    - (f). economic benefits of driving efficiently.
  - d. Lifelong Learning Approach to Driving
    - i. The driver as a lifelong learner:
      - (a). factors that contribute to changes in driving skill;
      - (b). changing motor vehicle technology;
      - (c). changing driving practices and laws; and
      - (d). the aging driving population.

9. Chapter 9— Defensive Driving:
  - a. five leading causes of collisions;
  - b. basic maneuvers for avoiding collisions:
    - i. tactical maneuvers; and
    - ii. mental skills;
  - c. major driving errors:
    - i. compensating for another driver's error;
  - d. counter measures for driver physical conditions:
    - i. fatigue;
    - ii. illness;
    - iii. physical impairments;
    - iv. stress; and
    - v. trip fatigue.

10. Chapter 10 Summation and Review— Comprehensive Summation of Chapter(s)/Chapter Test(s) and Knowledge Test. Upon completion of the classroom course and review of the chapters, the school shall administer the knowledge test.

D. Eight Hour behind the Wheel Curriculum. The behind-the-wheel portion of the curriculum will be limited to no more than 4 hours behind the wheel for each student daily with a 15-minute break after two hours driving time. There shall be no more than two students in the vehicle with the instructor. Upon completion of the behind the wheel portion a skills assessment shall be performed by the instructor. A road skills test shall be administered and the student shall attain a minimum score of 70 percent or more to receive a certificate of completion.

1. Practical instruction shall include, at a minimum, the demonstration of and actual instructions in the following maneuvers:

- a. vehicle checks:
  - i. pre-trip vehicle inspection—outside/inside vehicle;
- b. turning skills:
  - i. steering; and
  - ii. turn signals;
- c. intersection awareness:
  - i. traffic signals;
  - ii. driving through;
  - iii. stops; and
  - iv. right of way laws;
- d. lane changes;
- e. signs, lanes, and signals;
- f. traffic signals;
- g. space management;
- h. S.I.P.D.E. process;
- i. parking skills;
- j. reversing skills;
- k. turnabouts;
- l. city driving;
- m. expressway;
- n. areas of high risk:
  - i. shared left turn lane;
  - ii. median crossover;
  - iii. service roads;
  - iv. off-road recovery;
  - v. head-on collisions;
  - vi. poor weather;
  - vii. skid recovery;
  - viii. controlled braking; and
  - ix. night time driving;

- o. railroad crossings;
- p. emergency vehicles;
- q. school buses; and
- r. breakdown/collision.

2. The instructor shall gauge the driver's proficiency and provide feedback on the following skills:

- a. observation;
- b. communication;
- c. speed adjustment;
- d. vehicle positioning;
- e. time and space management; and
- f. hazard perception.

3. Student Assessment. During the last driving session with the student, the instructor shall perform a skills test to determine the student's ability to safely operate a vehicle. A minimum score of 70 percent shall be attained to pass the driver education course.

4. Upon completion of the eight-hour behind the wheel course, the instructor shall complete an in-depth assessment of the student's performance over each maneuver and skills covered above. The assessment shall be provided to the student and parent (if a minor) as a tool to continue driving instruction:

- a. visual search
- b. space management
- c. appropriate speed choices
- d. attention (distractions)
- e. emergency evasive actions
- f. physical control of the vehicle
- g. pre-trip preparation;
- h. backing up;
- i. accelerating and braking;
- j. left turn;
- k. right turn;
- l. proper lane usage;
- m. lane change;
- n. obeying traffic signs and signals; and
- o. stopping.

5. The driver education certificate of completion shall be completed when a student has attained a minimum score of 80 percent on the knowledge test and a minimum score of 70 percent on the eight hour behind the wheel portion of the course.

#### E. Six Hour Pre-Licensing Course

1. The pre-licensing course requires 6 hours of classroom instruction covering the topics outlined above under Subsection I, "Program of Instruction/Course Content." No more than 1 1/2 hours (25 percent) of the course may consist of audiovisual instruction. A minimum of 4 1/2 hours (75 percent) shall consist of formalized instruction which may be a combination of lecture, computer format plus classroom discussion. The audiovisuals may include such aids as films, slides or videos specifically designed to supplement the formalized instruction.

2. Six Hour Curriculum. The six hour pre-licensing course shall utilize a condensed version of the 30 hour classroom course and shall cover the basic components of each chapter outlined in the 30 hour classroom course.

3. Comprehensive Summation of Curriculum Chapters and Knowledge Test. Upon completion of the classroom course and review of the chapters, the school shall administer the knowledge test.

4. Eight-Hour Behind-the-Wheel Curriculum. The eight hour behind the wheel curriculum shall be done in the same manner and under the same conditions as provided in §154.D.

5. The driver education certificate of completion shall be completed when a student has attained a minimum score of 80 percent on the knowledge test and a minimum score of 70 percent on the eight hour behind the wheel portion of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A) (1) and R.S. 40:1461.

HISTORICAL NOTE: HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1985 (August 2012), amended LR 43:

#### **§155. Third-Party Tester/Examiner Requirements**

A. R.S. 32:408 requires all driver education providers to become certified as third party testers. Secondary schools may opt to not perform as third-party testers. All testers/examiners shall:

1. meet all the qualifications in §146;
2. have at least one licensed examiner; and
3. administer the knowledge and road skills tests.

a. At the end of the classroom instruction, the tester/examiner shall administer a knowledge test to each student. The test shall be provided to the examiner by OMV.

b. The tester/examiner shall administer an approved road skills test to an eligible student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1989 (August 2012), amended LR 38:3235 (December 2012), repromulgated LR 39:98 (January 2013), amended LR 40:2603 (December 2014), amended LR 43:

#### **§156. Application Process and Fees for Third-Party Testers/Examiners**

A. Each person requesting to be certified by and contract with DPS as a third-party tester shall submit the following:

1. completed third party tester application for class D and E driver's license;
2. fees as listed in §146.E-F;
3. a certificate of general liability insurance as listed in §157.B.1;
4. a certificate of auto liability insurance as listed in §157.B.1;
5. a completed application for examiner license;
6. a third-party tester route for administering the road skills test to be approved by DPS. The route shall be different from the routes used during any eight-hour behind the wheel training.

B. Upon approval of the application, DPS shall offer a contract to the applicant to administer the OMV knowledge test and the road skills test.

C. Each applicant for third-party examiner certification shall:

1. submit an application for third party examiner;
2. meet the qualifications of an instructor as listed in §145.B and C;
3. submit fees as listed in §146.E-F;
4. attend an examiner training session administered by DPS; and
5. pass a third-party examiner test administered by DPS.

#### **D. Renewal Application**

1. Application packages shall be complete. Any incomplete renewals will be returned.

2. The renewal schedule for third party testers shall be consistent with driver education provider renewal cycles.

3. The following documents shall be submitted in conjunction with the driver education renewal application:

- a. fees as listed in §146.E-F;
- b. a certificate of general liability insurance as listed in §157.B.1;
- c. a certificate of auto liability insurance as listed in §157.B.1; and
- d. a third-party tester contract.

4. Any tester that fails to renew his license/contract within six months of license or contract expiration shall be required to begin the initial application process again.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1990 (August 2012), amended LR 40:2603 (December 2014), amended LR 43:

#### **§157. General Regulations for Third-Party Testers**

##### **A. General Regulations**

1. All personnel shall conduct themselves in a professional manner at all times.

2. All third-party examiners shall comply with and abide by all applicable statutes and regulations as well as all terms of the contract executed by the third-party tester or third party examiner and DPS.

3. The school shall agree to permit DPS representatives to inspect the school and shall make available to DPS, when requested to do so, full information pertaining to the testing operation. Upon request, the school shall provide photo copies of the school's records required by DPS.

4. A representative of the Federal Highway Administration and/or a DPS representative may conduct random examinations, inspections, and audits without prior notice.

