

(through August 20, 2004)
Louisiana Administrative Code
Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC
Part XV. Other Regulated Entities
Chapter 3. Capital Companies Tax Credit Program

§301. Description of Program

A. These rules implement the Capital Companies (CAPCOs) Tax Credit Program pursuant to R.S. 51:1921 et seq. and R.S. 22:1068(E). This program was created by Act 642 of the 1983 Legislature, amended by Act 891 in 1984, Acts 695 and 915 in 1986, Act 496 in 1989, Acts 279 and 724 of 1993, and Act 21 of 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997).

§303. Definitions Provided by Rule

The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate and/or Affiliated Company-

a. solely for purposes of the transfer or sale of income or premium tax credits pursuant to R.S. 51:1924(F), R.S. 22:1068(E)(4), and LAC 10:XV.305(B), affiliate is defined as follows:

i. any person that controls, is controlled by or under common control with another person (including any person that would become an affiliate as a result of a business combination); or

ii. members, partners, or shareholders and any family members thereof, of a legal entity that invests in a CAPCO;

b. for all other purposes, the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a qualified Louisiana business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled by*, or is under common control with, a qualified Louisiana business;

c. for purposes of R.S. 22:1068(E)(2)(c), a *group of affiliates* shall mean a person and not less than all *affiliates* of such person;

d. the test relating to being under common control with will not apply to investments closed prior to the effective date of this Rule or to any qualified Louisiana business in which the investing certified Louisiana capital company has invested in prior to the effective date of this Rule;

e. Part ii of this Section shall not include as an affiliate those legal entities that are *controlled by* either an angel or institutional investor.

Allowable Organization Costs-Repealed

Angel Investor in a Qualified Louisiana Business-for purposes of excluding certain companies from being an affiliate of a qualified Louisiana business, an *angel investor* shall be defined as any investor that has provided early state funds to a business unless such investor is, the founder, or a family member of the founder, of the qualified Louisiana business.

Application-a completed application as determined by the commissioner.

Associate of a CAPCO-

a. any of the following:

i. a person serving a CAPCO, or an entity that directly or indirectly controls a CAPCO, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other people employed with the employee), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), accountant, or general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the CAPCO;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §303.A. *Associate of a CAPCO*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §303.A. *Associate of a CAPCO*.a.i, ii or iii;

v. a person that invests in the CAPCO and has received an income tax credit or premium tax reduction under the CAPCO Program;

vi. an affiliate of any person described in §303.A. *Associate of a CAPCO*.a.v; or

vii. (a). a person that, within six months before or at any time after the date that a CAPCO invests in the person, is controlled by a CAPCO or any of its affiliates. A CAPCO's primary purpose is to provide venture capital to qualified Louisiana businesses in need of capital; not to invest in subsidiaries of the CAPCO or its affiliates, or companies that a CAPCO or its affiliates intend to control. Such investments will result in an associate determination and will not be considered "qualified investments" in assessing a CAPCO's compliance with its continuing certification requirements.

(b). Section 303.A. *Associate of a CAPCO*.a.vii.(a) does not apply to an investment made by a CAPCO in a qualified Louisiana business if, within six months before or at any time after the date of the investment, the qualified Louisiana business is not controlled by the CAPCO or its affiliates. However, even though a CAPCO may not intend to control a business in which it invests, it may obtain control over the qualified Louisiana business after its initial investment. If control is acquired after the initial investment as a result of the following circumstances, such control will not create an associate relationship under §303.A. *Associate of a CAPCO*.a.vii.(a):

(i). persons controlled by the CAPCO as a means of protecting the CAPCO's investment or resulting from a material breach of any financing agreement; or

(ii). instances involving transitory or short-term control of a person by a CAPCO (or an affiliate of the CAPCO) solely to remedy actions by the person that may cause the CAPCO's investment in such person to fail to be treated as a qualified investment, on the good faith belief that such operation of the person is necessary to ensure that the investment in the person will be treated as a qualified investment.

b. For the purposes of this definition, if any associate relationship described in §303.A. *Associate of a CAPCO*.a.i-vi exists between a person and the CAPCO at any time within six months before or at any time after the date that the CAPCO makes its initial investment in such person, that associate relationship is considered to exist on the date of the financing.

BIDCO-a Business and Industrial Development Corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

Business-for the purposes of determining if a qualified Louisiana business operates primarily in Louisiana or performs substantially all of its production in Louisiana means an entity, together with all of that entity's affiliates that would directly or indirectly receive an economic benefit from a financing by a CAPCO. For purposes of this definition, an affiliate of the entity includes any entity which will become an affiliate of the entity as a result of a financing from a CAPCO.

CAPCO-a Certified Louisiana Capital Company certified pursuant to the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

Capitalization-for purposes of initial certification, pursuant to R.S. 51:1925(B):

a. *Generally Accepted Accounting Principles (GAAP) Capital*-common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. LESS: the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the CAPCO: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit or premium tax reduction.

Capitalize a Business-for purposes of LAC 10:XV.303. *Investment*.(b).(iv) the investment of cash in a business in exchange for common stock, or an equivalent ownership interest. Additionally, this shall include subordinated debt only if 1) it is used to refinance senior debt thereby allowing a qualified Louisiana business to expand; or 2) the CAPCO agrees to subordinate such debt to any current or future senior indebtedness owed by the business, provided that, in the case of future indebtedness, the senior indebtedness is incurred by the portfolio company within three months of the date the CAPCO made the subordinated debt investment.

Change of Control-for purposes of LAC 10:XV.319A shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding shares of the CAPCO or 50 percent or more of the combined voting power of the CAPCO; provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the CAPCO or the date of the CAPCO's last notification under LAC 10:XV.319A for whom the Office of Financial Institutions has received a current Biographical Affidavit and conducted a current background check shall be disregarded; or

b. individuals who constitute the voting power of the Board of Directors, Board of Managers or other governing board of the CAPCO as of the later of the CAPCO's certification date or the date of the CAPCO's last notification under LAC 10:XV.319A cease to comprise more than 50 percent of the voting power of such Board of Directors, Board of Managers, or other board; or

c. a change in the general partner or manager of the CAPCO or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the CAPCO that was the party to the merger or consolidation transaction.

Certified Louisiana Capital Company Group-Any two or more CAPCOs which share common management or is under common control, whether such management or control is accomplished directly or indirectly.

Commissioner-the commissioner of the Office of Financial Institutions.

