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ECONOMIC DEVELOPMENT

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Title 13
ECONOMIC DEVELOPMENT
Part I. Financial Incentive Programs

Chapter 1. General Provisions
Subchapter A. General Rules

§101. Board of Commerce and Industry

A. The principal offices of the board shall be at the Louisiana Department of Economic Development, Office of Commerce and Industry, located at One Maritime Plaza, Baton Rouge, LA, or at such other place as the board may determine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§103. Board Membership

A. Number and Qualifications of Board Members. The board shall consist of 20 members, unless R.S. 51:923 is amended to provide for a different number of board members. Fifteen members shall be appointed by the governor from among representatives of the major economic groups within the state of Louisiana, one who shall be an elected municipal official appointed by the governor from a list of three names submitted by the Louisiana Municipal Association and one who shall be an elected police juror, councilman, commissioner or parish president appointed by the governor from a list of names submitted by the Louisiana Police Jury Association. In addition, the governor, or his designee, the lieutenant governor, or his designee, and the secretary of the Department of Economic Development, or his designee, shall be ex officio members of the board with full right to participate in and vote on all matters.

B. Appointment. Each appointment by the governor shall be submitted to the senate for confirmation and shall again be submitted by the governor to the senate for confirmation every two years after the initial confirmation.

C. Term. The members, other than the governor, lieutenant governor and the secretary of the Department of Economic Development, shall serve for terms which shall be concurrent with the term of the governor making the appointments. The governor and lieutenant governor shall serve during the term of office of each. Other than the three ex officio members above, all other members shall continue to serve until their successors are appointed and take office.

D. Vacancy. A vacancy occurring for any reason shall be filled in the manner provided in §103.A hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§105. Compensation of the Board

A. Members of the board shall serve without compensation. Each member shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of official duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§107. Meetings of the Board

A. Open Meeting. All meetings of the board shall be subject to the open meetings law as provided in R.S. 42:1 et seq.

B. Annual Meeting. The year of the board shall begin February 1 each year. The meeting following the beginning of the year, the board shall elect its officers who shall serve until the next annual meeting or until their successors are elected.

C. Regular Meetings. The board may meet as often as it deems necessary provided that there shall be not less than four regular meetings each year. The summary agenda and the summary tables on all applications on the agenda for the regular meetings of the board shall be posted to the website at least one week prior to the meeting, but no later than 24 hours from when the board packet is provided to the board when feasible.

D. Special Meetings. A meeting may be called by the chairperson or by joint call of at least three of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board.

E. Quorum. Excluding any vacancies on the board, a majority of the members of the board shall constitute a quorum. In the absence of a quorum, a majority of the members present at the time and place of any meeting may adjourn such meeting from time-to-time with notice given in accordance with the Open Meetings Law.

F. Parliamentary Procedure. Unless otherwise provided by law to the contrary, all meetings of the board shall be conducted in accordance with *Robert's Rules of Order*.

G. Meeting Place. The board, its committees and sub-committees, shall hold its meetings at the principal office of the board, or at such other place as may be fixed by the board. The Board of Commerce and Industry shall have its meetings and the meetings of its subcommittees broadcast

via Livestream when feasible, except for those meetings or discussions which are protected from public disclosure by Louisiana confidentiality laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000), amended by the Department of Economic Development, Office of Business Development, LR 43:519 (March 2017).

§109. Notice

A. Notice by Mail. Under the provisions of Louisiana law or these rules, whenever notice is given to any member it shall not be construed to mean personal delivery of notice. Notice will be considered to be given in writing on the day the written notice is deposited in a post office with such notice bearing the member's address as it appears in the records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§111. Officers

A. The officers of the board shall be elected by the members of the board and shall be a chairperson and a vice-chairperson and such other officers as the board shall consider necessary. There shall be no prohibition against officers succeeding themselves.

1. Chairperson. The chairperson shall be a member of the board and shall preside at all meetings of the board at which he or she is present. The chairperson shall perform such other duties and have such other powers as from time to time may be assigned to the office by these rules or by the board. Election of the chairperson shall be at the annual meeting or such other time as may be necessary. The chairperson shall hold office until the next annual meeting.

2. Vice-Chairperson. The vice-chairperson shall be a member of the board. At the request of the chairperson or in the event of his absence or disability, the vice-chairperson shall perform all duties of the chairperson, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the chairperson. The vice-chairperson shall also perform such other duties and have such other powers as from time to time may be assigned to the office or to the vice-chairperson by these bylaws or by the board or by the chairperson. The vice-chairperson shall assume the role of chairperson of the screening committee. Election of the vice-chairperson shall be at the annual meeting or such other time as may be necessary. The vice-chairperson shall hold office until the next annual meeting.

B. Records. The board secretary shall keep an accurate record of all proceedings of the board, and shall be the custodian of all books, documents, and papers filed with the board and the minute books of the board. The secretary shall cause copies to be made of all minutes and other records and documents of the board and shall certify that such copies are true copies, and all persons dealing with the board may rely upon such certification. The records of the board shall be kept at the principal office of the board or at such other place that the board may determine. The records of the board shall be available for public inspection at reasonable times in the manner provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§113. Standing Committees

A. The board, by resolution adopted by a majority of the board then in office, may establish one or more standing committees, each which shall consist of three or more board members. Each committee shall have and exercise the authority of the board as contained within the resolution establishing such committee and shall perform such functions as shall be provided for in such resolution.

B. Appointment of Members. The officers and members of all standing and ad hoc committees shall be appointed by the chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2243 (October 2000).

§115. Speaking before the Board

A. Time Limit Set on Speaking before the Board

1. Petitions to the board by an applicant and/or representatives of same shall, as a group, be limited to at total of 10 minutes to put forward their plea.

2. Opponents to a given application shall, as a group, have a total of 10 minutes to put forward their opposition.

3. Any and all interested parties shall, as a group, have a total of 10 minutes to put forward their views.

4. If any group has more than one speaker, the group may divide their 10 minutes by the number of speakers in that group, however in no case will any group be allowed to speak for more than 10 minutes total.

5. Questions addressed to an applicant or others by a board member are not subject to the above time limits.

B. Any person wishing to appeal the action of the Board of Commerce and Industry or wishing to petition the board or any of its committees or sub-committees must submit their appeal or petition along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the Board of Commerce and Industry, the committee or sub-committee, during which the appeal or petition will be presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2243 (October 2000).

Subchapter B. Fees (Reserved)

Chapter 3. Gaming Ineligibility

§301. Gaming Ineligible

A.1. Any entity that has received or applied for a license to conduct gaming or is owned, controlled or managed by a company that has received or applied for a license to conduct gaming shall be ineligible to receive a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry.

2. If an entity that has received a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry, subsequently, during the term of such contract, applies for or receives a license to conduct gaming or becomes owned, controlled or managed by a company that has applied for or received a license to conduct gaming, the board shall, after notice, terminate the contract, and the entity shall repay any tax exemption, credit, rebate or other benefit received pursuant to the contract. The entity shall notify the board of its application for or receipt of a gaming license or change in ownership, control or management.

3. An entity that is owned, controlled or managed by a company that has received or applied for a license to conduct gaming may apply for a contract for a tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry if the business operated by that entity is not related to and does not provide support to the gaming activity. The burden shall be on the applicant to prove that the business is not related to and does not provide support to the gaming activity. If the board determines that the entity has provided sufficient proof that the entity is not related to and does not provide support to the gaming activity the board may, in its discretion, grant a contract for any tax exemption, credit, rebate or other benefit.

B. Definitions

Bingo—the game of chance commonly known as *bingo* or keno played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers, as objects, similarly numbered, are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on such a card.

Economic Interest—any interest in a contract, license or licensee whereby a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other benefit.

Game—any banking or percentage Same which is played with cards, dice, or any electronic, electrical, or mechanical device or machine for money, property, or any thing of value. Game does not include a lottery, bingo, pull tabs, raffles, electronic video bingo, cable television bingo, dog race wagering, or any wagering on any type of sports event, including but not limited to football, basketball, baseball, hockey, boxing, tennis, wrestling, jai alai, or other sports contest or event or racehorse wagering.

Gaming Device—any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine, including but not limited to slot machines or video draw poker devices, used directly or indirectly in connection with gaming or any game which affects the result of a wager by determining wins or losses. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game.

Gaming Operations or Gaming Activities—

a. the use, operation, offering or conducting of any game or gaming device;

b. the conducting, or directly assisting in the conducting, as a business, of any game, contest, lottery, or contrivance on board a commercial cruise ship used for the international carriage of passengers whereby a person risks the loss of anything of value in order to realize a profit;

c. the intentional conducting or assisting in the conducting of gaming activities upon a riverboat as defined and authorized in R.S. 4:501-4:562, whereby a person risks the loss of anything of value in order to realize a profit;

d. the intentional conducting or assisting in the conducting of gaming operations at the official gaming establishment as defined and authorized in Chapter 10 of Title 4 of the Louisiana Revised Statutes of 1950.

Pull Tabs—single or banded tickets or cards each with its face covered to conceal one or more numbers or symbols, where one or more card or ticket in each set has been designated in advance as a winner.

Racehorse Wagering—wagers placed on horse racing conducted under the pari-mutuel form of wagering at licensed racing facilities that is accepted by a licensed racehorse wagering operator.

Raffle—the game of chance commonly known as raffle or raffles played by drawing for prizes or the allotment of prizes by chance, by the selling of shares, tickets, or rights to participate in such game or games, and by conducting the game or games accordingly.

Slot Machine—any mechanical, electrical, or other device, contrivance, or machine which, upon insertion of a coin, token, or similar object therein or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums. merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

Video Draw Poker—device any unit, mechanism, or device authorized pursuant to the provisions of this Part, that, upon insertion of cash, is available to play or simulate the play of the game of draw poker or other card games,

utilizing a cathode ray tube or video display screen and microprocessors in which the player may win games or credits that can be redeemed for merchandise or cash. The term does not include a device that directly dispenses coins, cash, tokens, or anything else of value, except the ticket voucher required in accordance with the provisions of this Part. The term does not include any device authorized to be used in the conducting of charitable gaming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:926, 51:1786(6), 47:4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 21:258 (March 1995), amended by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives, LR 26:630 (April 2000).

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§501. Statement of Purpose

A. New Rules

1. These rules amend and restate prior rules and upon adoption are to implement two important policies for the industrial property tax exemption. The first is as a competitive incentive for job creation and under compelling circumstances, job retention. The second is to provide for input from local parish and municipal governments, school boards and sheriffs as to the extent of, and other terms and conditions for the industrial tax exemption.

2. On all projects, applicant manufacturers are to demonstrate a genuine commitment to investing in the communities in which they operate, and a genuine commitment to creating and retaining jobs in those communities. These are the expectations for the program's future, and the board will continue to operate it in a way that makes Louisiana competitive with other states in securing good jobs for our citizens while giving local governments a voice in their taxation. These rules are to be interpreted in a manner so as to promote these goals.

B. Applicability of rules in effect prior to June 24, 2016. Just as the board is promoting job growth and economic development and extending fairness to communities, the board is promoting fairness to manufacturers who have acted in accordance with prior rules. Contracts for the industrial property tax exemption and the renewal of the exemption and projects found to be pending as defined by Executive Orders JBE 16-26 and JBE 16-73 are to be treated fairly under the rules that were in place at the time of the contracts and prior to the new rules. Louisiana honors its commitments and the rules governing existing contracts and applications not subject to the new rules are to be interpreted in order to promote fairness and commitment. Therefore, only those applications with an advance notification form filed after June 24, 2016, are subject to the 2017 and 2018 rules changes.

C. Going Forward

1. Louisiana values its manufacturers and their contributions to its economy. The board's policies going forward are to provide all a seat at the table to determine the best investment outcome for our industries and our communities.

2. All rules in this chapter are intended to align with the above purpose while providing a process that balances accountability with reasonable administrative burden for state and local government and applicants+

3. For those applications with an advance notification form filed after June 24, 2016, but before July 1, 2018, the applicant has the option of choosing whether to proceed under the rules effective June 20, 2017, or the rules effectuated in 2018. Applications with an advance notification form filed after June 24, 2016, but before October 21, 2016, shall be subject to the rules effectuated on June 20, 2017, except that the industrial property tax exemption granted may be up to 100 percent for an initial contract term of no more than 5 years and may be renewed for no more than an additional 5 year contract term at up to a 100 percent exemption based upon performance of the applicant's obligations as delineated in exhibit A.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 43:1132 (June 2017), amended LR 44:1417 (August 2018).

§502. Definitions

Addition to a Manufacturing Establishment—

1.a. a capital expenditure for property that would meet the standard of a new manufacturing establishment if the addition were treated as a stand-alone establishment;

b. a capital expenditure for property that is directly related to the manufacturing operations of an existing manufacturing establishment; or

c. an installation or physical change made to a manufacturing establishment that increases its value, utility or competitiveness;

2. maintenance capital, required environmental capital upgrades, and replacement parts, except those replacements required in the rehabilitation or restoration of an establishment, to conserve as nearly, and as long as possible, original condition, shall not qualify as an addition to a manufacturing establishment;

3. expenses associated with the rehabilitation or restoration of an establishment as provided for in §511 shall be included as an addition to a manufacturing establishment.

Beginning of Construction—the first day on which foundations are started or, where foundations are unnecessary, the first day on which installations of the manufacturing establishment begins.

Board—Board of Commerce and Industry.

Capital Expenditure—the cost associated with a new manufacturing establishment or an addition to an existing

manufacturing establishment, including purchasing or improving real property and tangible personal property, whose useful life exceeds one year and which is used in the conduct of business.

Department—Louisiana Department of Economic Development.

Establishment—an economic unit at a single physical location.

Exhibit A—a fully executed agreement between the department and the applicant specifying the terms and conditions of the granting of the exemption contract.

Integral—required to make whole the product being produced.

ITEP Ready—a parish that has provided for continuous local governmental entity approval or rejection for all industrial ad valorem tax exemption applications within the parish.

Job—positions of employment that are:

1. new (not previously existing in the state) or retained;

2. permanent (without specific term);

3. full-time (working 30 or more hours per week);

4. employed directly, by an affiliate or through contract labor;

5. based at the manufacturing establishment;

6. filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment; and

7. any other terms of employment as negotiated in the exhibit A, including a requirement that in order to qualify as a job, a basic health benefits plan is or has been offered in conjunction with the position of employment.

Local Governmental Entity—the parish governing authority, school board, sheriff, and any municipality in which the manufacturing establishment is or will be located.

Maintenance Capital—costs incurred to conserve as nearly as possible the original condition.

Manufacturer—a person or business who engages in manufacturing at a manufacturing establishment.

Manufacturing—working raw materials by means of mass or custom production, including fabrication, applying manual labor or machinery into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. The resulting products must be suitable for use as manufactured products that are placed into commerce for sale or sold for use as a component of another product to be placed, and placed into commerce for sale.

Mega-Project—a manufacturing establishment that provides all of the following:

1. 500 jobs, employed directly, only, and otherwise meeting the definition of jobs, which shall generate a minimum of $20,000,000 in net new payroll within three years of the beginning of operations; and

2. a minimum of $100,000,000 in capital expenditures.

Obsolescence—the inadequacy, disuse, outdated or non-functionality of facilities, infrastructure, equipment or product technologies due to the effects of time, decay, changing market conditions, invention and adoption of new product technologies or changing consumer demands.

Qualified Disaster—

1. a disaster which results from:

a. an act of terror directed against the United States or any of its allies; or

b any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;

2. any disaster which, with respect to the area in which the manufacturing establishment is located, resulted in a subsequent determination by the president of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

3. a disaster which is determined by an applicable federal, state, or local authority (as determined by the secretary) to warrant assistance from the federal, state, or local government, or agency or instrumentality thereof; or

4. any other extraordinary event that destroys or renders all or a portion of the manufacturing establishment inoperable.

Rehabilitation—the extensive renovation of a building or project that is intended to cure obsolescence or to repurpose a facility.

Required Environmental Capital Upgrades—upgrades required by any state or federal governmental agency in order to avoid fines, closures or other penalty. Environmental upgrades demonstrated to be in excess of state and federal governmental agency requirements shall not be considered required environmental capital upgrades.

Restoration—repairs to bring a building or structure to at least its original form or an improved condition.

Secretary—secretary of the Louisiana Department of Economic Development.

Site—one or more contiguous parcels of land which are under the control of the manufacturing establishment or which contains certain assets of the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 43:1132 (June 2017), amended LR 44:1418 (August 2018), amended by House Concurrent Resolution No. 4 of the 2020 Regular Legislative Session, LR 46:856 (June 2020).

§503. Advance Notification; Application

A. An advance notification of intent to apply for tax exemption shall be filed with the department on the prescribed form prior to the beginning of construction or installation of facilities on all projects for tax exemption except as provided in §505.A and B of these rules. An advance notification fee of $250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification. The estimated project ending date as stated on the advance notification may be amended by the applicant if the amendment is made prior to the estimated project ending date.

B. All financial incentive programs for a given project shall be filed at the same time and on the same advance notification. The applicable advance notification fee for each program for which the applicant anticipates applying shall be submitted with the advance notification.

C. An application for tax exemption may be filed with the department on the prescribed form, subject to the following conditions:

1. the filing may be either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;

2. the deadline for filing the application may be extended pursuant to §523;

3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with the department on the prescribed form by December 31, until the project completion report and affidavit of final cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract;

4. an application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than $500 and in no case shall a fee exceed $15,000 per project;

5. The department reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

6. If the application is submitted after the filing deadline, the term of exemption available under an initial contract and renewal thereof shall be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction up to the maximum remaining term. The board may impose any other penalty for late filing that it deems appropriate.

D. The department will provide a copy of the application and all relative information to the Louisiana Department of Revenue (LDR) for review. LDR may require additional information from the applicant. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

E. In order to receive the board's approval, applications with advance notifications filed after June 24, 2016, shall include an exhibit A containing the following terms and conditions:

1. either the number of jobs and payroll to be created at the project site or the number of jobs and payroll to be retained at the project site where applicable;

2. that the initial exemption contract shall be for a term of no more than five years and may provide for an ad valorem exemption of 80 percent, except that the initial exemption contract for mega projects shall be for a term of no more than five years and may provide for an ad valorem exemption of up to 93 percent;

3. that the applicant can apply for a renewal exemption contract, the consideration of which will be based upon the applicant's performance during the initial term of the contract and that the renewal exemption contract shall be for a term of no more than five years and may provide for an ad valorem exemption of 80 percent, except that the renewal exemption contract for mega projects shall be for a term of no more than five years and may provide for an ad valorem exemption of up to 93 percent;

4. that the department, on behalf of the board, will notify the local governmental entities and the assessor when jobs and/or payroll requirements are not met in accordance with the exhibit A;

5. a provision addressing the penalty for failure to create the requisite number of jobs and/or payroll at the manufacturing establishment, including but not limited to, payment of stipulated sums to the taxing authorities, a reduction in term, reduction in percentage of exemption, or termination of the exemption; and

6. a statement of return on investment (ROI) as determined by the secretary.

F.1. Applications which provide for a new manufacturing establishment or which provide for an addition to a manufacturing establishment with the creation of new jobs or a compelling reason for the retention of existing jobs shall be favored by the board.

2. In determining whether a company has presented a compelling reason for the retention of existing jobs, the following non-exclusive situations may be considered:

a. to prevent relocation to another state or country;

b. to provide an advantage for investment from a company with multi-state operations with an established competitive capital project program;

c. to employ best practice or innovative, state of the art technology for the establishment's industry which shall be deemed to extend the life of the manufacturing establishment;

d. to increase maximum capacity or efficiency;

e. to provide the state a competitive advantage as determined by the secretary or by the board; or

f. upon the sharing of financial information as to the profit/loss of the facility accompanied by evidence that the exemption will prolong the life of, and employment at, the manufacturing establishment.

G. Eligibility of the applicant and the property for the exemption, including whether the activities at the site meet the definition of manufacturing, will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered by the board. The property exempted may be increased or decreased based upon review of the application, project completion report or affidavit of final cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to adjustments, as necessary, upon review and approval of the project completion report and affidavit of final cost. If the applicant fails to timely file the project completion report or affidavit of final cost the board may, after notice to the applicant, terminate the contract.

H. Upon the board's approval of an application, the department, on behalf of the board, shall, within three business days, transmit a copy of the approval and Exhibit A by mail or electronic mail to each local governmental authority and the assessor in the parish in which the manufacturing establishment is or will be located. The department shall post notice of the board's approval of an application on the department's website within three business days of approval, upon which date shall begin a notice period of 30 days for the parish governing authority (speaking on behalf of the parish and all parish bodies who are located outside the boundary of any affected municipality who receive a millage), the school board, any applicable municipality (speaking on behalf of the municipality and all municipal bodies who receive a millage) and the sheriff to initiate action to approve or reject the board's action as provided hereinafter.

1. Within the 30-day notice period, the parish governing authority, the school board, or any affected municipality may identify the application on the agenda of a public meeting notice and the sheriff may issue a letter approving or denying the application, and notice of these actions shall be given to the department within three business days. A local governmental entity that places the application on the agenda for a public meeting will have an additional 30 days (for a total of 60 days from the start of the notice period) to conduct a public meeting issuing a resolution approving or rejecting the board approved application, and notice of the issuance shall be given to the department within three business days. If a local governmental entity does not take action or provide notice as required herein, then the application will be deemed approved by each such entity.

2.a. A parish shall be ITEP Ready if each local governmental entity in the parish approves the designation by a majority vote at a public meeting, agreeing to either approve or reject all industrial ad valorem tax exemption applications and projects within their jurisdictions, including, in the case of continuous approval, all terms and conditions provided in any proposed industrial ad valorem tax exemption agreement. The parish governing authority, the school board, and each municipality authorized to receive a millage in the parish shall individually evidence its vote for or against the parish becoming ITEP ready by resolution. The sheriff shall evidence his vote for or against the parish becoming ITEP ready by letter. The 30-day notice period in which local governmental entities are authorized to hold a public hearing for the purpose of approving or rejecting an industrial ad valorem tax exemption application shall not apply to ITEP ready parishes. The governing authority of a parish that is ITEP ready shall submit to the department a resolution on behalf of the parish and all local governmental entities in the parish stating the continuous approval or continuous rejection of industrial ad valorem tax exemption applications within its jurisdiction. No further action evidencing local governmental entity approval or rejection shall be required.

b. Any local governmental entity within an ITEP ready parish may change its intent to be ITEP ready for the next calendar year. This change shall be evidenced by a resolution or letter presented to the Board of Commerce and Industry no later than December 31 of any year and shall be in effect for one calendar year beginning January 1 of the following calendar year. A parish shall remain ITEP Ready unless a change is made in accordance with this Subparagraph.

3. Within 60 days of the promulgation of these rules, the local governmental entities for each parish (in consultation with the parish assessor and, upon request, with guidance from the department), shall make best efforts to develop reasonable guidelines for application approval and/or denial and if so desired, penalty guidelines for failure to achieve and maintain jobs and/or payroll as required by the exhibit A.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015), LR 43:1133 (June 2017), LR 44:1419 (August

2018), amended by House Concurrent Resolution No. 4 of the 2020 Regular Legislative Session, LR 46:856 (June 2020).

§505. Miscellaneous Capital Additions

A. The renewal of miscellaneous capital addition contracts approved in accordance with JBE 16-26 and 16-73 shall be treated in accordance with prior rules.

B. Miscellaneous capital additions which had pending contractual applications on June 24, 2016, and which provide for new jobs at the completed manufacturing establishment shall be considered by the board.

C. Miscellaneous capital additions which did not have a pending contractual application as of June 24, 2016 or those with pending applications as of June 24, 2016, but do not provide for new jobs, are not eligible for the property tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015), LR 43:1135 (June 2017), LR 44:1421 (August 2018).

§507. Eligible Property—Buildings and Facilities Used in Manufacturing; Leased Property; Capitalized Materials

A. The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §§517 and 519) and additions to manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing establishment and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment;

b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process;

3. owners who are not engaged in manufacturing at the manufacturing establishment are eligible for the exemption only if the manufacturer at the site is obligated to pay the property taxes if the exemption were not granted.

B. Leased property is eligible for the exemption, if the property is used in the manufacturing process, is and remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

C. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing establishment. Some examples of these are:

1. ammonia in a freezing plant;

2. solvent in an extraction plant; and

3. catalyst in a manufacturing process.

D. To be eligible for exemption, a manufacturing establishment must be in an operational status and engaged in manufacturing. An owner of a new manufacturing establishment under construction may apply for an exemption with the expectation that the manufacturing establishment will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility shall no longer be eligible for exemption and its contract shall be subject to termination under §531.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 43:1135 (June 2017), LR 44:1421 (August 2018).

§509. Integral Parts of the Manufacturing Operation

A. Property that is an integral part of the manufacturing operation is eligible for the tax exemption.

B. The following activities are considered to be integral to the manufacturing process:

1. quality control/quality assurance;

2. packaging;

3. transportation of goods on the site during the manufacturing process;

4. other on site essential activities as approved by the secretary and the board.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1135 (June 2017), LR 44:1421 (August 2018).

§511. Rehabilitation and Restoration of Property

A. Capital expenditures for the rehabilitation or restoration of an existing establishment may be exempted if it is not maintenance. If replacements or upgrades are made as part of a rehabilitation or restoration to an establishment, only the capital expenditures in excess of original cost shall

be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed $50,000,000.

B. Exemption may be granted on the costs of rehabilitation or restoration of a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from rehabilitation or restoration made or rebuilding shall be clearly documented.

D. A deduction for the original cost of property to be replaced as part of a rehabilitation or restoration, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1135 (June 2017), LR 44:1421 (August 2018).

§513. Relocations

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted at the original location.

B. If a manufacturing establishment moves from one location in the state to another location within the state, the company shall be required to seek approval of the parish governing authority, the school board, the sheriff, and any municipality in which the manufacturing establishment will be located if these local governing authorities are different than those that approved the exemption at the original site.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946. amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 37:2378 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§515. Used Equipment

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§517. Ineligible Property

A. Maintenance capital, required environmental capital upgrades and new replacements to existing machinery and equipment, except those replacements required in the rehabilitation or restoration of a facility, are not eligible for the tax exemption.

B. If the establishment or addition is on the taxable rolls and property taxes have not been paid, the establishment or addition is not eligible for the exemption unless the assessor and local governmental entity agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

C. The board shall not consider for tax exemption any property previously subject to an ad valorem tax exemption that has expired or otherwise been terminated.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§519. Land

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§521. Inventories

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;

2. inventories of work-in-progress or finished products;

3. any other consumable items.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§523. Extension of Time

A. The department may grant an extension of up to six months for the filing of an application (§503.B), a project completion report (§525), or an affidavit of final cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§525. Effective Date of Contract; Project Completion Report

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The owner must file that information with the department on the prescribed project completion report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. A project completion report fee of $250 shall be submitted with the form. The deadline for filing the project completion report may be extended pursuant to §523.

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), LR 41:2318 (November 2015), LR 43:1136 (June 2017), LR 44:1422 (August 2018).

§527. Affidavit of Final Cost

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an affidavit of final cost showing complete cost of the exempted project. A fee of $250 shall be filed with the affidavit of final cost or any amendment to the affidavit of final cost. Upon request by the department, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the affidavit of final cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017), LR 44:1423 (August 2018).

§529. Renewal of Tax Exemption Contract

A. Application for renewal of the exemption must be filed with the department on the prescribed form not more than six months before, and not later than, the expiration of the initial contract. A fee of $250 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of compliance with the initial contract of exemption, a renewal contract of exemption may be approved by the board for an additional period of no more than five years and provide for an ad valorem exemption of up to 80 percent.

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered.

C. The board shall have the option of submitting a board approved renewal application to the local governmental entities for approval in accordance with the procedures for approval of the initial exemption contract.

D. The term of the renewal contract shall be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017), LR 44:1423 (August 2018).

§531. Violation of Rules or Documents; Inspection

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct an inspection. During the inspection, the department may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to inspection. If an inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days' notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 43:1137 (June 2017), LR 44:1423 (August 2018).

§533. Reporting Requirements for Changes in Operations

A. The department is to be notified immediately of any change which affects the tax exemption contract. This includes, but is not limited to, any changes in the ownership or operational name of a firm holding a tax exemption contract. A fee of $250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017), LR 44:1423 (August 2018).

§535. Sale or Transfer of Exempted Manufacturing Establishment

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of $250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017), LR 44:1423 (August 2018).

§537. Reporting to the Parish Assessor

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

B. All property exempted shall be listed on the assessment rolls and submitted to the Tax Commission or its successor, and up to 80 percent of the taxes shall be collected thereon during the period of exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 43:1138 (June 2017), LR 44:1424 (August 2018).