5. The facility shall conspicuously display the third-party tester certificate in the business during operational hours.

6. The tester and/or examiner shall not assist a person in obtaining a driver's license by deceptive practices.

7. The tester and/or examiner shall not state or imply that upon completion of the road skills test, the securing of a driver's license is guaranteed or assured.

8. A DPS representative shall biennially take a road skills test administered by the licensed third party examiner or test a sample of drivers who were examined by the third party to compare pass/fail results.

9. A third-party tester/examiner shall not administer any road skills tests until authorized to do so by DPS.

10. If at any time, a third-party tester/examiner ceases to meet any requirement imposed by statute, the regulations, or the contract, the third party tester or third-party examiner shall immediately cease all testing.

11. Each student administered the road skills tests shall be notified, prior to testing, that he is subject to being retested by OMV at any time.

12. Private driving schools shall administer road skills tests to all of the general public. Authorized secondary school driver education program providers shall administer road skills tests only to students enrolled in its school or its driver education program.

13. Each third-party tester shall retain at least one certified third party examiner in their employ at all times.

#### B. Safety and Insurance

1. Testers shall furnish DPS satisfactory proof of certificates of liability insurance in the school's name with the school's address. Policy dates on all certificates forwarded to DPS shall be current. Insurance shall be issued from an insurance carrier authorized to do business in Louisiana. For any renewals, changes, cancellations or expirations of the insurance policy, the insurance carrier shall notify OMV. Testers shall maintain the following:

a. general liability insurance policy with minimum liability limits of \$1,000,000 per occurrence. All tester addresses shall be listed on the policy;

b. the limits shall be \$500,000 in auto liability and identify (by description and vehicle identification number) the vehicle(s) covered. For vehicle qualifications, see §151.F:

i. testers may, at their discretion, use the applicant's vehicle for the road skills test. The vehicle must be covered with liability insurance. Proof of insurance coverage must be presented to the examiner prior to administering the road skills test. Proof of insurance must contain the insurance company's name, policy number, current policy period, description of the vehicle (year, make and VIN) and the applicant may not be an excluded driver.

2. The certificates of liability insurance must list OMV as a certificate holder or additional insured with the following address:

Office of Motor Vehicles  
Attn: Training and Certification Unit  
P.O. Box 64886  
Baton Rouge, LA 70896-4886

3. In the event a driving school is covered under a fleet policy and desires to add another vehicle to its fleet, the driving school shall advise the insurance company to notify DPS.

#### C. Knowledge Test

1. Passing the final examination in the driver education course shall qualify the student for license/permit issuance. The student must pass the knowledge test with a minimum score of 80 percent.

2. The same knowledge test shall be utilized for those taking the 6-hour pre-licensing course or the 30-hour classroom course.

3. All copies of the test shall be kept under lock and key or password protected at all times. Photocopies of the test should be produced at the completion of the course as needed.

4. The classroom instructor shall ensure that students seated next to each other have different versions of the test to complete.

5. The completed test shall be attached to the certificate of completion for surrender to DPS at the time of license application. Both documents shall be placed in a sealed envelope.

6. Schools and/or instructors that provide students with the answers to the test, teach only the information contained on the test, do not properly secure the tests, and assist a student to pass the final exam by deceptive practices or accept bribes to give a student a passing score shall be subject to having their license/certification revoked.

7. Any student who fails the final exam shall be allowed to re-test once the same day. If the student does not pass the test on the second attempt, the student may return any day thereafter (depending on instructor availability) and re-test twice each day until the test is passed.

8. The tester and/or examiner shall not assist a student pass the final examination by any deceptive practices. Any school or instructor who assists a student shall be subject to having their license/certification revoked.

9. Each student who is administered the final knowledge test shall be notified prior to testing that he is subject to being re-tested by OMV at any time.

10. Lost or stolen knowledge tests shall be reported to OMV immediately. If a theft or suspected theft has occurred, the local law enforcement agency shall also be notified and a police report sent to OMV.

#### D. Road Skills Testing Preparation Policies

1. Each applicant shall be required to present proof of identity as outlined in OMV's policy along with the completed test history form provided by OMV.

2. The legal custodial/domiciliary parent/guardian of an applicant under the age of 18 shall sign a consent statement, provide proper identification and provide proof that he or she is the legal custodial/domiciliary parent/guardian.

3. All applicants shall sign the disclosure of terms form supplied by OMV. If the applicant is under the age of 18, the legal custodial/domiciliary parent/guardian shall also sign. This form shall be kept in the files.

4. The fee for a road skills test shall not exceed \$40. This fee shall cover all expenses including the costs of the original and a copy of the road skills test certificate provided to each applicant.

5. A copy of the certificate shall be placed in the applicant's file and maintained by the tester for a minimum of five years.

6. The examiner may refuse to administer the road skills test at any time he determines the condition of the applicant, roads or weather to be unsafe.

#### E. Road Skills Testing Administration Policies

1. Only examiners who have been approved and certified by DPS shall administer road skills tests. Only examiners who are certified adaptive driver trainers shall administer road skills tests to applicants who require adaptive equipment, including bioptic telescopic lenses.

2. Only the applicant, examiner, examiner's supervisor, DPS representative, or interpreter, if necessary, are allowed in the vehicle when a road skills test is being administered.

3. Each driving course layout shall include (as a minimum) the following for scoring purposes:

a. two stop signs (one with an obstructed view, if possible);

b. two traffic lights;

c. two lane changes;

- d. two intersections, without a turn;
- e. two reversal procedures:
  - i. into and out of a parking space;
  - ii. three-point turn;
- f. three left turns, one of which includes a left turn onto a multiple-lane roadway;
- g. three right turns, one of which includes a right turn onto a multiple-lane roadway; and,
- h. one parking maneuver.

4. If a maneuver is not able to be performed within a reasonable driving distance from the testing facility due to roadway conditions, the maneuver may be omitted from the test route with prior written approval from OMV.

5. During the road skills test, each third party examiner shall measure the applicant's performance in each of the following operational skills:

- a. observing;
- b. communicating;
- c. speed adjustment;
- d. vehicle positioning;
- e. time and space judgment; and
- f. hazard perception.

6. Standardized instructions shall be utilized when conducting a road skills test.

7. Approved scoring criteria shall be standardized, as determined and approved by DPS. Each applicant starts with 100 points. The applicant shall receive 80 points or better to pass. If the applicant fails due to inexperience, the examiner may recommend a learner's permit.

8. If using a vehicle with a dual brake, it shall be an automatic failure of the test if the examiner has to use the brake for any reason.

9. The driving school shall be required to administer road skills tests to the general public.

10. Third-party testers will set the hours and conditions under which the facility will provide the road skills test.

#### F. Record Keeping

1. The following information shall be maintained in the records, in date order, by month, and shall be maintained for five years from the date of the road skills test:

- a. completed application for road skills test (DPSMV2271);
- b. completed discourse of terms for applicants (DPSMV2273);
- c. completed road skills driving test (DPSMV2005A);
- d. completed test history form (DPSMV30059) furnished by DPS, if applicable; and
- e. completed road skills test certificate (DPSMV2272), if applicable.

2. Every third-party tester shall maintain an ascending numerical accounting record of all certificates issued. Every tester will self-issue certificate numbers for each road skills test in the manner prescribed by DPS.

3. A road skills test log shall be maintained with the tester files. The examiner will record each road skills test including the applicant's name, the examiner's name, the time in/out for the test and indicating whether the test was passed or failed.

4. Every third-party tester shall maintain a monthly report of skills tests performed which shall include:

- a. the number of road skills tests;

- b. the monthly log;
- c. the vehicle inspection form; and
- d. applications for road skills tests.

5. The six-month reports shall be submitted to OMV biennially by the 10th of January and the 10th of July.

6. In secondary school programs, if oversight for the driver education program is provided at the system level, the system shall determine the location where the records shall be kept. All records shall be maintained at a central location which provides DPS access during daytime hours.