Control-

a. Solely for purposes of determining whether a qualified Louisiana business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a CAPCO, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is used with respect to a specified person or legal entity.

b. For all other purposes, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

Date Certified, Newly Certified or Designated as a Certified Louisiana Capital Company-the date that the commissioner notifies a CAPCO of its certification.

Date on Which an Investment Pool Transaction Closes-date that a CAPCO designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

- a. execution of all legal documents and elimination of all material contingencies associated with the consummation of the transaction; and
- b. the date that the CAPCO receives a cash investment of certified capital that is available for investment in qualified Louisiana businesses.

Equity Features-includes [pursuant to R.S. 51:1923(4) and (5)] the following:

- a. *Royalty Right*-rights to receive a percent of gross or net revenues, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

- b. *Net Profit Interests*-rights to receive a percent of operating or net profits, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

- c. *Warrants for Future Ownership*-options on the stock of the qualified Louisiana business. The qualified Louisiana business may repurchase a warrant (a “call”) or the qualified Louisiana business may be required to repurchase a warrant (a “put”) at some fixed amount or an amount based on a pre-agreed upon formula.

- d. *Equity Sale Participation Right*-conversion options of debt, to convert all or a portion of the debt to the qualified Louisiana business’s stock, then to participate in the sale of the stock of the qualified Louisiana business.

- e. *Equity Rights*-the receipt or creation of a significant equity interest in a qualified Louisiana business.

- f. And such other conceptually similar rights and elements as the OFI may approve.

Family Member-spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

Financing Assistance Provided in Cash and The Investment of Cash- transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; loan collection expenses or legal fees incurred by a CAPCO in protecting its collateral interest in an investment.

Headquartered in Louisiana-at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. In analyzing whether the business has a substantial portion of its assets located in Louisiana, Part a. of the definition of *Operates Primarily in Louisiana* shall be utilized in making the determination. The application of this definition shall only be made to investments made from pools of capital certified in 2002 or thereafter.

Institutional Investor-shall include venture capital companies, investment companies, mutual funds, brokerage companies, insurance companies, pension funds, investment banks, Small Business Investment Companies licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958, CAPCOs, BIDCOs, and any other corporation, limited liability company, or partnership with total assets in excess of \$5,000,000 formed for the purpose of making investment in multiple businesses.

Examples:

a. A company founded by an individual seeks additional capital to continue product development. A high net worth individual or an *institutional investor* reviews the investment and elects to provide capital. Following this investment, the company is able to develop its product to a certain stage. Now, the company is in need of a larger investment to bring the product to market and a certified Louisiana capital company desires to invest. Under this scenario, neither the net worth nor the net income of the angel or *institutional investor* or any companies *controlled* by the angel or *institutional investor* would be combined with the qualified Louisiana business in determining if the limits found in R.S. 51:1923(13)(a) would be exceeded.

b. A high net worth individual controls one or more companies that are not considered qualified Louisiana businesses. This high net worth individual founds another company and provides the capital for startup and product development and now seeks funding by a certified Louisiana capital company. Under this scenario, the founder of the company seeking *investment* would not be considered an angel or *institutional investor*.

Investment-

a. for purposes of earning tax credits or reductions under R.S. 51:1923(1) and (2), R.S. 51:1924(A) and (B), or R.S. 22:1068(E), means a transaction that, in substance and in form, is the investment of cash in exchange for:

i. common stock, preferred stock, or an equivalent ownership interest in a CAPCO; or

ii. a loan receivable or note receivable from a CAPCO which has a stated final maturity date of not less than five years from the origination date of the loan or note;

iii. notwithstanding the above, an *investment* shall also include debt instruments which are obligations of the investing insurance company to a certified Louisiana capital company. Such debt instruments shall be converted into cash at a rate of not less than 10 percent per year from the date of the *investment*;

iv. however, at all times, in order to perfect the tax credits earned as a result of an investment described in Subparagraphs a-c of this Paragraph, the CAPCO shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

(a). available to be invested in qualified investments in qualified Louisiana businesses;

(b). invested in qualified *investments* made subsequent to the *investment* date of the *investment* pool; or

(c). a combination of §303.A.*Investment.a.iv.(a)* and (b).

b. i. an *Investment* furthers economic development within Louisiana. If the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the qualified Louisiana business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 50 percent of the proceeds derived from the investment are used by the qualified Louisiana business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a buyout of a company;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the CAPCO shall request in writing and the commissioner shall issue a written response to the CAPCO that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a

significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a CAPCO in interim construction financing shall not be considered to further economic development within Louisiana, unless the same CAPCO also provides the debt funding that refinances the interim funding upon completion and the permanent financing is determined to further economic development within Louisiana;

iii. for purposes of (b)(i)(e) of this definition, an *investment* by a CAPCO to refinance interim debt of a qualified Louisiana business will be considered to further economic development within Louisiana if the commitment to fund the *investment* by the CAPCO occurs before the funding of the interim debt.

Louisiana Employees-

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis, that perform services in Louisiana for a qualified Louisiana business in exchange for salaries, wages and/or other compensation, which is included in Louisiana withholding tax returns filed by the qualified Louisiana business.

b. The term *Louisiana employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a qualified Louisiana business on a contract basis; or

ii. employees of any business that perform services (contractor) for a qualified Louisiana business.

For example: a contractor may enter into an agreement to perform services for a qualified Louisiana business. The contractor's employees that perform services under that agreement would not be Louisiana employees under this definition.

Net Income-net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth-net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office-the Office of Financial Institutions (OFI).

Operates Primarily in Louisiana-a business *operates primarily in Louisiana* if, at the time of the initial *investment*, the business is in good standing with the Louisiana Secretary of State, if applicable, and meets one or more of the following:

- a. the business has more than 50 percent of its total assets located in Louisiana;
- b. more than 50 percent of the business' net income is allocable or apportionable to Louisiana in accordance with Louisiana income tax law, but disregarding whether the business is taxable or tax-exempt for Louisiana income tax purposes;
- c. more than 50 percent of the total salaries, wages and/or other compensation of the business are paid to Louisiana employees; or
- d. the CAPCO has, prior to investing in the business, received a written opinion from the commissioner that, based upon relevant facts and circumstances, the business has demonstrated it operates primarily in Louisiana and will continue to operate primarily in Louisiana for at least one year from the date of any financing by a CAPCO. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

NOTE: For *investments* made utilizing certified capital raised during 2002 or 2003, Subparagraph c is superseded by R.S. 51:1923(13)(a)(i) which requires that at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. Therefore, in addition to meeting this new 80 percent test, in order for the business to be deemed to operate primarily in Louisiana, one or more of Subparagraphs a, b or d must be met.