Chapter 7. Enterprise Zone Program

§701. General

A. Intent of Program. The intent of the program is to stimulate employment for residents in depressed areas of the state that are designated as enterprise zones by providing tax incentives to a business hiring from these areas.

B. Description of Program. The Louisiana Enterprise Zone Program is a jobs program that gives tax incentives to a business hiring from certain specified targeted groups of individuals. Enterprise zone program incentives are in addition to other state-sponsored incentives such as the industrial tax exemption program and the Restoration Tax Abatement Program. Enterprise zone and quality jobs programs are mutually exclusive.

C. Effective date of Act 423 of the 2013 Regular Session

1. The provisions of Act 423 shall apply to advance notification filed on or after June 1, 2013 and prior to April 1, 2016.

D. Effective date of Act 18 of the 2016 First Extraordinary Session.

1. The provisions of Act 18 shall apply to advance notification filed on or after April 1, 2016, except as provided below.

a. A retail business, hotel or restaurant with an assigned NAICS Code of 44,45,721 or 722, which has no more than fifty employees nationwide including affiliates

prior to the contract effective date, and which files or enters into an advance notification on or after July 1, 2020, and before December 31, 2021, shall be eligible to receive benefits. However, no such business shall be eligible to earn benefits pursuant to this section after June 30, 2023.

E. Effective date of the 2021 Enterprise Zone Program rule changes.

1. The provisions of the 2021 Enterprise Zone Program rule changes shall apply to advance notifications filed after the date of promulgation, detailed in the Louisiana Register published on July 20, 2021, except for the provisions of §705 codifying current administrative practice, or unless otherwise stipulated by the Louisiana Legislature, in §701.C and D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:252 (March 1991), amended by Department of Economic Development, Office of Commerce and Industry, LR 22:446 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2298 (November 2003), LR 37:2368 (August 2011), LR 40:490 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:852 (July 2021).

§702. Eligibility criteria and available incentives

A. Eligibility

1. This program is available to a Louisiana business that will:

a. create jobs. Create permanent full-time net new jobs that are at least equal to the lesser of:

i. five jobs, created within the first two years of the contract period; or

ii. the number of jobs equal to a minimum of 10 percent of the employees employed throughout the United States by the business and its affiliates, a minimum of one, created within the first year of the contract period;

iii. for good cause shown, the board may grant an extension of not more than two years to comply with the above job creation requirements;

b. hire from targeted groups.

i. a business located in an urban enterprise zone, or a business not located in either an enterprise zone, or economic development zone shall certify that at least 50 percent of the employees filling net new jobs are from one of the following target groups:

(a). residents. someone living in any enterprise zone in Louisiana;

(b). a person receiving an approved form of public assistance during the six months prior to employment;

(c). a person considered to be lacking in basic skills, i.e. performing below a ninth grade proficiency in reading, writing or mathematics.

(d). a person considered unemployable by traditional standards.

ii. A business located in a rural enterprise zone, an economic development zone, or an enterprise zone in Calcasieu Parish shall certify that at least 50 percent of the employees filling net new jobs are from one of the target groups identified above in §702 A.1.b.i; or

(a). a resident of the same parish as the project site.

2. The following businesses shall not be eligible to participate in the program:

a. businesses with gaming on site;

b. churches;

c. residential developments, including but not limited to the construction, selling, or leasing of single-family or multi-family dwellings, apartment buildings, condominiums or town houses.

d. employment agencies, with an assigned NAICS Code of 5613 and advance notifications filed on or after April 1, 2016.

3. The following businesses are subject to certain limitations and restrictions:

a. for a multi-tenant facility to be eligible for the benefits of this Chapter, the business must meet one of the following criteria:

i. occupy a minimum of 33 percent of the total floor area of the building;

ii. tenants are businesses new to the state;

iii. tenants are Louisiana businesses increasing their number of locations within the state by placing a new location within this facility;

iv. tenants are relocating within Louisiana and will generate the minimum of new job credits over and above the total jobs at their previous location;

b. retail establishments. No retail business with an NAICS code of 44, 45, or 722 is eligible to participate in the program unless:

i. an advance notification was filed on or after June 21, 2013 and before July 1, 2015:

(a). retail establishments that are assigned a North American industry classification code beginning with 44 or 45 and have more than 100 employees nationwide including affiliates prior to the contract effective date are not eligible to participate unless:

(i). the business is a grocery store or pharmacy as defined by LED; and

(ii). the business is located in an enterprise zone;

(b). however, if a retail establishment filed an advance prior to July 1, 2015, but did not enter into an EZ

contract prior to July 1, 2015, it cannot claim EZ incentives until on or after July 1, 2016; or

ii. for retailers with no more than 50 employees nationwide including affiliates, an advance notification was filed on or after July 1, 2020 and before December 31, 2021. However, no such retail business shall be eligible to earn benefits after June 30, 2023;

c. employment agencies. No business with an NAICS code of 5613 is eligible to participate in the program unless it filed an advance notification prior to April 1, 2016;

d. hotels. A business with an assigned NAICS Code of 721 shall be ineligible to receive benefits, unless:

i. an advance notification was filed prior to April 1, 2016; or

ii. for businesses with no more than 50 employees nationwide including affiliates, an advance notification was filed on or after July 1, 2020 and before December 31, 2021. However, no such business shall be eligible to earn benefits after June 30, 2023.

B. Available Incentives. The following incentives are available for Louisiana businesses meeting program eligibility criteria.

1. Job Tax Credit. A one-time tax credit for each net new job created, with the benefit amount to be calculated as follows:

a. for projects for which the advance notification form is filed prior to April 1, 2016 a one-time tax credit of $2,500 for each net new job; or

b. for projects for which the advance notification form is filed on or after April 1, 2016 a one-time tax credit of $1,000 for each net new job, unless the following conditions are met;

i. the net new employee for which the credit is being claimed was receiving Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Women, Infants and Children (WIC), Medicaid or unemployment benefits, or any other benefits from a similar public assistance program as determined by the department, during the six-month period prior to employment; or

ii. the net new employee is hired by a participating business located in an enterprise zone;

iii. the amount of the credit for each net new employee meeting these conditions shall be $3,500 for each net new job; or

c. for a business in the aviation and aerospace industries as defined in the NAICS industries 336411, 336412, 336413 or 33291, a one-time tax credit of $5,000 for each net new job;

d. in addition to the job tax credits provided for in this section, a one-time tax credit of $2,500 for each recipient of Temporary Assistance for Needy Families (TANF) hired by a business. The TANF recipient must receive compensation which will disqualify them from continued participation in TANF and must be employed for two years to generate the additional tax credit. An employer shall not obtain the jobs tax credit for more than 10 TANF employees in the first year of participation in the program;

e. limitations to the job tax credit.

i. position limitations:

(a). for projects with advance notifications filed before April 1, 2016, job tax credits shall only be calculated based upon a position within the state that did not previously exist in the business, and that is filled by a person who is a citizen of the United States and who is domiciled in Louisiana, or who is a citizen of the United States and becomes domiciled in Louisiana within 60 days of employment in such position, performing duties as a regular, full-time employee;

(b). for projects with advance notifications filed on or after April 1, 2016, job tax credits shall only be calculated based upon a position within the state that is in excess of the median statewide number of employees of the business, including affiliates, and meeting the above requirements of Subclause B 1.e.i.(a);

ii. credit amount limitations. The total number of credits granted to a business for employees who are citizens of the United States and who become domiciled in Louisiana within 60 days after employment, shall not exceed 50 percent of the total number of job tax credits granted to the business under the contract.

2. Sales and use tax rebate or refundable investment tax credit as follows:

a. Sales and Use Tax. Rebates of sales and use taxes imposed by the state, and sales and use taxes imposed by its political subdivisions upon approval of the governing authority of the appropriate taxing political subdivision, on all eligible purchases during a specified project period of not more than 30 months:

i. sales and use taxes imposed by a political subdivision which are dedicated to the repayment of bonded indebtedness or dedicated to schools shall not be eligible for rebate;

ii. a business seeking a local sales and use tax rebate must obtain an endorsement resolution specific to the project from each political subdivision levying the taxes to be rebated. The endorsement resolution must clearly state the intention to rebate sales and use taxes as allowable for the project. The endorsement resolution must be adopted prior to board approval of the application, or if the project cost is greater than one hundred million dollars, prior to the project ending date; or

b. Refundable Investment Tax Credit. In lieu of the sales and use tax rebates, a refundable investment tax credit equal to one and one-half percent of the amount of qualified expenditures for assets that are located at the project site and are placed in service during the project period, and are in accordance with the provisions of §731 and §732;

c. Limitations to the Rebate of Sales and Use Taxes and the Investment Tax Credit.

i. A business shall not receive any sales and use tax rebate or investment tax credit until it has provided all documentation necessary to illustrate compliance with program requirements, including but not limited to filing an annual certification report and proof of the creation of net new jobs.

ii. For purposes of determining the maximum sale and use tax rebate or income tax credit allowed, each net new job shall be counted once.

iii. For projects with advance notifications filed on or after April 1, 2016, the amount of sales and use tax or investment tax credit granted shall not exceed one hundred thousand dollars per net new job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 47:853 (July 2021).

§703. Definitions

Act 423—Act 423 of the 2013 Regular Session of the Louisiana Legislature

Act 18—Act 18 of the 2016 First Extraordinary Session of the Louisiana Legislature

Affiliate—

1. any business entity that is:

a. controlled by the business;

b. a controlling owner of the business;

c. controlled by an entity described in Subparagraph a or b; or

d. another franchisee of the same franchisor;

2. *control*, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:

a. a majority of the voting stock or other voting interest of such business entity or the business; or

b. stock or other interest whose value is a majority of the total value of such business entity or the business;

3. a controlled or controlling business entity will be deemed a "non-affiliate" (not an *affiliate*) if LED determines that neither the business nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity;

4. a controlled or controlling business entity will be deemed an 'unrelated affiliate" (not an *affiliate*) if LED determines that the business entity is not engaged in any line of business related to the project activities.

Beginning of the Project—

1. the first day on which project foundations are started or where foundations are unnecessary, the first day on which installation of the project facility begins or the first day that materials or equipment purchased for the project are received;

2. where there is no construction, installation, or purchase of materials or equipment, the first day on which a new hire is made in connection with the project; or

3. the beginning date reported on the application (which date must be on or after the date the advance notification was filed).

Board—the Board of Commerce and Industry.

Business—a legal entity applying for the enterprise zone program that conducts any activity carried on for the production of income from selling goods or performing services. A *business* may be conducted in the form of either a for-profit or not-for-profit entity. A not-for-profit entity will be considered a *business* only if it provides goods or services for a fee based upon the cost of providing those goods or services (for example, hospitals).

Business Incentives Services—the Business Incentive Services Division of the Office of Business Development of the department.

Contract Effective Date—the day that the advance notification and fee were received by Business Incentives Services or the beginning of the project shown on the application. The *contract effective date* cannot be earlier than the date the advance notification was received by Business Incentive Services unless a waiver of timely filing has been approved by the board.

Department—Louisiana Department of Economic Development.

Department of Revenue—Louisiana Department of Revenue.

Domicile—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent.

Economic Development Zone—

1. a contiguous geographic area with a visible boundary, owned or operated by a political subdivision or an entity created by a political subdivision for commercial or industrial development purposes, including but not limited to the following:

a. industrial park;

b. business park;

c. airport or air park;

d. research park;

e. research and development park;

f. downtown development district with taxing and bonding authority;

g. former federal facility (immediately prior owner and occupant must have been a federal governmental entity), excluding a single building or small grouping of buildings; or

h. port;

2. an economic development zone must be designated as such by the political subdivision in which it is located, and approved by the board. The location of an economic development zone once defined is permanent, and cannot be moved or relocated.

Employment Baseline—

1. the baseline from which net new jobs are determined, to be calculated as follows:

a. for projects with advance notifications filed with business incentives services prior to June 21, 2013, *employment baseline* will be determined in accordance with prior policy and practice in place at the time of the filing of the advance notification.

b. for projects with advance notifications filed with business incentives services on or after June 21, 2013 but prior to April 1, 2016,

i. the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date) at the project site, during the payroll periods including the 12th day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months); or

ii. the last annual average number of full time employees certified under an enterprise zone contract for the business that was in effect on the day prior to the contract effective date;

c. for projects with advance notifications filed with business incentives services on or after April 1, 2016 but prior to the effective date of the 2020 Rule promulgation:

i. equal to the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date) statewide, during the payroll periods including the 12th day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months).

d. for projects with advance notifications filed with business incentives services after the effective date of the 2021 rule promulgation:

i. equal to the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the six months prior to the contract effective date) statewide, during the payroll periods including the 12th day of the month, in the last six months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining four months).

2. the baseline must be maintained in any year for which the business requests job tax credits;

Enterprise Zone—a census block group which is economically distressed and in need of expansion of business and industry and the creation of jobs, and designated by the board to be eligible for the benefits of this Chapter in accordance with R.S. 51:1784.

Full Time Employee—an employee who is reported on the business's quarterly report and is scheduled to work 35 hours per week.

Grocery Store—a business that primarily engages in activities that qualify for one of the following NAICS codes: 445110, 445210, 445220, 445230, 445291, and 452910.

Headquarters—the corporate domicile of the company, together with all executive and administrative jobs normally constituting a corporate *headquarters*, or the regional *headquarters* support services of the company, together with all executive and administrative jobs normally constituting a regional corporate *headquarters*.

Hire Date—the first day of work for which the business directly pays an employee.

Lacking Basic Skills—an employee who exhibits below a ninth grade level proficiency in reading or writing or math.

Louisiana Workforce Commission—formerly known as the Louisiana Department of Labor.

NAICS—North American Industrial classification system.

Net New Job—

1. a position of employment that is:

a. created on or after the contract effective date;

b. in addition to the number of jobs in the employment baseline;

c. based at the site of the enterprise zone project;

d. filled by a full time employee; who is

i. a United States citizen domiciled in Louisiana, or who becomes domiciled in Louisiana within 60 days after hire date; and who is

ii. reported on the business's quarterly report;

2. the number of *net new jobs* filled by full time employees shall be determined by averaging the monthly totals of full time employees over a minimum of 7 months for the first and last year of the contract period, and over a 12-month period for all other years;

3. for purposes of determining qualification of the business for the enterprise zone program under §701.E, net new jobs shall be limited to permanent full-time jobs that are in addition to the number of permanent full-time jobs included in the employment baseline;

4. jobs in which employees perform essentially the same work at the same location both before and after the contract effective date are not *net new jobs* unless:

a. there has been an arm's length transfer of ownership between unrelated companies (not affiliates); and

b. either the location has been out of operation for at least three months, or the secretary determines that the jobs would have likely been lost to the state absent the transfer;

5.a. transferred jobs which are not *net new jobs* include:

i. jobs transferred, or jobs associated with work or sales transferred to the project site from other Louisiana sites of the business (including affiliates), unless back-filled at the original site;

ii. jobs transferred, or jobs associated with work or sales transferred, to the business from affiliates and unrelated affiliates on the project site, unless back-filled;

iii. jobs transferred, or jobs associated with work or sales transferred, to the project site from other Louisiana sites as a result of the business (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation;

b. jobs created for the project, but temporarily assigned to another site until the site is ready or for training or similar purposes, are not considered transferred jobs and may be considered net new jobs when re-assigned to the project site;

6. lost jobs which must be deducted in determining *net new jobs* include:

a. jobs lost due to closure of any site of the business (including affiliates) that:

i. is located within the same parish; and

ii. provides the same goods or services as the project site;

b. jobs lost due to downsizing of any site of the business (including affiliates) that:

i. is located within the same parish; and

ii. provides the same goods or services as the project site;

iii. the project site and the other site each sell their goods or services primarily into that parish; and

iv. the downsizing was anticipated by the business at the time the qualification certification was filed;

c. jobs lost due to closure or downsizing of any site of the business (including affiliates) that:

i. is located in the state of Louisiana; and

ii. provides the same goods or services;

iii. primarily for the same market segment or customer base, as the project site; and

iv. the closure or downsizing was anticipated by the business at the time the qualification certification was filed;

d. jobs lost by the business (including affiliates) due to relocation outside Louisiana or downsizing of headquarters operations or headquarters support services of the business (including any intermediate or ultimate parent company), and the relocation or downsizing was anticipated by the business at the time the qualification certification was filed.

Permanent Job—as established in the qualification certification (as of the time the qualification certification is filed and irrespective of subsequent modifications to the job), a job that has no anticipated end date falling within the period commencing 45 days prior to the contract effective date and ending five years after the contract effective date.

Pharmacy—any business located within Louisiana where drugs are dispensed and *pharmacy* primary care is provided and where the place has obtained a permit per R.S. 37:1221 prior to the commencement of operation.

Placed in Service—the date indicated as *placed in service* on the business's federal tax return depreciation schedule.

Political Subdivision—in this Chapter, a state, parish, municipality or other *political subdivisions*, including and not limited to a law enforcement or other special district authorized by law to perform governmental functions.

Project—a construction, expansion, or other business venture and associated activities for which benefits are sought under the Enterprise Zone Program.

Project Completion Report—a report confirming the beginning of the project, the project ending date, and the benefits elected.

Project Ending Date—the date all construction and purchasing is completed and received for the project, completing the project.

Project Period—the time encompassed by the contract effective date and the project ending date.

Project Site—the contiguous physical location of a project.

Public Assistance—

1. for projects with advance notifications filed with business incentives services prior to the effective date of the 2021 Rule promulgation, public assistance shall be determined in accordance with prior policy and practice in

place at the time of the filing of the advance notification, and shall be any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependent upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their hire date.

2. for projects with advance notifications filed with business incentives services after the effective date of the 2021 rule promulgation, public assistance shall be limited to the following public assistance programs; Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Women, Infants and Children (WIC), Medicaid, unemployment benefits, or any other benefits from a similar public assistance program as determined by the department. Any such assistance must have been received by the individual within a six-month period prior to their hire date.

Qualified Expenditure—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in *Internal Revenue Code* section 263(a)(1)(A)-(L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, capitalized costs of manufacturing machinery and equipment to the extent the capitalized manufacturing machinery and equipment costs are excluded from sales and use tax pursuant to R.S. 47:301(3), and the capitalized cost for the purchase of an existing building. When a taxpayer purchases an existing building and capital expenditures are used to rehabilitate the building, the costs of the rehabilitation only shall be considered qualified expenditures. Additionally, a taxpayer shall be allowed to increase their *qualified expenditures* to the extent a taxpayer's capitalized basis is properly reduced by claiming a federal credit.

Quarterly Report—the *quarterly report* of wages paid that a business files with the Louisiana Workforce Commission.

Rural Enterprise Zone—an enterprise zone located in a parish having a current U.S. Census population of 75,000 or less.

State—state of Louisiana.

Unemployment Benefits—shall be limited to temporary financial assistance to workers who are unemployed through no fault of their own and who meet the requirements of the Louisiana Employment Security Law.

Unemployable by Traditional Standards—having no prior work history or job training, having a criminal record (excluding misdemeanors), having a history of being unable to retain employment after gaining it, or being physically challenged.

Urban Enterprise Zone—an enterprise zone located in a parish having a current U.S. Census population greater than 75,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2299 (November 2003), amended LR 37:2369 (August 2011), LR 40:491 (March 2014), amended by the Department of Economic Development, Office of Business Development, LR 47:854 (July 2021).

§705. Job Calculation Methodology

A. When determining program eligibility, compliance, computation of job tax credits, sales and use tax rebates or investment tax credits, the department shall employ the following methodology.

1. Program Eligibility and Compliance

a. When calculating whether 50 percent of employees are hired from identified target groups, the department does not recognize partial employees, so anything over a whole number is rounded up to the next higher whole number. As an example, if 3 employees are hired, then 50 percent must be from an identified group. Since 50 percent of 3 = 1.5, this is rounded up to demonstrate that 2 out of the 3 employees hired must be from a target group. Rounding down to only 1 employee would fall below the required 50 percent threshold.

b. The number of jobs shall be determined by averaging the first 12-month period, and then by separately averaging the second 12-month period. The department will not combine periods to perform one average calculation for a 24-month period.

2. Computation of Job Tax Credits. When calculating the amount of job tax credits, the department shall not recognize partial job creation, and will exclude the partial job from the tax credit calculation, rounding down to the nearest whole number and only recognizing and awarding tax credits based upon whole numbers. As an example, if an average of 1.5 jobs are created, this is rounded down and LED will award tax credits for the creation of 1 job. Rounding up to 2 jobs would be awarding excess tax credits that have not been earned.

3. Computation of net new jobs as it relates to the maximum $100,000 sales and use tax rebate or investment tax credit per net new job. The department shall use the whole number computed for issuance of job tax credits.

4. Post Act 18 Baseline Calculation. Two baseline numbers shall be determined, as follows;

a. a statewide baseline, equal to the median number of statewide, full-time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date); and

b. a project site baseline, equal to the median number of full-time employees at the project site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 47:855 (July 2021).

§707. Items Eligible for Sales and Use Tax Rebate [Formerly §721]

A. Materials that are permanently installed at the project site during the project period are eligible for sales and use tax rebates.

B. Materials that originate from a contractor or subcontractor's inventory and are permanently installed at the project site during the project period are eligible for sales and use tax rebates. In order for rebates to be issued on property withdrawn from inventory, the contractor or subcontractor must maintain sufficient records and provide sufficient information to enable the Department of Revenue to verify that Louisiana sales or use taxes were paid on the property for which rebate is claimed.

C. Machinery and equipment purchased for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

D. Machinery and equipment transferred into Louisiana for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

E. Software purchased, capitalized, and used by the business primarily at the project site during the project period is eligible for sales and use tax rebates.

F. Consumable items are not eligible for sales and use tax rebate. Ineligible items include but are not limited to: per diem, labor, service contracts, storage, freight, radios, laptop computers, utilities, permits and fees, office supplies, construction consumables, blades, drill bits, PVC sheeting, tape, gloves, dusk masks, and all leases and rentals.

G. Lease-purchases may be eligible for a sales and use tax rebate upon Department of Revenue's approval. The property acquired through lease-purchase must be used exclusively at the project site, must be owned by an entity named in the enterprise zone contract, and must be intended to remain at the project site for the expected useful life of the machinery and equipment. A copy of the lease-purchase agreement must be submitted with the claim for rebate request to Department of Revenue, Office Audit Division.

H. A lease of an improvement to immovable property may be eligible for sales and use tax rebate upon the following conditions:

1. the improvements were made with the specific intent to enter into a lease agreement for the use of the improvements by the business, that is, an agreement to lease the improvements must exist before construction begins;

2. at its inception the lease must meet one or more of the following four criteria:

a. the lease transfers ownership of the property to the lessee by the end of the lease term;

b. the lease contains a bargain purchase option;

c. the lease term must be a minimum of twenty years;

d. the present value of the minimum lease payments, excluding any portion of the payments representing costs such as insurance, maintenance, and taxes to be paid by the lessor, equals or exceeds 90 percent of the fair value of the leased property; and

3. rebates shall be paid to the lessee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:96 (February 1985), amended by the Department of Economic Development, Office of Business Development, LR 17:255, (March 1991), LR 22:449 (June 1996), LR 29:2302 (November 2003), LR 37:2372 (August 2011), LR 40:493 (March 2014).

§716. Electronic Submittals

A. The department shall only allow submission of information electronically using Fastlane or any other electronic data submittal program provided by the department.

B. Electronic documents will be accepted by the department in satisfaction of the requirements of department regulations, notwithstanding any other department regulation to the contrary, including but not limited to an electronic contract document executed in whole or part with electronic signatures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 47:856 (July 2021).

§717. Annual Employee Certification

A. An annual employee certification report (ECR) must be filed with the business incentive services by May 31 on all active contracts validating program compliance. An ECR fee of $250 shall be submitted with the report. Failure to file may result in contract cancellation. One extension of up to 60 days may be granted if requested in writing, if the request is received prior to the due date of the ECR.

1. Employee certification report filings shall report company employees working at the project site for a 12-month period, and shall be due within six months of the anniversary of the contract effective date, or the Governor’s signature on the contract, whichever is later.

2. In the case of early contract terminations, a company may submit final employee certification reports containing data for varying project time periods as approved in writing by the department.

3. The department may request additional information necessary to verify benefit eligibility. The company must provide all requested information, or other documentation as approved by the department, within 180 days. Failure to do so within the prescribed timeframe shall result in the expiration of the ECR and require re-submission.

4. If the employee certification report is submitted after the filing deadline, the amount of the job tax credit shall be reduced by five percent for each month or portion of a month late, up to a maximum reduction of 100 percent after 20 months.

a. Except as otherwise approved by the secretary for good cause shown. Good cause may include but not be limited to events beyond the reasonable control of the parties, such as an act of God, an act of war, an act of terrorism, a cyberattack, or a natural disaster due to earthquake, landslide, fire, flood, tornado, tropical storm or hurricane. The business shall have the burden to establish good cause.

B. If the employee certification report substantiates that the business has not created the permanent full-time net new jobs required for program eligibility, the board shall cancel the contract and the business shall refund all credits and rebates received. If not timely paid in compliance with the contract, the department will notify Department of Revenue of the contract violation, and the business will be subject to the provisions of §737.

C. For projects with advance notifications filed with business incentives services prior to June 21, 2013, the annual employee certification process will be performed in accordance with prior policy and practice in place at the time of the filing of the advance notification.

D. A business may request that its contract be terminated and that it no longer be required to file an ECR if:

1. the contract has been in effect for at least 30 months; and

2. the business has met all of the requirements of the program.

E. While companies may elect to terminate contracts prior to their scheduled expiration date, early terminations may not be conducted in such a manner as to abuse the purpose and intent of the program to be limited to a period of five years. Therefore, companies that elect early contract termination shall be restricted from applying for a new contract at the same project site until the end of the five-year period, as outlined in the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011), LR 40:494 (March 2014), LR 42:867 (June 2016).

§719. Arbitrary Termination of Employees

A. The board shall not accept an application from an applicant which performs essentially the same job at the same or new location but for a different ownership in order to qualify for the benefits of this Chapter. New jobs tax credits shall not be generated by those persons whether or not the name or owner of the business changes over a short period of time (less than two weeks), i.e., a business closes on Friday under one ownership and opens on Monday under a different ownership. These are not net new jobs and shall not generate jobs tax credits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2302 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014).

§721. Advance Notification

A. An advance notification form, and a $250 fee, shall be filed with business incentive services prior to the beginning of the project. All incentives for the same project must be indicated on one advance notification and be identified by one project number. Internet filing of the advance notification may be made at the department website.

B. An advance notification shall include but not be limited to a project description, estimated number of jobs, payroll, costs, project start and end dates. The project start date shall not exceed 12 months after the advance filing date and in no instance shall the project period exceed 30 months. Dates may be amended by the applicant if the written request is made prior to the estimated project ending date. An advance notification expires 90 days after the estimated project ending date shown on the advance notification, unless an application is timely filed, or a written date revision request is received by business incentive services prior to the expiration date but in no instance shall exceed 45 months after the advance filing date.

C. An advance notification filed after the beginning of the project requires a waiver of late filing from the board, based upon events beyond the control of the business caused the late filing or documented fault or error on the part of the business incentive services that caused the business's late filing. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits or procedures will not be accepted as a valid reason for waiving the timely filing requirement. A waiver of late filing will allow the business to proceed as if the advance notification was filed timely.

D. A business proposing a project exceeding 30 months must separate the project into phases with no phase having a project period greater than 30 months. The business must comply with program eligibility requirements, and file a separate advance notification, application, project completion report, and affidavit of final cost, with the required fees, for each phase of the project. The business must elect either the sales and use tax rebate or the investment tax credit for all phases of the project. Businesses electing the investment tax credit are not subject to the 50 percent limitation of §731.B for phases subsequent to the initial phase, and may elect to file one investment tax credit claim for all consecutive project periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2302 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:857 (July 2021).

§723. Application

A. An application for an enterprise zone contract, and the required fee, must be filed with Business Incentives Services, on the form prescribed, within three months after the project ending date. Internet filing of the application may be made at the department's website. Upon request, the business shall receive a thirty-day extension of time in which to file its application, provided such request for extension is received by business incentives services no later than the filing deadline date.

1. Applications must include sufficient information to verify program compliance. LED reserves the right to request additional information, which shall be provided to LED within 60 days. In the event an applicant does not provide the requested additional information to LED within this time frame, LED shall present the application to the board as a late filing.

B. With or after the filing of the advance notification, but no later than with the filing of the application, the business shall file with Business Incentives Services, on the form prescribed, a qualification certification of the intended number of permanent full-time net new jobs for purposes of determining eligibility for the Enterprise Zone Program.