7. All records and necessary data pertaining to the operation of the tester shall be maintained in the office in chronological month order and shall be available for inspection upon request by any law enforcement officer or DPS representative. All records shall be maintained in hard copy (original) for one year and may be transferred to an electronic after the one-year period.

#### G. Road Skills Test Certificate (DPSMV2272) Requirements

1. Road skills test certificates shall be issued only to applicants who complete a road skills test with an approved third party tester.

2. If an applicant does not pass the road skills test, a certificate may be issued with comments to add an "02" restriction for issuance of a learner's permit only.

3. Lost or stolen road skills test certificate forms shall be reported to OMV immediately. The local law enforcement agency shall also be notified and a police report submitted to OMV.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1990 (August 2012), amended LR 38:3235 (December 2012), LR 40:2603 (December 2014), LR 43:

#### §158. Military Exemption [Formerly §159]

A. Any active duty military person who never been licensed in this state or another state, upon proving his active duty status, may submit proof of completion of military driver training, which is essentially equivalent to the training required in this part, in lieu of providing the certificate of completion required by this part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:38:1990 (August 2012), amended LR 38:3235 (December 2012), LR 43:

#### §159. Suspension, Revocation and Penalty Assessment

A. All regulations outlined in this Chapter shall be adhered to by the driving school and its employees. DPS may fine, suspend or revoke any driving school license, instructor license, examiner license, owner license or third party tester agreement issued under these rules and regulations upon discovery of satisfactory evidence of violations. If the violation involves the owner of the driving school or other management staff, then the driving school may be assessed fines, or the license may be suspended or revoked, or both. If the violation involves the instructor, then the instructor may be assessed fines, or the license may be suspended or revoked, or both. Fines may be assessed up to \$1500 per rule or statute violated. If the fine is not paid

within 30 days of the mailing of the notice of the fine, the license may be suspended or revoked.

1. Any instructor whose driving privileges have been suspended or revoked is subject to having his instructor's license suspended or revoked.

2. Any behind-the-wheel instructor who has been arrested for driving while intoxicated or operating a vehicle while under the influence of alcohol or drugs, shall be immediately suspended and shall remain suspended until a final disposition of the charges are received by DPS.

3. The license of any instructor arrested for any crime enumerated in R.S. 15:587.1(C) (the Child Protection Act) shall immediately be suspended and shall remain suspended until a final disposition of the charges are received by DPS.

4. Instructors who are arrested and indicted, or both, for any disqualifying offense listed in §145 shall be suspended and their license will remain suspended until final disposition of the offense has been received by DPS.

5. In the event a driving school owner's license or a driving school instructor's license issued pursuant to this Chapter is revoked, he shall not be involved in the administrative duties of the school.

#### B. Appeal Rights

##### 1. Notice of Suspension, Revocation or Fine

a. A currently licensed owner/instructor whose license and third-party tester agreement is revoked or suspended shall be notified in writing by DPS either by email or mail.

##### 2. General Provisions

a. Except as otherwise provided by these rules, any notice shall be served by certified mail, return receipt requested, or hand delivered to the permanent address that is provided in the application or latest amendment thereto, on file with DPS. Notice shall be presumed to have been given in the event an incorrect or incomplete address is supplied to DPS by the applicant or if the applicant fails to accept properly addressed certified mail.

b. Any fine levied by DPS which is adjudicated to a final administrative judgment shall be paid within 10 business days of said judgment becoming final. Failure to pay such a fine within 10 business days may serve as grounds to suspend or revoke any license or contract under this Part.

c. In cases of serious violations of the law or these rules, or in situations in which the law calls for prompt suspension or revocation, or violations which present a danger to the public health, safety or welfare, DPS may provide notice. Such notice shall be promptly documented and confirmation in writing shall be provided to the applicant.

d. Any request for an administrative hearing for a fine, suspension or revocation of a license or third party tester agreement shall be made in writing and sent to DPS (Training and Certification Unit, P.O. Box 64886, Baton Rouge, LA 70896) within 30 calendar days. The action and/or penalty shall become final if the request for an administrative hearing is not submitted timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 43:

### **Family Impact Statement**

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. local governmental entities have the ability to perform the enforcement of the action proposed in accordance with R.S. 40:1730.23.

### **Poverty Impact Statement**

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in R.S. 49:973. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

### **Small Business Analysis**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have any adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

### **Provider Impact Statement**

The proposed Rule does not impact or affect a "provider." "Provider" means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed Rules have no effect or impact on a "provider" in regards to:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the provider to provide the same level of service;
3. the ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written comments or requests for public hearing on these proposed Rule to Laura Hopes, Department of Public Safety and Corrections, Public Safety Services, Office of Legal Affairs, at 7979 Independence Blvd., Suite 307, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6103 (phone); (225) 925-3974 (facsimile); laura.hopes@la.gov (email). Comments will be accepted through close of business June 10, 2017.

**Public Hearing**

A public hearing will be held on Tuesday, June 27, 2017 at 10 a.m. at 7979 Independence Boulevard, Suite 301, Baton Rouge, LA 70806. If the requisite number of comments are not received, the hearing will be cancelled. Please call and confirm the hearing will be conducted before attended.

Karen St. Germain  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Driving Schools and Driver Education**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not affect expenditures for state or local governmental units. Generally, the proposed rule changes revise Title 55 of the LA Administrative Code as it relates to the governing of driving schools and the driver education program.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes may increase SGR collections for the Dept. of Public Safety, Office of Motor Vehicles as a result of increased penalties for driver's education schools violating regulatory provisions. The proposed rules increase penalties by up to \$1,000, from a maximum of \$500 for a major violation to a maximum of \$1,500 per violation with penalty amounts determined at the discretion of the Commissioner of the Office of Motor Vehicles. As a result, to the extent driver's education schools are found to be in violation of their governing regulations and fined for a violation in excess of \$500, SGR collections will increase for OMV. However, because the number of violations driver's education schools will commit is unknown, as well as the penalty amounts they may be fined is unknown, the exact increase is indeterminable.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule changes increase penalties by up to \$1,000 for driver's education schools found to be violating regulatory provisions, from a maximum of \$500 for a major violation to a maximum of \$1,500 per violation with penalty amounts determined at the discretion of the Commissioner of the Office of Motor Vehicles. As a result, to the extent driver's education schools are found to be in violation of their governing regulations and fined for a violation in excess of \$500, the amount in fines they must pay to OMV will represent an increase for the schools. However, because the number of violations driver's education schools will commit is unknown, as well as the penalty amounts they may be fined is unknown, the exact increase for schools is indeterminable.

Furthermore, the proposed rule changes add requirements for driver's education instructors, stating that they must provide a completed medical evaluation form, proof of completion for a first aid or CPR certification, and proof of completion of a training course on sexual harassment prevention. It is assumed that the instructors or their respective schools would bear any costs associated with these requirements at an amount that is likely marginal.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will not affect competition and employment.

Jason Starnes  
Chief Administrative Officer  
1705#035

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Experimental Fisheries Program (LAC 76:VII.701)**

The secretary of Wildlife and Fisheries hereby advertises his intent to modify rules and regulations in the Experimental Fisheries Program (R.S. 56:571). The proposed changes to the Experimental Fisheries Program will enable the department more flexibility in development of new fishing gears and technology. This will help develop potential gear advancements and help establish fisheries for underutilized fishery species.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 7. Experimental Fisheries Program**

**§701. Permits**

A. Purpose. Under Louisiana law, only gear which is legally sanctioned may be used in a fishery. All other types of gear require permits. These permits may be issued for the development of new fisheries, gear designed to harvest underutilized species and to persons who are interested in the development of experimental gear. The purpose of the permit system is to:

1. allow the department to closely supervise all fisheries not sanctioned by statutory law which may conflict with established fisheries or which may use gear prohibited by statutory law;

2. allow the permittee to develop experimental gear for fisheries development, while providing information of this activity to the department for scientific purposes.