Participation Between CAPCOs-are loans or other investments in which one or more CAPCOs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a CAPCO may only include its participation (ownership interest) as a qualified investment.

Performs Substantially All of Its Production in Louisiana-business performs substantially all of its production in Louisiana if:

- a. the business derives more than 50 percent of its gross receipts from the sale of manufactured, produced or processed goods; and

b. more than 50 percent of the total value added to the business' finished product is added within Louisiana.

NOTE: For *investments* made utilizing certified capital raised during 2002 or 2003, R.S. 51:1923(13)(a)(i) adds a new requirement that at least 80 percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least 80 percent of the payroll of such business be paid to such employees. Therefore, in addition to meeting this new 80 percent test, in order for the business to be deemed to perform substantially all of its production in Louisiana, this new 80 percent test must be met in addition to Subparagraphs a and b.

Permissible Investments-for purposes of R.S. 51:1926(B), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under Subsection a.(iv)(a) of the definition of *Investment* in LAC 10:XV.303 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the CAPCO within 10 days following demand by the CAPCO in connection with funding a qualified investment. This limitation on the maturity of an investment shall only apply to *investments* made subsequent to the date of this Rule.

Person-a natural person or juridical entity. If used with respect to acquiring control of or controlling a specified person, *person* includes a combination of two or more persons acting in concert.

Primary Business Activity of a CAPCO-the investment of a CAPCO's certified capital primarily in qualified investments in qualified Louisiana businesses. Primary business activity is demonstrated by having at all times, a minimum of 50 percent of total certified capital of each investment pool, which has been collected in cash, available for investment in or having been invested as qualified investments in qualified Louisiana businesses.

Sophisticated Investor-any of the following:

- a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;
- b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital under Management for purposes of investment limits, pursuant to R.S. 51:1926(B):

a. *GAAP Capital*-common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchanged for cash and is available for investment in qualified *investments*; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. PLUS: Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS: the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the CAPCO:

The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

d. The portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:1926(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997), LR 25:1216 (July 1999), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:33 (January 2004).

§305. Income and Premium Tax Credits

A. In order to be eligible for any income or premium tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a CAPCO voluntarily decertifies and preserves all income and premium tax credits, if debentures, notes or any other quasi-equity/ debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income or premium tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Insurance or the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:1927 and R.S. 51:1928. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

B. Income or premium tax credits may be sold or transferred, subject to the following conditions.

1. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirors. Furthermore, even though a transfer or sale of credits, known as an election under this Section, may involve several entities, only one election may be made during any calendar year. Therefore, an investor in a CAPCO may only transfer or sell credits once during a calendar year and the entity that purchases the credit may not transfer credits obtained during the year of purchase. In any subsequent calendar year, the purchaser of the credits may make one election per year, if needed.

2. Companies and/or individuals shall submit to the Department of Insurance or the Department of Revenue and Taxation in writing, a notification of any transfer or sale of income or premium tax credits within 30 days of the transfer or sale of such credits. The notification shall include the original investor's income or premium tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for both transferor and acquiror, the date of transfer, and the amount transferred.

3. If an insurance company transfers premium tax credits between affiliates or sophisticated investors, the notification submitted to the Department of Insurance shall be provided on forms prescribed by the Department of Insurance.

4. If income tax credits are transferred between affiliates or sophisticated investors (acquirors), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquiror shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquiror;

b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquiror; and

c. credits taken by the transferor and each acquiror under R.S. 51:1924(A) and (B).

5. Failure to comply with this rule will jeopardize the income or premium tax credit transferred.

6. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:1924(A) and (E) or R.S. 22:1068(E)(3), respectively. Any income or premium tax credits transferred or sold pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), which credits are subject to recapture pursuant to R.S. 51:1927(C), 51:1928(A) or R.S. 22:1068(E)(4), shall be the liability of the taxpayer that actually claimed the credit.

C. 1. The total income tax credits granted pursuant to R.S. 51:1924.A in any calendar year shall not result in an additional reduction of total income tax revenues of greater than \$2,000,000 per year.

2. During any calendar year in which this Subsection will limit the amount of certified capital for which income tax credits are allowed, certified capital for which income tax credits are allowed will be allocated among Louisiana certified capital companies. Requests for allocation shall be prepared for filing not later than December first on a form prescribed by the commissioner which form shall include an affidavit by the investor pursuant to which such investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified Louisiana capital company subject only to receipt of allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before December first of any calendar year shall be deemed to have been filed on December first of such year. Requests for allocation shall be allocated as follows:

a. When aggregate requests for allocation by certified Louisiana capital company groups do not exceed \$5,714,285.71, all requests for allocation shall be approved by the department.

b. When aggregate requests for allocation exceed \$5,714,285.71, each certified Louisiana capital company group shall be entitled to receive an allocation to be calculated by dividing \$5,714,285.71 by the number of certified Louisiana capital company groups requesting an allocation. In the event that this allocation results in one or more certified Louisiana capital company groups receiving an allocation in excess of the amount which was requested, the excess shall be reallocated to the remaining certified Louisiana capital company groups on an equal basis until the entirety of the allocation has been fully distributed.

3. No certified Louisiana capital company certified after December first of any year shall be entitled to receive an allocation pursuant to Paragraph (b) of this Subsection for the same calendar year in which it was certified.

4. Annually within 10 days of December first, the commissioner shall review all requests for allocation of income tax credits and notify the certified Louisiana capital companies of the amount of certified capital for which income tax credits are allowed to the investors in such company. During this 10 day period, each CAPCO or CAPCO group may allow for the substitution of one investor for another investor when the initial investor is unable or unwilling to complete the proposed investment.

5. In the event a certified Louisiana capital company or group does not receive an investment of certified capital equaling the amount of the allocation made pursuant to Paragraph C.2.b of this Subsection within 10 days of its receipt of notice of such allocation it shall notify OFI within three days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1924, 1927, 1928 and 1929, and R.S. 22:1068(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 16:762 (September 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1132 (September 1997), LR 25:1216 (July 1999), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:35 (January 2004).

§307. Application Fees; Other Fees

A. An advance notification of intent to seek certification shall be filed by a company or entity, the applicant, prior to filing an application. An advance notification fee of \$100 shall be submitted with the advance notification form.

B. An application fee of \$5,000 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

C. The office reserves the right to return the advance notification or application to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications and applications which have been accepted will not be refundable.