C. An application fee equal to 0.5 percent (0.005) of the total estimated tax relief shall be submitted with each application. Total estimated tax relief includes jobs tax credits, state sales and use tax rebates and investment tax credits. Jobs tax credits are calculated by multiplying the total new jobs estimated to be created within the five-year contract period by $2,500 ($5,000 for rubber, aerospace or auto parts manufacturers). An additional application fee will be due if a project's employment or investment is increased from that stated in the application, resulting in a minimum fee of $100 more than previously paid. The minimum fee is $500 and the maximum fee is $15,000 per application. All fees shall be made payable to Louisiana Department of Economic Development.

D. An application must be submitted to business incentive services at least 45 days prior to the board meeting where it is intended to be presented for approval. Applications may be deferred to a later board meeting date at the request of the applicant, but shall not exceed presentation at a board meeting occurring more than 6 months after the filing of the application, except as otherwise approved by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:857 (July 2021).

§725. Recommendations of the Secretaries of Economic Development and Revenue

A. Business Incentive Services shall forward the application with its recommendation to the secretary of the Louisiana Department of Revenue and the secretary of the Louisiana Department of Economic Development for their review and recommendations. The secretaries of the Department of Revenue and the department may submit a letter of no objection in lieu of a letter of recommendation.

B. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action. If LDR issues an objection to an application other than an objection because an applicant is in active negotiations with, under audit by or in litigation with LDR, the applicant has six months to clear the objection or the application shall be cancelled. The six-month period shall begin on the date LED sends written notification to the company of the objection received from LDR. Applicants may demonstrate active negotiation to LED by providing written documentation periodically, but at least every six months, of ongoing, bilateral communications between the applicant or its representative and LDR, even if such communication begins after the objection was issued, or other written verification as approved by LED.

C. If LDR issues an objection to an application, the applicant has six months to clear the objection or the application shall be cancelled by the department. The six-month period shall begin on the date LED sends written notification to the company of the objection received from LDR.

1. Except that the department may, in its sole discretion, grant an extension in the following circumstances.

a. Active Negotiation. An extension may be granted to applicants which demonstrate active negotiation to LED by providing written documentation of ongoing, bilateral communications between the applicant or its representative and LDR as applicable, even if such communication begins after the objection was issued, or other written verification as approved by LED.

i. The extension shall not exceed six months, and an application with an active, unresolved objection shall be cancelled by the department one year after sending written notification to the company of the objection.

b. Litigation. The department may grant an extension to applicants which demonstrate active litigation with LDR, including but not limited to submission of a written complaint or petition, as approved by LED.

i. the extension shall be valid during the pendency of the action, but shall not exceed five years.

c. As otherwise approved by the secretary for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011), LR 40:495 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:857 (July 2021).

§727. Application Review by the Board of Commerce and Industry

A. Business Incentive Services shall present an agenda of applications to the board with recommendations based upon its findings.

B. Each business or its representative will be notified of the board meeting date at which its application will be considered. The business should have someone present who is able to answer any questions the board may have regarding the information contained in the application. In the event there is no representative present, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011), LR 40:496 (March 2014).

§729. Enterprise Zone Program Contract

A. Upon approval of the application, the board shall enter into a contract with the business for the benefits allowed by this Chapter. The business must execute its portion of the contract and return it to Business Incentive Services as follows.

1. For projects with contract effective dates prior to the effective date of the 2021 Rule promulgation, if the contract is not returned within 60 days, the board may rescind the approval of the application.

2. For projects with contract effective dates after the effective date of the 2021 Rule promulgation, if the contract is not returned within 90 days, the board's approval shall be deemed rescinded.

3. When the contract has been fully executed, a copy will be sent to the business, the Department of Revenue, and if applicable, sent to the political subdivision.

B. Business incentive services must be notified, on the prescribed form, of any change that will affect the contract. A fee of $250 shall be submitted with a request for any contract amendment. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract, or the suspension, closing, or abandonment of operations. Failure to report any changes within six months may constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:858 (July 2021).

§731. Project Completion

A. Within six months after the project ending date or the governor's signature on the contract, whichever is later, the business shall file with business incentive services, on the prescribed form, a project completion report and an affidavit of final cost. A project completion report fee of $250 and an affidavit of final cost fee of $250 shall be submitted with these forms or any amendments to these forms.

1. Any outstanding or final employee certification reports shall be submitted to LED prior to, or along with, a project completion report submission.

2. The department may grant an extension of thirty days for the filing of a project completion report, provided the written request for extension is received prior to the filing deadline.

3. If the project completion report is submitted after the filing deadline, the amount of the investment tax credit, or sales and use tax rebate shall be reduced by five percent for each month or portion of a month late, up to a maximum reduction of 100 percent after 20 months.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the investment tax credit is elected. Except as provided in §721.D, the investment tax credit may not be elected if more than 50 percent of the qualified expenditures related to the project (including intangible costs such as architectural and/or engineering fees prior to construction) are incurred before the filing of the advance notification.

C. The affidavit of final cost shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 47:858 (July 2021).

§732. Investment Tax Credit Claims

A. The investment tax credit is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service, regardless of whether the actual time period involved exceeds 30 months.

B The investment tax credit claim must be filed with the Department of Revenue, Office Audit Division, with the required documentation.

C. The investment tax credit may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The investment tax credit applies to the assets that are related to the qualified expenditures, provided that the business reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

D. The claim for investment tax credit must be filed with the Department of Revenue no later than six months after the governor's signature of the contract and the department's signature of the project completion report, and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30 day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014).

§733. Sales and Use Tax Rebate Requests

A. The Enterprise Zone Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Office Audit Division, and must include the following:

1. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or is listed in the Enterprise Zone Program contract;

2. certification that the listed materials are reasonably expected to qualify for a rebate under the Enterprise Zone Program; and

3. certification that state sales and use taxes have been paid on the listed items.

B. The request may be filed on the official Department of Revenue "claim for rebate" form or on other forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

C. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after the Department of Economic Development signs a project completion report and sends it to the Department of Revenue, the political subdivision, and the business, or no later than 30 days after the end of the calendar year in the case of customer-owned tooling used in a compression molding process and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30 day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

D. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2375 (August 2011), LR 40:496 (March 2014).

§735. Business with a Contract Must File State Income and Franchise Tax Returns

A. Businesses that have satisfied their Louisiana income tax and/or franchise tax liability by applying jobs tax credits earned under this Chapter shall file the same forms and tax returns with the Department of Revenue that are required if no jobs tax credit were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from Business Incentive Services certifying the jobs tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return. limited liability companies, sub chapter s corporations, etc., must have the name(s) of owners and their Social Security numbers or Department of Revenue number for corporations listed on the contract in order for jobs tax credits to flow through to the owner(s).

B. Partnerships and sole proprietorships shall file the same returns that are required if the jobs tax credits were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from business incentives services certifying the tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2375 (August 2011), LR 40:497 (March 2014).

§737. Violation; Cancellation of Contract

A. On the initiative of the board upon notice or a written complaint of violation of the terms of the statutes, rules or the contract, the board or its representative shall determine if a full investigation should be made. The board shall have full authority for such investigation, including but not exclusively, the authority to call for reports, pertinent records, or other information from the business. If the investigation appears to substantiate a violation the board or its representative will present the subject contract for formal action.

B. If a business is found to be in violation of the statutes, these rules or the contract, board may cancel the contract and the business shall remit back to the state all jobs tax credits taken on income tax and franchise returns, all state and local sales and use tax rebates, investment tax credit, and any other taxes that would have been imposed but for the issuance of this contract.

C. The department shall notify the Department of Revenue of the cancellation, and the Department of Revenue will proceed by all appropriate means to recapture all benefits received pursuant to this Chapter, including any penalty and interest due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2375 (August 2011), LR 40:497 (March 2014).

§739. Fees

A. Advance notifications, applications, and affidavits of final cost are not deemed to be filed until all information requested on the form and the required fees are received by LED. Processing fees for advance notifications, applications, or annual certifications that have been accepted for eligible projects shall not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37: 2376 (August 2011), amended LR 40:497 (March 2014), LR 42:868 (June 2016).

§743. Relocation of Enterprise Zones

A. A municipality or parish requesting the relocation of an enterprise zone must provide valid reason for requesting the move and must have the approval of the board.

B. The residents of originally designated enterprise zone may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the board shall be the date of passage affixed to the resolution by the local governing authority requesting the relocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2376 (August 2011), LR 40:498 (March 2014).

§745. Appeals

A. A business may appeal an action of the board by submitting its appeal along with any necessary documentation to business incentives services no later than 90 days after the board action. The appeal shall not be considered by the board less than 30 days after submission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 37:2376 (August 2011), LR 40:498 (March 2014).

§749. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices

A. No political subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:257 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:451 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2305 (November 2003), LR 37:2376 (August 2011), LR 40:498 (March 2014).

Chapter 9. Restoration Tax Abatement Program

§901. General

A. Intent of Law. To encourage the expansion, restoration, improvement, and development of existing commercial structures and owner-occupied residences in downtown, historic, and economic development districts. To provide for the development and improvement of local communities, encourage the fullest use of underutilized resources, and enhancement of the tax base.

B. Program Description. The Restoration Tax Abatement Program provides to commercial property owners and homeowners who expand, restore, improve or develop an existing structure in a downtown development district, economic development district or historic district (the "project"), the right for five years after completion of the work, to pay ad valorem taxes based on the assessed valuation of the property for the year prior to the commencement of the project.

1. The application is subject to approval by the local governing authority, the state Board of Commerce and Industry, and the governor. Assessment of the improvements, made by the project to the property, is deferred for five years by a contract entered into with the Board of Commerce and Industry. The contract may be eligible for renewal, subject to the same conditions, for an additional five years. The tax

abatement is now available if property taxes have been paid on the improvements made by the project. If the property is sold, the contract may be transferred, subject to local government and board approval.

2. The program is administered by the Louisiana Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division. For more information contact the Restoration Tax Abatement Program Administrator, Box 94185, Baton Rouge, LA 70804-9185. Telephone Baton Rouge, LA (225) 342-5402.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§903. Time Limits for Filing Application

A. The applicant shall submit an "advance notification" on the prescribed form prior to the beginning of construction. An advance notification fee of $250 shall be submitted with the advance notification form. The phase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

B. Application for tax exemption should be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed prior to the beginning of construction. Failure to file an application prior to construction may result in the application being denied.

C. An application fee (effective May 4, 1988) shall be submitted with the application based on the following:

1. 0.5 percent of the estimated total five-year property tax exemption;

2. minimum application fee is $500 for all projects except owner occupied residential properties which have no minimum application fee; maximum application fee is $15,000;

3. please make checks payable to: Louisiana Economic Development.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost 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, applications, or affidavits of final cost which have been accepted, may not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:223 (February 2016).

§905. Application Requirements

A. The application must be complete (any exceptions must be authorized by C & I staff). All sections of the application form RTA1 must be filled in. Under Section 5, submit at least a one paragraph detailed description of the project with some historical overview, if applicable. For "Estimated No. of Jobs," list only the net new permanent jobs that will be created as a result of the project being applied for; do not list permanent jobs that existed prior to the beginning of the project. In addition all applicable addendum documentation, listed under "Project Documentation," must be received. The application will be returned to the applicant if the required information is not received.

B. The expansion, restoration, improvement or development must be made to an existing structure and must be located in a downtown development district, economic development district or historic district.

C. If the construction period is longer than two years, the project must be divided into two-year phases, and a separate application must be filed for each two-year increment. A separate application must be filed for each structure being restored, renovated, improved or developed. Exceptions to this Paragraph must be approved in advance by the authorized representative of the board, and approved by the board.

D. The expansion, restoration, improvement or development of a certified historic structure shall also be required to meet the National Park Service requirements for restoration projects known as the Secretary of the Interior's "Standards for Rehabilitating Historic Structures"; and, as interpreted by the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation. As used in this Subsection, the phrase "certified historic structure" means any building including its structural components, which:

1. is listed on the National Register of Historic Places; or

2. is located in a registered historic district and is listed as a contributing element of that district in the National Register records under authority of the Secretary of the Interior.

E. The Board of Commerce and Industry will not consider for tax exemption any expansion, restoration, improvement or development project if substantial completion of a commercial project occurred prior to October 15, 1982. For an owner-occupied residence, construction must not have been started prior to September 7, 1990.

F. Pursuant to R.S. 47:4315.A.(4), under no circumstances will the Board of Commerce and Industry consider an application for abatement on any project for expansion, restoration, improvement or development once ad valorem taxes have been paid on the basis of an assessed

valuation which reflects the improvements made by the project.

G. When the expansion, restoration, improvement, or development is to be made to an owner-occupied residence, a contract of exemption shall not be available unless a minimum rehabilitation cost equal to or greater than 25 percent of the assessed valuation of the improvements located on the property for the year prior to the commencement of the expansion, restoration, improvement, or development of the owner-occupied residence is incurred by the owner and such expansion, restoration, improvement, or development is completed within a 24-month period. *Owner-occupied residence* means any structure occupied by the owner and used principally for residential use including condominium units, duplexes, and other multiple residence structures. Owner-occupied residence projects shall not have been started prior to September 1, 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§907. Project Documentation

A. Application is to be filed with the Office of Commerce and Industry. Please return four application forms (RTA1) completed, signed and notarized. The application should include a complete description of the project. Attach additional pages if necessary. In addition, two complete sets of the addendum documentation, Paragraphs B.1-6 and either Paragraphs B.7 or 8 are required for all projects. For projects involving owner-occupied residences Paragraphs B.9 and 10 must also be included. The Office of Commerce and Industry may request additional information.

B. The following addendum documentation must be submitted with the application (please denote each document with one of the numbers below):

1. proof of ownership: act of sale or option to acquire the property;

2. a legal property description (suitable for insertion into the exemption contract—retype if necessary), a plot map; a copy of the building permit issued for the project;

3. picture of the structure before beginning the project and a rendering of the structure as it will appear after completion of the project;

4. names and addresses of all owners (the general partner(s) or, the principal stockholders of the corporation);

5. the assessed value of the structure only (improvements) and the taxes paid on the structure only;

6. a copy of the tax invoice for the year prior to commencement of the project from the parish assessor;

7. certification from the local governing authority that the structure is in a downtown development district, an historic district, or an economic development district specifically designated as such for this program;

8. if the project is a "certified historic structure" as defined in §905.B, Certification from the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation that the project meets the National Park Service requirements for restoration projects known as The Secretary of the Interior's "Standards for Rehabilitating Historic Structures." This is mandatory if the project is located in downtown New Orleans or downtown Shreveport;

9. a statement certifying that the minimum rehabilitation cost incurred to the owner-occupied residence project will be equal to or greater than 25 percent of the assessed valuation of the improvements located on the property prior to the commencement of the expansion, restoration, improvement, or development; and

10. a statement certifying that the owner-occupied residence project will be completed within a 24-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:253 (March 1992).

§909. Local Governing Authority Certification and Approval

A. R.S. 47:4314.B, requires the exemption to be certified and approved by each local governing authority which is defined in R.S. 47:4313(5).

> "'Local governing authority' means the governing authority of the parish in which the downtown, historic, or economic development district is located unless the district is located within a municipality, in which case 'local governing authority' shall mean the governing authority of the municipality. It the district is located partly in a municipality, 'local governing authority' shall mean the governing authority of the parish and the governing authority of the municipality."

B. Upon receipt of the application, the local governing authority shall notify each tax recipient body affected by the contract for a limited exemption and shall make available to each body the application and all supporting documents.

C. The parish or municipal governing authority shall certify that the property on which the expansion, restoration, improvement of development is being made is located within an established downtown, historic, or economic development district, whether established by a local governing authority or in accordance with law. This certification shall be submitted to the Office of Commerce and Industry with its decision to approve or disapprove.

D. The local governing authority shall determine whether the applicant's land usage meets the definition of "commercial property" based on their zoning ordinance, land use plan, downtown or economic revitalization plan, or any other development code and shall certify that the property meets their criteria. This certification shall be submitted to the Office of Commerce and Industry along with their recommendation.

E. Before notifying the board of its approval or disapproval of the application, the local governing authority shall conduct a public hearing. Notice of the time and place of the hearing shall be published at least twice in the official journal of the local governing authority, and at least 10 days shall elapse between the first publication and the date of the hearing. Each affected tax recipient body shall be given written notice of the hearing at least 10 days prior to such hearing. After such hearing, the local governing authority shall determine whether to approve or disapprove the application.

F. The local governing authority shall, within 60 days after receipt of the application from the Office of Commerce and Industry, file with the department a statement of its decision to approve or disapprove the application, the reasons therefor, and any supporting documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§911. Effective Date of Contract

A. The owner of the existing structure or structures, shall carefully document the beginning date of the effective use of the structure, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially completed, whichever occurs first, The Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contract, which shall be December 31 of the year in which effective use of the structure began or construction was essentially complete, whichever was sooner.

B. As the assessment date for Orleans Parish is August 1, the effective date of contract for a structure located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986). amended by the Department of Economic Development, LR 18:254 (March 1992).

§913. Affidavit of Final Cost

A. Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form together with a fee of $250 for the inspection which will be conducted by the Office of Commerce and Industry (make check payable to the Louisiana Economic Development).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:224 (February 2016).

§915. Reports to Parish Assessor

A. The property owner agrees to file annually with the assessor of the parish in which the structure is located any taxpayer's report required by law on forms furnished by the assessor in order that the exempted property may be separately listed on the assessment rolls. Notwithstanding the fact, taxes will be collected on the exempt property during the period of exemption at the assessed valuation of the property the year prior to the commencement of the expansion, restoration, improvement, or development of the property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§917. Contract Can Be Transferred

A. If the property for which the limited exemption has been granted is sold the limited exemption may be transferred for the remainder of its term to the new owner, provided such transfer is approved by the local governing authority, the Board of Commerce and Industry, and the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§919. Violation of Rules or Documents

A. On the board's initiative or whenever a written complaint or violation of terms of the tax exemption rules or contract is received, the assistant secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or other pertinent records or other information from the contractee. If the investigation substantiates a violation, he may present the subject contract to the board for formal cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:255 (March 1992).

§921. Contract Renewal

A. Effective January 1, 1991, contracts may be renewed, subject to the same conditions, for an additional five years extending such right for a total of 10 years from completion of the work.

B. In order to be eligible for renewal of an existing contract the Project Completion Report and affidavit of final cost, contract addendum documents, must have been filed for the original contract; taxes cannot have been paid on the improvements pursuant to R.S. 47:4315.A.(4); and a renewal application form must be submitted. The following documentation should be submitted:

1. three copies of the application, Form RTA1, marked "Renewal," containing current data;

2. a written, notarized certification (three copies) from the applicant, referencing the original application/contract number, that "taxes have not been paid on improvements exempted under contract number (number), for (owner name), pursuant to R.S. 47:4315, Paragraph A.(4) and the Restoration Tax Abatement Program Rules"; and

3. a renewal fee check for $250, payable to Louisiana Economic Development.

C. The same approval process, as used for the original application and contract, will be followed for renewal contracts. Applications must first be filed with the Office of Commerce and Industry. They will then be sent to the local governing authority for approval. If approved by the local governing authority, the application will be submitted to the Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:224 (February 2016).

Chapter 11. Quality Jobs Program

§1101. General

A. Purpose. The Quality Jobs Program provides rebates as an inducement for businesses in traditional or seed clusters targeted for development by the department to locate or expand existing operations in Louisiana, and to support employers who will make significant contributions to the development of the state economy.

B. Program Description

1. The amount of the rebate is directly related to the new direct jobs created and to the new annual gross payroll generated as the result of the employer locating or expanding existing operations in the state.

2. The employer may be entitled to sales and use tax rebates or the project facility expense rebate–authorized in R.S. 51: 2456 (B) (1), in addition to the requirements of this Chapter.

C. Effective date of Act 387 of the 2007 Regular Session

1. The provisions of Act 387 shall apply to all advance notification filed prior to July 1, 2017, except as provided below.

2. The provisions of the Quality Jobs Program prior to the enactment of Act 387 shall apply to contracts executed or advance notifications filed prior to June 30, 2008, if at the time the contract is executed, amended or renewed the employer does not elect to apply the provisions of Act 387.

3. The provisions of Act 387 shall apply to contracts executed or advance notifications filed prior to June 30, 2008 if at the time the contract is executed, amended or renewed the employer elects to apply the provisions of Act 387. Upon such election, the provisions of Act 387 shall be applied beginning with the fiscal year in which the election is made.

4. The provisions of Act 387 may not be applied to any fiscal year beginning prior to January 1, 2007.

D. Effective date of Act 386 of the 2017 Regular Session

1. The provisions of Act 386 shall apply to advance notifications filed on or after July 1, 2017, except as provided below.

a. a COVID-19-impacted retail business, hotel or restaurant, that has no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification and which is assigned a NAICS Code of 44, 45, 721, or 722, and which files or enters into an advance notification on or after July 1, 2020, and on or before December 31, 2021, shall be eligible for benefits. However, no such COVID-19-impacted business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023.

2. The provisions of Act 387 shall apply to advance notifications for companies meeting the provisions of section 4 of Act 386, as approved by the department.

E. Effective date of the 2023 Quality Jobs Program rule changes.

1. The provisions of the 2023 Quality Jobs Program rule changes shall apply to advance notifications filed after the date of promulgation, detailed in the *Louisiana Register* published on January 20, 2023, or unless otherwise stipulated by the Louisiana Legislature, in §1101.C and D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2305 (November 2003), amended by the Office of Business Development, LR 37:2587 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:25 (January 2023), repromulgated LR 49:338 (February 2023).

§1103. Definitions

Act 386—Act 386 of the 2017 Regular Session of the Louisiana Legislature

Affiliate—

1. any business entity that is:

a. controlled by the employer;

b a controlling owner of the employer; or

c. controlled by an entity described in Subparagraph a or b;

2. control, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:

a. a majority of the voting stock or other voting interest of such business entity or the employer; or

b. stock or other interest whose value is a majority of the total value of such business entity or the employer;

3. a controlled or controlling business entity will be deemed a non-affiliate (not an affiliate) if the department determines that neither the employer nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

Approved Rehire Employees—a former employee who was previously on the payroll of the Company, parent entity, subsidiary, or affiliate in Louisiana, but has been off such payroll for a period of at least 12 months, may be considered a New Direct Job if rehired into a position that is not part of the Baseline Jobs. When determining New Direct Job qualifications, the department shall consider all relevant factors including but not limited to; ES4's, W2's and Company re-hiring practices, and the intent of the program to permanently locate new or expand existing operations in Louisiana.

Basic Health Benefits Plan or *the Health Insurance Coverage*—that which is required to be offered shall include individual coverage for basic hospital care, coverage for physician care, and coverage for health care which shall be the same as that provided to executive, administrative, or professional employees. Coverage must become effective no later than the first day of the month 90 days after hire date. For companies subject to provisions of Act 386, the coverage shall be in compliance with federally mandated health care requirements but if no such federally mandated requirements exist, the coverage for the employer portion of employee only coverage shall have a value of at least one dollar and 25 cents per hour.

Benefit Rate—one of the following percentages:

1. contracts subject to the provisions of Act 386:

a. the benefit rate shall be 4 percent for new direct jobs which pay at least $18 per hour in wages;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least $21.66 per hour in wages.

2. contracts subject to the provisions of Act 387:

a. the benefit rate shall be 5 percent for new direct jobs which pay at least $14.50 per hour in wages and health care benefits;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least $19.10 per hour in wages and health care benefits;

c. health care benefits paid shall be the value of the health care benefits plan elected by an employee, as determined by the department.

3. contracts not subject to the provisions of Act 386 or Act 387:

a. the benefit rate shall be 5 percent for new direct jobs which pay at least 1 3/4 times the federal minimum hourly wage rate;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least 2 1/4 times the federal minimum hourly wage rate and meet one of the following criteria:

i. the new direct jobs are located in a distressed region, or at least 50 percent of the new direct jobs shall be filled by persons who reside in a distressed region;

ii. the new direct jobs are with an employer categorized in a traditional or seed cluster targeted by the department.

Board—the Louisiana Board of Commerce and Industry.

Contract Effective Date—the day that the advance notification and fee were received by the department, or a later contract effective date specified on the application. The contract effective date cannot be earlier than the date the advance notification and fee are received by the department.

Contract Execution—means the date the contract is signed by the governor.

Corporate Headquarters of a Multi-State Business—a multi-state business whose primary function is identified by NAICS 55114.

COVID-19-Impacted Retail Business—a for-profit corporation, a limited liability company, a partnership, or a sole proprietorship that had a physical and active operation in Louisiana on March 13, 2020, and ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency, as approved by the Department.

Department—the Louisiana Department of Economic Development.

Distressed Region—for companies subject to the provisions of Act 387, as designated by the department:

1. a parish with a per capita income in the lowest 25 percent of the parishes; or

2. a census tract and block group that is below the state median per capita income, based on the most recent federal decennial census.

Domicile—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent. Workers in the United States who are working on an H-1B Visa are not deemed to be domiciled in Louisiana.

Employment Baseline—the median statewide number of employees of an employer, including affiliates, working the average hours per week required in §1105, excluding employees engaged in lines of business that the department determines are unrelated to the activities for which quality job program benefits are sought, during the payroll periods including the twelfth day of the month, in the last six months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining four months). The employment baseline must be maintained in any year for which the employer requests payroll rebates. The employment baseline may be reduced by the number of employees retained and continued in employment for at least one year by an unrelated third party business acquiring a site or line of business.

Employer—a legal person who applies for and executes a Quality Jobs Program contract with the department pursuant to the provisions of R.S. 51:2452-2462.

Gross Payroll—

1. wages for the new direct jobs upon which the specified benefit rate is calculated;

2. for medical industries serving rural hospitals, gross wages shall include only those wages directly related to providing services to a rural hospital.

Health Care Benefits—means the amount of any payment to or on behalf of an individual in its employ for individual coverage under a plan or system established by an employer which makes provision for individuals in its employ generally or for a class or classes of such individuals including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment for the basic health benefits plan or health insurance coverage, or the value of the health plan or health insurance coverage offered by the employer to an individual it employs.

Hire Date—the first day of work for which the employer directly pays an employee.

LDR—the Louisiana Department of Revenue.

LED—the Louisiana Department of Economic Development

LWC—the Louisiana Workforce Commission, formerly the Louisiana Department of Labor.

Medical Industries—a person, or entity licensed or certified by this state to provide health care or professional services as a physician, hospital, nursing home, community blood center, tissue bank, dentist, registered or licensed practical nurse or certified nurse assistant, ambulance service, certified registered nurse anesthetist, nurse midwife, licensed midwife, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, psychologist, social worker, licensed professional counselor, licensed perfusionist.

Multi-State Business—a business entity operating in more than one state, with a physical presence in more than one state, as approved by the department.

NAICS—North American Industrial Classification System.

New Direct Job—employment at a Louisiana site:

1. of an employee:

a. whose domicile is in the state of Louisiana;

b. working the average hours per week required by §1105; and

c. who prior to the contract effective date was not on the payroll in Louisiana of:

i. the employer;

ii. the employer's parent entity, subsidiary, or affiliate; or

iii. any business whose physical plant and employees were or are substantially the same as those of the employer, unless either:

(a). there has been an arm’s length transfer of ownership between unrelated companies (not affiliates), and either the location has been out of operations for at least three months; or

(b). the secretary determines that the jobs would have likely been lost to the state absent the transfer (under such circumstances jobs at the re-opened plant are deemed not to have previously existed for purposes of Subparagraph 2.b. below); or

(c). the employee is an Approved Rehire Employee.

2. in a job (a position of employment) that:

a. is with an employer that has qualified for the incentive rebate;

b. did not exist in this state prior to the advance notification being filed by the employer with the department pursuant to the provisions of R.S. 51:2455; and

c. is not part of the employment baseline;

d. is based at the project site, as determined by the department considering the employee’s physical work site, the site to which the employee reports or which administers

the employment, the site from which the employee receives work, and the nature of the business;

3. the following jobs are not new direct jobs:

a. jobs created as a result of the employer securing a contract to supply goods and services in the state of Louisiana, if another business was under an obligation to supply the same goods and services from a facility located in Louisiana and such obligation was terminated within three months prior to creation of the job by the employer;

b. jobs transferred, or jobs associated with work or sales transferred, from other Louisiana sites as a result of the employer (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation.

Physical Presence—the department shall consider all relevant evidence in evaluating multi-state presence, including, but not limited to; the location of offices, facilities, tangible property and employees. Ancillary services provided through use of technology, without more, shall be insufficient to establish a physical presence.

Project Site—the single contiguous physical location shown on the application.

Rural Hospital—as defined by R.S. 40:1300.