NOTE: The following points delineate criteria used in the issuance of permits.

**B. General Regulations**

1. Permits will not be issued for species which are threatened or endangered. Permits will not be issued for fisheries, gear types or applications of otherwise legal gear which are specifically prohibited by law unless otherwise explicitly authorized by the secretary.

2. - 4. ...

5. Information gained by the department through the issuance of a permit is not privileged and may be disseminated to the public.

6. - 15. ...

16. The department reserves the right to observe the operations taking place under the permit at any time and permittee shall be required to provide food and lodging on the permitted vessel for an observer at the request of the department.

17. All permittees shall notify the department prior to leaving port to fish under permitted conditions and immediately upon returning from permitted trip. The department shall be notified by calling a designated phone number.

18. If any permittee does not report monthly as required, his permit shall be suspended. If no report is received by January 31, following suspension, the deposit is forfeited.

19. The permitted boat used in the program shall have a distinguishing sign so that it may be identified. The sign

shall have the word "EXPERIMENTAL" printed on it in at least 6-inch high letters on a contrasting background so as to be visible from low flying aircraft or from any other vessel in the immediate vicinity.

#### C. Permit Application

1. All permits shall be valid for the calendar year in which they are issued and expire December 31 following the date of issuance. Any permits issued on or after November 15 of each year shall be valid for the remainder of the current calendar year as well as the following calendar year.

2. Each applicant for a permit under this program will be assessed an administrative fee of \$50 prior to the issuance of the permit. Each applicant who is a resident of Louisiana will be required to post a performance fee deposit of \$1,000 payable by cashier's check. All nonresidents shall post a performance fee deposit of \$4,000 also payable by cashier's check. These deposits are required prior to the issuance of the permit and are valid until expiration of the permit.

3. Permit requests for experimental gear shall include complete descriptions of the gear and methods used, including drawings or pictures, and the specie(s) to be fished. All potential permittees shall send requests to the Office of Fisheries permit manager. Proof of ownership or written permission from the owner of the proposed permitted vessel(s) shall be provided prior to the issuance of the permit. The person requesting a permit shall show proof that all applicable licenses have been acquired prior to the issuance of the permit. Proof of bona fide residency is also required prior to the issuance of the permit.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:571, R.S. 56:322.1, and R.S. 56:322.2.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), LR 12:847 (December 1986), amended by the Department of Wildlife and Fisheries, Office of Fisheries, LR 15:1098 (December 1989), LR 28:1601 (July 2002), LR 29:49 (January 2003), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:947 (April 2005), LR 40:545 (March 2014), LR 43:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### **Family Impact Statement**

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons may submit written comments relative to the proposed Rule to Robert Bourgeois, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to Friday, June 30, 2017.

Jack Montoucet  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Experimental Fisheries Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change is expected to have no effect on expenditures to the Louisiana Department of Wildlife and Fisheries.

The proposed rule change revises the procedures for issuing experimental gear permits. It grants the Secretary of Wildlife and Fisheries the authority to authorize the issuance of experimental gear permits for gear types other than those permitted under current rules and regulations. It unifies the application procedures for gear used in saltwater areas and freshwater areas. Finally, it allows the mandatory \$50 permit fee to be paid at the same time as the issuance of the experimental gear permit instead of at the time of application before the permit is issued.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change is expected to have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is expected to benefit individuals and agencies who would like to test types of gear that are prohibited under current rules and regulations. Individuals participating in this program may incur minimal costs in order to display identifying information on their permitted boat.

The proposed rule change is expected to enhance the convenience of experimental gear permit applicants by allowing the payment of the mandatory \$50 application fee when the permit is issued, not before it is issued. The inconvenience of refunding the application fee would be spared under the proposed rule change. The Louisiana Department of Wildlife and Fisheries received three to four applications for experimental gear permits in the past three years.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change is expected to have no effect on competition or employment.

Bryan McClinton  
Undersecretary  
1705#032

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# Potpourri

**POTPOURRI**  
**Office of the Governor**  
**Coastal Protection and Restoration Authority**

Public Hearing—Substantive Changes to Proposed Rule  
Natural Resource Damage Restoration Banking  
(LAC 43:XXXI.Chapter 1)

The Coastal Protection and Restoration Authority (CPRA) Board published a Notice of Intent (Notice) to promulgate a Rule to establish a Natural Resource Damage Restoration Banking Program in the January 20, 2017 edition of the *Louisiana Register* (LR 43:128-136). The Notice solicited public comments on the proposed Rule. As a result of its consideration of the written comments received, CPRA proposes to amend §101.B, §107.B, §111.A.5, §115.B.1, §115.B.3.a-d, §115.B.6, §115.C.3, §115.C.5, §117.A.2-10, §117.D, §121.C, §121.D, §123.C, and §127.A.4 of the proposed Rule so that these provisions will read as set forth below.

**Title 43**  
**NATURAL RESOURCES**

**Part XXXI. Coastal Protection and Restoration Authority**

**Chapter 1. Natural Resource Damage Restoration Banking**

**Subchapter A. General Provisions**

**§101. Purpose/Declaration and Intent**

A. ...

B. This NRD Restoration Banking Program is designed to allow, encourage, and incentivize private investors to undertake restoration projects and generate restoration credits that responsible parties can purchase to fully or partially resolve NRD liabilities from oil spills under OPA and OSPRA. This program will provide up-front restoration in the Louisiana coastal area, allow for the implementation of large scale restoration projects, and provide greater ecosystem benefits in an efficient and cost-effective manner, as compared to spill-by-spill restoration actions. Notwithstanding any provision of this Chapter, the natural resource damage assessment (NRDA) trustees retain final authority whether to propose and select the purchase of credits from certified NRD restoration banks or another option as preferred alternatives to restore for injuries resulting from a particular oil spill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

**§107. Definitions**

A. ...

B. The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the word, term, or phrase is otherwise defined in the text.

\* \* \*

*NRD Restoration Banking Program*—a program developed by the state under this Chapter under which a responsible party purchases credits generated by a BRT-certified NRD restoration bank from a restoration bank sponsor to reduce or resolve its liability under OPA and OSPRA for damages to natural resources and services in connection with a settlement of NRD claims against the responsible party.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

**§111. NRD Restoration Banking Program Requirements**

A. In determining the eligibility of a proposed NRD restoration bank, the BRT shall consider the following factors:

1. - 4. ...

5. whether the NRD restoration bank is consistent with the goals and objectives of the coastal master plan; and

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

**§115. Prospectus**

A. ...

B. For new NRD restoration banks proposed for construction, the scope of work shall provide information regarding the proposed NRD restoration bank at a sufficient level of detail to support informed BRT comment and evaluation. A complete scope of work must contain, at a minimum, the components listed below:

1. objectives of the proposed NRD restoration bank, including the habitat type(s) and species that are the focus of the proposed bank;

2. ...

3. physical characteristics of the proposed NRD restoration bank, including:

a. a description of the existing (pre-construction) site location and conditions;

b. a description of the proposed construction activities including the work to be performed and the total acreage or footprint of the proposed work; and

c. a summary table of the pre- and post-construction habitat types, associated acreages, and conditions at the bank site;

4. - 5. ...

6. current ownership, proposed ownership arrangements and long-term management strategy, including proposed conservation restrictions (if applicable);

7. ...