D. The commissioner shall conduct an annual review of each CAPCO to determine the company's compliance with the rules and statutes. Examiner time shall be billed at a rate not less than \$50 per hour, per examiner, or \$500 per review, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925, 1927 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§309. Application Process

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:1921 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

B. The form for applying to become a CAPCO may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filings shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Said application and all submissions of additional information reported to the office, shall be forwarded via United States mail or private or commercial interstate carrier, properly addressed and postmarked and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the commissioner. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a CAPCO and/or the department may be subject to civil and criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§311. Conditions of Certification

A. All CAPCOs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a certified Louisiana capital company and shall certify and acknowledge that the act statement is true and correct:

1. The CAPCO has an initial capitalization of not less than \$200,000. If any capitalization is repurchased or contemplated to be repurchased by the CAPCO within five years after certification, the CAPCO will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Furthermore, any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits or premium tax reductions.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the CAPCO will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification. If the commissioner does not object to the notification within 30 days of the receipt, the notification shall be deemed approved.

3. The board of directors will not elect new or replace existing board members or declare dividends without prior written consent of the office for the first two years of business.

4. The CAPCO will immediately notify the office when its total certified capital under management is not sufficient to enable the CAPCO to operate as a viable going concern.

5. The CAPCO will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The CAPCO will comply with the CAPCO Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The CAPCO will adopt OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant to the commissioner.

B. 1. If a CAPCO contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the CAPCO shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 days prior to investor solicitation.

2. If a CAPCO seeks to certify capital pursuant to §303.A.*Investment(a)iii*, the CAPCO shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow this office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended, LR 23:1134 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§313. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:1926, decertification of an investment pool under R.S. 51:1927 and voluntary decertification of an investment pool under R.S. 51:1928:

1. The numerator for the investment pool shall be:
 - a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and
 - b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.
2. For purposes of the calculation of the numerator:
 - a. no qualified investment may be counted more than once;
 - b. the date the investment of cash is made determines whether the one-year date is achieved. For multiple fundings, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.
3. If a CAPCO invests a portion of its total certified capital in a majority-owned BIDCO, the qualified investments made by the majority-owned BIDCO shall be added to the numerator under §311.A.1.a and b.
4. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a CAPCO's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a CAPCO may allocate its qualified investments to all open investment pools, provided such allocations are reasonable.

C. 1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

a. a sale that is executed in connection with a sale of control of a qualified Louisiana business; or

b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the CAPCO may deliver to the Office a letter of credit in form and substance, and issued by a financial institution, acceptable to the Office. The letter of credit:

a. shall be payable to the Office as beneficiary;

b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with C.1 above;

c. shall provide that the letter of credit is forfeitable in full if the CAPCO fails to comply with the requirements of C.1 above; and

d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of A.1.a above which have not yet been held by the CAPCO a minimum of one year.

3. If the CAPCO provides a letter of credit in accordance with C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the CAPCO as the sole remedy for the failure of the CAPCO to comply with the requirements of C.1 above; otherwise, the failure to comply with C.1 above shall be considered a violation of R.S. 51:1926(H)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1929 and 1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1134 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:36 (January 2004).

§315. Information Required from Qualified Louisiana Businesses

Prior to making an investment in a business, a CAPCO shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the CAPCO in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business.

For example: a board resolution;

2. a binding waiver of rights and consent agreement sufficient to allow the CAPCO, upon request to the business, full access to all information and documentation of the business which is in any way related to the investment of the CAPCO in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow acquisition by the CAPCO of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of proceeds, and that the business will provide to the CAPCO, documentation of the use of proceeds; and

5. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1927, 1928 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1350 (September 1997).

§317. CAPCO Report and Record Requirements

A. Reporting Requirements. Pursuant to R.S. 51:1926(F)(2), CAPCOs are required to submit to the commissioner reports of selected information for each qualified investment made in the previous calendar year. Senate Concurrent Resolution Number 40 of the 1996 Regular Session also requires that the department determine the economic development impact of the CAPCO Program on the state. In order to provide such a report to the Senate, economic information for each company in which a CAPCO has invested shall be obtained and reported to the commissioner by each CAPCO. Such reports shall be submitted on forms provided or approved by OFI.

B. Record Requirement. In order for the commissioner to properly review and analyze a CAPCO's compliance with this rule and all relevant statutes, each CAPCO shall obtain from each business in which the CAPCO has invested, and maintain in its possession for review, any and all records deemed necessary by the commissioner.

C. 1. Except as provided in this Paragraph 2 of this Subsection C, no information contained in the report of examination may be disclosed to investors or shareholders.

2. The report of examination is the property of the Office of Financial Institutions and is furnished to the CAPCO for use by management and the board of directors/managers of the CAPCO and its parent entities. Therefore, the release of any information contained in the report of examination is considered a violation of R.S. 51:1934.

D. All CAPCOS shall prepare quarterly financial statements which shall include a balance sheet, an income statement, and a statement of cash flows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1135 (September 1997), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:37 (January 2004)

§319. Change of Control

A. In the event of a change of control of a certified Louisiana capital company, at least 30 days prior to the effective date, the CAPCO shall provide written notification to the commissioner of the proposed transaction. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner;
2. a copy of the proposed business plan of the new owners covering a three year period;
3. a discussion of the previous experience the proposed owner has in the field of venture capital;
4. a credit report on each new owner;
5. a listing of any changes to the board of directors and/or of the CAPCO;
6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:37 (January 2004).

§320. Investment in Approved Funds

A. Any certified Louisiana capital company that has capital certified pursuant to R.S. 51:1924 for the calendar years 1999 or 2000, and which qualifies for credits pursuant to R.S. 22:1068(E) shall invest an amount, as determined by the secretary, into the following investments:

1. fifty percent of the amount determined by the secretary shall be invested in one or more capital management funds as approved by the secretary whose primary investment objectives include pre-seed, seed, and early stage business ventures, and whose investment in any such business and its affiliates is limited to one million dollars or less. Investments made by such funds must give special emphasis to the Targeted Technology Clusters identified in Vision 2020CMaster Plan For Economic Development as adopted by the Louisiana Economic Development Council; and

2. fifty percent of the amount determined by the secretary shall be invested in any certified Louisiana capital company whose primary investment objectives include investing in the following three categories:

- a. certified disadvantaged businesses;
- b. business ventures operating in economically distressed areas; or
- c. Louisiana businesses and affiliates in an amount not exceeding one million dollars.