Wages—all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and dismissal payments which the employer is required by law or contract to make. Gratuities shall be estimated in accordance with the Internal Revenue Code and its rules and regulations. Wages shall not include the following:

1. the amount of any payment with respect to services performed after January 1, 1951, to or on behalf of an individual in its employ under a plan or system established by an employer which makes provision for individuals in its employ generally, or for a class of classes of such individuals, including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment, on account of:

a. retirement;

b. sickness or accident disability;

c. medical and hospitalization expenses in connection with sickness or accident disability;

d. death, provided the individual in its employment does not have the option to receive, instead of provision of such death benefit, any part of such payment or, if such death benefit is insured, any part of the premium or contributions to premiums paid by his employer or does not have the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon the termination of such plan or system or policy of insurance or of his services with such employer; or

e. a bona fide thrift or savings fund, providing such payment is conditioned upon a payment of a substantial sum by such individuals in its employment and such sum paid by the employer cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any 12 month period, except upon an individual's separation from that employment;

2. any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan of the type described in 26 U.S.C. 125 and referred to in 26 U.S.C. 3306(b)(5)(G);

3. any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such financing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C. 127 or a dependent care assistance program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C. 3306(b)(13);

4. the payment by an employer, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under Section 3101 of the federal Internal Revenue Code with respect to domestic services in a private home of the employer or for agricultural labor performed after December 31, 1980;

5. dismissal payments that the employer is not required by law or contract to make; or

6. the value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ, provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2306 (November 2003), amended by the Office of Business Development, LR 37:2588 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:25 (January 2023), repromulgated LR 49:339 (February 2023).

§1105. Qualified Employers

A. For companies subject to the provisions of Act 387, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1. Eligible Businesses. The nature of the employer's business must fall within one of the following categories:

a. one of the following six Vision 2020 cluster industries:

i. biotechnology, biomedical, or medical industries serving rural hospitals;

ii. micromanufacturing;

iii. software, auto regulation, Internet, or telecommunications technologies;

iv. environmental technologies;

v. food technologies; or

vi. advanced materials;

b. a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, or 54171;

c. an oil and gas field services business identified by the NAICS Code 213112, that has Louisiana as the national or regional headquarters of a multi-state business whose service territory includes Louisiana and the Gulf of Mexico, with new direct jobs that pay wages not less than $30,000 per year;

d.i. a business that has, or within one year will have, at least 50 percent of its total annual sales to:

(a). out-of-state customers or buyers;

(b). in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

(c). the federal government;

ii. for contracts not subject to the provisions of Act 387, qualification under this Subparagraph also requires either:

(a). 75 percent of total annual sales to the buyers specified above; or

(b). the nature of the employer's business must fall within one of the following categories:

(i). an industry defined by NAICS codes that have a direct state employer multiplier of 2.0 or greater in accordance with the most current edition of the Regional Input/Output Multiplier System II or its successor;

(ii). a central administrative office that influences the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions are accomplished;

(iii). data processing, back office operations, and telephone call center operations (NAICS Code 56142);

(iv). a wholesale trade business (NAICS Code 42) with a distribution center of not less than 25,000 square feet;

e. located in a designated distressed region. Such designation shall be maintained during the contract period, including any renewal period. The employer must be located in a distressed region or at least 50 percent of the new direct jobs must be filled by persons residing in a distressed region.

2. Ineligible Businesses. The following employers or persons shall not be eligible for benefits provided under this Chapter:

a. retail employers identified by NAICS Code Sections 44 and 45;

b. business associations and professional organizations identified by NAICS Code 8139;

c. state and local government enterprises;

d. real estate agents, operators, and lessors;

e. automotive rental and leasing;

f. local solid waste disposal, local sewage systems, and local water systems businesses;

g. nonprofit organizations, unless the department determines that the new direct jobs created by the organization would have a significant impact on Louisiana;

h. employers engaged in the gaming industry identified by NAICS Code sections 713210 and 721120; and

i. attorneys.

3. Payroll

a. The employer must create a minimum of five new direct jobs.

b. If the employer employs more than 50 employees prior to the beginning of the contract, it must have an annual gross payroll for new direct jobs equal to or greater than $500,000.

c. If the employer employs 50 or fewer employees prior to the beginning of the contract, it must have an annual gross payroll for new direct jobs equal to or greater than $250,000.

d. The employer shall have the required annual payroll for new direct jobs and the minimum five new direct jobs for the employer's fiscal year for which the employer is applying for its third annual rebate, or the contract is cancelled and any rebates received must be repaid.

4. Full-time Employee Work Hours

a. For contracts subject to Act 387, the employer must employ full-time employees working 30 or more hours per week in new direct jobs.

b. For contracts prior to Act 387, the employer must employ full-time employees working 35 or more hours per week in new direct jobs. If the employer is a call center (NAICS Code 56142) it must employ full-time employees working 30 or more hours per week in new direct jobs.

5. Health Benefits. The employer must offer, or will offer within 90 days of the contract effective date, a basic health benefits plan or health insurance coverage to the individuals it employs in new direct jobs, in accordance with the following requirements:

a. contract effective dates before June 1, 2000—the employer shall pay not less than 50 percent of the insurance premium;

b. contract effective dates on or after June 1, 2000, but before May 1, 2002—the employer shall pay not less than 75 percent of the premium for full-time employees. The employer shall offer group coverage for dependents of full-time employees, but the employer is not required to pay the premium;

c. contract effective dates on or after May 1, 2002—the employer shall offer the employee the choice of one of the following:

i. the employer shall pay not less than 85 percent of the total premium for full-time employees choosing to participate under individual coverage and shall offer coverage for dependents of full-time employees, but the employer is not required to pay the premium; or

ii. the employer shall pay not less than 50 percent of the total premium for full-time employees who choose to participate and choose to cover their dependents;

d. for contracts subject to the provisions of Act 387, the health care benefits must be determined by the department to have a value of at least $1.25 per hour. The department's valuation analysis shall be made in accordance with standard operating procedures which shall be posted on the department's website.

B. For companies subject to the provisions of Act 386, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1. Eligible Businesses. The nature of the employer's business must fall within one of the following categories;

a. the employer is in one of the following industries:

i. biotechnology, biomedical, and medical industries serving rural hospitals;

ii. micromanufacturing;

iii. software, Internet or telecommunications technologies;

iv. clean energy technology;

v. food technologies; or

vi. advanced materials;

b. the employer is a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, or 54171;

c. the employer is an oil and gas field services business identified by the NAICS Code 213112, that has Louisiana as the national or regional headquarters of a multi-state business whose service territory includes at least Louisiana and the Gulf of Mexico;

d. the employer is a business that has, or within one year will have, at least 50 percent of its total annual sales to:

i. out-of-state customers or buyers;

ii. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

iii. the federal government;

iv. an independent Louisiana certified public accountant shall annually verify that the contract site meets the out-of-state sales requirement, in accordance with guidelines provided by the department;

e. the employer is a business that is located in a parish which is within the lowest 25 percent of parishes based on per capita income. An employer that qualifies for a contract under this Item at the time of the initial quality jobs contract executed pursuant to this Chapter shall remain qualified for a contract through and during the renewal period regardless of any change in the per capita income of the parish,

f. the employer is the corporate headquarters of a multi-state business;

g. the employer is a business that spends fifty percent or more of its time performing services for its out-of-state parent company. These services include, but are not limited to, legal, marketing, finance, information technology, order management, distribution center operations or overall operations support.

h. the employer is in the business of maintenance, repair, and overhaul operations for commercial transport aircraft.

2. Ineligible Businesses. The following employers or persons shall not be eligible for benefits provided under this Chapter:

a. retail employers identified by NAICS Code Sections 44 and 45, except that;

i. COVID-19-impacted retail employers identified by the NAICS Codes of 44 and 45 that have no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification shall be eligible to participate in this rebate program if such employers file or enter into an advance notification on or after July 1, 2020, and on or before December 31, 2021. However, no such COVID-19-impacted retail business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023;

b. business associations and professional organizations identified by NAICS Code 8139;

c. state and local government enterprises;

d. real estate agents, operators, and lessors;

e. automotive rental and leasing;

f. local solid waste disposal, local sewage systems, and local water systems businesses;

g. nonprofit organizations, unless the department determines that the new direct jobs created by the organization would have a significant impact on Louisiana;

h. employers engaged in the gaming industry identified by NAICS Code sections 713210 and 721120; and

i. professional services firms assigned a NAICS code beginning with 54, unless the business can demonstrate that more than fifty percent of its services are provided to out-of-state customers or for the corporate headquarters of a multi-state business or if the employer can demonstrate that the company has or will have one year sales of at least 50 percent of its total sales out-of-state customers or buyers, to in-state customers or buyers or buyers if the products or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government;

j. construction companies, unless the company is the corporate headquarters of a multi-state business or can demonstrate that the company has, or will have within one year, sales of at least fifty percent of its total sales to either out-of-state customers or the federal government;

k. all businesses assigned a NAICS code beginning with 5613;

l. medical professionals assigned a NAICS code beginning with 62, except for those engaged in biomedical industries, biotechnology industries or those who provide services to rural hospitals or those who provide services or will within one year provide services to a patient base made up of at least fifty percent out-of-state patients;

m. Out-of-state sales or out-of-state patient requirements can be demonstrated by submission of documents including, but not limited to, a report issued by an independent Louisiana certified public accountant, in accordance with guidelines provided by the department.

3. Minimum New Direct Jobs and Annual Gross Payroll

a. New Direct Jobs. The employer must create a minimum of:

i. five new direct jobs for companies who employ 50 or fewer baseline employees, or

ii. 15 new direct jobs for companies who employ more than 50 baseline employees.

b. Annual Gross Payroll. The employer must have an annual gross payroll of:

i. equal to or greater than $225,000, for companies who employ 50 or fewer employees prior to the beginning of the contract; or

ii. jobs equal to or greater than $675,000, for companies who employ more than 50 employees prior to the beginning of the contract.

c. The employer shall have the required annual payroll for new direct jobs and the minimum number of new direct jobs for the employer's fiscal year for which the employer is applying for its third annual rebate, or the contract is cancelled and any rebates received must be repaid.

4. Full-Time Employee Work Hours

a. The employer must employ full-time employees working 30 or more hours per week in new direct jobs.

5. Health Benefits. The employer must offer, or will offer within 90 days of the contract effective date, a basic health benefits plan or health insurance coverage to the individuals it employs in new direct jobs, in compliance with federally mandated healthcare requirements or, if no federally mandated healthcare requirements exist, is determined to have a value of at least $1.25 per hour. The employer must offer health insurance coverage for the dependents of full-time employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2307 (November 2003), amended by the Office of Business Development, LR 37:2590 (September 2011), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:27 (January 2023), repromulgated LR 49:340 (February 2023).

§1107. Application Fees, Timely Filing

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of $250, for each program applied for, shall be submitted with the advance notification form. An advance notification filing shall be considered by the department to be a public record under *Louisiana Revised Statutes*, title 44, chapter 1, Louisiana Public Records Law, and subject to disclosure to the public.

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, Business Incentives Services, through the department's online Fastlane portal no later than 24 months after the department has received the advance notification and fee, except that upon request, a business shall receive a thirty-day extension of time in which to file its application, provided that the request for extension is received by the Department no later than the filing deadline. Failure to file an application within the prescribed timeframe will result in the expiration of the advance notification.

1. The application shall include a detailed project description clearly stating the nature and scope of the proposed project. For example, whether the project is the construction of a new facility, renovation of an existing facility, or an increase in workforce. Where possible, identify specific project goals, milestones and costs that may be verified by both the department and LDR for subsequent contract compliance review.

2. Applications submitted by COVID-19 impacted retail businesses shall include support documentation evidencing a physical and active operation in Louisiana on March 13, 2020, and that it ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency.

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is $500 and the maximum application fee is $15,000 for a single project;

3. an additional application fee will be due if a project's employment or investment scope is or has increased, unless the maximum has been paid.

D. An application to renew a contract shall be submitted with an application fee and filed within six months prior to the initial contract expiring. The board may approve a request for renewal of an expired contract filed less than five years after expiration of the initial contract, and may impose a penalty for the late filing of the renewal request, including a reduction of the five year renewal period.

1. The application for renewal shall include a detailed project description stating the nature and scope of the project.

E. The advance notification, application, or annual certification is not deemed to be filed until all information requested on the form and the required fees are received by LED. Processing fees for advance notifications, applications, or annual certification that have been accepted for eligible projects shall not be refundable.

F. Applications may be deferred to a later board meeting date at the request of the applicant, but shall not exceed presentation at a board meeting occurring more than 12 months after the filing of the application, except as otherwise approved by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), LR 41:1085 (June 2015), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:28 (January 2023), repromulgated LR 49:341 (February 2023).

§1109. Application Review and Determination

A. Application Review

1. The department will assign a project number and review the advance notification form to determine if the employer is qualified pursuant to §1105. The employer will be notified of the project number and due date of the application packet. Certification of the employer's primary qualification, on the prescribed form, must be submitted by the applicant, prior to the application being received by the department.

2. The application packet must be completed through the department’s online Fastlane portal by the due date. If the application is incomplete, the department may request additional information prior to further action. The application fee must accompany the application packet pursuant to §1107.C.

3. The employer must provide all information requested by the department for purposes of verifying employer qualifications, gross payroll, wages, new direct jobs, and the value of the basic health benefits plan or health insurance coverage, including but not limited to a list of all employees, their positions and wages, and a copy of the basic health benefits plan or health insurance coverage policy.

4. LED reserves the right to request missing information, which shall be provided to LED within 60 days. Applications with missing or inadequate information after this time frame shall be considered late filings.

B. Determination. The department shall determine whether the employer is qualified, the amount of gross payroll, the value of the basic health benefits plan or the health insurance coverage, the number of new direct jobs and the benefit rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 49:28 (January 2023), repromulgated LR 49:342 (February 2023).

§1111. Consultation with the LWC and the LDR

A. The department will provide a copy of the application and all relative information to the LWC and the LDR for review. Either the LWC or the LDR or both may require additional information from the applicant.

B. The department must receive a letter-of-no-objection or a letter-of-approval from the LWC and the LDR, prior to submitting the application to the board for action. If LWC or LDR issues an objection to an application other than an objection because an applicant is in active negotiations with, under audit by or in litigation with the department issuing the objection, the applicant has six months to clear the objection or the application shall be cancelled. The six-month period shall begin on the date LED sends written

notification to the company of the objection received from LWC or LDR. Applicants may demonstrate active negotiation to LED by providing written documentation periodically, but at least every six months, of ongoing, bilateral communications between the applicant or its representative and LWC or LDR as applicable, even if such communication begins after the objection was issued, or other written verification as approved by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), LR 49:29 (January 2023), repromulgated LR 49:342 (February 2023).

§1115. Department Recommendations to Board

A. After its review and determination the department will prepare the application information in a format suitable for presentation to the board.

B. The department will make a presentation to the board as to the economic impact and the benefits to be received.

C. The department will make recommendations for approval or disapproval, and will provide information on behalf of the LWC and the LDR.

D. The board must approve the application prior to a contract being issued.

E. Applicant or its representatives will be notified of the board meeting date at which their application will be considered. The applicant should have someone present who is able to answer any questions the board may have regarding the information contained in the application, otherwise, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011).

§1117. The Contract

A. The board, after no objection from the executive director of the LWC and secretary of the LDR, and with the approval of the governor, may enter into a contract with an employer for a period up to five years. The business must execute its portion of the contract and return it to Business Incentive Services within 90 days. If the contract is not returned within 90 days, the board's approval shall be deemed rescinded.

1. A contract with an employer shall be limited to a single project site and the benefits the employer shall receive will be based upon the operations at that location. An employer may have only one contract in effect for a project site, except as provided below.

2. Upon written approval of the department, an employer may have one additional contract in effect for a project site for a subsequent expansion project that is distinct from the project associated with the original contract, and that increases the number of new direct jobs at the site by at least 25 percent. If new direct jobs are not increased by at least 25 percent by the end of the third fiscal year of the additional contract, the contract shall be terminated and all benefits for the site shall be determined under the original contract.

3. An employer may have multiple contracts covering multiple locations. The eligibility of each location shall be determined separately.

4. For each contract, the department shall certify that the employer has a net overall increase in employment statewide for each new direct job.

5. A contract may, with the approval of the board, be transferred to a business entity purchasing and continuing the operation of a project site. Upon such transfer, the employment baseline shall be that of the purchaser during the 45-day period prior to the purchase.

6. A contract shall be limited to one employer receiving payroll rebates, however the employer's named related entity or affiliate may generate a sale and use tax rebate or project facility expense rebate for their expenditures directly relating to the project site, but payable to the contract holder, if the following conditions are met:

a. the employer meets all program requirements;

b. the entity is disclosed by the employer in its application; or

c. the entity is listed in the contract attachment Schedule One, which may be amended with the approval of the department and the board.

7. A fee of $250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location.

B. The contract may be renewed for an additional five years provided that:

1. the employer has complied with all the terms of the contract;

2. the employer has met the statutory minimum hourly wage for the new direct jobs subject to the benefit rate established when the contract was entered into; and

3. the hourly wage rate has increased by an amount which is no less than the greater of either of the following:

a. the hourly wage rate has grown by the percentage increase in the Consumer Price Index published by the U.S. Department of Labor for the five years of the initial term of the contract, compounded; or

b. the hourly wage rate has increased by 2 percent for each of the five years of the initial term of the contract, compounded annually;

c. the greater of the increases required under items a. and b. above shall become the minimum hourly wage for the renewal contract.

C. No contract shall be executed if:

1. the employer has defaulted, not repaid a loan, or not repaid an obligation involving public funds;

2. the employer declared bankruptcy and the obligation to pay or repay public funds or monies was discharged as part of such bankruptcy a contract shall not be executed; or

3. the employer is in default on any filing or payment to the state, or any of its agencies or political subdivisions, for which an assessment or judgment is final.

D. Contract Voided. Violation of the provisions of §1117.C shall void the contract and any rebates paid to the employer prior to the date the violation is discovered, the rebates will be recovered by adding to the income tax liability for the taxable year the violation occurred. Additionally, interest will be assessed from the date of the violation and the employer shall receive no further rebates.

E. Contract Suspended

1. If a rebate is received by an employer as provided under this provision and the employer is rendered an assessment or judgment that is final and nonappealable in favor of the state or any of its agencies or any of its political subdivisions, the contract shall be suspended pending the settlement of the assessment. No rebate shall accrue to the employer under the contract during the period of suspension.

2. After the employer's fiscal year for which the employer applied for his third annual rebate, if at any other time during the 10-year contract period the employer applies for a rebate following the end of the employer's fiscal year, and the verified gross payroll for the fiscal year does not demonstrate the required minimum new direct jobs and the required gross payroll, the rebates shall be suspended and shall not be resumed until such time as the payroll and job requirements are met. No rebate (payroll rebate, sales and use tax rebate or project facility expense rebate) shall accrue or be paid to the employer during a period of suspension.

F. Contract Rebates Reduced

1. If the employer receives a rebate and it is subsequently determined the employer did not qualify for the rebate, future rebates will be reduced by the amount received by the employer.

2. If there are no future rebates to deduct the amount owed the state, the tax liability of the employer will be increased by the amount of the rebate for the taxable period non-qualification was determined.

3. The secretary of the LDR may recover any rebates previously granted to an employer but which rebates disallowed as authorized by R.S. 47:1561.2. The employer shall waive prescription for the purpose of recovering any disallowed rebates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), LR 42:866 (June 2016), LR 49:29 (January 2023), repromulgated LR 49:342 (February 2023).

§1118. Project Completion

A. All companies, whether seeking a payroll rebate, sales and use tax rebate or project facility expense rebate, shall file a minimum of one project completion report and one affidavit of final cost as follows.

1. An applicant may file a preliminary project completion report no earlier than with its third fiscal year filing, but no later than with the filing of a final project completion report.

2. An applicant shall file a final project completion report within six months after the project ending date or the governor's signature on the contract, whichever is later.

3. No more than two project completion reports (one preliminary and one final report) may be filed per five year contract period.

4. Project completion reports shall be submitted through the department's online Fastlane portal.

5. A fee of $250 shall accompany all project completion report filings, or any project completion report amendment filings.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the project facility expense rebate is elected.

C. The affidavit of final cost shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

E. The basis for rebate claims (sales and use tax rebate or project facility expense rebate) shall not exceed the costs listed on the affidavit of final cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 49:29 (January 2023), repromulgated LR 49:343 (February 2023).

§1119. Payroll Incentive Rebates

A. Except as otherwise provided herein an employer who has entered into a contract may receive a rebate that is calculated by multiplying the benefit rate times the annual gross payroll.

B. Notwithstanding anything to the contrary in either Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended, the following rules shall apply with respect to the application of the rebate allowed.

1. The incentive rebate allowed an S corporation shall be paid to the S corporation entity and not the individual shareholders of the corporation.

2. The incentive rebate allowed a partnership, limited liability partnership (LLP), or limited liability company (LLC) shall be paid to the entity and shall not be paid to the individual partners or members of the entity.

C. Notwithstanding any other provision of law to the contrary in Title 47 of the Louisiana Revised Status of 1950, as amended, the secretary of the LDR shall make the rebate.

D. In order to receive the rebate provided for by the contract, an employer shall apply with the department.

1. The application shall be filed on the prescribed form designated by the department and shall contain the required information to determine if the applicant is qualified.

2. The application shall contain a sworn statement, by a duly authorized officer of the employer, listing the names of persons or other entities who have received or who will receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits of this program.

E. In order to qualify to receive the rebate, the employer applying shall meet the requirements of §1101.B.1 and 2.

F. The department shall determine if an applicant is qualified to receive rebates.

G. The approved employer shall apply annually for rebates with the department in the prescribed format and provide the information as described in §1123. The employer may be audited by the department to verify eligibility. The rebates may continue as long as the employer complies with the approved contract and remains eligible.

H. The benefit rate shall be determined annually based on information provided by the employer on the rebate claim reports made annually.

I. The payroll rebates shall be paid annually after the employer submits the required annual report as specified in §1123 and the department determines the employer is eligible for the rebate for that fiscal year. The report shall be filed within 90 days following the end of the employer's fiscal year with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), repromulgated LR 49:30 (January 2023), repromulgated LR 49:343 (February 2023).

§1120. Sales and Use Tax Rebate or Project Facility Expense Rebate

A. Project Facility Expense Rebate

1. The project facility expense rebate is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service.

a. Qualified expenditures include intangible costs such as architectural and/or engineering fees prior to the contract effective date.

b. The project facility expense rebate may not be elected if more than 50 percent of the qualified expenditures relating to the project are incurred before the filing of the advance notification.

2 The project facility expense rebate claim must be filed with the Department of Revenue, Taxpayer Compliance—SSEW Division, with the required documentation.

3. The project facility expense rebate may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The project facility expense rebate applies to the assets that are related to the qualified expenditures, provided that the business reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

4. The claim for the project facility expense rebate must be filed with the Department of Revenue no later than six months after the Department of Economic Development signs a project completion report and it is received by the Department of Revenue, the political subdivision, and the business. The project completion report shall not be signed until the project is complete and the contract has been approved by the board and the governor. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

B. Sales and Use Tax Rebates

1. The Quality Jobs Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales

and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Taxpayer Compliance—SSEW Division, and must include the following:

a. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or by the contract holders named affiliates listed in the Quality Jobs Program contract. Invoices as required under R.S. 51:2457 shall also be required;

b. certification that the listed materials are reasonably expected to qualify for a rebate under the Quality Jobs Program; and

c. certification that state sales and use taxes have been paid on the listed items.

2. The request may be filed on the official Department of Revenue "claim for rebate" form or on other LDR approved forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

3. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after the Department of Economic Development signs a project completion report and sends it to the Department of Revenue, the political subdivision, and the business, or no later than 30 days after the end of the calendar year and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

4. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 49:30 (January 2023), repromulgated LR 49:343 (February 2023).

§1121. Rebate Payments

A. In addition to the payroll rebates, an employer shall be entitled to sales and use tax rebates or the project facility expense rebate as authorized in R.S. 51:2456, if the employer meets the hiring requirements of R.S. 51:2455 Program and meets the other limitations, procedures, and requirements of R.S. 51:2456 and 2457 and the rules promulgated there under, Louisiana Administrative Code, Title 13, Part I, Chapter 11.

B. A request for rebate of local sales and use taxes must be accompanied by an endorsement resolution approved by the governing authority of the appropriate political subdivision from which rebates will be sought. The endorsement resolution must clearly state the local governmental subdivision intends to rebate the allowable sales and use taxes for the project. The resolution must be filed with the department prior to the board taking action on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), LR 49:30 (January 2023), repromulgated LR 49:344 (February 2023).

§1123. Rebate Claim Filing

A. Payroll Rebate

1. An annual certification and a fee of $250 shall be filed annually, commencing within six months after completion of the applicant’s fiscal year or execution of the contract, whichever is later. The department may grant an extension of up to an additional sixty days provided the extension is requested prior to the filing deadline. Failure to file an annual certification within the prescribed timeframe may result in the annual rebate being denied or restricted. An annual certification is required in each year the contract is active, irrespective of whether annual rebates are being claimed.

2. The annual report will provide information on the number of employees at the site, the number of employees statewide, the number of new direct jobs created at the site, the number of hours worked by each employee weekly, the hourly wage paid employees in the new direct jobs, the position title, the employee's address, the hire date, the term date, the insurance acceptability, the percentage of the insurance paid by the employer, and the annual gross wages.

3. The department may request additional information and documentation from the employer as may be necessary to determine the eligibility for the annual rebate for that fiscal year or may request the employer revise the annual report.

4. Upon approval the department will advise the LDR of the eligible rebate. The LDR shall make payment of the rebate after offset, if applicable, under R.S. 47:1622. The rebate shall be considered a refundable overpayment for the purpose of such offset.

5. If the actual verified annual gross payroll for the employer's third fiscal year does not show a minimum of 15 or five new direct jobs and does not equal or exceed a total annual payroll for new direct jobs of either $675,000 or $225,000, whichever is applicable, the employer will be

determined to be ineligible under this Chapter. The LDR will be notified and the tax liability for the current tax period in which the failure to meet the requirements occurs shall be increased by the amount of rebates previously allowed.

6. If the department determines that the employer has large number of employees, multiple locations, or other factors that would cause the number of new direct jobs to be not readily determined, the department may require the employer to obtain a new and separate unemployment compensation number with the LWC for reporting new direct jobs.

B. Sales and Use Tax Rebate or Project Facility Expense Rebate

1. An annual employee certification report with a $250 annual employee certification report fee must be filed on all active contracts for the employer to qualify for the sales and use tax rebate or project facility expense rebate under this Chapter.

2. Sales and Use Tax Rebate or Project Facility Expense Rebate–Advance Notification. An employer who receives a Quality Jobs Program contract and who meets the requirements for sales and use tax rebates as authorized in R.S. 51:2456 and §1121 of these rules, will satisfy the advance notification requirement for sales and use tax rebates or project facility expense rebate for the Quality Jobs Act contract by submission of the Quality Jobs Program advance notification referred to in §1107 of these rules. The sales and use tax rebate or project facility expense rebate period shall begin on the contract effective date, unless otherwise provided in the contract, and shall be no longer than 5 years, and shall not extend beyond the term of the Quality Jobs Program contract. In order to receive rebates of local sales and use taxes, the employer must satisfy the provisions of §1121.B of these rules.

3. No more than two project facility expense rebate claims may be filed during each five year contract period.

4. Sales and use tax rebates claims may be filed on a monthly, quarterly or annual basis during each five year contract period, at the discretion of the company receiving the benefit, as long as all requirements for issuance have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011), LR 42:866 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 49:31 (January 2023), repromulgated LR 49:344 (February 2023).

§1125. Prohibited Incentives

A. A qualified employer that enters into a contract under this Chapter shall not be eligible to receive the other credits or exemptions provided for in the following provisions of law except as provided for in R.S. 51:2456(B):

1. R.S. 47:34 (tax credit for generation of new jobs in Louisiana);

2. R.S. 47:38 and 287.757 (income tax credit for conversion of vehicles to alternate fuel usage);

3. R.S. 47:4301 through 4306 (Industry Assistance Program—income tax, corporate franchise tax, state sales tax, and excise tax exemptions for manufacturing establishments);

4. R.S. 47:6004 (employer credit for employment of previously unemployed person);

5. R.S. 47:6009 (Louisiana basic skills training tax credit-income tax credit);

6. R.S. 47:6010 (employer income tax credit for employee alcohol and substance abuse treatment programs);

7. R.S. 51:1787 (Enterprise Zone Program—incentives tax exemption from sales and use tax materials to be used in the construction of a building and for machinery and income tax credit for each employee in an enterprise zone);

8. R.S. 47:287.748 (re-entrant jobs credit for formerly incarcerated employees—corporate income tax);

9. R.S. 47:287.749 (corporate income tax credit for new jobs);

10. R.S. 47:287.753 (neighborhood assistance income tax credit);

11. R.S. 51:2351 et seq. (Technology Commercialization Credit and Jobs Program).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011).