C. For existing, already-constructed restoration projects in use as a bank pursuant to other (non-NRD) regulatory frameworks, the scope of work shall provide the information

identified in Subsection B of this Section, but incorporating actual rather than anticipated post-construction conditions. In addition, the scope of work shall include:

1. - 2. ...
3. identification of all credit sales that have occurred pursuant to any regulatory program;
4. identification of the numbers and types of credits and associated locations still available for sale to address the requirements of other regulatory programs;
5. description of a process and internal controls to prevent double counting; and
6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

### **§117. Restoration Bank Plan**

A. A complete restoration bank plan shall, at a minimum, contain the following components:

1. ...
2. site ownership;
3. detailed project description and work plan, including items in §115.B.2-6 above, as well as the following:
  - i. soil/sediment information;
  - ii. drainage patterns/hydrology;
  - iii. presence, type, density, and condition of existing vegetation;
  - iv. description of any man-made structures;
  - v. current on-site habitat loss rates; and
  - vi. planting plan;
4. restoration goals and objectives;
5. determination of credits (includes number and types of credits), including, for multi-use restoration banks a description of a process and internal controls to prevent double counting;
6. financial assurance;
7. credit release schedule;
8. performance criteria;
9. monitoring requirements;
10. long-term management plan, including proposed conservation restrictions (if applicable); and
11. other information deemed necessary by the BRT to determine the appropriateness, feasibility, and practicability of the restoration bank.

B. - C. ....

D. Final Restoration Bank Plan. Within 60 days of receipt of public comments from the BRT chair, the sponsor must submit a final restoration bank plan to the BRT for approval, with supporting documentation that explains how the final restoration bank plan addresses the comments provided by the public. The BRT will have 30 days from receipt of the final restoration bank plan to indicate whether it is approved. If additional time for review is warranted, the BRT chair shall notify the sponsor in writing prior to the completion of the 30-day period of the amount of additional time needed for final approval. The BRT chair shall provide written notice to the sponsor of the BRT's decision to deny or approve the final restoration bank plan. Upon approval, the final restoration bank plan must be made available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

### **§121. NRD Restoration Credits**

A. ...

C. Release of Restoration Credits Determination. Release of restoration credits for NRD restoration banks must be approved by the BRT. In order for restoration credits to be released, the sponsor must submit documentation to the BRT chair demonstrating that the appropriate milestones for release of restoration credits have been achieved and requesting the release of restoration credits. The sponsor must provide the BRT chair with the number of copies of this documentation specified by the BRT chair for distribution to the BRT members for review. BRT members must provide any comments to the BRT chair within 30 days of the BRT chair's receipt of this documentation. If the BRT determines that a site visit is necessary, the BRT members must provide any comments to the BRT chair within 30 days of the site visit. The BRT chair must schedule the site visit so that it occurs as soon as it is practicable, but the site visit may be delayed by seasonal considerations that affect the ability of the BRT members to assess whether the applicable credit release milestones have been achieved. If additional time is needed at any point in the release of restoration credits determination process, the BRT chair shall provide written notification to the sponsor prior to the running of the time-period with the amount of additional time needed. The BRT chair must provide written notice of final release of restoration credits determinations to the sponsor within 60 days of receipt by the BRT chair of the sponsor's request for release of credits or 60 days of the site visit, whichever is later. BRT determinations denying release of credits should include the rationale as to why the credit release was denied as well as guidance to the sponsor regarding corrective action(s), if appropriate, that may be taken to remedy any deficiencies identified.

D. Transfer or Sale to RP or Trustee. Once released, restoration credits may only be purchased to reduce or resolve NRD liability for a specific release of oil if the application of the credits to that spill has been approved by the appropriate NRDA trustees. The cost of restoration credits provided by an NRD restoration bank is to be negotiated by the responsible party and the sponsor of the NRD restoration bank from which the restoration credits are to be purchased. Within seven days of the sale or transfer of any NRD credits, the sponsor must provide a written report to the BRT detailing each sale/transfer of restoration credits. At a minimum, the notification must specify the number and type of restoration credits sold or transferred.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

### **§123. Monitoring NRD Restoration Banks**

A. ...

C. The restoration bank plan must provide for a monitoring period that is sufficient to demonstrate that the

NRD restoration bank has met its restoration objectives and performance criteria. Upon a determination that the NRD restoration bank has achieved its objectives and performance criteria, the BRT may reduce or waive the remaining monitoring requirements. Conversely, the BRT may extend the original monitoring period upon a determination that performance criteria have not been met or the bank is not on track to meet them. The BRT may also revise monitoring requirements when corrective action is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, LR 43:

#### **§127. Compliance**

A. ...

4. Suspension of the sale of restoration credits under Paragraphs 2 or 3 of this Subsection above does not preclude CPRA from exercising its rights secured by financial assurances issued under §126 above.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.5.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Coastal Protection and Restoration Authority, Office of the Commissioner LR 43:

#### **Public Hearing**

In accordance with R.S. 49:968(H)(2), a public hearing on these proposed substantive changes will be held on June 26, 2017, at 1 p.m., at CPRA, 150 Terrace Ave., Baton Rouge, LA 70802.

Johnny Bradberry  
Chairman

1705#057

#### **POTPOURRI**

#### **Department of Health Board of Pharmacy**

#### **Marijuana Pharmacy (LAC 46:LIII.Chapter 24)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy published a Notice of Intent in the January 20, 2017 edition of the *Louisiana Register* to add a new subchapter to Chapter 24. Limited Service Providers, of its rules; Subchapter E. Marijuana Pharmacy. The proposed Rule was prepared in response to Act 261 of the 2015 Legislature and Act 96 of the 2016 Legislature; it establishes standards for the packaging and labeling of marijuana products as well as the dispensing of such products in pharmacies licensed by the board.

The board conducted a public hearing on March 2, 2017 to receive comments and testimony on the proposed Rule. During their subsequent meeting on March 14, 2017, the board considered the comments and testimony and voted to recommend several revisions to the original proposed Rule to address several comments.

In particular, the board has proposed 16 sets of revisions: (1) Clarify the definition of approved safe by removing the introductory clause, which will require all approve safes to

be equipped with an alarm system [§2441.A.3]; (2) An extensive revision of the laboratory testing standards to harmonize them with the standards being promulgated by the Department of Agriculture and Forestry [§2443.B]; (3) To change 'edible dosage forms' to 'gelatin-based chewables, which will eliminate the opportunity for marijuana product dosage forms to include food or candy items infused with marijuana, items never contemplated in the enabling legislation [§2443.C.1.d]; (4) To harmonize the product design standards and the packaging standards to prohibit targeting of individuals less than 18 years of age [§2443.C.2.c.iv and 2443.D.1.e.i]; (5) To provide for the use of package inserts as supplementary labeling [§2443.D.2.d]; (6) To clarify that dispensing of marijuana shall be limited to those pharmacies holding a marijuana pharmacy permit [§2445.B]; (7) To remove the restriction on political campaign contributions for those firms seeking to apply for a marijuana pharmacy permit [§2447.A.4.a]; (8) To reduce the number of persons who would be disqualified from ownership of a marijuana pharmacy permit to members and their families serving on the board or as its staff [§2447.A.4.b]; (9) To reduce the amount of funds necessary to demonstrate financial capacity, from \$1 million to \$100,000 [§2447.A.10]; (10) To clarify an imprecise reference to the enabling legislation [§2447.A.15.f]; (11) To increase the amount of time available to the person awarded a pharmacy permit to initiate operations [§2447.A.20]; (12) To correct an oversight relative to the fees required for the renewal of a marijuana pharmacy permit [§2447.B.2]; (13) To reduce the restriction imposed on the type of packaging required of the pharmacist dispensing the marijuana product, and to add specific language authorizing the pharmacist to compound a marijuana product formulation [§2451.E]; (14) To amend the list of items which can be sold in a marijuana pharmacy to include 'other retail products' [§2451.N]; (15) To amend the standards of practice to allow a pharmacist to dispense an emergency supply of marijuana product pursuant to an emergency oral authorization [§2457.D.1.a]; and (16) To amend the standards of practice to replace 'authorized prescriber' with 'recommending physician' since marijuana cannot be prescribed, only recommended [§2457.D.1.c and 2457.D.2 and 2457.E.2.b.iii and 2457.E.2.b.ix].