B. The amount to be invested by each certified Louisiana capital company pursuant to Subsection A shall be determined annually by the secretary beginning January 1, 2000. Such amount shall not exceed ten percent of all capital certified by such certified Louisiana capital company in the previous calendar year that are eligible for credits pursuant to R.S. 22:1068(E). The amount to be invested pursuant to Subsection A shall be invested within 120 days from the end of the calendar year in which the capital is certified or 120 days from the date the secretary determines the amount to be invested, whichever is later. If certified capital is paid in pursuant to a debt instrument in accordance with the provisions of R.S. 22:1068(E)(1)(a) and LAC 13:XV.303.Investment(a)(iii), the investment required to be made by this Section may be made at the rate of ten percent of actual cash received each year.

C. The capital management fund referred to in Paragraph A.1 shall be managed by a qualified individual or individuals or entity that is managed by a qualified individual or individuals and governed by a board consisting of one representative from each certified Louisiana capital company that has invested in the management fund as required by this Section and the secretary or his designee, who shall act in an advisory capacity only, with the right to attend meetings but with no voting privileges. The governing board of the capital management fund will develop policies for the administration and operation of the capital management fund. Certified Louisiana capital companies investing in such capital management fund, shall share in

the profits and losses of such fund in accordance with the documents providing for the creation and organization of the fund. The fund shall submit reports to the secretary, semi-annually within 30 days of June 30 and December 31. The report shall include information on all investments made by the fund and a copy of the most recent financial statements of the fund and shall be submitted on a form provided by the secretary.

D. Any entities receiving funds pursuant to Paragraphs A.1 or A.2 shall comply with all requirements of R.S. 51:1921 et seq. (Chapter 26 of Title 51 of the Louisiana Revised Statutes) and with this Chapter with respect to such funds received as if those funds were certified capital as defined in R.S. 51:1923(1) with the exception that:

1. such funds shall earn no additional tax credits;
2. for purposes of R.S. 51:1926(A)(1), fifty percent must be invested in qualified investments and for purposes of R.S. 51:1926(A)(2), eighty percent must be invested in qualified investments; and
3. one hundred percent of such funds shall be invested in qualified investments within eight years.
4. Notwithstanding any other provisions of this Section to the contrary, and considering the adverse impact of Hurricanes Katrina and Rita on the state of Louisiana, all deadlines for the investment of funds in qualified investments required by Subsection D of this Section which would have fallen between the dates of August 25, 2005 and March 30, 2006 shall be and they are hereby extended to March 31, 2006.

E. Amounts invested pursuant to Subsection A.2 shall be invested directly into a certified Louisiana capital company. Investments directly into a business shall not qualify as an investment pursuant to Subsection A.2.

F. With respect to capital raised and certified pursuant to R.S. 22:1068(E) during the calendar year 1999 only, if a certified Louisiana capital company demonstrates to the secretary that investments made from 1999 certified capital were made or committed prior to December 1, 2000, were made with the understanding that they would qualify under §1935 and were made in accordance with the terms of a previous agreement entered into by the secretary, such investments will be deemed to qualify pursuant to this Section.

G. If a certified Louisiana capital company which is required to invest funds by this Section is also a certified Louisiana capital company described in Paragraph A.2 above, it shall not be required to reinvest part of its certified capital into another certified Louisiana capital company pursuant to the requirements of Paragraph A.2; however, it must still make the investment required by Paragraph A.2.

H. Any certified Louisiana capital company may request a determination from the secretary that it is a certified Louisiana capital company described in Subsection A.2. A request for a

determination shall be addressed to the secretary and shall include a copy of the certified Louisiana capital company's:

1. articles of organization;
2. by-laws;
3. investment policy; and
4. any disclosure statement distributed to prospective investors. If any of those documents have been amended from its original form, a copy of both the original and amended documents must be provided. The secretary may request any additional information that he deems necessary to make a determination.

I. Failure to comply with this Section shall result in the following consequences.

1. In the event any certified Louisiana capital company subject to the provisions of Subsection A, fails to comply with the requirements of this Section, the certified Louisiana capital company shall be subject to involuntary decertification of its capital in an amount equal to the amount of funds required to be invested pursuant to this Section. Such involuntary decertification shall result in the disallowance and recapture of any tax credits related to such capital.

2. If any entity that receives funds pursuant to Subsections A.1 or A.2 fails to comply with the provisions of this Section regarding the investment of such funds, the secretary shall have the authority to specifically direct how such funds shall be invested, including the authority to name a specific business and amount for an investment. If the entity fails to comply with such directive, the entity shall remit such funds to the secretary for investment. The entity shall retain ownership of any funds and investments made with such funds.

J. For purposes of this Section only, the following terms shall have the meaning provided in this Subsection:

Business Ventures Operating in Economically Distressed Area-a business whose principal place of business is located in a Census Block Group designated by the Department of Economic Development as an Enterprise Zone pursuant to R.S. 51:1784(A) and (B) and not considering any designation pursuant R.S. 51:1785(B).

Certified Disadvantaged Businesses-shall include any business which has received certification as such from any federal, state or local government agency or has been certified as a Small and Emerging Business by the division of small and emerging business development in the Department of Economic Development.

Early Stage Business Venture-shall include and enterprise that has high growth potential, minimal revenues or minimal profits.

Pre-Seed-shall include an enterprise that conducts research and development to demonstrate proof of concept, files for initial patents and plans the enterprise for at least the two rounds of financing subsequent to initial investment in the enterprise.

Seed-shall include an enterprise that is completing its initial product research and development, building a prototype, completing market research, hiring the initial management team members and formulating a strategy to achieve very high growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1935.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 27:675 (May 2001), amended LR 28:989 (May 2002), amended by the Department of Economic Development, Office of the Secretary and the Office of the Governor, Office of Financial Institutions, LR 30:37 (January 2004).

§321. Severability

If any section, term, or provision of any of the foregoing rules, LAC 10:XV.301-320, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended by the Office of Financial Institutions, LR 23:1136 (September 1997).

§323. Fees and Assessments

Pursuant to the authority granted under LSA-R.S. 51:1929(5), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the certified Louisiana Capital Companies Tax Credit Program, LSA-R.S. 51:1921 et seq.

Fees and Assessments

DESCRIPTION	FEE	
1. Request for certification of capital pursuant to LSA-R.S. 51:1924. Each certified Louisiana capital company seeking an allocation of certified capital shall submit a non-refundable fee with the request for allocation filed on October 1st and December 1st of each year.	<u>Requested Amount</u>	<u>Fee</u>
	Less than \$250,000	\$1,000
	\$250,000 < \$3,000,000	\$2,500
	\$3,000,000 or greater	\$5,000

<p>2. Annual assessment of each certified Louisiana capital company at a floating rate to be assessed no later than May 15th of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.303, as of the previous December 31st audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the certified Louisiana capital companies program by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the certified Louisiana capital companies program shall be added to the next variable assessment or billed on a pro rata basis.</p>	<p>Variable</p>
<p>3. Late Fee: For each calendar day that an assessment is late pursuant to the requirements of Section 323(B)(2), a late fee shall be assessed.</p>	<p>\$100 per day</p>

B. Administration

1. The failure to submit a fee with the request for allocation as required in Section 323 (A)(1) shall result in the denial of an allocation of certified capital.