§1127. Penalties

A. Penalties are provided under R.S. 51:2460 for false or fraudulent information in making application, making a claim for rebate, or other instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003), amended by the Office of Business Development, LR 37:2595 (September 2011).

§1131. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with R.S. 51:2451-R.S. 51:2462 or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003), amended by the Office of Business Development, LR 37:2595 (September 2011).

§1133. Applicability of Act 126 of the 2015 Legislative Session to the Quality Jobs Program

A. Pursuant to Act 126 of the 2015 Regular Session of the Louisiana Legislature:

1. for projects filing an advance notification on or after July 1, 2015, from July 1, 2015, through June 30, 2018, annual payroll rebates will be approved for payment at a rate of 5 percent or 6 percent (as applicable) multiplied by 80 percent of payroll. Payroll rebates approved on and after July 1, 2018, will be calculated on 100 percent of payroll. However, annual payroll rebates claims that are due before July 1, 2018, but not timely filed are subject to reduction in the discretion of the Board of Commerce and Industry;

2. projects filing advance notification before July 1, 2015, are not affected by Act 126, and payroll rebates will be calculated on 100 percent of payroll irrespective of date of approval for payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:866 (June 2016).

Chapter 13. Louisiana Biomedical Research and Development Park Program

§1301. General

A. Relief from taxation may be granted as provided under R.S. 46:318.1(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1303. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise: *Medical Concerns* which are technology-based or innovative growth oriented are defined as companies engaged in the application of science especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, and sale of products that emerge from or depend upon the practical application of scientific or technological advances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1305. Qualifications

A. To qualify for the Louisiana Biomedical Research and Development Park Program tax incentives an applicant must be a *medical concern* as defined in this rule, must provide documentation evidencing its location in the park area, as described in R.S. 46:813.A, and must demonstrate, by written statement, its viability and ability to contribute to the improved health care of citizens and through improved economic conditions, creation of jobs and to the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant including, but not limited to, the following:

1. the benefits to the state in terms of continued employment opportunities, expenditures for goods and services, contributions to the revenue base of the state and local governments, and the creation of new and additional permanent jobs;

2. competitive conditions existing in other states or in foreign nations;

3. the economic viability of the applicant, and the effect of any tax exemptions or credits on economic viability;

4. the effects on the applicant of temporary supply and demand conditions;

5. the effect of casualties and/or natural disasters;

6. the effects of United States and foreign trade policies;

7. the effect of federal laws and regulations bearing on the economic viability within the state of the applicant; and

8. the competitive effect of like or similar exemptions or credits granted to other applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1307. Filing of Applications

Editor's Note: Applications must be filed now at the following address:
Office of Business Development Services
Box 94185
Baton Rouge, LA 70804-9185

A. An "Advance Notification" of intent to file for the Louisiana Biomedical Research and Development Park tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, and/or occupation of facilities. An advance notification fee of $100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional

information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. Applications must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than $200 and in no case shall a fee exceed $5,000 per project. A fee of $50 shall be charged for the renewal of a contract.

C. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of $100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

E. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §1307.B above.

F. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve further extension. All requests for extension must be in writing and must state why the extension is requested.

G. Please make checks payable to:

Louisiana Office of Commerce and Industry

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1309. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

A. The Office of Commerce and Industry shall forward the application with its recommendations to the Secretary of Economic Development and the Secretary of Revenue and Taxation for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the Secretary of Revenue and Taxation shall submit a Letter of No Objection in lieu of a Letter of Recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1311. Application Shall Be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue and Taxation and an endorsement resolution of the local taxing authorities and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1313. Board of Commerce and Industry Enters into Contract

A. Upon approval of the application, by the governor and the Joint Legislative Committee on the Budget, the Board of Commerce and Industry shall enter into contract with the applicant for exemption of the taxes allowed by R.S. 46:813.

1. A copy of the contract shall be sent to the Department of Revenue and Taxation and to the local political subdivision's tax authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1315. Rebates on Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors.

B. State sales and use tax rebates shall be filed according to official Department of Revenue and Taxation procedures.

C. Local sales and use tax rebates shall be filed in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1317. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1319. Affidavits Certifying Eligibility Filed Annually

A. On January 15 of each year, the businesses with contracts will file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §705. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after revocation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1321. Appeals Procedure

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1323. Income and Franchise Tax Requirements

A. In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five-year income and franchise tax liability must be provided to the Board of Commerce and Industry by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1325. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Board of Commerce and Industry might have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1327. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue and Taxation.

B. The taxing authorities of the local governmental subdivision issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue and Taxation who will advise the proper procedures to follow in order to obtain the state sales/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

Chapter 15. Louisiana University Research and Development Parks Program

§1501. General

A. Intent of Law. To provide for the reduction in taxes for concerns located in research and development parks operating in association with a public or regionally accredited independent university in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1503. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise.

Concern—any technology-driven or innovative, growth-oriented company engaged in the application of science, especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, assembly or sale of products or services that emerge from or depend upon the practical application of scientific or technological advances.

Construction Period—begins the first day on which foundations are started, or where foundations are unnecessary, the first day that materials or equipment for that project are received, and ends the day that construction is completed or operations begin, whichever is later.

Develop—to aid in the growth of or bring into being.

Innovative Growth-Oriented—utilizing new concepts or ideas to induce or sustain growth.

Manufacturing Establishment—for the purposes of receiving benefits under this program shall mean those engaged in the mechanical or chemical transformation of materials or substances into new products, or assembling component parts if the finished product is neither a structure nor other fixed improvement.

Park Area—the area included in any *research* and development park which is operated in association with a public or regionally accredited independent university in the state.

Park Developer—person(s) or entity responsible for preparing the park area for use.

Program—the Louisiana University Research and Development Parks Program.

Research—a scientific or scholarly investigation process.

Technology—the application of science, especially to industrial or commercial objectives and the whole body of methods and materials used to achieve such objectives.

University Research and Development Park—includes nonprofit or for-profit research and development parks that have established a relationship with a university or are part of a university. The relationship may be a contractual one including joint ventures or actual operation of a research and development park by a university, or it may take the shape of a formal operational relationship including cooperative or sponsored ventures between a research park and university. A University Research and Development Park shall have:

a. existing or planned land and buildings primarily designed for private and public research and development facilities, technology driven and science-based companies relating to manufacturing, assembly, or support services;

b. a contractual and/or operational relationship(s) with a university or other institution of higher education;

c. a role in promoting research and development by the university in partnership with industry, assisting in the growth of new ventures, and promoting economic development;

d. a role in aiding the transfer of technology and business skills between the university and industry tenants;

e. a resolution from the affiliated university describing its participation in the program.

B. Park developer must submit a resolution to the Office of Commerce and Industry as soon as a park has been established. The resolution must give the following information:

1. specific location and boundaries of the park;

2. documentation of university affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1505. Criteria

A. To qualify for the Louisiana University Research and Development Parks Program tax incentives an applicant must be a *concern*, as defined in §1503.A, must provide documentation evidencing its location in a University Research and Development Park, must document its association with a Louisiana public or regionally accredited independent university, and must demonstrate, by written statement, its viability to contribute to the improved scientific information and technology available to the citizens of Louisiana and its ability, through improved economic conditions, to stimulate the creation of jobs and the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1506. Resolution from Local Governmental Subdivision

A. The local governmental authority must file with the Board of Commerce and Industry a resolution for each park located within the jurisdiction of its political subdivision, adopted by the governing authority, which provides for participation by that governmental subdivision in the program. The resolution by the local governing authority shall authorize the Board of Commerce and Industry to grant rebates and/or exemptions on eligible sales taxes of the local political subdivision as outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1507. Filing of Applications

Editor's Note: Applications must be filed now at the following address:
Office of Business Development Services
Box 94185
Baton Rouge, LA 70804-9185

A. An advance notification of intent to file an application for the Louisiana University Research and Development Parks tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, or occupation of existing facilities. An advance notification fee of $100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. An application must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than $200 and in no case shall a fee exceed $5,000 per project. A fee of $50 shall be charged for the renewal of a contract. An estimated five-year income and franchise tax liability must be provided to the Board of Commerce and Industry. This information will be requested on the application form and is to be used to estimate the economic impact of the project to the state.

C. A copy of any application requesting rebate of and/or exemption from taxes of any political subdivision shall be transmitted by the applicant to the governing authority of each political subdivision levying any such taxes. Rebates made by local governing subdivisions may include all of those sales taxes that are not dedicated to the repayment of bonded indebtedness.

D. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of $100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

E. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

F. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §1507.B above.

G. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve a further extension. All requests for extension must be in writing and must state why the extension is requested.

H. In addition to the information contained in the application, the applicant shall make available any additional relevant information pertinent to the application that the Secretary of the Department of Economic Development or the Board of Commerce and Industry may request.

I. Please make checks payable to: Louisiana Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1509. Recommendations of the Secretaries of Economic Development and Revenue

A. The Office of Commerce and Industry shall forward the application with its recommendations to the Secretary of Economic Development and the Secretary of Revenue for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue shall submit their recommendations (the Secretary of Revenue shall submit a Letter of No Objection in lieu of a letter of recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1511. Application Shall Be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue, an endorsement resolution of the local taxing authorities, and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1513. Contract Approvals

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendation, together with all supporting documentation and the recommendations of the Department of Economic Development and the Department of Revenue, to the governor and the Joint Legislative Committee on the Budget. When the governor and Joint Legislative Committee on the Budget find that a concern satisfies the requirements of the law and these rules, they shall advise the Board of Commerce and Industry that it may enter into a contract with such a concern providing for tax rebates, exemptions, and/or credits as allowed by R.S. 17:3389. The contract shall be under the terms and conditions as deemed to be in the best interest of the state. A copy of the contract shall be forwarded to the Department of Revenue, to the local governmental subdivision's tax authority, and the tax collecting officer or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1515. Tax Incentives Available under Contract

A. Tax exemptions may be granted for any of the following:

1. state corporate franchise tax;

2. state corporate income tax;

3. any other tax imposed directly by the state on the applicant.

B. The contract will not authorize the applicant to make tax-free purchases from vendors. Rebates of taxes paid may be granted for any of the following:

1. sales and use taxes imposed by the state or local governmental subdivisions on:

a. machinery and equipment used by the applicant;

b. materials and building supplies used in the repair, reconstruction, modification, or construction of a plant or facility;

c. a tax credit may be granted against the tax liability due to the state for the corporate income tax and the corporate franchise tax, provided however, that such credit shall not exceed the cost of purchase by the concern of machinery and scientific equipment used on the premises of the concern located in the park area;

d. materials and supplies necessary for or used in the manufacturing or assembly of the applicant's product, or delivery of services but not on goods or materials that become an integral part of the product or process;

e. any other goods and services used or consumed by the applicant's facility in the park.

C. State sales and use tax rebates shall be filed according to official Department of Revenue procedures.

D. Local sales and use tax rebates shall be filed in the manner prescribed by the local governmental subdivision taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1516. Tax Relief Granted

A. The amount of state tax rebates and/or exemptions granted to a concern may be a maximum of 30 percent of the tax liability for state corporate franchise, income, and state sales and use taxes of the concern during the fiscal year preceding the fiscal year for which the rebates and/or exemptions are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

B. The amount of the local governmental subdivision tax rebates granted to a concern may be a maximum of 100 percent of the tax liability for sales taxes due to that local governmental subdivision by the concern during the fiscal year preceding the fiscal year for which the rebates are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

C. Companies are eligible to receive tax benefits, under this Chapter, for only facilities located within the park.

D. Tax rebates are available for machinery and equipment when used inside the park by the applicant for research or in the manufacturing, assembly of a product, or delivery of a service. Machinery and equipment shall not be leased, rented, moved, or used, outside the physical premises of the concern receiving the tax benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1517. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract. If the contract is canceled, the Board of Commerce and Industry shall notify the Department of Revenue, the local governmental subdivision and the agency collecting the local taxes, of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1518. Contract Renewals

A. The initial contract may be entered into for a period up to a maximum of five years under such terms and conditions the board deems to be in the best interest of the state. Each contract may be renewed for a period of up to five years, provided that the total number of years of a contract shall not exceed 10 years, the terms and conditions of which shall be deemed in the best interest of the state. Any renewal contract shall become effective only if the local governmental subdivision levying the tax approves of the renewal prior to the action by the Board of Commerce and Industry to renew the contract. The applicant shall receive and submit the approval of the local governmental subdivision to the Board of Commerce and Industry along with the request for a contract renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1519. Annual Review

A. On February 15, of each year, the contractee shall file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §1505. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Economic Development will notify the Department of Revenue within 30 days after revocation of a contract. On February 15, of each year, the contractee shall provide the Department of Economic Development with a copy of its most recent research and development report from the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1521. Appeals and Petition Procedures

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the board's staff at least 30 days prior to the meeting of the board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1525. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have a representative present who is able to answer any questions the Board of Commerce and Industry may have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

B. The local governing authority of the political subdivision levying taxes within the park shall be notified of the date of the Board of Commerce and Industry meeting at which any application for benefits under this program will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1527. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue.

B. The taxing authorities of the local governmental subdivision issuing an endorsement resolution should be contacted by the applicant to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue who will advise the proper procedures to follow in order to obtain the state sale/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

Chapter 17. Industry Assistance Program

§1701. Use of Louisiana Contractors, Labor and Supplies

A. The Louisiana Department of Economic Development ("LED") and the Board of Commerce and Industry ("board") encourages applicants and their contractors to give preference and priority to Louisiana manufacturers and in the absence of Louisiana manufacturers, to Louisiana

suppliers, engineers, contractors and labor except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;

2. the applicant's use of machinery, supplies and equipment manufactured in Louisiana, or sold or distributed by Louisiana residents;

3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and

4. the applicant's creation or continuance of new and retained employment of Louisiana residents; and

5. the applicant's use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant's facilities.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1703. Qualifications

A. To qualify for the exemption, in whole or in part, from the taxation referenced in Section 1715, the applicant must be:

1. a person defined as an *employer* within the meaning of R.S. 51:2453(1)(b)(1) and in §1105.A.1-A.5 of the quality jobs rules promulgated by this board;

2. an existing business with operating Louisiana facilities. The applicant must be able to demonstrate to the board's satisfaction that because of the exemption as well as its current and projected operating business plan and projections with the exemption, it will continue to maintain its current employment levels and will commit to significant investment sufficient to continue to grow and prosper in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1705. How to Apply

A. An "Advance Notification" of intent to file for Industry Assistance shall be filed by the company at least 90 days prior to filing an application. An advance notification fee of $100 shall be submitted with the prescribed advance notification form.

B. Application to the Board of Commerce and Industry for the Industry Assistance Program must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, along with the required additional information.

C.1. An application fee shall be submitted with the application based on the following range of taxes estimated to be exempted.

Fee Amount	Range of Taxes to be Exempted
$200	$1 to $15,000
$300	$15,001 to $50,000
$400	$50,001 to $150,000
$500	over $150,000

2. LED reserves the right to return the advance notification, application, or affidavit of final cost 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, applications, or affidavits of final cost which have been accepted, will not be refundable.

D. Application must be accompanied by five years of comprehensive financial statements, prepared in accordance with generally accepted accounting principles; and, which contains relevant information that will support the application justification. The justification should refer to qualitative as well as quantitative information contained in the financial statements which can materially demonstrate the need for the program benefits, and the resulting cost/impact benefits to the state on the basis of sound business plans and objectives. Qualitative information for the previous five year period should provide explanation about: economic resources, past and projected capital investment in the facilities, past and projected employment levels in the facilities and the wages, salaries and employee benefits paid to employees and projected into the future, the sources of prospective cash inflows: obligations to transfer economic resources to others, the causes of prospective cash outflows; and earnings, the financial results of operations and other events and conditions that affect the enterprise, and comparables for the applicant's similar facilities and operations in other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3497 (December 2011).

§1707. Additional Information May Be Required

A. In addition to the information contained in the application, the applicant shall make available any additional information and records that LED and/or the board may request.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1709. Public Hearings

A. The Board of Commerce and Industry shall conduct a public hearing on an application for exemption that receives the recommendation of the secretary of Economic Development who, personally or through his designee, shall present his recommendations to the Board of Commerce and Industry. After due consideration to all facts and testimony, the Board of Commerce and Industry shall determine whether or not the approval of the application should be recommended to the governor and to the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1711. Requirements for Exemption

A. The secretary of Economic Development, the Board of Commerce and Industry, the governor and the Joint Legislative Committee of the Budget may consider any and all factors which are relevant to the continued operations of the applicant. These should include, but not be limited, to the following:

1. the benefits to the state in terms of continued employment opportunities, payroll, expenditures for goods and services, contributions to the revenue base of the state and local governments and the creation of new and additional permanent jobs in conjunction with the considerations set forth in §§1701 and 1703 of these rules;

2. competitive conditions existing in other states or in foreign nations including the effect, if any, of United States and foreign trade policies, federal laws and regulations, and the competitive effect of like or similar policies upon related businesses;

3. the economic viability of the applicant and the effect of any tax exemption on maintaining or increasing capital investment, employment levels economic viability as reflected in the business plan of the applicant and the manner in which it addresses future competitive contingencies and other conditions pertinent to the prospects for maintaining or increasing investment capacity and job growth;

4. the applicant's history of compliance with Louisiana and federal environmental, tax, fair trade, civil rights and other laws in its operations.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1713. Approval of the Joint Legislative Committee of the Budget and the Governor

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendations together with all supporting documents and the recommendations of the Department of Economic Development to the governor and the Joint Legislative Committee of the Budget the assessor of the parish in which the plant is located, each member of the legislature, and the governing authority of each political subdivision as required by the statute. The governor and the Joint Legislative Committee on the Budget may determine that all, part or none of the recommendation of the board is to be followed and upon making that determination, shall advise each other and the board that the recommendation is rejected, or that the board may, subject to any restrictions imposed by the governor or the Joint Legislative Committee of the Budget, enter into a contract with such establishment exempting it from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3498 (December 2011).

§1715. Taxes to be Exempt

A. The Department of Economic Development shall report to the governor and to the Joint Legislative Committee of the Budget the effect upon the applicant of the taxes or portions thereof to be exempt. Taxes that may be exempted include:

1. the corporation franchise tax;

2. sales and use taxes imposed by the state on any goods, services, material and supplies necessary for or used in manufacturing or production of a product or consumed by the applicant;

3. sales and use taxes imposed by the state on machinery and equipment to be used by the applicant, or materials and building supplies, whether purchased directly or through a contractor, to be used in the repair, reconstruction, modification or construction of plant and facilities;

4. the corporation income tax;

5. any other taxes imposed directly by the state on the applicant.

B. The Department of Economic Development shall recommend to the governor, such tax relief as shall be appropriate to and consistent with the purposes of statute and these rules. Provided, however, that the governor and the Joint Legislative Committee on the Budget shall agree to a determination of the relief to be provided by contract with

the applicant subject to a maximum amount of exemption from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1717. Limits to Amount of Tax Exemption

A. The total amount of tax exemptions that can be granted to any single applicant shall be reasonably proportionate to the amount that shall be granted to other applicants based upon each applicant's total number of employees in Louisiana and amount of capital investment in Louisiana, provided that the wages for each job must equal or exceed the average wage paid in the parish or parishes of business operation of the applicant. Exceptions may be made if the department determines and recommends to the Board of Commerce and Industry that an additional amount of exemption will materially improve the viability and stability of the applicant's operation in Louisiana as measured by jobs created or retained and capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1719. Contract Subject to Annual Audit and Review

A. The contract shall provide that the applicant will be subject to an annual audit by the Louisiana legislative auditor. The company will receive notice of the annual review 45 days in advance. A review fee of $100 must be returned and received 15 days prior to the appointment date of the annual review. The contract will be reviewed annually by both the Board of Commerce and Industry and the Joint Legislative Committee of the Budget. Should the audit or other review or other known facts and circumstances uncover a violation of the contract, the Board of Commerce and Industry, with the approval of the governor and the Joint Legislative Committee of the Budget, shall give notice, thereof. in writing, and unless the violation is corrected within 90 days, any remaining portion of the exemption from taxation granted under any contract entered into under this statute may be canceled. The contract may also be canceled if the need for the exemption or the grounds for the exemption are no longer applicable.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1721. Renewing the Contract

A. The initial contract can be entered into for any period not exceeding five years. Each contract may be renewed for periods of up to five years providing that:

1. the total number of years of exemption shall not exceed 15 years;

2. the applicant can show that it is in the best interest of the state of Louisiana to extend the contract;

3. the renewal is recommended by the Department of Economic Development, and the Board of Commerce and Industry; and

4. the renewal is approved by the Joint Legislative Committee on the Budget and the governor.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

§1725. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected applicant establishment shall submit to the division, at the time of submitting an application for industry assistance to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;

b. the methods it will use to:

i. encourage economically disadvantaged business participation;

ii. keep records of economically disadvantaged business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by an economically disadvantaged business in a timely manner; or

iii. cannot be performed by an economically disadvantaged business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Paragraph D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and Rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and Rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4306; R.S. 39:1956.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3499 (December 2011).

Chapter 19. Tax Equalization Program

§1901. General

A. Intent of Law. For qualifying manufacturing establishments, headquarters, or warehousing and distribution establishments, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Tax Equalization Program is an inducement to attract, retain, and encourage the expansion of, manufacturing establishments, headquarters, and warehousing and distribution establishments to Louisiana, which would not do so in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:3500 (December 2011).

§1903. Louisiana Manufacturers and Suppliers

A. The Louisiana Department of Economic Development (“LED”) and the Board of Commerce and Industry (“board”) encourages applicants and their contractors to give preference and priority to Louisiana manufacturers, and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;

2. the applicant’s use of machinery, supplies, and equipment manufactured in Louisiana, sold or distributed by Louisiana residents;

3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and

4. the applicant's creation or continuance of new and retained employment of Louisiana residents; and

5. the applicant's use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant's facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3500 (December 2011).

§1905. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;

b. the methods it will use to:

i. encourage economically disadvantaged business participation;

ii. keep records of economically disadvantaged business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by an economically disadvantaged business in a timely manner; or

iii. cannot be performed by an economically disadvantaged- business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Paragraph D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3501 (December 2011).

§1907. Eligibility for Submission of Application

A. An applicant for tax equalization must be either a manufacturing establishment, a headquarters, or a warehousing and distribution establishment.

B. The sites under consideration must be valid and viable for the proposed operations.

C. An applicant must either be located in another state or be located in Louisiana and contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which the applicant is or seeks to be located.

D. The state in which the establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of the Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3501 (December 2011).

§1909. Application Fees

A. An advance notification fee of $100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than $200 and in no case shall a fee exceed $5000 per project. A fee of $50 shall be charged for the renewal of a contract.

C. The Office of Business Development Services reserves the right to return the advance notification, application, or affidavit of final cost 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, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1911. Application Procedure

A. Prior to the formal announcement, an "advance notification" of intent to file for Tax Equalization must be filed with the Office of Business Development Services. The company will submit, on forms provided by the Office of Business Development Services, a comparison of taxes for all sites under consideration.

B. The secretary of the Department of Economic Development, after review of the advance notification shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Business Development Services, may be filed with the Office of Business Development Services. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Business Development Services. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Department of Revenue.

E. The Department of Revenue shall within 10 days after receipt of the notice file in writing with the Board of Commerce and Industry any objections it has to granting the exemption.

F. If no objection is made, the Board of Commerce and Industry shall send the recommendation to the governor with a finding that no objection was filed by the Department of Revenue. If any such objection is made, the Board of Commerce and Industry shall hold a contradictory hearing to determine whether such exemption should be granted and the Board of Commerce and Industry shall act as arbitrator at such hearing. The Board of Commerce and Industry shall make its recommendations in writing to the governor for a final determination.

G. The Board of Commerce and Industry, with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All contracts for tax equalization shall contain goals for new or retained employment, investment, and growth.

I. All information submitted will be held in confidence to the fullest extent permitted by the public records law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1913. Application Contents

A. The application shall be submitted on forms provided by the Office of Business Development Services. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

a. construction cost;

b. annual labor cost;

c. annual raw materials cost;

d. annual transportation cost:

e. annual power cost; and

f. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

a. state sales/use tax;

b. state corporate income tax;

c. state corporate franchise tax;

d. state ad valorem property tax (where applicable);

e. state inventory tax (where applicable); and

f. any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

a. local sales/use tax;

b. local ad valorem property tax;

c. local inventory tax; and

d. any other local taxes.

B. All applications for retention of an existing business located in Louisiana, shall demonstrate, to the satisfaction of the Board of Commerce and Industry, a real and compelling potential for the business to relocate to the competing site, including a demonstration that it is economically feasible to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3502 (December 2011).

§1915. Yearly Determination of Tax Equalization Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana corporate income and franchise tax return, the contractee shall furnish. to the Department of Revenue and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state; and

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue.

C. The data reflecting the tax burden, including any available tax incentives. which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Business Development Services will assist the Department of Revenue should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation for manufacturing establishments shall be granted in the following priority:

1. state corporation franchise tax;

2. state corporation income tax;

3. state sales and use tax on machinery and equipment to be used in manufacturing;

4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;

5. any other tax imposed by the state of Louisiana to which the applicant is subject.

G. Exemptions from taxation for headquarter shall be granted in the following priority:

1. state corporation franchise tax;

2. state corporation income tax;

3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the headquarters facility;

4. state sales and use tax on purchases of tangible personal property used in the construction of the headquarters facility;

5. any other taxes imposed by the state to which such businesses are subject.

H. Exemptions from taxation for warehousing and distribution establishments shall be granted in the following priority:

1. state corporation franchise tax;

2. state corporation income tax;

3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the warehousing and distribution establishment;

4. state sales and use tax on purchases of materials and supplies necessary for the on-site operation of the warehousing and distribution establishment;

5. state sales and use tax on purchases of tangible personal property used in the construction of the warehousing and distribution establishment;

6. any other taxes imposed by the state to which like businesses are subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3503 (December 2011).

§1917. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Business Development Services, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the project completion report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3503 (December 2011).

§1919. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of $100 for the inspection which will be conducted by the Office of Business Development Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1921. Contract Renewals

A.1. Except as otherwise provided in this Section, each contract of exemption entered into under authority of this Chapter shall be reviewed and reevaluated, and shall be subject to renegotiation, five years from the date of the execution of the contract and may be renewed for an additional five-year period.

2. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §1913.A.2 and 3 regarding certification of taxes. A renewal fee of $50 must accompany the renewal application.

B.1. Subsequent renewals for additional periods of five years or less may be granted to a contract holder whose contract has not expired as of the date of application for renewal if the applicant can demonstrate the conditions of the initial contract were met and the activities of the applicant in the state of Louisiana generate economic benefits to the state that exceed 20 times the benefit to the applicant of the incentive provided by this Chapter for the year preceding the request for renewal. Such benefit to the state shall be determined by the application of nationally recognized multipliers as appropriate and set forth in the Regional Input-Output Modeling System ("RIMS II"), or its successor publications, for the business operations of the applicant as published by Regional Economic Analysis Division BE-61, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230.

2. The contract holder's application for subsequent renewal shall include an attestation by an independent public accounting firm of the calculation of the economic benefit to the state.

3. In addition to the requirements of R.S. 47:3203, the Board of Commerce and Industry shall forward its recommendations, together with the proposed contract and all supporting documents, to the Department of Economic Development and the Joint Legislative Committee on the Budget. Upon receipt of the recommendations and proposed contract, the Joint Legislative Committee on the budget shall have 30 days to approve or reject the renewal contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1923. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have ninety days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

§1925. Environmental Report Requirement

A. Any applicant, the primary business of which is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana, shall submit with the application:

1. information relative to the impact the establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:3504 (December 2011).

Chapter 27. Technology Commercialization Credit and Jobs Program

§2701. Purpose and Application

A. The purpose of this Chapter is to implement the Technology Commercialization Credit and Jobs Program as established by R.S. 51:2351 et seq.

B. This Chapter shall be administered to achieve the following purposes:

1. to induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana;

2. to expand the economy of the state by enlarging its base of technology and research-based businesses;

3. to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and

4. to attract and retain the finest research faculty to Louisiana universities.

C. This Chapter shall apply to any person:

1. seeking to become qualified to claim a credit; or

2. claiming a credit.