The original proposal is resubmitted, as revised, for publication in the Potpourri section of the *Louisiana Register*. The Legislative Fiscal Office has evaluated the impact of the proposed revisions of the original proposed Rule and has opined that while the proposed changes are substantive they do not impact the original fiscal statement approved by their office.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LIII. Pharmacists**

#### **Chapter 24. Limited Service Providers**

#### **Subchapter E. Marijuana Pharmacy**

#### **§2441. Definitions**

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section:

\* \* \*

*Approved Safe*—a safe which conforms to or exceeds all of the following standards:

a. Shall have the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

b. If it weighs less than 750 pounds, is bolted or cemented to the floor or wall in such a way it cannot be readily removed; and

c. Is equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee, or such other protection as the board or its designee may approve.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:

### §2443. Marijuana Products

A. - B.1. ...

2. A producer shall make available each such batch at the production facility for testing by a laboratory approved by LDAF. The laboratory employee shall select a random sample from each batch.

a. Medical marijuana concentrate shall not be used to produce any form of product until it has passed all analysis limits for:

i. active ingredient analysis for characterization of potency;

ii. pesticide active ingredients, including but not limited to, the most recent list of targeted pesticides published by LDAF;

iii. residual solvents;

iv. heavy metals; and

v. mycotoxins.

b. Product shall not be released for delivery to a pharmacy for sale or consumption until it has passed all analysis limits for:

i. microbiological contaminants;

ii. active ingredient analysis for accuracy of potency; and

iii. homogeneity.

c. LDAF personnel may select a random sample at any point in the process for the purpose of analysis for anything the LDAF deems necessary.

d. Samples shall be secured in a manner approved by LDAF at all times when not in immediate use for the analyses being conducted.

B.3. ...

#### 4. Testing Specifications

a. With respect to the microbiological test, a marijuana sample shall be deemed to have passed if it satisfies the recommended microbial and fungal limits for cannabis products as follows:

i. total yeast and mold: < 10,000 colony-forming units per gram (CFU/g); and

ii. *E. coli* (pathogenic strains) and *Salmonella* spp: < 1 CFU/g.

b. With respect to the mycotoxins test, a marijuana sample shall be deemed to have passed if it meets the following standards:

i. aflatoxin b1 < 20 parts per billion (ppb);

ii. aflatoxin b2 < 20 ppb;

iii. aflatoxin g1 < 20 ppb;

iv. aflatoxin g2 < 20 ppb; and

v. ochratoxin < 20 ppb.

c. With respect to the heavy metals test, a marijuana sample shall be deemed to have passed if it meets the following standards:

i. arsenic < 10 parts per million (ppm);

ii. cadmium < 4.1 ppm;

iii. lead < 10 ppm; and

iv. mercury < 2 ppm.

d. With respect to the pesticide chemical residue test, a marijuana sample shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item set forth in subpart C of the United States Environmental Protection Agency's "Tolerances and Exemptions for Pesticide Chemical Residues in Food", as found in 40 CFR 180 or its successor.

e. With respect to the residual solvent test, a marijuana sample shall be deemed to have passed if the following solvents are below the listed limits:

i. butanes < 800 ppm;

ii. heptanes < 500 ppm;

iii. benzene < 1 ppm;

iv. toluene < 1 ppm;

v. hexanes < 10 ppm;

vi. total xylenes < 1 ppm; and

vii. ethanol < 5,000 ppm.

f. With respect to the test for homogeneity, a marijuana sample shall be deemed to have failed if ten percent of the sample contains more than twenty percent of the total active ingredient.

g. Every sample shall undergo an active ingredient analysis or potency analysis.

i. For medical marijuana concentrate samples, the potency test is to establish the presence of active ingredients and their concentrations for accurate calculations of amounts needed for the production of products. The analysis must identify the following substances:

(a). THC (tetrahydrocannabinol);

(b). THCA (tetrahydrocannabinolic acid);

(c). CBD (cannabidiol); and

(d). CBDA (cannabidiolic acid).

ii. For product samples, the potency test is to establish the active ingredient composition for verification of labeling to ensure accurate dosing. The maximum variance permitted is fifteen percent from the labeled amount. For example, a product labeled as containing 10 milligrams of tetrahydrocannabinol (THC) shall contain no less than 8.5 milligrams THC and no more than 11.5 milligrams THC.

#### 5. Procedures for Sample Failures

a. In the event a medical marijuana concentrate sample fails testing for pesticides, heavy metals or mycotoxin, the entire batch from which the sample was taken shall be disposed of in accordance with the disposal rules promulgated by LDAF.

b. In the event a medical marijuana concentrate sample fails residual solvent testing, then, with prior approval of LDAF, the product may be subjected to an appropriate remedy, e.g., vacuum drying, reformulated and

tested again. The reformulation must pass all required tests for a medical marijuana concentrate in duplicate before it can be released for use in products. If either duplicate fails any test, the entire batch shall be disposed of in accordance with the disposal rules promulgated by LDAF. A batch of medical marijuana concentrate can only be reformulated once and only to remedy excessive residual solvents.

c. In the event a product fails the microbiological testing, the entire batch from which the sample was taken shall be disposed of in accordance with the disposal rules promulgated by LDAF.

d. In the event a product fails the potency or homogeneity testing, then, with prior approval of LDAF, the product can be re-sized and tested again. The reformulated product shall be tested again in duplicate and pass all required tests before it can be released for sale or consumption. If either duplicate fails any test, the entire batch shall be disposed of in accordance with the disposal rules promulgated by LDAF.

6. In the event of any test failure, the laboratory shall transmit to LDAF an electronic copy of such test result at the same time it transmits those results to the producer. In addition, the laboratory shall maintain the laboratory test results including all relevant chromatograms and quality control documentation for at least five years and make them available to LDAF at its request.

7. The laboratory shall dispose of any remaining medical marijuana concentrate or product samples no sooner than 60 days following the completion of any testing, in compliance with the disposal rules promulgated by LDAF.

8. A producer shall provide the laboratory test results to the marijuana pharmacy for each batch of marijuana used in a product acquired by the marijuana pharmacy. The pharmacy shall make such testing results available upon request to their patients, caregivers, and physicians who recommended such marijuana products dispensed to their patients.

C. - C.1.c. ...

d. gelatin-based chewables;

1.e. - 2.c.iii. ....

iv. is customarily associated with persons under the age of eighteen years; or

C.2.d. - D.1.d. ...

e. Packaging selected by the producer shall be subject to the following restrictions:

i. shall not specifically target individuals under the age of 18 years;

1.e.ii. - 2.c. ...

d. The producer may utilize a package insert which is enclosed or attached to the product container to provide the information required in this Section. If the producer elects to use such supplementary labeling, the label affixed to the outer surface of the product container shall contain the following information, at a minimum:

i. the batch or lot number referenced at Subsection D.2.a.i;

ii. the potency of the THC and CBD referenced at Subsection D.2.a.iv;

iii. the net weight referenced at Subsection D.2.a.v;

iv. the expiration date referenced at Subsection D.2.a.vi; and

v. the caution statement referenced at Subsection D.2.b.i.

E. - E.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:

#### **§2445. Marijuana Pharmacy Permit**

A. ...

B. The dispensing of marijuana for therapeutic purposes shall be limited to those pharmacies holding a marijuana pharmacy permit issued by the board, and only when that permit is in active or restricted status.

C. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:

#### **§2447. Licensing Procedures**

A. - A.3. ...

4. In the event any person holding any ownership interest in the entity submitting an application for a marijuana pharmacy permit has engaged in any of the following activities, the entity shall be disqualified and the board shall not issue a marijuana pharmacy permit to that applicant:

a. within the two-year period preceding the date of the application, the person or any member of the person's immediate family served as a member of the board or its staff.

5 - 9. ...