2. The assessment described in Section 323(A)(2) shall be considered late if not received by this office on or before May 31st of each calendar year. If this office receives an assessment after May 31st, it shall not be deemed late if it was postmarked on or before May 31st .

3. If audited financial statements are not submitted to this office by April 30th, unaudited financial statements shall be submitted no later than May 1st . These unaudited financial statements shall then be used to determine the assessment amount provided for in Section 323(A)(2). Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31st.

4. If neither an audited nor unaudited financial statement has been received by this office by May 1st beginning on June 1st, the late fee described in Section 323(A)(3) shall be assessed until the assessment has been paid.

5. If any of the dates described in parts 2 and 3 above, except the April 30th and the December 31 due date for audited financial statements, occurs on an official state holiday or a Saturday or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

6. The assessment for each certified Louisiana capital company group, as defined in LSA-R.S. 51:1923(11), and described in Section 323(A)(2) shall be based on the following formula:

a. The numerator will be the total certified capital under management for the group as of the previous December 31st;

b. The denominator will be the total certified capital under management for all certified Louisiana capital companies as of the previous December 31st.

C. Severability.

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

AUTHORITY NOTE: Promulgated in accordance with LSA-R.S. 51:1929(5).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions LR 28:2349 November 2002).

§325. Notes Receivable

A. The provisions of R.S. 22:1068.E.(1)(b) will be satisfied with respect to a note receivable issued by a certified Louisiana capital company or its investment pool to an investing insurance company if:

1. the note receivable has a stated final maturity date of not less than five years from the date on which the certified Louisiana capital company or its investment pool issues the note receivable; and

2. either:

a. the note receivable is repaid in a manner which results in the note receivable being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the note receivable; or

b. the duration of the note receivable is no shorter than the duration of a hypothetical note that:

i. is issued on the same date as the note issued by the certified Louisiana capital company or its investment pool;

ii. has the same maturity date as the note issued by the certified Louisiana capital company or its investment pool;

iii. has a price and yield the same as that of the note issued by the certified Louisiana capital company or its investment pool, calculated in the same manner (i.e., with respect to compounding, 360 vs. 365 day per year calculations, etc.); and

iv. is fully amortized by equal daily payments, which amounts are calculated as follows:

(a). the aggregate of all amounts scheduled to be paid or otherwise credited to the holder of the note receivable issued by the certified Louisiana capital company or its investment pool for the entire term of the note receivable divided by;

(b). the total number of days scheduled to elapse from the date on which the certified Louisiana capital company or its investment pool issues its note receivable through and including the stated maturity date thereof, calculated on a 365 or 360 day year, consistent with the calculation of interest on the note receivable.

B. For purposes of this Section, a note receivable's "duration" shall mean the weighted-average time to receipt of the present value of the amounts used to repay or otherwise satisfy the note receivable obligation. For purposes of this Section, a note receivable's duration shall be calculated in a manner that is typical in the industry for publicly-traded debt instruments.

C. Each certified Louisiana capital company or its investment pool that issues notes to insurance companies other than those described in Subparagraph A.2.a of this Section shall submit to the Office of Financial Institutions, in writing, the duration for each such note issued by it (or one representative note, if all notes are similar except for the face amount) and the duration for the note described in Subparagraph A.2.b of this Section. Each calculation shall show:

1. all information required to make the duration calculation; and
2. all interim worksheets and formulae used in the duration calculation, reasonably sufficient to allow the Office of Financial Institutions to duplicate the calculation.

A copy of the actual spreadsheet model used by the certified Louisiana capital company or its investment pool for its duration calculation in a Microsoft Excel software format shall satisfy the requirements of the preceding sentence.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 16:762 (September 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1132 (September 1997), amended LR 25:1216 (July 1999), LR 29:

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 51:1929, has adopted the following additional Rules for the Louisiana Capital Companies Tax Credit Program, in order to provide direction to certified Louisiana capital companies who are seeking to invest certified capital in "Louisiana-based economic development infrastructure projects," as such term is used in R.S. 51:1923(12)(c) of the Louisiana Capital Companies Tax Credit Program (the "CAPCO Program"). The term

“Louisiana-based economic development infrastructure Louisiana Register Vol. 29, No. 10 October 20, 2003 projects” is not defined in the CAPCO Program. These Rules are intended to provide a procedure for certified Louisiana capital companies seeking a designation of a “Louisiana-based economic development infrastructure project” for an intended investment in order to qualify for the tax credit under this program; and these Rules further provide criteria that a project must meet in order to qualify for such a designation.

§327. Louisiana-Based Economic Development Infrastructure Projects

A. An applicant seeking this designation for an intended investment shall provide to the secretary the following information along with the request for this designation:

1. a description of the project;
2. a description of all sources and uses of financing for the project;
3. a description of the proposed investment;
4. an analysis of how the investment in the project furthers economic development within Louisiana;
5. a calculation of the percentage of the certified Louisiana capital company’s total certified capital and total certified capital under management which will be invested in the project;
6. an analysis of whether the entity in which the certified Louisiana capital company proposes to invest is a qualified Louisiana business;
7. an analysis of whether the proposed investment meets the criteria set forth in §303 Investment.b;
8. a statement as to whether the business in which the certified Louisiana capital company proposes to invest, intends to acquire any real estate for resale or whether any real estate in which the certified Louisiana capital company proposes to invest is intended to be resold;
9. the charter documents for the entity that owns the Louisiana-based economic development infrastructure project and each intervening entity through which the certified Louisiana capital company owns its interest in the Louisiana-based economic development infrastructure project; and
10. copies of all management, maintenance, operations and other agreements which the certified Louisiana capital company contemplates being executed with respect to the Louisiana-based economic development infrastructure project, or if no such agreements have yet been prepared, a description of all contemplated arrangements.

B. A Louisiana-based economic development infrastructure project shall be designated by the secretary for purposes of qualifying the investment under La. R.S. 1923(12)(c) if it meets the criteria set forth in each of subsections 1 through 5 of this Section B, or if it meets other criteria determined by the secretary from time to time.