D. Qualifying individuals or businesses that invest in the commercialization of Louisiana technology in Louisiana may earn, apply for, and be granted a refundable tax credit on any income or corporation franchise tax liability and earn a refundable tax credit based on new jobs created. Qualifying research centers that develop Louisiana technology to be commercialized may earn apply for, and be granted a refundable tax credit based on new jobs created.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2351 and 2353.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), amended LR 36:308 (February 2010).

§2703. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Basic Health Benefits Plan—a health benefits plan which shall be determined by the Department of Economic

Development to have a value of at least $1.25 per hour; shall include coverage for basic hospital care, and coverage for physician care; and shall include coverage for health care, which shall be the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act, 29 U.S.C.A. §201 et seq.

Commercialization—the development of a technology into a commercial product by going through the process of prototyping, securing funding, and other steps necessary to get the final product to the marketplace. Commercialization begins after a technology has been reduced to practice and the company is proceeding to develop a commercial market.

Commercialization Costs—investment in machinery and equipment, all expenditures associated with obtaining the rights to use or the use of technology, including fees related to patents, copyrights, and licenses, payments to Louisiana universities for research agreements, and payments to third-party Louisiana research or clinical trial companies.

Credit Certification—a certification by DED of the amount of the technology commercialization credit earned by a taxpayer for a particular tax year.

DED—Louisiana Department of Economic Development.

Eligibility Certification—a certification by the DED that a taxpayer is eligible to earn technology commercialization credits.

LDR—Louisiana Department of Revenue.

Machinery and Equipment—machinery or equipment that is a capital asset used in a trade or business subject to depreciation under federal tax law that is placed in service and used in Louisiana.

New Direct Job—employment in Louisiana of an employee working an average of at least 30 hours per week, who was not previously on the *taxpayer's* payroll in Louisiana, nor previously on the payroll of the *taxpayer's* parent entity, subsidiary, or affiliate in Louisiana, or previously on the payroll of any business whose physical plant and employees are substantially the same as those of the *taxpayer* in Louisiana and meets the following requirements:

a. the employee shall occupy a job which did not exist in Louisiana prior to the fiscal year of the *taxpayer* during which the *taxpayer* filed an application for eligibility to earn tax credits pursuant to §2705 below.

b. shall not mean any job that is a result of job shifts due to the gain or loss of an in-state contract to supply goods and services. *New direct job* shall not mean any employees who were retained following the acquisition of all or part of an in-state business by an employer.

Taxpayer—a natural person, business, corporation, or other business entity that seeks to or has become qualified to claim a credit on any income or corporation franchise tax liability against taxes owed to Louisiana.

Technology—the product or intellectual property owned or research sponsored at a regionally accredited college, technical school, or university located in Louisiana or any product or intellectual property to which significant development or enhancement occurred in Louisiana

Technology Commercialization Credits—credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer for investment in commercialization costs.

Technology Jobs Credit—credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer for new direct jobs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004), amended LR 36:308 (February 2010).

§2705. Determination of Eligibility to Earn Tax Credits

A. Prior to earning any credits pursuant to the Technology Commercialization Credit and Jobs Program, a taxpayer must apply for and obtain an eligibility certification from DED that the taxpayer is eligible to earn such credits.

B. The application for eligibility certification must be submitted prior to the end of the taxpayer's tax year for which the taxpayer first seeks to earn a technology commercialization credit or technology jobs credit.

C. A taxpayer shall apply for an eligibility certification by submitting an application on a form specified by the DED and provide at a minimum, the following information:

1. for a Technology Commercialization Credit:

a. a description of the technology to be commercialized:

b. a description of how and from whom (what university) the technology was acquired including the terms of the acquisition;

c. if the technology is not owned by a university, in what manner research was sponsored by the university or what significant development or enhancement to the technology occurred at the university;

d. An agreement with a Louisiana regionally accredited college, technical school, university, or research company to commercialize or research a technology;

e. a description of the taxpayer’s Louisiana facilities or proposed Louisiana facilities, and the taxpayer's proposed investment in machinery and equipment.

f. any other information requested by DED or LDR;

2. for a Technology Jobs Credit:

a. a description of the type of entity the taxpayer is, that is, for profit corporation, LLC, non-profit, governmental entity etc.;

b. a description of the type of research the taxpayer does,

c. a listing of proposed new direct jobs that the taxpayer expects to create along with the estimated salary;

d. a description of the taxpayer's health benefits plan that will be offered to employees.

D. DED shall review the application with an emphasis on the eligibility requirements stated in §2707 and, if DED determines that the taxpayer is eligible under the provisions of the Technology Commercialization Credit and Jobs Program to earn technology commercialization credits or technology jobs credits, DED shall issue an eligibility certificate. DED shall maintain a record of all eligibility certificates issued and shall provide a copy of each certificate to the Louisiana Department of Revenue.

E. An eligibility certification shall be valid for a period of five tax years of the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004), amended LR 36:308 (February 2010).

§2707. Requirements for Eligibility

A. To be eligible for certification under §2705, the taxpayer must meet the following requirements:

1. for a Technology Commercialization Credit:

a. the taxpayer must invest in commercialization costs, including investment by purchase or lease of machinery and equipment which is placed into and maintained in service in Louisiana that is directly related to the production of technology or is used to produce resources essential to the production of technology;

b. the taxpayer must enter into an agreement with a Louisiana regionally accredited college, technical school, university, or research company to commercialize or research a technology;

2. for a Technology Jobs Credit:

a. the applicant must be certified eligible to earn a technology commercialization credit, or be a nonprofit or governmental research center approved by the Secretary of the Department of Economic Development;

b. the applicant must create a minimum of five new direct jobs in this state as defined by R.S. 51:2453(4) of the Quality Jobs Program;

c. the applicant must offer a basic health benefits plan to the individuals it employs in new direct jobs in this state;

d. the new direct jobs shall pay an average minimum of $50,000 per year in wages to qualify for the new jobs refundable tax credit, excluding wages to a person who owns more than 30 percent of the equity of the applicant.

B. An eligibility certification may be renewed for an additional five tax years on the following conditions:

1. the taxpayer has complied with all requirements of the program for the initial five tax years; and

2. an application for renewal is filed with DED not sooner that the end of the fifth tax year and no later than the end of the sixth tax year;

3. for renewal of the Technology Jobs Credit Eligibility Certification, the new direct jobs shall pay an average minimum of $56,000.

AUTHORITY NOTE: Promulgated III accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:309 (February 2010).

§2709. Certification of Amount of Credit

Editor's Note: This section was formerly §2707.

A. The technology commercialization tax credit shall be:

1. equal in value to 40 percent of the amount of money invested by the taxpayer applicant in commercialization costs for one business location;

2. a refundable credit which may be applied to any income or corporation franchise tax liability owed to the state by the taxpayer;

3. limited to an investment of $250,000 per five-year certification period.

B. The technology jobs credit shall be:

1. equal to 6 percent multiplied by the gross payroll of new direct jobs as verified by the Department of Economic Development;

2. a refundable credit which may be applied to any income or corporation franchise tax liability owed to the state by the taxpayer.

C. Prior to claiming a technology commercialization credit or technology jobs credit on any tax return, a taxpayer must apply for and obtain a credit certification from DED. A taxpayer must have been issued an eligibility certification before a credit certification may be issued.

D. The application for a credit certification shall be submitted on a form provided by the DED. The application shall include a detailed itemization of all commercialization costs incurred during the tax year.

E. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be

considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004), amended LR 36:309 (February 2010).

§2711. Eligible Commercialization Costs

NOTE: Editor's Note: This section was formerly §2713.

A. Investment in machinery and equipment shall include:

1. the purchase price, including any taxes and costs of delivery and installation, and the capitalized amount of a capitalized lease;

2. the machinery and equipment must remain in use at the business location during the five tax years the taxpayer is eligible to earn the credit or its expected useful life, whichever is less. The sales price, trade in value, or other value received in the sale or disposition of the machinery or equipment shall be deducted from the commercialization costs for that year.

B. Other expenditures must be associated with obtaining the rights to use or the use of technology, and may include:

1. any transaction costs incurred in obtaining technology rights such as attorney fees for negotiation of licensing agreements, accounting, or other fees;

2. costs incurred for the use of technology such as royalties or licensing fees; and

3. costs incurred in protecting the rights to technology such as costs for filing or obtaining patents, recordation fees.

C. No expenditures for which a research and development tax credit was claimed pursuant to R.S. 47:6015 shall be eligible as a commercialization cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004), amended LR 36:310 (February 2010).

§2713. Recapture of Credits

Editor's Note: This section was formerly §2715.

A. An application for eligibility certification or credit certification shall constitute:

1. a consent by the taxpayer that in the event the taxpayer must repay any technology commercialization credits:

a. the Secretary of the Department of Revenue may recover any such amounts as authorized by R.S. 47:1561.2; and

b. such amounts will be deemed to constitute refundable tax credit; and

2. a written agreement between the taxpayer and the Secretary of the Department of Revenue for the suspension of the running of prescription for any technology commercialization credits claimed by the taxpayer until one year after the end of the fourth tax year of the eligibility certification;

3. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of technology commercialization credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004), amended LR 36:310 (February 2010).

§2715. Application Fee [Formerly §2711]

A.1. An application fee in the amount equal to 0.5 percent (0.005) times the total anticipated tax incentive with a minimum application fee of $500 and a maximum application fee of $15,000 shall be submitted with each application.

2. All fees shall be made payable to: Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004), amended LR 36:310 (February 2010), amended by the Department of Economic Development, Office of Business Development, LR 42:224 (February 2016).

§2717. Applicant Receiving Tax Credits not Eligible to Receive Certain other Tax Credits and Exemptions

A. Notwithstanding any other provision of law to the contrary, an applicant who receives tax credits pursuant to the provisions of this Chapter shall not be eligible to receive the other credits or exemptions provided for in the following provisions of law in connection with the activity for which the tax credits or rebates were received:

1. the tax credit for generation of new jobs provided for in R.S. 47:34;

2. the Louisiana Quality Jobs Program provided for in R.S. 51:2451 et seq.;

3. the employer credit for employment of previously unemployed persons provided for in R.S. 47:6004;

4. the Louisiana basic skills training tax credit provided for in R.S. 47:6009;

5. the tax credit for employee alcohol and substance abuse treatment programs provided for in R.S. 47:6010;

6. the sales tax rebate and income tax credits of the Enterprise Zone Program provided for in R.S. 51:1787;

7. the reentrant jobs credit for formerly incarcerated employees provided for in R.S. 47:287.748;

8. the corporation income tax credit for new jobs provided for in R.S. 47:287.749;

9. the neighborhood assistance tax credit provided for in R.S. 47:287.753.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:310 (February 2010).

§2719. Applicability of Act 125 of the 2015 Legislative Session to the Technology Commercialization Credit and Jobs Program

A. Pursuant to Act 125 of the 2015 Regular Session of the Louisiana Legislature, applications approved on or after July 1, 2015, are subject to the following reductions from July 1, 2015, through June 30, 2018:

1. technology commercialization credits—28.8 percent of the amount of the investment;

2. technology jobs credits—4.32 percent of payroll for new direct jobs.

B. Applications approved prior to July 1, 2015, are not affected by Act 125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:224 (February 2016).

Chapter 29. Research and Development Tax Credit

§2901. Purpose and Application

A. The purpose of this Chapter is to implement the Research and Development Tax Credit Program as established by R.S. 47:6015.

B. This Chapter shall be administered to achieve the following purposes:

1. encourage the development, growth, and expansion of the private sector within the state; and

2. encourage new and continuing efforts to conduct research and development activities within this state.

C. This Chapter shall apply to any person claiming a credit under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), amended by the Office of the Secretary, LR 38:350 (February 2012), amended by the Office of Business Development, LR 40:49 (January 2014), LR 40:1525 (August 2014).

§2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6015 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Affiliate—a company that shares more than 50 percent common ownership or other means of control with respect to another company.

Base Amount—

a. If the taxpayer is an entity that employs 50 or more persons, the base amount shall be 80 percent of the average annual qualified research expenses within Louisiana during the 3 years preceding the taxable years.

b. If the taxpayer is an entity that employs less than 50 persons, the base amount shall be 50 percent of the average annual qualified research expenses within Louisiana during the 3 preceding taxable years.

Credit Certification—a certification by LED of the amount of the research and development tax credit earned by a person for a particular tax year.

Custom Manufacturing or Custom Fabricating—the business of companies (custom fabricators and/or manufacturers) that assemble, fabricate, or manufacturer parts, equipment, assemblies, vessels, software or other products ("specified item") in response to specific design criteria and delivery schedule provided by the customer/client.

a. The typical business model acquisition process utilized by custom fabricators and/or manufacturers is as follows:

i. the customer/client providing the custom fabricator and/or manufacturer with the detail specific design criteria for the specified item in a document generally referred to as a "request for proposal";

ii. after review and analysis, the custom fabricator and/or manufacturer submits a "proposal" to the customer/client in which they commit to a specific price and delivery schedule to assemble, fabricate, or manufacturer the specified item requested by the customer/client in their request for proposal;

iii. if the proposal is acceptable, the customer/client will generally issue a "purchase order" commitment document to the custom fabricator and/or manufacturer agreeing to the terms of their proposal, and authorizing the custom fabricator or manufacturer to begin work per their proposal; and

iv. although the custom fabricator or manufacturer generally commits to a fixed price to produce the requested item, they have effectively negated most, if not all, material or unusual commercial transaction risks by their ability to analyze the required design criteria before committing to a specific price and delivery schedule within their proposal.

LED—Louisiana Department of Economic Development.

Person—any natural *person* or legal entity including an individual, corporation, partnership, or limited liability company.

Professional Services Firm—a firm who is primarily engaged in work which requires specialized education, knowledge, labor, judgment or is predominantly mental or intellectual in nature; and which may require the holding of a professional license. These types of firms engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

Qualified Research Expenses in the State—expenses for qualified research as defined under 26 U.S.C. §41(d) ("qualified research") that are qualified research expenses under 26 U.S.C. §41(b) ("qualified research expenses") and meet the following requirements:

a. wages described in 26 U.S.C. §41(b)(2)(A)(i) shall be paid to individuals who are residents of Louisiana and perform their services in Louisiana;

b. supplies described in 26 U.S.C. §41(b)(2)(A)(ii) shall be consumed in Louisiana;

c. expenses for the right to use computers as described in 26 U.S.C. §41(b)(2)(A)(iii) shall be for the use of computers located in Louisiana; and

d. contract research expenses as described in 26 U.S.C. §41(b)(3) shall be for services performed in Louisiana;

e. 26 U.S.C. §41(d) also excludes expenditures associated with certain activities from the definition of qualified research. These activities include:

i. research conducted after the beginning of commercial production;

ii. activities related to the adaptation of an existing business component to a particular customer's requirements or needs;

iii. activities related to the reproduction, in whole or in part, of an existing business component from a physical examination of the business component, plans, blueprints, detailed specifications or publically available information with respect to such component;

iv. activities related to management functions or techniques, efficiency surveys, market research, testing or development, routine data collection or routine testing or inspections for quality controls;

v. research conducted using the social sciences including economics and business management, as well as behavioral sciences, arts and humanities; and

vi. research funded by a contract, grant, or otherwise by another person or governmental entity.

Research and Development Tax Credits—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program provided by R.S. 47:6015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:49 (January 2014), LR 40:1525 (August 2014), LR 45:218 (February 2019).

§2904. Type, Amount and Duration of Credit

A. Type. Any taxpayer meeting the following criteria shall be allowed a tax credit to be applied against income and corporation franchise taxes due:

1. employs 50 or more persons (including affiliates) and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities;

2. employs less than 50 persons (including affiliates), and claims for the taxable year a federal income tax credit under 26 U.S.C. 41(a) for the taxable year, or incurs qualified research expenses for the taxable year, as defined in 26 U.S.C. §41(b); and

3. receives a small business innovation research grant, as defined in R.S. 47:6015(D).

B. Amount. The amount of the credit authorized shall be equal to:

1. 5 percent of the difference between the qualified in-state research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 100 or more persons (including affiliates); or

2. 10 percent of the difference, between the Louisiana qualified in-state research expenses in the state for the taxable year minus the base amount, if the applicant is an entity that employs 50 to 99 persons (including affiliates); or

3. 30 percent of the difference, between the qualified in-state research expenses in the state for taxable year minus the base amount if the applicant is an entity that employs fewer than 50 persons (including affiliates); or

4. 30 percent of the small business innovation research grant award or small business technology transfer program funding received during the tax year.

C. Duration. No credit shall be allowed for research expenditures incurred, small business technology transfer program funds received, or small business innovation research grant funds received after December 31, 2021.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:1768 (August 2010), amended by the Office of the Secretary, LR 38:351 (February 2012), amended by the Office of Business Development, LR 40:50 (January 2014), LR 40:1526 (August 2014), amended Office of the Secretary, LR 42:42 (January 2016), LR 45:219 (February 2019).

§2905. Certification of Amount of Credit

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a credit certification from LED.

B. The application for a credit certification shall be submitted on a form provided by the LED and shall include, but not be limited to the following information:

1. an application fee equal to 0.5 percent of the amount of the tax credits applied for, with a minimum of $500 and a maximum of $15,000, payable to Louisiana Department of Economic Development;

2. appropriate supporting documentation:

a. for taxpayers employing 50 or more residents, a federal income tax return and evidence of the amount of federal research credit for the same taxable year;

b. for taxpayers employing up to 50 residents:

i. either:

(a). a federal income tax return and evidence of the amount of federal research credit for the same taxable year; or

(b). a request that LED enter into an attest engagement with a certified public accountant ("CPA") authorized to practice in Louisiana or a tax attorney who is selected by LED for a report that focuses on verification of the applicant's expenditures and claimed qualified research activities as well as pay the deposit for such report in accordance with R.S. 36:104.1 and 47:6015; and

ii. evidence of the amount of qualified research expenses for the same taxable year;

c. for taxpayers claiming credits based upon the federal small business innovation research grant, evidence of the amount of such grant;

d. the LED may also require documentation, including but not limited to the following, as proof of an expenditure prior to certification:

i. wages:

(a). copy of W-2 for each employee who participates in qualifying research and development activities;

(b). percentage of each employee's salary that is dedicated to qualifying research and development activities; and

(c). Louisiana Workforce Commission quarterly report of wages paid for the company for the third and fourth quarter of the tax year in question;

ii. supplies:

(a). invoices with date of purchase included;

iii. contracted research:

(a). invoices with applicable dates or periods of work; and

(b). contracts for the research to be performed;

e. in order for any research and development project to qualify, the requesting company must identify:

i. the business component that was developed or improved;

ii the uncertainty that existed in the capability, method or design related to such business component;

iii. how the research was technological in nature; and

iv. the process of experimentation undertaken;

3. the total amount of qualified research expenses and the qualified research expenses in the state;

4. the total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development;

5. the average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development;

6. the average value of benefits received by all Louisiana resident employees;

7. the cost of health insurance coverage offered to all Louisiana resident employees;

8. any other information required by LED.

C. Taxpayers qualifying for tax credit transfers under §2915 may apply for up to two credit certifications per calendar year. All other taxpayers shall be limited to one credit certification per calendar year.

D. LED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

E. In order for credits to be awarded, a taxpayer must claim the expenditures within one year after December 31 of the year in which the expenditure was incurred. For example, company A buys a piece of equipment that would qualify for the research and development tax credit on May 15, 2011. In order for company A to receive a credit on that expenditure, the application for credit on that expense must be received by December 31, 2012.

F. Each year LED shall perform a detailed examination of at least 10 percent of all applications received prior to the issuance of credits on such applications.

1. LED shall select applications for examination based on one or more of the following:

a. a random sampling;

b. applicant's business sector; and

c. other selection criteria as determined by LED.

2. Upon notice that their application has been selected for examination, the applicant shall provide all supporting documentation requested by LED to show the amount of qualified research expenses for such taxable year.

3. The applicant bears the burden of proving that its activities meet the definition of qualified research under 26 U.S.C. §41(d).

4. LED still retains the right to examine a taxpayer's application after the issuance of credits and any credits disallowed following such examination shall be subject to recovery, recapture or offset.

G. If LED reviews a submission and determines that an applicant is not eligible for tax credits for a tax year, the company shall have six months from the date of disallowance to resubmit additional documentation for reconsideration. LED will not consider any additional documentation after this six-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), LR 38:351 (February 2012), LR 40:51 (January 2014), LR 40:1526 (August 2014), amended by the Office of the Secretary, LR 42:42 (January 2016), amended the Department of Economic Development, Office of the Secretary, LR 45:219 (February 2019).

§2911. Recapture of Credits

A. An application for credit certification shall constitute:

1. a consent by the taxpayer that credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. a consent by the taxpayer that the Department of Revenue may disclose to LED, any tax information of the taxpayer related to the earning of, or use of research and development tax credits by the taxpayer or any other information required by LED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), amended by the Office of the Secretary, LR 38:352 (February 2012), amended by the Office of Business Development, LR 40:52 (January 2014), LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 45:220 (February 2019).

§2913. Ineligible Businesses

A. For tax years beginning on or after January 1, 2013, the following types of businesses will be ineligible to participate in the program, unless specifically invited by the secretary of LED to:

1. professional services firms that do not have a pending or issued United States patent related to the qualified research expenditures claimed; and

2. businesses primarily engaged in custom manufacturing or custom fabricating that do not have a pending or issued United States patent related to the qualified research expenditures claimed.

B. Only expenditures directly related to the business component for which a professional services firm or business primarily engaged in custom manufacturing or custom fabricating has a pending or issued patent will be eligible for research and development credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 40:52 (January 2014), amended LR 40:1527 (August 2014), amended by the Department of Economic Development, Office of the Secretary, LR 45:221 (February 2019).

§2915. Transfer of Certain Research and Development Credits

A. For tax years 2018 and later, credits based upon participation in either the Small Business Technology Transfer Program or the Small Business Innovation Research Grant not previously claimed by a taxpayer shall be transferable in accordance with the following provisions.

1. A single transfer or sale may involve one or more transferees.

2. Notice of the credit transfer shall be submitted by the applicant to the Louisiana Department of Revenue in writing within 10 business days of the transfer or sale of credits.

a. No transfer or sale of credits shall be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.

b. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter issued by the Department of Economic Development, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the credit certificate, the price paid by the transferee to the transferor, and any other information required by the Department of Revenue.

c. The notification submitted to the Department of Revenue shall include a transfer processing fee of two hundred dollars per transferee.

d. Failure to comply with this Paragraph shall result in the disallowance of the tax credit until the taxpayers are in full compliance.

3. The transfer or sale of credits does not extend the time in which the credits can be used. The carryforward period for a credit that is transferred or sold begins on the date on which the credit was earned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 45:221 (February 2019).

Chapter 31. Assessment of Tax-Exempt Pollution Control Equipment

§3101. Assessment of Tax-Exempt Pollution Control Equipment

A. Six months prior to the date of expiration of an industrial tax exemption contract on air or pollution control equipment, the subject company will file with the Board of Commerce and Industry the following information:

1. four copies of the tax exemption contract covering the equipment;

2. four copies of the certification by the Louisiana Air and/or Stream Control Commission(s) that the subject equipment is a valid pollution control device;

3. four certified copies of a rendition of the actual market value of the equipment at the time the tax exemption is to expire, according to the method set forth in Act 69.

B. Upon receipt of this material it will be reviewed for content by the Board of Commerce and Industry, meeting in regular session, prior to the expiration date of the tax exemption contract.

C. If the board is satisfied with the information received, it will direct the Executive Director of the Department of Commerce and Industry to issue to the subject company a letter certifying that:

1. a valid tax exemption contract has existed on subject pollution abatement equipment;

2. it meets the standards of the appropriate state pollution control agencies;

3. it appears to qualify under the provisions of Act 69 of 1973 covering the method such pollution control equipment is to be assessed.

D. The original of this document is to be returned to the subject company, along with one copy each of the items listed in Section I of this resolution. A copy of the letter of certification, together with one copy each of the items in Section I of this resolution, is to be forwarded to the Assessor of the Parish in which subject equipment is located, and a duplicate copy of all material sent to the Louisiana Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.31.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, March 1974, by resolution.

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2011 (Act 414 of 2011; R.S. 47:6020, the provisions of which shall hereinafter be referred to as "Act 414") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 414. For the purposes of this Chapter, the "department" shall be Louisiana Economic Development.

B. Act 414 repealed the Angel Investor Tax Credit Program Act of 2005 and replaced it with the reenacted provisions of R.S. 47:6020. Therefore, effective July 8, 2011, which is the date the governor signed Act 414, the department must recertify all Louisiana entrepreneurial businesses and all annual and program caps for individual businesses will start over.

C. Effective date of the 2021 Angel Investor Tax Credit Program rule changes.

1. The provisions of the 2021 rule changes shall apply to applications filed after the date of promulgation, detailed in the Louisiana Register published on (Month) 20, 2021, except for the provisions of Section 3303 codifying current administrative practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011), amended by Department of Economic Development, Office of the Secretary, LR 47:1105 (August 2021).

§3302. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6020 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Angel Pool—a group of persons including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of an accredited investor.

Certification—certification by the department recognizing the company as an eligible Louisiana Entrepreneurial Business.

Department—the Department of Economic Development

LEB—Louisiana Entrepreneurial Business

NAICS—North American Industrial Classification System.

Opportunity Zone—a community development program established by Congress in the Tax Cuts and Jobs Act of 2017 defined as a population census tract that is a low-income community that is designated as a qualified opportunity zone.

Professional Services—occupations requiring specialized education, knowledge, labor, judgment or are predominantly mental or intellectual in nature; and which may require the holding of a professional license. Professional services firms may engage in activities which include, but are not limited to, architecture, engineering, legal services and accounting.

Qualified Investment—a cash investment into a Louisiana Entrepreneurial Business by an Accredited Investor which may be in the form of equity, convertible debt, or other types of subordinate debt as approved by the department. Only the initial principal amount of any debt investment is eligible for the credit.

Reservation Letter—letter issued by the department provisionally indicating the dollar amount of credits which their investors may be eligible to receive if proof of qualified investment can be shown.

Subordinate Debt—

a. by its terms requires no repayment of principal for the first three years after issuance;

b. is not guaranteed by any other person or secured by any assets of the LEB or any other person; and

c. is subordinated to all indebtedness and obligations of the LEB to its general creditors.

Tax Credit Certification Letter—letter issued by the department certifying the dollar amount of Angel Investor Tax Credits earned by an investor for a particular tax year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 47:1105 (August 2021).

§3303. Accredited Investor

A. An *accredited investor* shall meet the definition established by Rule 501 in Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933, which may include but not be limited to the following:

1. an angel pool (which may be a limited liability corporation or limited liability partnership, as provided below) as determined by the department, all of whose participants shall be accredited investors;

2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds $1 million at the time of the purchase;

3. a person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year;

4. the qualified investment in the Louisiana Entrepreneurial Business must be maintained for three years unless otherwise approved by the Department of Economic Development;

5. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B. Angel pools may receive certification from the department upon showing:

1. the proposed pool of investors is organized solely for the purposes of making angel investments;

2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;

3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;

4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011), amended by Department of Economic Development, Office of the Secretary, LR 47:37 (January 2021), LR 47:1105 (August 2021).

§3305. Louisiana Entrepreneurial Business

A. A *Louisiana Entrepreneurial Business* shall be defined as those businesses approved by the department under Act 414 and that meet the following requirements.

1. A business shall provide the department with a business plan that includes all appropriate long and short

term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 414 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than 50 percent of its sales will be from outside of Louisiana;

c. employs 50 or fewer full-time employees; and

d. the business has either gross annual sales of less than $10 million or a business net worth of less than $2 million.

2. Exclusions

a. Businesses primarily engaged in the following activities are not eligible to be certified as a Louisiana entrepreneurial business: retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, and financial services, including venture capital funds.

b. Businesses primarily engaged in the following activities may qualify as a Louisiana entrepreneurial business but only if the department, in its discretion, determines from the business plan that the company is a wealth-creating business for Louisiana: state or local government enterprises, business associations and professional organizations as defined in North American Industry Classification System (NAICS) code 8139, automotive rental and leasing, local solid waste disposal, local sewage systems and local water systems businesses, hospitals or nonprofit organizations.

3. Such other findings by the department as shall be consistent with Act 414, provided that under no circumstances shall the department's certification of the applicant as a Louisiana entrepreneurial business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Certification of a Louisiana entrepreneurial business shall be obtained from the department by submitting the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 414 electronically to an email address specified by the department on its website. Upon receipt, the department shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana entrepreneurial business. The department's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the department's letter. The certification may be extended for additional one year periods upon application to the department showing that the business continues to be an entrepreneurial business within the meaning of the Act and these Rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the department. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 414 and these Rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011).

§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits

A. The following rules shall be applicable to qualified investments by accredited investors in Louisiana entrepreneurial businesses.