10. The applicant shall supplement the application form with sufficient documentation of the applicant's financial capacity to properly operate a marijuana pharmacy, including but not limited to, evidence of his escrow account, letter of credit, or surety bond of at least \$100,000 in a financial institution headquartered in Louisiana.

a. The pharmacy's \$100,000 escrow account, letter of credit, or surety bond shall be payable to the board in the event the board determines after a due process hearing that the pharmacy has failed to timely and successfully complete the construction of the pharmacy or to operate such pharmacy in compliance with the provisions of this Subchapter.

b. The board shall permit the pharmacy's escrow account, letter of credit, or surety bond to be reduced by \$25,000 upon the successful achievement of each of the following milestones:

i. a determination by the board that the pharmacy is fully operational and able to commence and has begun dispensing of marijuana as provided in this Subchapter;

ii. a determination by the board that the pharmacy remained operational and without substantial interruption and without any violation of law or regulation for a one-year period; and

iii. a determination by the board that the pharmacy remained operational and without substantial interruption and without any violation of law or regulation for a second one year period.

iv. the pharmacy shall maintain the escrow account, letter of credit, or surety bond for a minimum of \$25,000 for the remainder of its operation.

10.c. - 15.e. ...

f. Any other reason provided by any federal law or rule or state law or rule that is not inconsistent with R.S. 40:1046 or 40:1047 or this Subchapter.

16. - 19. ...

20. If an applicant has been awarded a marijuana pharmacy permit and has not commenced operation of such pharmacy within 310 days of being notified of the marijuana pharmacy permit award, the board may, in the board's discretion, rescind such marijuana pharmacy permit, unless such delay was caused by force majeure. A marijuana pharmacy shall be deemed to have commenced operation if the pharmacy is capable of operating in accordance with the applicant's approved application. In the event a marijuana pharmacy permit is rescinded pursuant to this subsection, the board shall award a marijuana pharmacy permit by selecting among the qualified applicants who applied for the marijuana pharmacy permit that was rescinded. If no other qualified applicant applied for such marijuana pharmacy permit or satisfied the criteria for awarding a permit, the board shall publish, in accordance with this Section, a notice of open applications for marijuana pharmacy permits.

B. - B.1. ...

2. The owner's managing officer and pharmacist-in-charge of the marijuana pharmacy permit shall complete, sign and date a permit renewal application form supplied by the board, and further, shall include all information requested on the form and attach the pharmacy permit renewal fee and state controlled dangerous substance license renewal fee authorized in R.S. 37:1184 and the prescription monitoring program fee authorized in R.S. 40:1013, and further, shall submit the renewal application package to the board office prior to the expiration date of the pharmacy permit.

B.3. - D.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:

#### **§2451. Operation of Marijuana Pharmacy**

A. - D. ...

E. A marijuana pharmacy shall sell marijuana products only in a secure and light-resistant container. Nothing herein shall preclude a pharmacist from compounding a marijuana product appropriate for his patient.

F. - M. ...

N. No marijuana pharmacy shall sell anything other than marijuana products; however, the pharmacy may elect to sell over-the-counter (OTC) medications, durable medical equipment (DME), and other retail products from the same premises but outside the prescription department.

O. - U. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR

#### **§2457. Standards of Practice**

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

D. Recordkeeping Requirements

1. Prescription/recommendation/order (hereinafter, "request") for marijuana

a. Authorization for Emergency Dispensing. An emergency situation exists when administration of the

marijuana product is necessary for immediate treatment, an appropriate alternate treatment is not available, and the recommending physician cannot reasonably provide a written recommendation. In the case of an emergency situation, a pharmacist may dispense a marijuana product upon receiving oral authorization directly from a recommending physician, provided that:

i. the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written recommendation signed by the recommending physician);

ii. the oral authorization shall be immediately reduced to written form by the pharmacist and shall contain, at a minimum, the following information:

(a) full name and address of the patient;

(b) drug product name, strength, and dosage form;

(c) quantity of product recommended;

(d) directions for use;

(e) name, address, telephone number, and CDS license number of the recommending physician; and

(f) name of the pharmacist receiving the oral authorization;

iii. if the recommending physician is not known to the pharmacist, he shall make a reasonable effort to determine that the oral authorization came from a physician authorized to recommend marijuana products in Louisiana, which may include a callback to the physician using his telephone number as listed in the telephone directory or other good faith efforts to insure his identity; and

iv. within seven days after authorizing an emergency oral recommendation, the physician shall cause a written recommendation for the emergency quantity authorized to be delivered to the dispensing pharmacist. The recommendation shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral authorization. The written recommendation may be delivered to the pharmacist in person or by mail, but if delivered by mail, it shall be postmarked within the seven day period. Upon receipt, the dispensing pharmacist shall attach this recommendation to the oral emergency authorization which had earlier been reduced to written form. The pharmacist shall notify the board if the recommending physician fails to deliver a written recommendation to him within the required time; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written recommendation from the recommending physician.

b. ...

c. The written request shall bear the manual signature of the recommending physician. No other form of signature shall be valid, including (but not limited to) stamps, computer generated signatures, or signatures of anyone other than the recommending physician.

d. ...

2. When the pharmacy receives a request for marijuana from a recommending physician in written form, the pharmacist shall cause the form to be scanned and filed using an electronic imaging system in compliance with §1123 of the board's rules.

D.3. - E.2.b.ii. ...

- iii. name of the recommending physician;
- iv. - viii. ...
- ix. directions for use of the product as included in the recommending physician's request;

2.b.x. - 5.e.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:

**Public Comments**

Interested persons may submit written comments to Malcolm J. Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these proposed revisions of the original proposed Rule.

**Public Hearing**

A public hearing on these proposed revisions is scheduled for Monday, June 26, 2017 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. that same day.

Malcolm J. Broussard  
Executive Director

**POTPOURRI**

**Department of Health  
Board of Pharmacy**

Pharmacy Technicians (LAC 46:LIII.Chapter 9)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy published a Notice of Intent in the January 20, 2017 edition of the *Louisiana Register* to amend several sections of Chapter 9. Pharmacy Technicians, of its rules. In particular, the proposed Rule requires the applicant for a pharmacy technician candidate to demonstrate enrollment in a nationally-accredited and board-approved pharmacy technician training program as one of the three eligibility criteria for the pharmacy technician candidate registration. In addition, the proposed Rule requires the applicant for the pharmacy technician certificate to demonstrate successful completion of a nationally-accredited and board-approved technician training program as one of the eligibility criteria for that certificate. Finally, the proposed Rule also makes changes to the scope of practice and documentation of the continuing education requirement for pharmacy technicians.

The board conducted a public hearing on March 1, 2017 to receive comments and testimony on the proposed Rule. During their subsequent meeting on March 14, 2017, the board considered the comments and testimony and voted to recommend revisions to the original proposed Rule to address several comments. In particular, the board has proposed revisions to allow for the possibility of more than one board-approved technician certification examination (§903.A.2.c.ii); to clarify that termination of enrollment in a training program removes the eligibility for a candidate to

retain their registration and provide a mechanism for the re-issuance of the registration upon re-enrollment in a training program (§903.A.3.d); remove the requirement for training programs to notify the board when candidates are no longer 'satisfactorily progressing' with a notice requirement for such notice when the candidate is no longer enrolled due to any reason other than graduation (§903.B.2); and to allow candidates enrolled in a nationally-accredited training program to acquire some of their hours of practical experience in a consultant pharmacy practice that does not hold a pharmacy permit (§903.C.4.a).

The original proposal is resubmitted, as revised, for publication in the Potpourri section of the *Louisiana Register*. The Legislative Fiscal Office has evaluated the impact of the proposed revisions of the original proposed Rule and has opined that some fiscal and economic impact will result from the suggested revisions. A summary of the revised Fiscal and Economic Impact Statement is appended.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 9. Pharmacy Technicians**

**§903. Pharmacy Technician Candidates**

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

c. The applicant shall satisfy one of the following eligibility criteria:

i. Proof of enrollment in a nationally-accredited and board-approved pharmacy technician training program; or

ii. Proof of successful completion of a board-approved technician certification examination, and further, proof of successful completion of a high school approved by a state department of education or an equivalent degree of education, as evidenced by a valid and legible copy of a diploma, transcript, or other appropriate credential; or

iii. Proof of credentialing as a pharmacy technician by another state board of pharmacy as well as evidence of practice as a pharmacy technician for at least one year in that state, and further, proof of successful completion of a board-approved technician certification examination.