1. The information shall demonstrate that 100 percent of the funds invested by the certified Louisiana capital company shall be used directly or indirectly:

a. for the acquisition, construction, modification, refurbishment or remodeling of physical facilities, other immovable property improvements or movable property which becomes affixed to or a component part of immovable property, in each case, located in Louisiana; or

b. as attendant expenses related to the investments, including without limitation, closing expenses, capital expenditure reserves, working capital, and reasonable fees and expenses relating to the management and operation of the facilities.

2. The facilities must accomplish at least two of the following, as determined by the secretary, or shall accomplish such other objectives as the secretary may determine from time to time:

a. provide below market rental environments for “disadvantaged businesses” as defined in R.S.51:1923 (7);

b. provide attractive rental environment for the attraction of out of state companies in the targeted clusters identified in the State’s Vision 2020 Plan to locate headquarters or operations in Louisiana;

c. provide below market rental environments for qualified Louisiana startup businesses as defined In La. R.S.51:1923 (14);

d. provide attractive rental environments for qualified Louisiana technology-based businesses as defined In La. R.S.51:1923 (15); or

e. provide below market cost services.

3. The investment by the certified Louisiana capital company in the Louisiana-based economic development infrastructure project shall be made either to acquire an equity interest in an entity that directly or indirectly owns or acquires an interest in a Louisiana-based economic development infrastructure project, to provide debt financing to an entity that owns or acquires an interest in the Louisiana-based economic development infrastructure project, or to provide a combination of these investment mechanisms.

4. The secretary shall review and approve of the percentage of the certified Louisiana capital company’s certified capital and total certified capital under management that is invested in the proposed project or project entity, in his or her discretion.

5. The secretary may adopt additional criteria for his or her approval of Louisiana-based economic development infrastructure projects.

C. An investment approved by the secretary which is made by a certified Louisiana capital company in a Louisiana-based economic development infrastructure project or an entity that directly or indirectly owns an interest in a Louisiana-based economic development infrastructure project in accordance with this Rule shall be deemed to “further economic development within Louisiana” for purposes of R.S. 51:1923(12).

D. Following the secretary’s designation of an investment by a certified Louisiana capital company as a qualified investment in a Louisiana-based economic development infrastructure project, the secretary shall issue a letter to the certified Louisiana capital company applicant confirming the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 29: 2011 (October 2003)

§331. Qualified Technology Funds

A. An applicant seeking designation as a qualified technology fund shall provide to the secretary the following information along with the request for this designation:

1. the charter documents for the entity that will constitute the qualified technology fund;
2. copies of any management agreements to which the qualified technology fund contemplates being a party, and a description of any contemplated comparable arrangement;
3. a reasonably detailed description of how the qualified technology fund meets and will continue to meet the criteria of R.S. 51:1923(16);
4. a copy of the qualified technology fund’s investment policy;
5. evidence in form and substance acceptable to the secretary by which the qualified technology fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana technology-based businesses, as required by R.S. 51:1923(16)(b);
6. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees that the commissioner shall regulate the investment of the certified capital received by the qualified technology fund as required by R.S. 51:1923(16)(d);
7. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees to provide:

a. to the secretary by August 1 of each year the information required to be included in the secretary's report described in R.S. 51:1927.2, with respect to the operations and investments of the qualified technology fund, to the extent that such information is relevant to the qualified technology fund; and

b. to the commissioner the information required by R.S. 51:1926(F), by the dates set forth therein, to the extent that such information is relevant to the qualified technology fund; and

8. such additional information as may be requested by the secretary with regard to the qualified technology fund or its ownership, management or operations.

B. A qualified technology fund shall be designated by the secretary for purposes of qualifying an investment in the qualified technology fund under R.S. 51:1923(12)(d) if the applicant meets the criteria set forth in each of Paragraphs 1 through 4 of this Subsection B, or if it meets such additional or other criteria determined by the secretary from time to time.

1. The applicant has delivered to the secretary all of the information required by Subsection A of this Section.

2. The information delivered to the secretary pursuant to this Section demonstrates that the qualified technology fund meets the criteria under R.S. 51:1923(16).

3. The information delivered by the applicant shall demonstrate reasonable prospects for the qualified technology fund to invest the following percentages of each of the qualified technology fund's investment pools within the following time periods:

a. on or before the second anniversary of the investment date of the investment pool, 50 percent of the investment pool invested in qualified Louisiana-based technology businesses; and

b. on or before the third anniversary of the investment date of the investment pool, 100 percent of the investment pool invested in qualified Louisiana-based technology businesses.

4. The charter and/or management documents with respect to the applicant shall provide that:

a. the non-certified capital company representatives involved with the management of the applicant have the authority to appoint a majority of the members (including the chairman) of each of:

i. the board of directors, board of managers or other similar governing authority of the applicant and any entity responsible for the direction of the applicant's investment decisions; and

ii. any committee of the board of managers, board of directors or other similar governing authority of the applicant with the authority to approve investment decisions and any such committee of any entity responsible for the direction of the applicant's investment decisions; provided that the certified Louisiana capital companies investing in the qualified technology fund may retain a right to representation on any such boards or committees and a right to veto, by majority vote of those certified capital companies present and voting at any meeting for such purpose, investment decisions of such boards or committees;

b. the qualified technology fund shall have management representation from at least one of the Louisiana research parks identified in R.S. 51:1923(16)(a) or any other technology park certified by the secretary;

c. each member of any board, committee or other governing authority of the applicant or any entity responsible for applicant's investment decisions shall disclose in writing all conflicts of interest with respect to any prospective investment by the applicant (except for conflicts of interest existing solely because of a prior investment by the qualified technology fund or any investment pool or subsidiary thereof) and no such member may vote on any such matter; provided that, the fact that a business is located at or is being assisted or incubated by a Louisiana research park or other technology park shall not in and of itself constitute a conflict of interest for a representative of the park serving on the board of director or any committee of the qualified technology fund with respect to matters relating to that business; and d. the applicant may not invest in any qualified Louisiana-based technology business in which a certified Louisiana capital company that is a participant in the qualified technology fund has previously invested except for a follow-on investment by the qualified technology fund to the extent that the certified Louisiana capital company's first investment in the qualified Louisiana-based technology business was closed contemporaneously with or after a previous investment by the qualified technology fund, and further provided that the investment by the qualified technology fund does not serve to directly or indirectly repay or refund all or a portion of the certified Louisiana capital company's previous investment.

C. Qualified technology funds which are approved by the secretary pursuant to this Section shall be subject to the following additional provisions.