1. For calendar year 2011, the department will begin accepting applications on September 1, and for all other calendar years, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual $3,600,000 cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

a. Upon receipt of an application for the reservation of credits, the department will send the business a reservation letter indicating the dollar amount of credits which their investors are entitled to receive if proof of qualified investment can be shown.

b. Each business applicant will have to decide on their application if they are willing to accept a prorated credit amount should their application be received on the day the cap is reached. The business will also have to determine what percentage of proration they will accept. If the business does not indicate in their application a willingness to accept a prorated credit amount at the percentage of proration available on the day the cap is reached, their application will be deemed to have been received the day following the day in which the cap was reached.

c. Proof of a qualified investment must be provided to the department within 120 days from the date of the reservation letter. The department will accept the subscription agreement as required by the Securities and Exchange Commission as proof of investment.

d. If proof of a qualified investment is made within the requisite 120-day period, the department will issue a tax credit certification letter to the investor.

i. The tax credit certification letter will include the investor's name, address, Louisiana taxpayer identification number and the amount of the credit. The tax credit certification letter will include a breakdown of which years and in what amounts per year the credit will be claimed.

ii. The Louisiana Department of Revenue will receive a copy of the tax credit certification letter for purposes of verification of the credits.

e. If proof of qualified investment is not provided to the Department within the requisite 120-day period, the angel investor tax credits which had been reserved for that company's investors will be added to the remaining available annual credit cap.

f. Any returned reservation credits whose businesses could not provide proof of qualified investment within 120 days, will be allocated when available on a first come, first serve basis until the annual cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of:

i. the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day; or

ii. the day all 120-day proof of qualified investment periods have expired.

iii. the timeline for proof of qualified investment will be the same 120-day period as mentioned above.

g. A business that fails to provide proof of qualified investment on the full reservation amount within 120 days will not be allowed to apply for angel investor credits again for a three-month period. The three-month period will begin on the day following the end of the 120-day period for proof of qualified investment.

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website. An application fee shall be submitted with all applications for reservation of credits. The application fee shall be equal to 0.5 percent (0.005) times the total anticipated tax incentive for the investors with a minimum application fee of $500 and a maximum application fee of $15,000, payable to Louisiana Department of Economic Development.

C. A qualified investment earns tax credits in the calendar year in which the qualified investment is made. The request for the reservation of credits for a qualified investment must be made in the same year in which the qualified investment is made. In order to earn credits under this program, a qualified investment can be made no earlier than 30 days prior to the reservation of credits.

D. The angel investor tax credits should be claimed on the investor's income and corporation franchise tax returns in accordance with the statutory requirements of R.S. 47:6020(D)(3).

E. Transfers of the angel investor tax credits will be allowed in compliance with R.S. 47:6020(F).

F. The Angel Investor Tax Credit Program has a program cap of $3,600,000 in tax credits granted per calendar year. If the department does not grant the entire $3,600,000 in tax credits in any calendar year, the amount of residual unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the $3,600,000 per year limitation. No tax credit shall be granted to an investor until the qualified investment has been made in the Louisiana Entrepreneurial Business.

G. For purposes of receiving angel investor tax credits, an investor may not invest more than $720,000 per year per business or more than $1,440,000 total per business over the life of the program. The credit shall be allowed against the income tax for the taxable period in which the credit is earned and the franchise tax for the taxable period following the period in which the credit is earned. The credits approved by the department shall be granted at the rate of 25 percent of the amount of the qualified investment with the credit divided in equal portions for two years.

1. Except as provided in Paragraph 4 of this Subsection, applications received on or after July 1, 2020, for qualified investments that meet the requirements of Subsection C of this Section and the requirements of 26 U.S.C. 1400Z-1, 1400Z-2, and applicable federal regulations shall be entitled to an enhanced credit in accordance with the provisions of this Subsection.

2. The amount of the credit granted by the department shall be 35 percent of the amount of the qualified investment with the credit divided in equal portions for two years,

3. In addition to the credit cap provided for in Subsection A, the total amount of credits granted under this Subsection shall not exceed $3,600,000 per year for a total program cap of $7,200,000 per year. If the department does not grant the entire $3,600,000 in tax credits in any calendar year authorized pursuant to this Subsection, the amount of unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the $3,600,000 annual cap provided for in this Subsection.

4. To the extent that federal laws and regulations relative to opportunity zones require that business revenues be derived from within the opportunity zone, otherwise eligible business shall be exempt from the requirement that 50 percent or more of sales shall come from out of state as specified in Subsection A.

H. No credits shall be granted or reserved under this program for reservation applications received by the department on or after July 1, 2025.

I. The department has the authority to change the administration of the Angel Investor Tax Credit Program

when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10-day prior notice published on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3196 (December 2011), amended by the Department of Economic Development, Office of Business Development, LR 42:35 (January 2016), amended by Department of Economic Development, Office of the Secretary, LR 47:37 (January 2021), amended by Department of Economic Development, Office of the Secretary, LR 47:1105 (August 2021).

§3309. Applicability of Act 125 of the 2015 Legislative Session to the Angel Investor Tax Credits

A. Act 125 of the 2015 Regular Session of the Louisiana Legislature makes the following changes to the Angel Investor Tax Credits from July 1, 2015 until June 30, 2018:

1. credits shall be reserved and issued at a rate of 25.2 percent of the investment amount in the LEB and credits shall be issued at the reserved rate regardless of the date of issuance;

2. the total amount of credits that may be reserved and issued in a calendar year is $3.6 million, exclusive of any un-granted credits carried forward from previous years; and

3. an investor may be issued credits on investments up to $720,000 per business per year and up to $1.44 million total per business.

B. The provisions of this section shall supersede any contradictory provisions under this Chapter between July 1, 2015 and June 30, 2018.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:36 (January 2016).

Chapter 35. Retention and Modernization Program

§3501. Purpose and Application

A. The purpose of this Chapter is to implement the Retention and Modernization Act as established by R.S. 51:2399.1 et seq.

B. The Chapter shall be administered to achieve the following purposes:

1. to induce businesses to remain in the state and not relocate outside the state; and

2. to modernize existing business operations in Louisiana.

C. This Chapter shall apply to any employer:

1. seeking to become qualified to claim a credit; or

2. claiming a credit under this program.

D. An employer may earn a refundable tax credit on any income or franchise tax liability at the rate of 5 percent for qualified expenditures incurred for modernization.

E. Nothing herein shall be construed to constitute a guarantee or assumption by the state of any debt of any individual company, corporation, or association or to authorize the credit of the state to be given, pledged, or loaned to any individual, company, corporation, or association.

F. No agency shall incur monetary or personnel costs paid with federal funds for compliance with the provisions of this Chapter, when such use of the funds is prohibited by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:474 (March 2010).

§3503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2399.1 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Department—Department of Economic Development.

Employer—a legal person who is engaged in a lawful enterprise not excluded by this Chapter that executes a contract with the department pursuant to the provisions of this Chapter.

a. Eligible Employers. To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. Ineligible Employers. Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter:

i. retail employers (44 and 45);

ii. business associations and professional organizations (8139);

iii. state and local governmental enterprises;

iv. real estate agents, operators and lessors;

v. automotive rental and leasing;

vi. local solid waste disposal, local sewer systems, and local water systems business;

vii. non-profit organizations; gaming industry (713219 and 721120); attorneys.

Facility—employer's manufacturing site that is the subject of the project.

LEDC—Louisiana Economic Development Corporation.

LDEQ—Louisiana Department of Environmental Quality.

LDR—Louisiana Department of Revenue.

LWC—Louisiana Workforce Commission.

Modernization—capitalized investment by an employer in technology, machinery, building and/or equipment that meets one of the following provisions:

a. an investment from a company with multi-state operations with an established competitive capital project program, which is approved by the Department; or

b. an increase in the maximum capacity or "efficiency" of the facility of greater than 10 percent. The modernization investment may be either voluntary or mandated by law but must result in the facility adopting "best practices" technology for its industry and the company shall establish that without the investment that the facility would be high risk for closure in the foreseeable future. Modernization does not include the replacing of existing technology with the same or similar technology;

i. increased "efficiency" claims must be supported by an independent third party analysis, such as an engineer's report, or by any other reasonable means;

ii. best practices may be verified by objective data provided by independent third parties knowledgeable in the industry such as LDEQ, or by any other reasonable means;

iii. the required efficiency increase includes a "green" option for a facility which affects a 10 percent or greater net reduction in nitrogen oxide (NOx) or volatile organic chemicals (VOC) without any increase in other emission sources from a facility in substantial compliance with its Title V Clean Air Act permit for the five preceeding calendar years in which the emission reductions are claimed.

Project—the design, development, installation and construction of a technology, machinery, building and equipment that results in a modernization of an employer's product line, unit or entire operations that require at least five million dollars of investment.

Qualified Expenditures—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, and the capitalized cost for the purchase of an existing building. When an employer purchases an existing building and capital expenditures are used to rehabilitate the building, only the costs of the rehabilitation shall be considered qualified expenditures. Additionally, an employer shall be allowed to increase his qualified expenditures to the extent an employer's capitalized basis is properly reduced by claiming a federal credit.

Secretary—Secretary of the Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR: 36:474 (March 2010), amended 37:514 (February 2011).

§3505. Eligibility Requirements

A. An employer must meet two sets of requirements.

1. Qualifying Manufacturer

a. Eligible Employers. To qualify for a contract pursuant to this Chapter, employers must be a manufacturer, as defined by North American Industry Classification System (NAICS) codes: 113310, 211, 213111, 541360, 311-339, 511-512 and 54171 as the employer's primary function.

b. Ineligible Employers. Employers engaged in the following professions or services, and identified by the following NAICS codes, shall not be eligible for any credits under this Chapter:

i. retail employers (44 and 45);

ii. business associations and professional organizations (8139);

iii. state and local governmental enterprises;

iv. real estate agents, operators and lessors;

v. automotive rental and leasing; local solid waste disposal, local sewer systems, and local water systems business;

vi. non-profit organizations;

vii. gaming industry (713219 and 721120);

viii. attorneys.

c. The department may promulgate rules annually listing other employers, professions or service industries which are eligible and not eligible for any credit pursuant to this Chapter, and such rules shall not take effect unless presented to LEDC and approved by both the House Ways and Means Committee and the Senate Committee on Revenue and Fiscal Affairs in a public meeting held for such purpose.

2. Qualifying Event

a. Efficiency. The employer must establish an increase of greater than 10 percent in the maximum capacity or efficiency of the facility; or

b. Investment. An employer with multi-state operations and an established competitive capital project must make an approved investment of at least $5 million dollars in the facility.

B. No contract or certification shall be executed with an employer who:

1. has defaulted on or otherwise not repaid any loan or other obligation involving public funds, nor with any employer who has ever declared bankruptcy under which an obligation of the employer to pay or repay public funds or monies was discharged as part of such bankruptcy; or

2. is in default on any filing or payment with or to the state or any of its agencies or political subdivisions and in which an assessment or judgment that is final and non-appealable has been rendered, and remains outstanding, in favor of the state, or any of its agencies, or political subdivisions.

C. No project placed in service before July 1, 2011 shall be eligible for the tax credits authorized pursuant to this program.

D. If approved and subsequently issued a tax credit allocation letter, an applicant shall commit to continue business operations in the state for at least the five year period of the tax credit allocation.

1. If an applicant fails to continue business operations in the state, it may retain credits already granted, but the department reserves the right to withhold previously reserved, but not yet granted tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:475 (March 2010).

§3507. Amount, Allocation and Limitations upon Tax Credits

A. An employer earns tax credits in the calendar year in which the project is placed in service.

B. Certified tax credits shall be granted by the department at a rate of 1 percent of the amount of certified expenditures annually over a five year period, for a total of 5 percent of the amount of certified expenditures, subject to the limitations outlined in this section.

C. The Retention and Modernization Tax Credit Program has a program cap of $10 million, in tax credits granted per calendar year.

1. The department shall allocate tax credits in accordance with the terms of the tax credit allocation letter.

2. The department shall certify and grant tax credits based upon verification of actual expenditures and in accordance with terms of the tax credit allocation letter.

a. In the event that the total amount of credits granted in any calendar year is less than $10 million dollars, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the ten million dollar limit for each year.

b. In the event that the total amount of credits granted in any calendar year meets the $10 million dollar cap, any excess credits applied for will be treated as having been applied for on the first day of the subsequent calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:475 (March 2010).

§3509. Application Procedures

A. Beginning January 1, 2010, an applicant may apply for this program by submitting the following information to the department:

1. a written application;

2. supporting data as requested by the department, including but not limited to: independent third party reports verifying efficiency improvements or investments made;

3. a statement verifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 51:2399.1 et seq.; and

4. an application fee of 0.2 percent of the estimated tax credits, with a minimum application fee of $200 and a maximum fee of $5,000.

B. The department shall review the application and supporting information, and if it is found to be incomplete or if further information is needed shall contact the applicant business and request such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:476 (March 2010).

§3511. Tax Credit Allocation Letter

A. The department shall review the application and supporting information and determine whether to allocate tax credits.

1. Evaluation. When determining allocation of available tax credits the department shall take the following factors into consideration:

a. the impact of the project on the objectives of the Retention and Modernization Program;

b. the impact of the project on the employment of Louisiana residents;

c. the impact of the project on the overall economy of the state;

d. the availability of tax credits relative to the annual program cap and tax credits being requested by the applicant; and

e. the total financial impact from an applicant's involvement with any program administered by the department.

B. Beginning March 31, 2010, tax credit allocation letters may be issued quarterly: by March 31, June 30, September 30, and December 31 of each calendar year.

1. All complete applications received in the same quarter shall be treated and evaluated as if received on the same day, according to the following schedule.

a. Applications received by February 28 shall be considered for allocation on March 31.

b. Applications received by May 31 shall be considered for allocation on June 30.

c. Applications received by August 31 shall be considered for allocation on September 30.

d. Applications received by November 31 shall be considered for allocation on December 31.

C. The tax credit allocation letter shall:

1. contain the employer's name, address and tax identification number;

2. identify the proposed efficiency improvements or investments;

3. identify a timeline for completion;

4. provide for possible extensions for good cause;

5. provide for possible revocation in case of bad faith or unreasonable delays; and

6. provide for a reservation of tax credits, to be allocated in equal portions for five years;

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:476 (March 2010).

§3513. Certification of Tax Credits

A. Beginning July 31, 2011, employers seeking final certification of tax credits must submit to the department:

1. an audit of qualified expenditures incurred by the employer for modernization, certified by an independent certified public accountant;

a. qualified expenditures that could improve efficiency may include but not be limited to: new automation equipment, computer-driven instrumentation upgrades, NOX or VOC air emission reduction equipment;

b. investment in new equipment for a new production unit making a new or similar product may be a qualified expenditure, if an employer is competing for a new production line as part of a consolidation through competitive capital budget within family of plants either domestically or internationally;

2. evidence of continued business operation; and

3. any other information as reasonably requested by the department.

B. The department shall review requests for certification of tax credits, and upon verification of expenditures, and consultation with the Executive Director of LWC and the Secretary of LDR, shall issue a tax credit certification letter granting tax credits to an employer.

C. The final certification letter shall contain the employer's name, address and tax identification number and be accepted by LDR as proof of the credit.

D. The department shall maintain a list of the tax credit certificates issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:476 (March 2010), amended LR 37:514 (February 2011).

§3515. Claiming of Tax Credits

A. After receiving a final certification letter from the department, an employer may claim his refundable tax credit from LDR as follows.

1. All entities taxed as corporations for Louisiana income or corporation franchise tax purpose shall claim any credit on their corporation income or corporation franchise tax return.

2. Individuals shall claim any credit on their individual income tax return.

3. Estates or trust shall claim any credit on their fiduciary income tax return.

4. Entities not taxed as corporation shall claim any credit on the returns of the partners or members as follows.

a. Corporate partners or members shall claim their share of the credit on their corporation income or corporation franchise tax returns.

b. Individual partners or members shall claim their share of any credit on their fiduciary income tax returns.

B. A retention and modernization tax credit shall expire and have no value or effect on tax liability beginning with the eleventh year after the tax year in which it was originally granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:477 (March 2010).

§3517. False or Fraudulent Claims

A. Any person making an application, claim for a tax credit, or any report, return statement, invoice or other instrument or providing any other information pursuant to this program who willfully makes or who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other instrument, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than one

thousand dollars and not more than $50,000, or imprisoned for not less than two years and not more than five years, or both.

B. Any person convicted of a violation shall be liable for the repayment of all credits which were granted to the employer. Interest shall be due on such credits at the rate of fifteen percent per annum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, and 51:2332 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 36:477 (March 2010).

Chapter 37. Louisiana Community Economic Development Act

Subchapter A. General Provisions

§3701. Purpose

A. The purpose of this Chapter is to administer the Louisiana Community Economic Development Act as established by R.S. 33:130.751 et seq. and R.S. 47:6031.

B. The purpose of this program is to provide for community development corporations and community development financial institutions and to encourage economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:750 (April 2010).

§3703. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 33:130.751 et seq., unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Award Agreement—that agreement or contract hereinafter referred to between the applicant and the department through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms, conditions, and performance objectives of the award provided pursuant to these rules.

Community Development Corporation (CDC)—a non-profit corporation which satisfies all of the requirements of R.S. 33:130.752(1) and meets the LANO standards of excellence.

Community Development Financial Institution (CDFI)—an organization which satisfies all of the requirements of R.S. 33:130.752(2).

Department—Department of Economic Development, or their designee.

Donation—either *inter vivos or mortis causa*, in the form established by Louisiana law.

Contribution—a gift, payment, or deposit of money or anything of value, or the forgiveness of a loan or of a debt.

Low Income—an income level at or below 80 percent of the mean income for a family of similar size within the state.

Sale Below Cost—a contract whereby a person transfers ownership of a thing to another for a price in money, in the form established by Louisiana law, at a price below its appraised value, as evidenced by appropriate documentation.

Secretary—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:750 (April 2010).

Subchapter B. Certification Program

§3705. Eligibility Requirements for Certification

A. Community Development Corporation (CDC). An applicant must meet all of the following requirements:

1. is chartered pursuant to Chapter 2 of Title 12 of the Louisiana Revised Statues of 1950;

2. is tax exempt pursuant to Section 501(C)(3) of the Internal revenue Code of 1986, as amended;

3. has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development;

4. has activities and decisions initiated, managed, and controlled by the constituents of the community served;

5. does not provide credit, capital, or other assistance from public funds in an mount greater than twenty-five thousand dollars at one time or in one transaction;

6. is not a non-profit organization with the sole purpose of providing housing to neighborhoods or technical assistance to other nonprofit organizations;

7. has been certified or recertified as a community development corporation as provided in this Subpart; and

8. meets the LANO standard of excellence.

B. Community Development Financial Institute (CDFI). An applicant must meet all of the following requirements:

1. has a primary purpose of promoting community development by providing credit, capital, or development services to small business or home mortgage assistance to individuals, including, but not limited to, capital access programs, micro-lending, franchise financing, and guaranty performance bonds;

2. maintains, through representation on its governing board, accountability to persons in need of the institution's services;

3. is not an agent or instrumentality of the United States, or of a state political subdivision of a state, nor maintains an affiliate relationship with any of these entities;

4. maintains a goal of providing a majority of its services to low-income individuals, minorities, or females or in rural areas;

5. provides capital and technical assistance to small or micro-business or mortgage assistance to individuals;

6. does not provide credit, capital, or other assistance in an mount greater than two hundred fifty thousand dollars at one time or in one transaction;

7. has been certified or recertified as a community development financial institution as provided for in this Subpart; and

8. may be a federally or state-chartered financial institution holding company which qualifies as a community development financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:750 (April 2010).

§3707. Application Procedures

A. An applicant for certification shall submit the following documents to the department:

1. complete, notarized certification application;

2. organizational management;

a. certificate of incorporation;

b. either 501(c)(3) tax exempt letter or CDFI fund certification letter;

c. by-laws; and

d. program of work;

3. board information;

a. names and addresses of the partners, officers, directors or trustees and those principal owners or members;

b. minutes of the four most recent board of directors meetings;

4. financial information;

a. a copy of the most recent financial audit; and

b. a copy of the fiscal budget, including year-to date expenditures;

5. business plan;

6. an application fee of $300;

7. any additional information requested by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:751 (April 2010).

§3709. Qualification

A. The department shall review the application and supporting documentation, and if necessary conduct a site visit to determine qualification.

B. The department shall issue the applicant a final written determination, indicating either approval or denial of certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:751 (April 2010).

§3711. Duration of Certification

A. If approved, certification shall be valid for two years from the date of certification.

B. A certified CDC or CDFI shall submit to the Department, on or before the anniversary date of their certification; a notarized annual financial report complying with the requirements of R.S. 33:130.754(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:751 (April 2010).

§3713. Renewal of Certification

A. Certification may be renewed for subsequent two-year periods.

B. Applicants must re-apply to the department, submit all required documentation and an application fee of $175.

C. The department shall review the application, supporting documentation, and verify that all reporting requirements have been complied with, to determine qualification for the re-certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:751 (April 2010).

§3715. Denial of Certification

A. The department shall serve notice of intent to deny certification or renewal of certification, or to revoke an existing certification.

B. Such notice shall be a written determination by the department, including a brief statement of the reasons alleged for denial.

C. Such notice shall be served by certified mail or by mail service requiring a return receipt.

D. A denied applicant may request a hearing within 30 days of receiving notice, by filing a written request for hearing with the department.

1. Such hearing shall be conducted pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:130.751 et seq., and 47:6031.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:751 (April 2010).

Subchapter C. Administration of Grants and Loans

§§3717.-3725. Reserved.

Subchapter D. Certification of Tax Credits

§§3727.-3735. Reserved.

Chapter 39. Ports of Louisiana Tax Credits

Subchapter A. Investor Tax Credit

§3901. Purpose and Definitions

A. Purpose

1. The primary purpose of this Subchapter is to encourage private investment in public port facilities in Louisiana. The development, improvement, expansion, and maintenance of the state's ports and port infrastructure facilities, is essential to Louisiana's economic health and the ability of business and industry associated with the maritime industry to compete cost effectively on a regional, national, and global scale.

B. Definitions

Applicant—investing company or proposing entity submitting application for certification of project/expenditures/tax credits

Application Date—the date an application for preliminary certification of a project is received by LED.

Capital Costs—

a. all costs and expenses incurred by an investing company.

i. in connection with acquisition, construction, installation, and equipping of a qualifying project;

ii. during the period commencing with the date on which the acquisition, construction, installation, and equipping commences and ending on the date on which the *qualifying project* is placed in service.

b. *Capital costs* shall include, but are not limited to:

i. costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen;

ii. the costs of acquiring land or rights in land and any cost incidental thereto, including recording fees;

iii. the costs of contract bonds and of insurance of any kind that may be required or necessary during the acquisition, construction, or installation of a qualifying project;

iv. the costs of architectural and engineering services, including test borings, surveys, estimates, plans, and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, and installation of a qualifying project;

v. the costs associated with installation of fixtures and equipment; surveys, including archaeological and environmental surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, paving, and provisions for drainage, storm water retention, installation of utilities, including water, sewerage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the property;

vi. costs otherwise defined as capital costs incurred by the investing company where the investing company is the lessee under a lease that contains a term of not less than five years and is characterized as a capital lease for federal income tax purposes;

vii. all other costs of a nature comparable to those described, including but not limited to all project costs required to be capitalized for federal income tax purposes pursuant to the provisions of 26 U.S.C. §263(A).

c. *Capital costs* shall not include property owned or leased by the investing company or a related party before the commencement of the acquisition, construction, installation, or equipping of the qualified project unless such property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.

COA—the Commissioner of Administration of the State of Louisiana

DOTD—the Louisiana Department of Transportation and Development.

Estimated Start Date—the estimated date on which the acquisition, construction, installation, or equipping of the qualifying project was commenced or is expected to commence.

Investing Company—any corporation, partnership, limited liability company, proprietorship, trust, or other business entity, regardless of form, making a qualified investment.

Investors—shareholders, partners, members, owners, or beneficiaries of an investing company.

JLCB–the Joint Legislative Committee on the Budget.

LED—the Louisiana Department of Economic Development.

LDR—the Louisiana Department of Revenue.

Port Activity—any trade or business described in the 1997 North American Industry Classification System (NAICS) within Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when the trade or business is conducted on premises in which a public port has an ownership, leasehold, or other possessory interest and such premises are used as part of the operations of a public port, including the above trades and businesses as they may hereafter be reclassified in any subsequent publication of the NAICS or similar classification system developed in conjunction with the United States Department of Commerce and Office of Management and Budget.

Project—any land, building, or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, located or to be located in a public port of the state.

Proposing Entity—The public port, upon whose property, a qualifying project is to be undertaken.

Public Port—any deep-water port commission or port, harbor and terminal district as defined in Article VI, Section 44 of the Constitution of Louisiana, and any other port, harbor, and terminal district established under Title 34 of the Louisiana Revised Statutes of 1950.

Qualified Investment—the financial undertaking by an investing company of a qualifying project.

Qualifying Expenditures—Expenditures in the state, after the application date, for capital costs of a qualifying project.

Qualifying Project—a project sponsored or undertaken by a public port and an investing company.

a. with a capital cost of not less than one and one-half million dollars, and

b. at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port or port and harbor activity.

c. it shall not mean bulk liquid or gas facilities.

State—the State of Louisiana.

SBC—the Louisiana State Bond Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2543 (November 2010), amended LR 48:403 (March 2022).

§3903. Preliminary Certification

A. Preliminary certification of the project is the initial step in the tax credit process. An application for preliminary certification as a qualifying project must be submitted to LED prior to the start of the project.

B. The application for preliminary certification shall include the following information:

1. a detailed project description;

2. a preliminary budget including the following information:

a. the estimated capital costs; and

b. the estimated Louisiana payroll;

3. the estimated start date and the estimated completion date;

4. an explanation of why the proposed project is a qualifying project;

5. the names of each investing company or the name or names of the investors to become entitled to the tax credit;

6. a copy of the cooperative endeavor agreement between the investing company and the public port in whose geographic jurisdiction the proposed qualifying project is to be located indicating cooperation and support among all of the parties;

7. any additional information required by LED;

8. project plans, specifications, contracts, purchase orders and other appropriate design and/or expenditure documentation; if the foregoing information is not made available to DOTD during preliminary certification, then the project owner/sponsor must provide these items to DOTD prior to project construction.

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is $500 and the maximum application fee is $15,000 for a single project.

D. LED shall review the application and determine whether the project is a qualifying project, taking into consideration, the following factors;

1. the impact of the project on the immediate and long-term objectives of the tax credit provided for such investment;

2. the impact of the project on the employment of Louisiana residents;

3. the impact of the project on the overall economy of the state;

4. the availability of similar infrastructure or facilities within fifty miles of the proposed project;

5. the economic impact of the project on similar, existing private or public projects within 50 miles of the proposed qualifying project;

6. LED may require the investing company to conduct a public meeting, in the project location area to obtain additional information regarding the impact of the proposed project.

E. If LED determines that the project is a qualifying project, LED shall issue a preliminary certification of the qualifying project which shall include.

1. a unique identifying number for each project;

2. the estimated total amount of tax credits that will be issued;

3. the estimated amount of tax credits to be taken at five percent per year;

F. The preliminary certification shall be valid only for a period of thirty months, from the date of approval by the JLCB and SBC, during which time the qualifying project must be completed or the preliminary certification shall expire;

1. if a project is project to take longer than 30 months, the applicant may request an extension of the preliminary certification by providing sufficient justification;

2. an extension of the preliminary certification requested after approval by the JLCB and SBC will require a new certification of sufficient revenue as provided in §3905.

G. LED shall send the preliminary certification to the proposing entity, the investing company, the LDR and the COA. LED shall send the preliminary certification and a copy of the application to DOTD.

H. LED shall prepare, and send to the COA with the preliminary certification, an economic analysis of the qualifying project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2544 (November 2010), amended by the Office of Business Development, LR 42:223 (February 2016).

§3905. Certification of Sufficient Revenue

A. After receipt of the LED preliminary certification and economic impact analysis, the COA shall review the project and determine whether a certification of sufficient revenue may be issued.

1. COA may issue a certification if he finds that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits as a result of either:

a. increased port activity because of grant; or

b. otherwise.

2. The COA's certification shall state the amount of tax credits for which sufficient revenues are determined.

3. The COA's certification shall be submitted to the JLCB and the SBC for approval.

4. If the COA's certification is approved by both the JLCB and the SBC, it shall be delivered to the Secretary of LED

5. The certification of the COA shall be valid for a period of 30 months after it is approved by the JLCB and SBC, unless an extension is requested as provided in §3903.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2545 (November 2010).