2.d. - 3.c. ...

d. Termination of Enrollment; Status of Registration

i. In the event the candidate is no longer enrolled in a nationally-accredited and board-approved pharmacy technician training program for any reason other than graduation, the candidate no longer meets the eligibility criteria to possess the registration, and the candidate shall relinquish the registration to the board, giving notice of their last day of enrollment in the program.

ii. In the event a candidate fails to relinquish their registration when required to do so, or when notified by the board office of that requirement, the board staff shall inactivate the registration and refer the matter to the board for its consideration of disciplinary action against the candidate.

iii. In the event the candidate should re-enroll in the original program or a different program, and gives proof of that enrollment to the board, the board may re-issue the registration with the original expiration date preserved.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Pharmacy Technicians**

iv. In its discretion, the board may grant an exception to the original expiration date upon request by the candidate demonstrating unusual circumstances.

e. A pharmacy technician candidate shall notify the board, in writing, no later than 10 days following a change of mailing address. The written notice shall include the candidate's name, registration number, and old and new addresses.

f. A pharmacy technician candidate shall notify the board, in writing, no later than 10 days following a change in location(s) of employment. The written notice shall include the candidate's name, registration number, and name, address, and permit numbers for old and new employers.

B. - B.1. ...

2. The training program shall notify the board when a pharmacy technician candidate is no longer enrolled in the program. Evidence of a program's failure to comply with this rule shall constitute sufficient basis for the withdrawal of the board's approval for the program.

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

4. The candidate's registration shall evidence his authority to earn practical experience in a pharmacy, under the supervision of a pharmacist, in satisfaction of the requirements for pharmacy technician certification.

a. In the event the registration was issued to an applicant enrolled in a nationally-accredited and board-approved training program, the candidate shall earn the amount of experience prescribed by the curriculum of that program, which may include hours earned in a consultant pharmacy practice which does not hold a pharmacy permit; or

C.4.b. - D.2.b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1212.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, repromulgated LR 19:1025 (August 1993), amended LR 23:1307 (October 1997), LR 30:2485 (November 2004), effective January 1, 2005, LR 39:1777 (July 2013), LR 43:

**Public Comments**

Interested persons may submit written comments to Malcolm J. Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these proposed revisions of the original proposed Rule.

**Public Hearing**

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Malcolm J. Broussard  
Executive Director

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated implementation costs to the Louisiana Board of Pharmacy are approximately \$1,500 (\$750 in FY 17 and \$750 in FY 18) for the notice and rule publication costs. There are no estimated implementation savings to the state or local government units through promulgation of the proposed rule. The proposed rule change will require pharmacy technicians to complete a nationally-accredited and board-approved pharmacy technician training program to qualify for their pharmacy technician certificate.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated impact on revenue collections of the Board of Pharmacy. To the extent candidates receive this training at public higher education institutions, these institutions may receive an indeterminable amount of additional revenue.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is anticipated to affect persons who seek to become pharmacy technicians. The estimated cost to these candidates will depend on the training program that is available to the candidate. Pharmacy technician candidates will be required to enroll in and complete a nationally-accredited pharmacy technician training program in order to qualify for their pharmacy technician certificate. The currently nationally-accredited training programs are found in many universities, community colleges, technical colleges, and proprietary schools. The estimated cost for these programs ranges from \$1,200 to over \$15,000 depending on the institution. However, there are national chain pharmacies that have internal accredited training programs that do not charge tuition to the students and students can earn income while attending school. Additionally, there may be an economic benefit to pharmacy technicians as the proposed rule allows hours earned in a consultant pharmacy practice that does not hold a pharmacy permit to be used as experience needed to complete a pharmacy technician training program.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change may have an initial slowing effect on the number of pharmacy technician candidates. However, the accredited educational programs should help a greater percentage of candidates to pass the national certification examination and increase the number of pharmacy technicians available for employment.

Malcolm J. Broussard  
Executive Director  
1705#031

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**POTPOURRI**

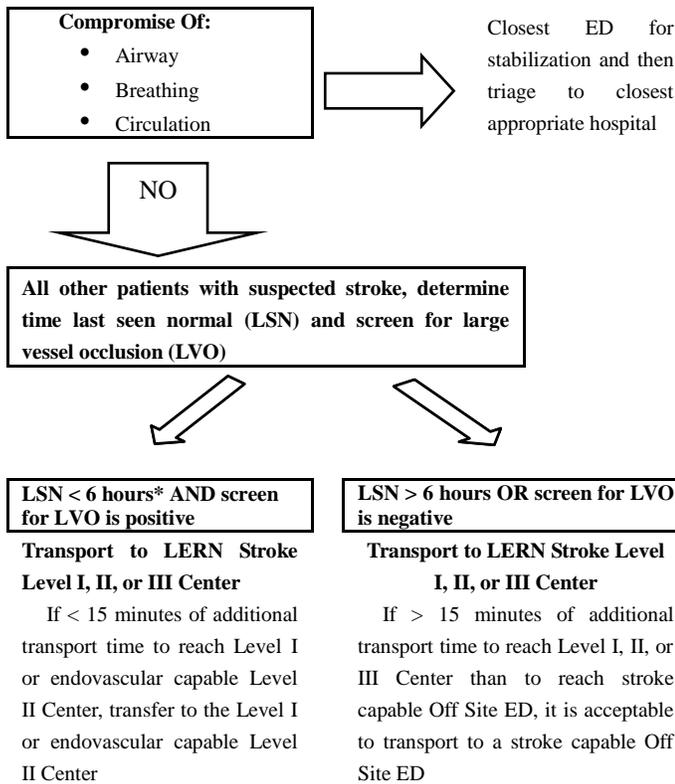
**Department of Health  
Emergency Response Network Board**

**LERN Destination Protocol: Stroke**

On April 21, 2017, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated “LERN designation protocol: stroke,” replacing the previous “LERN designation protocol: stroke” adopted on November 21, 2013, which was published in the Potpourri section of the *Louisiana Register* in Vol. 40, No. 01, January 20, 2014, pp. 189-190; and was published as a final Rule in Vol. 41, No. 1, January 20, 2015, p. 137, as follows.

**LERN Destination Protocol: Stroke  
LERN Call Center: (866) 320-8293**

The following protocol applies to patients with suspected stroke:



\* The LSN < 6 hrs should include patients without a definite time of LSN, but who could reasonably be assumed to be within 6 hrs of onset, including patients who wake-up with stroke symptoms.

<b>Guiding Principles:</b>
• Time is the critical variable in acute stroke care
• Protocols that include pre-hospital notification while en route by EMS should be used for patients with suspected acute stroke to facilitate initial destination efficiency.
• Treatment with intravenous tPA is the only FDA approved medication therapy for hyperacute stroke.
• EMS should identify the geographically closest hospital capable of providing tPA treatment.
• Transfer patient to the nearest hospital equipped to provide tPA treatment.
• Secondary transfer to facilities equipped to provide tertiary care and interventional treatments should not prevent administration of tPA to appropriate patients.

William Freeman, MD  
Chair

1705#007

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

**Orphaned Oilfield Sites**

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Ora Oil Company	Rodessa	S	Norton	001	990091
Muslow And Parker	Caddo Pine Island	S	Wells "A"	002	43027
Ross Exploration, Inc.	Caddo Pine Island	S	Spell B	008	44475
Unknown	Caddo Pine Island	S	Muslow	001	990482
Unknown	Sligo	S	Skannal	001	990483

Richard P. Ieyoub  
Commissioner

1705#033

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