1. The information provided by a qualified technology fund to the office or the department shall be subject to R.S. 51:1926(D) and 51:1934.

2. A qualified technology fund shall not make any investment in any qualified Louisiana-based technology business if either:

a. the business is involved in any of the lines of business identified in R.S. 51:1926A(3); or

b. if after making the investment the total investment outstanding in such business and its affiliates would exceed the greater of:

i. twenty-five percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

ii. \$500,000.

3. No initial investment by the qualified technology fund in a qualified Louisiana-based technology business, when aggregated with all other investments by the qualified technology fund in such business which are made within the 12 month period following the date of the initial investment, will exceed the greater of:

a. fifteen percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

b. \$300,000.

4. Before any investment is made by a qualified technology fund, the qualified technology fund shall obtain an affidavit from the qualified Louisiana-based technology business in the form required by R.S. 51:1926(G).

5. a. All distributions made by a qualified technology fund to a certified Louisiana capital company which has invested in the qualified technology fund shall constitute certified capital which is subject to the requirements of R.S. 51:1928(C).

b. A qualified technology fund shall not make any payment or distribution to any CAPCO or affiliate of a certified Louisiana capital company which has invested in it that is not covered by Subparagraph C.5.a of this Section unless approved in advance by the secretary.

6. a. An investment by a certified capital company in a qualified technology fund that is approved by the secretary in accordance with this Section shall be deemed to “further economic development within Louisiana” for purposes of R.S. 51:1923(12); provided that each investment by a qualified technology fund in qualified Louisiana technology-based businesses must:

i. “further economic development within Louisiana” as provided by rule with respect to qualified Louisiana businesses; and

ii. consist of the investment of cash and result in the acquisition of either:

(a). non-callable equity in a qualified Louisiana technology-based business;

or

(b). a note issued by a qualified Louisiana technology-based business with a stated final maturity date of not less than three years; provided that the aggregate of all investments by the qualified technology fund in debt instruments with a stated maturity of less than five years may not exceed 25 percent of the total certified capital invested by certified capital companies in the qualified technology fund.

b. The qualified technology fund need not be a Louisiana business and industrial development corporation to provide financing assistance to qualified Louisiana technology-based businesses.

7. The aggregate management fees charged by a certified Louisiana capital company and a qualified technology fund with respect to funds invested by the certified Louisiana capital company in the qualified technology fund shall not exceed the amount permitted by R.S. 51:1928(C)(3).

8. The qualified technology fund shall submit to the commissioner, on or before April 30th, annual audited financial statements which include the opinion of an independent certified public accountant.

9. The commissioner shall conduct an annual review of the qualified technology fund and its various investment pools similar to the annual review of certified capital companies pursuant to R.S. 51:1927(A).

D. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall constitute an investment and a qualified investment for purposes of R.S. 51:1926(A)(1) and (2) on the date that the certified Louisiana capital company makes the investment in the qualified technology fund or in an investment pool sponsored and administered by the technology fund if the investment by the certified Louisiana capital company is in cash and is either in the form of equity which is not subject to redemption prior to the third anniversary of the date of investment or debt which has a stated final maturity date of not less than three years from the origination of the debt investment in the qualified technology fund.

E. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall not constitute a qualified investment for purposes of 51:1927(C)(1), (2) and (3) and 51:1928(B)(3) until the qualified technology fund has invested an amount equal to 100 percent of the investment pool which includes the investment by the certified Louisiana capital company. If as of the third anniversary of the investment date of the investment pool which includes a certified Louisiana capital company's investment in a qualified technology fund the qualified technology fund has failed to invest 100 percent of the investment pool in qualified Louisiana-based technology businesses in accordance with R.S. 51:1923(16) and this Section, the certified Louisiana capital company may demand repayment or redemption of its pro rata share of the uninvested portion and:

1. the invested portion with respect to such certified Louisiana capital company shall be considered to have been invested in qualified investments for purposes of R.S. 51:1927.1(C)(1), (2) and (3) and R.S. 51:1928(B)(3); and

2. the uninvested portion returned to the certified Louisiana capital company shall thereafter only be deemed to have been invested in a qualified investment for purposes of R.S.

51:1927.1(C)(1), (2) and (3) and R.S. 51:1928(B)(3) when such funds are invested in qualified investments in qualified Louisiana-based technology businesses; and

3. the repayment or redemption shall not adversely affect the status of such funds as having been invested in a qualified investment for purposes of R.S. 51:1926(A)(1) and (2).

F. For purposes of this Section, the term “investment pool” means not less than all of the cash invested by certified Louisiana capital companies in a qualified technology fund on the same day.

G. A qualified technology fund may organize separate entities to separate the investments which comprise its different investment pools so long as each such separate entity is organized and managed in a manner materially the same as approved by the secretary pursuant to this Section. Each separate entity shall be subject to regulation as a “qualified technology fund” but need not be separately approved as such by the secretary.

H. The secretary shall respond to an application to become a qualified technology fund within 30 days of receipt of the information required by Subsection A of this Section.

I. To become certified as a “technology park” that is permitted to be involved in the management of a qualified technology fund pursuant to R.S. 51:1923(16)(a) (in addition to the entities specifically enumerated in R.S. 51:1923(16)(a)), an applicant shall submit to the secretary:

1. the charter documents for the applicant;
2. a detailed description of the management and operations of the applicant;
3. a statement showing all owners, operators, managers, beneficiaries or other interest holders of the applicant who benefit financially (directly or indirectly) from the operations of the applicant;
4. a list of qualified Louisiana-based technology businesses that have been assisted by the services provided by the applicant and a list of references from those entities, with contact information;
5. a copy of the applicant’s mission statement, goals, purposes or other similar statements;
6. the audited financial statements of the applicant from the prior fiscal year with an opinion of independent certified public accountants;
7. information from which the secretary can determine whether the applicant meets the criteria of a Louisiana research park, as defined in R.S. 51:1923(11); and
8. such additional information as may be requested by the secretary with regard to the applicant.

J. The secretary shall approve an applicant as a “technology park” for purposes of participating in the management of a qualified technology fund if the applicant meets the following criteria or such additional or other criteria determined by the secretary from time to time:

1. the applicant is a Louisiana research park, as defined in R.S. 51:1923(11); and
2. in the secretary’s reasonable opinion, the information delivered by the applicant to the secretary demonstrates that the applicant has a history and a mission materially contributing to the economic development of the state of Louisiana by providing assistance to qualified Louisiana-based technology businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929 and 1935.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, and the Office of the Governor, Office of Financial Institutions, Office of the Commissioner, LR 30:1616 (August 2004).