§3907. Certification of Qualifying Expenditures

A. After approval of the certification of sufficient revenue, the applicant may submit a request to LED for certification of qualifying expenditures as follows:

1. The applicant must submit a cost report to LED prepared by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

2. DOTD shall inspect the site and verify that the capital costs expenditures were made by verifying that the project components identified in the detailed project description are complete and in place

3. LED may require an additional audit by an LED-selected CPA, the cost of which shall be reimbursed by applicant.

4. LED shall determine and certify qualifying expenditures.

5. Qualifying expenditures shall be certified by LED no more than twice for a project, unless the applicant reimburses LED for the cost of additional certifications.

B. A request for the certification of qualifying expenditures must be filed no later than six months after the project becomes operational.

C. Except as provided in paragraph §3907.C.1., LED shall not certify as qualifying expenditures any expenditures incurred prior to the application date.

1. LED may certify expenditures incurred prior to the application date if:

a. the expenditures are directly related to performance of due diligence for the qualifying project; and

b. the expenditures are capital costs as defined in §3901.

D. LED and DOTD shall have reasonable access to the project site (or location of the fabrication) during and upon completion of activities related to project construction or installation, for the purpose of conducting periodic inspections during project construction or a final inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2545 (November 2010).

§3909. Certification of Tax Credits

A. LED may issue a certification of tax credits to the Applicant only after all of the following have occurred.

1. LED has certified the project as a qualifying project.

2 COA has issued a certification of sufficient revenue, which has been approved by both JLCB and SBC.

3. LED has certified qualifying expenditures.

6. The applicant has reimbursed any audit and additional certification costs.

B. LED shall issue to the applicant a tax credit certification letter, stating:

1. the dollar amount of tax credits certified, which shall not exceed the qualifying expenditures or the amount of tax credits certified by the COA, whichever is less ; and

2. the amount of tax credit to be taken each year, which shall be five percent of the total tax credit per year.

C. tax credits shall not be carried back to any tax year prior to the year capital cost expenditures are incurred, but may be claimed beginning either the tax year the expenditures are incurred or the tax year in which the expenditures were certified, for a period of 20 years.

D. Tax credits are earned by investors when expenditures are made by investing company.

E. LED shall send the tax credit certification letter to the investing company and to LDR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

§3911. Claiming Tax Credits

A. All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Subsection on their corporation income tax return.

B. Individuals, estates, and trusts shall claim any credit allowed under this Subsection on their income tax return.

C. Entities not taxed as corporations shall claim any credit allowed under this Subsection on the returns of the partners or members as follows.

1. Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

2. Individual partners or members shall claim their share of the credit on their individual income tax returns.

3. Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

D. If the tax credit allowed exceeds the amount of taxes due for the tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 10 years.

E. The investing company shall attach the tax certification letter to their return when claiming the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

§3913. Recapture and Recovery of Tax Credits

A. Recapture

1. If LED finds that funds for which an investing company received tax credits were not expended as qualifying expenditures, LED shall notify the investing company and reissue the tax certification letter to LDR within 15 days of the discovery. The investing company's state income tax liability for such taxable period shall be increased by an amount necessary for the recapture of the tax credits allowed. LED may delegate its audit authority to LDR.

B. Recovery

1. Credits previously granted to a taxpayer, but later disallowed, may be recovered by LDR through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned.

2. Interest may be assessed and collected, but only at a rate of three percentage points above the rate provided in R.S. 39:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2546 (November 2010).

Subchapter B. Import-Export Tax Credit

§3921. Purpose and Definitions

A. Purpose

1. The primary purpose of this Subchapter is to encourage the use of state port facilities in Louisiana. The utilization of public port facilities for the import and export of cargo to or from distribution, manufacturing, fabrication, assembly, processing, or warehousing sites in Louisiana is essential to Louisiana’s economic health and the ability of business and industry associated with the maritime industry to compete cost effectively on a regional, national and global scale.

B. Definitions

Applicant—the international business entity submitting application for certification of tax credits.

Application—information provided by the applicant that is required to participate in the import-export tax credit program that has been verified by an independent certified public accountant or other third party approved by Louisiana Economic Development, which shall be filed annually for the prior calendar year's qualified cargo.

Application Date—the date an application for preliminary certification of a project is received by LED.

Baseline Tonnage—any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an international business entity receiving the credit, which are imported or exported to or from a Louisiana facility and which are so moved by way of an oceangoing vessel berthed at a Louisiana public port facility during the 2013 calendar year.

Breakbulk Cargo—machinery, equipment, materials, products, or commodities, including but not limited to palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods and commodities, or offshore drilling platforms and equipment, and shall not include bulk cargo.

Bulk Cargo—loose, unpackaged, non-containerized cargo or any liquid or dry commodities that are handled in bulk.

Certified Tonnage—the number of tons of qualified cargo in a calendar year minus the number of tons of baseline tonnage.

COA—the commissioner of administration of the state of Louisiana.

Containerized Cargo—any machinery, equipment, materials, products, or commodities shipped in containers which are rigid, sealed, reusable metal boxes in which merchandise is shipped by vessel, truck, or rail.

DOTD—the Louisiana Department of Transportation and Development.

Export Cargo—any breakbulk or containerized cargo brought from the state of Louisiana to a foreign country, excluding bulk cargo.

Import Cargo—any breakbulk or containerized cargo brought to the state of Louisiana from a foreign country, excluding bulk cargo.

International Business Entity—a taxpayer corporation, partnership, limited liability company, or other commercial entity, all or a portion of whose activities involve the import or export of breakbulk or containerized cargo to or from a Louisiana facility.

JLCB—the Joint Legislative Committee on the Budget.

LED—the Louisiana Department of Economic Development.

LDR—the Louisiana Department of Revenue.

Louisiana Expenditures—shipping costs incurred in the transporting, warehousing, storing, and blast freezing of qualified cargo between the Louisiana facility and the cargo's point of entry to or exit from the state.

Louisiana Facility—manufacturing, fabrication, assembly, distribution, processing, or warehousing facilities located within Louisiana.

Oceangoing Vessel—any vessel, ship, barge, or watercraft that floats, including offshore oil exploration platforms.

Public Port—any deep-water port commission or port, harbor and terminal district as defined in article VI, section 44 of the Constitution of Louisiana, and any other port, harbor, and terminal district established under title 34 of the *Louisiana Revised Statutes* of 1950.

Qualified Cargo—any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an international business entity, that are imported or exported to or from a Louisiana facility by means of an oceangoing vessel berthed at a public port facility.

Significant Positive Economic Benefit—net positive tax revenue that shall be determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by the COA, and the value of the credit, and any other state tax and financial incentives that are used by LED to secure the project or activity.

State—the *state* of Louisiana.

SBC—the Louisiana State Bond Commission.

Ton—a net *ton* of 2000 pounds and in the case of containerized cargo it shall exclude the weight of the container.

Verified Statement—information required by Section 3923.D, verified by the applicant's chief executive officer or most senior officer responsible for shipping and distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2238 (November 2014).

§3923. Application

A. An international business entity submitting an application is eligible to receive tax credits for certified tonnage following preliminary certification by LED, certification of significant positive economic benefit by the COA, approval of JLCB, approval by SBC and final certification by LED.

B. No applications will be received for import-export tax credits prior to July 1, 2014.

C. Applications may be filed after January 1 of each year for qualified cargo shipped during the immediately preceding calendar year.

D. No more than one application may be filed by an applicant for a calendar year, and shall include all qualified cargo for that calendar year.

E. The application shall include the following information:

1. a verified statement of baseline tonnage;

2. a verified statement of qualified cargo specifically including:

a. total annual volume and tons of breakbulk or containerized cargo exported from or imported to a Louisiana facility;

b. all shipping Louisiana expenditures directly associated with imports or exports through Louisiana public ports, and general freight charges, or a distribution of those expenditures that can be identified as Louisiana expenditures across the following six key shipping-related categories:

i. international shipping, which are those Louisiana expenditures for shipping between the Louisiana port and international locations such as pilotage, tugs, harbor fees, linement and dockage;

ii. water transportation, which are those Louisiana expenditures for intrastate shipping by barge or other vessel;

iii. truck transportation, which are those Louisiana expenditures for intrastate transportation by road;

iv. rail transportation, which are those Louisiana expenditures for intrastate transportation by rail;

v. warehousing and storage, which are those Louisiana expenditures for wharfage, stevedoring, drayage, warehousing, storage, and other loading and unloading charges;

vi. blast freezing, which are those specific Louisiana expenditures for freezing or other cold storage;

c. any additional information required by LED.

3. The applicant must retain documentation supporting the information in the verified statement for a three-year period. Upon good cause, all books and records of the applicant relating to the application shall be subject to audit by LED, at applicant's expense.

F. An application fee equal to 0.5 percent (0.005) times the total anticipated tax incentive, with a minimum application fee of $500 and a maximum application fee of $15,000, shall be submitted with each application for import-export credits. The fee shall be made payable to Louisiana Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2239 (November 2014), amended by the Office of Business Development, LR 42:223 (February 2016).

§3925. Preliminary Certification

A. LED shall review the application and determine:

1. eligibility of the applicant;

2. certified tonnage; and

3. the estimated significant positive economic benefit of the cargo shipment, taking into consideration:

a. the nature of the cargo as either containerized or breakbulk;

b. transit of the cargo across the docks of a Louisiana public port;

c. the origination and terminus of the cargo from or to a Louisiana or international location;

d. the impact of the cargo shipment in promoting port and harbor activity;

e. the impact of the cargo shipment on the employment of Louisiana residents;

f. the impact of the cargo shipment on the overall economy of the state.

B. If LED determines that the applicant is eligible, LED shall issue a preliminary certification of the certified tonnage, the maximum amount of tax credits that could be issued (no more than $5 per ton of certified tonnage), a recommended finding as to significant positive economic benefit and, if less than the maximum, the recommended amount of tax credits warranted by the estimated significant positive economic benefit.

C. LED shall send the preliminary certification and economic analysis to the COA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2239 (November 2014).

§3927. Certification of Significant Positive Economic Benefit

A. The COA shall review the application, LED preliminary certification and economic analysis, and determine whether a certification of significant positive economic benefit may be issued.

1. COA may issue a certification if he finds that there will be significant positive economic benefit received by the state to offset the effect to the state of the tax credits as a result of either:

a. increased port activity because of grant; or

b. otherwise.

2. The COA's certification shall state the amount of tax credits for which significant positive economic benefit is determined.

3. The COA's certification shall be submitted to the JLCB and the SBC for approval.

4. If the COA's certification is approved by both the JLCB and the SBC, it shall be delivered to the Secretary of LED for final certification.

a. Approval by the JLCB shall not be granted earlier than July 1, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2239 (November 2014).

§3929. Final Certification

A. The secretary of LED (or his designated program administrator) shall issue a final certification of tax credits in the amount certified by the COA and approved by JLCB and SBC, and deliver copies to the applicant and LDR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2240 (November 2014).

§3931. Tax Credit Limitations

A. Tax credits shall be issued on a first come, first served basis, based upon the date of final certification.

B. No applicant shall receive a final certification of tax credits under this program in an amount greater than $1,800,000 for certified cargo in any calendar year.

C. LED shall not issue final certification of tax credits under this program in a total amount for all applicants greater than $4,500,000 in any single fiscal year.

D. Applications exceeding the limitations provided in this Section will be deemed reduced to the applicable limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2240 (November 2014), amended LR 48:403 (March 2022).

§3933. Claiming Tax Credits

A. There shall be allowed a credit against the individual income, corporate income, and corporation franchise tax liability of a taxpayer who has received a final certification from LED, provided that the credit shall be allowed only against the tax liability of the international business entity which receives the certification.

B. Tax credits are earned in the tax year in which LED issues final certification.

C. The first year in which tax credits may be claimed against taxes is the tax year in which the tax credits are earned.

D. If the tax credit allowed exceeds the amount of taxes due for the tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

E. The applicant shall attach the final certification to its return when claiming the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2240 (November 2014).

§3935. Audit, Recapture and Recovery of Tax Credits

A. Recapture. If LED finds that tax credits have been improperly issued, LED shall issue a revised final certification disallowing the improperly issued tax credits and send copies thereof to the applicant and LDR. The applicant's state income tax liability for such taxable period shall be increased by an amount necessary for the recapture of the tax credits allowed.

B. Recovery. Credits previously granted to an applicant, but later disallowed, may be recovered by LDR through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned.

C. Interest. Interest may be assessed and collected, at a rate of three percentage points above the rate provided in R.S. 39:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2240 (November 2014).

§3937 Termination of Program

A. No import-export credits shall be granted after January 1, 2020. Applications for certification of tax credits for all certified tonnage through December 31, 2018 must be submitted no later than July 1, 2019 to allow sufficient time for final certification of the tax credits by December 31, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2240 (November 2014).

Subchapter C. Louisiana Import Tax Credit

§3945. Purpose and Definitions

A. Purpose

1. The primary purpose of this Subchapter is to encourage the use of Louisiana public port facilities for cargo imports which in turn will foster the development of new port infrastructure facilities for the manufacturing, distribution, and warehousing of imported goods.

2. This program presents a streamlined and efficient method for applying for and utilizing tax credits for imports that place Louisiana in an equal position with competing states' that have similar programs in place to incentivize the growth of cargo imports.

B. Definitions

Actual Cargo Volume—total amount of imported cargo received (in TEU's) by a port facility user within its port credit incentive period.

Application Date—the date an application, application fee and all information required to make a determination of eligibility is received by LED.

Base Cargo Volume—average amount of imported cargo received (in TEU's) by a port facility user in the three years preceding an application for port credits. Only cargo that is owned by a port facility user at the time the port facility is used may be included in the calculation of base cargo volume.

Base Cargo Volume Period—the three-hundred sixty-five-day period ending on the last day of the month immediately preceding the month in which an application for port credits is submitted to LED, provided that project agreements awarding port credits may specify a different base cargo volume period.

LDR—the Louisiana Department of Revenue.

LED—the Louisiana Department of Economic Development.

Net New TEUs—the number of TEUs of actual cargo volume imported through a public port during the port credit incentive period in excess of the applicant's base cargo volume during the applicant's base cargo volume period.

Port Credit—a one-time tax credit of up to $50 per TEU of cargo imported through a Louisiana public port, or up to $100 per TEU of cargo imported through a Louisiana public port if entering into a project agreement with the state, that may be applied against Louisiana tax liability.

Port Credit Incentive Period—the 365-day period designated by an applicant on its application as the 12-month period in which it is eligible to earn port credits, as approved by LED, provided that the port credit incentive period shall begin no earlier than the first day of the month immediately following the date the application is submitted to LED. Project agreements awarding port credits may specify a port credit incentive period beginning on any date mutually agreed to by the parties.

Port Facility User—any person engaged in the manufacturing, warehousing, or distribution of goods imported through a public port of the state.

Public Port—any deep-water port commission or port, harbor and terminal district as defined in article VI, section 44 of the Constitution of Louisiana, and any other port, harbor, and terminal district established under title 34 of the *Louisiana Revised Statutes* of 1950.

TEU—20-foot equivalent unit, that is a standard measurement in shipping volumes in units of 20-foot long containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:404 (March 2022).

§3947. Eligibility

A. The applicant must be a port facility user engaged in the manufacturing, warehousing, or distribution of goods imported through Louisiana public ports whose primary function is identified by one or more of the NAICS sector codes of 31-33, 42, or 493.

B. The applicant shall be a port facility user that imports more than 50 TEUs of cargo through Louisiana public ports annually or if a new port facility user, then the applicant shall submit a projection of its annual anticipated actual cargo volume, which must exceed 50 TEUs.

C. The applicant shall increase its imported cargo volumes by at least one hundred and five percent during its port credit incentive period as compared to imported cargo volumes during its base cargo volume period.

1. For example, if an applicant established a baseline cargo volume of 250 TEU's, a minimum of an additional 12.50 in TEU's (5 percent) would be required during the incentive period, for a total of 262.50 TEU's (105 percent of base cargo volume).

2. Tax credits shall be calculated based upon the additional, net new TEU only.

D. The applicant shall file an application for port credits with LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:404 (March 2022).

§3949. Application

A. A port facility user seeking to obtain port tax credits shall file an application with LED before commencement of the port credit incentive period or project to include the following information:

1. indication of which type of port credit is being sought:

a. port credits of up to $50 per TEU based upon cargo volume; or

b. port credits of up to $100 per TEU based upon an invitation from and a project agreement with the state, as approved by LED and the governor;

2. the port facility user's company name, NAICS code and evidence that the applicant is engaged in the manufacturing, warehousing, or distribution of goods imported through Louisiana public ports;

3. the name of the public port serving as the site of the port facility user's imported cargo;

4. evidence that the applicant's current imported cargo volume through a Louisiana public port exceeds 50 TEU's of cargo annually. If the applicant is a new port facility user, then the applicant shall submit a projection of its anticipated annual actual cargo volume, which must exceed 50 TEUs;

5. evidence of base cargo volume:

a. applicants seeking tax credits based upon cargo volume or project agreement shall include documentation and evidence of the average amount of imported cargo volumes in TEUs for the applicant during the three-year period ending on the last day of the month immediately prior to the date of submission of the application to LED. If the applicant is a new port facility user, the applicant shall propose a base cargo volume, subject to approval by LED.

6. any additional information required by LED.

B. An application fee equal to 0.5 percent (0.005) times the total anticipated tax incentive, with a minimum application fee of $500 and a maximum application fee of $15,000, shall be submitted with each application. The fee shall be made payable to Louisiana Economic Development.

C. Applications shall be accepted for port tax credits on or after September 1, 2021, until port tax credits are no longer available subject to the tax credit limitations within this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1 and 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:405 (March 2022).

§3951. Preliminary Certification or Project Agreement

A. LED shall review the application and determine:

1. eligibility of the applicant;

2. base cargo volume;

3. base cargo volume period; and

4. port credit incentive period.

B. If LED determines that the applicant is eligible, LED shall issue either:

1. a preliminary certification for projects seeking tax credits based upon cargo volume, indicating:

a. a certification of the base cargo volume based upon records from the applicable public port facility confirming the total and average amounts of imported cargo volumes in TEUs for the applicant during the three-year period immediately preceding the month of the port facility user's application submission; or if a new port facility user, a base cargo volume proposed by the applicant and approved by LED;

b. the 12-month port credit incentive period, during which time an applicant may be eligible to earn port tax credits. This period shall begin no earlier than the first day of the month immediately following the application date and shall begin no later than 90 days following the application date;

c. a preliminary certification of the total anticipated tax incentive allocation which shall be calculated by multiplying total number of net new TEUs by $50 per TEU; or

2. a project agreement for port facility users seeking port credits based upon an invitation from the state, indicating:

a. a certification of the base cargo volume based upon records from the applicable public port facility confirming the total and average amounts of imported cargo volumes in TEUs for the applicant during the three-year period immediately preceding the month of the port facility user's application submission; or if a new port facility user, a base cargo volume proposed by the applicant and approved by LED;

b. a 36-month port credit incentive period, during which time an applicant may be eligible to earn port tax credits. This period shall begin on any date mutually agreed to by the parties, but no earlier than the month immediately following the date of application submission;

c. a preliminary certification of the total anticipated tax incentive allocation which shall be calculated by multiplying the total number of net new TEUs by the rate per TEU outlined in the project agreement.

C. If LED determines that the applicant is ineligible, LED shall issue a written denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:405 (March 2022).

§3953. Final Certification

A. Applicants shall file a request for final certification of credits within 90 days of the end of the port credit incentive period. Requests received after this date shall not be accepted and any tax credits earned shall be deemed waived, unless applicant receives written approval for late submission from LED prior to the deadline.

B. Port credits are earned based upon actual cargo volumes transiting the applicable public port during the port credit incentive period and as such, requests for final certification of credits shall include:

1. evidence of actual cargo volumes transiting the applicable port during the applicable port credit incentive period supported by records from the applicable public port facility. Only cargo that is owned by the port facility user shall be included in the calculation of actual cargo volume.

2. a summary of actual cargo volumes, net new TEUs, and the percentage increase in imported cargo during the port credit incentive period as compared to imported cargo volumes during the base cargo volume period;

3. any additional information required by LED.

C. After review and a determination that applicant has increased its imported cargo volumes by at least one hundred five percent during its port credit incentive period, LED shall issue a final certification of credits and provide to LDR the name and tax identification number of the applicant approved for credits, total amount of credits, and any other information required by LDR.

D. If LED determines that the applicant has not meet qualification requirements, LED shall issue a written denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:405 (March 2022).

§3955. Tax Credit Limitations

A. Tax credits shall be issued on a first come, first served basis, based upon the date of final certification.

B. Tax credits are earned upon net new TEUs of actual cargo volumes transiting the applicable public port during the port credit incentive period and the certification of actual cargo volumes as set forth in Section 3951.

1. For example, if an applicant established a baseline cargo volume of 250 TEU's, and showed an additional 150 TEU's imported during the incentive period, for a total of 400 TEU's, tax credits would be awarded based upon only the 150 additional net new TEU's imported.

C. A port facility user shall not to be entitled to claim more port credits than are approved by LED pursuant to Section 3951.

D. LED shall not issue final certification of tax credits under this program in a total amount for all applicants greater than four million five hundred thousand dollars in any single fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:406 (March 2022).

§3957. Claiming Tax Credits

A. There shall be allowed a credit against corporate income tax liability of a taxpayer who has received a final certification from LED, provided that the credit shall be allowed only against the tax liability of entity which receives the certification.

B. Tax credits are earned in the tax year in which LED issues final certification.

C. Tax credits may be claimed against a taxpayers income liability for the tax year containing the last day of the port credit incentive period, notwithstanding the carryforward provisions herein.

D. If the tax credit allowed exceeds the amount of taxes due for the tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

E. Tax credits are not refundable or transferable.

F. The applicant shall attach the final certification to its return when claiming the credits.

G. A recipient of port credits granted pursuant to this section shall not be eligible for import-export cargo tax credits pursuant to R.S. 47:6036(I) nor shall a recipient of port credits be eligible to receive any other state tax credit, exemption, exclusion, deduction, rebate, or any other tax benefit for which the taxpayer has received a port credit pursuant to this Section. A recipient of import-export cargo tax credits as provide din R.S. 47:6036(I) shall not be eligible for port credits pursuant to this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:406 (March 2022).

§3959. Recovery of Tax Credits

A. Credits previously granted to an applicant, but later disallowed, may be recovered by LDR through any collection remedy authorized by R.S. 47:1561.3 and initiated within three years from December 31 of the year in which the credits were earned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.1

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 48:406 (March 2022).

Chapter 41. Corporate Tax Apportionment Program

§4101. General

A. The Corporate Tax Apportionment Program (the "program") extends the single sales factor computation for corporate income and franchise tax purposes utilized by manufacturers and merchandisers to other qualified business sectors. The secretary ("secretary") of the Louisiana Department Economic Development ("LED") may invite businesses who meet the eligibility requirements to participate in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:4401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2739 (November 2012).

§4103. Eligibility Requirements; Invitation to Participate; Application

A. The secretary may invite a business to participate in the program, upon determining the business meets all of the following criteria:

1. at least 50 percent of the total annual sales of the business from its Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers or buyers who resell the product or service to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof;

2. the activities of the Louisiana site or sites include at least one of the following:

a. corporate headquarters;

b. logistics;

c. warehousing;

d. data center;

e. clean technology

f. destination health care;

g. research and development;

h. renewable energy;

i. digital media and software development; or

j. any other business sector targeted by the secretary as a focus of the department's economic development efforts;

3. except when the business will provide at least 25 new headquarters jobs or shared service center jobs, the business is not primarily engaged in any of the following sectors:

a. retail sales;

b. real estate;

c. professional services;

d. natural resource extraction or exploration;

e. financial services; or

f. venture capital funds;

4. the business is not engaged in gaming or gambling.

B. At the invitation of the secretary, a business may apply for participation in the program by submitting certified statements and substantiating documents as required by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:4401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2739 (November 2012).

§4105. Contract Approval

A. Contract. The secretary shall determine the terms and conditions of the contract, including performance obligations.

B. Approval

1. The secretary may request approval of the contract by the Joint Legislative Committee on the Budget upon determining that:

a. the business meets all eligibility requirements;

b. participation in the program is needed in a highly competitive site selection situation to encourage the business to locate the project in the state; and

c. securing the project will result in significant positive economic benefit to the state.

2. The Joint Legislative Committee on the Budget may approve the contract for the business' participation in the program for an initial term of up to 20 years, renewable at the discretion of the secretary for up to an additional 20 years.

3. Upon approval of the contract, LED shall submit a copy of the contract to the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:4401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2739 (November 2012).

§4107. Contract Renewal

A. Upon application by a qualified business, and LED's determination that the business continues to meet eligibility requirements and contract performance obligations, the secretary may renew the contract for an additional period of up to 20 years. LED shall submit a copy of the renewal to the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:4401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2739 (November 2012).

§4109. Annual Certification of Eligibility

A. The qualified business must submit certification (signed by a key employee of the business) that it continues to meet all eligibility requirements of the program as well as all performance obligations of the contract by September 1 of each year unless the contract designates another reporting deadline. A company's failure to submit the annual certification of eligibility by the deadline provided for in this section shall result in the forfeiture of benefits for the previous tax year and the secretary, in his discretion, may terminate the contract. LED may require an audit of any annual certification at the expense of the qualified business.

B. The qualified business may not file its Louisiana corporate income and franchise tax return utilizing the single sales factor for apportionment purposes until the annual certification of eligibility has been submitted to and verified by LED. Upon verification, LED shall notify the Louisiana Department of Revenue that the business remains eligible to use the single sales factor for apportionment purposes on its Louisiana corporate income and franchise tax return.

C. If a business fails to maintain the eligibility requirements for participation in the program or fails to meet the performance objectives in the contract, the department may suspend or terminate the contract. Upon suspension or

termination of the contract, department will notify the Louisiana Department of Revenue that the business is not qualified to utilize the single sales factor for apportionment purposes for the tax year or years in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:4401.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2739 (November 2012).

§4111. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with R.S. 51:4401 or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2740 (November 2012).

Chapter 43. Competitive Projects Payroll Incentive Program

§4301. General

A. The Competitive Projects Payroll Incentive Program (the "program") provides an incentive rebate of up to 15 percent of a participating company's new payroll. The secretary ("secretary") of the Louisiana Department Economic Development ("LED") may invite businesses who meet the eligibility requirements to participate in the program.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:27360 (November 2012).

§4303. Eligibility Requirements; Invitation to Participate; Application

A. The secretary may invite a business to participate in the program, upon determining the business meets all of the following criteria:

1. at least 50 percent of the total annual sales of the business from its Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers or buyers who resell the product or service to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof;

2. the business will primarily engage in one of the following activities at the project site:

a. manufacturing of the following types of durable goods:

i. automobiles, motorcycles or other passenger vehicles, or components thereof;

ii. aircraft or components thereof;

iii. spacecraft or components thereof;

iv. medical devices;

v. batteries or other power storage devices;

vi. motors, engines, turbines or components thereof;

vii. environmental control systems;

viii. household appliances;

ix. computers, computer peripherals or components thereof;

x. communications equipment;

xi. audio or video equipment;

xii. semiconductors;

xiii. consumer-oriented electronic devices or components thereof;

xiv. industrial machinery; or

xv. construction heavy equipment such as excavators;

b. manufacturing of pharmaceutical products;

c. conversion of natural gas to diesel, jet fuel, or other refined fuels;

d. data storage or data services, provided that at least 75 percent of sales meet the out-of-state sales requirements of this Subsection; or

e. other activities as recommended by the secretary and approved by the Joint Legislative Committee on the Budget; and

f. the business offers or will offer a basic health benefits plan to individuals it employs within 90 days of the effective date of qualifying for the incentive rebates pursuant to R.S. 51:3111;

3. the following types of businesses shall not be eligible for participation in the program:

a. a business engaged in gaming or gambling;

b. a business primarily engaged in natural resource extraction or exploration, unless the project activity is the conversion of natural gas to diesel, jet fuel, or other refined fuels; or

c. a business primarily engaged in retail sales, real estate, professional services, financial services, venture capital funds, shipbuilding, wood products, agriculture, or manufacturing of machinery or equipment primarily intended to serve the energy industry.

B. At the invitation of the secretary, a business may apply for participation in the program by submitting certified statements and substantiating documents as required by LED.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2736 (November 2012).

§4305. Contract Approval

A. Contract. The secretary shall determine the terms and conditions of the contract, including the term, rebate rate, maximum rebate amount, performance obligations and the consequences of any failure to perform such obligations.

B. Approval

1. The secretary may request approval of the contract by the Joint Legislative Committee on the Budget upon determining that:

a. the business meets all eligibility requirements;

b. participation in the program is needed in a highly competitive site selection situation to encourage the business to locate the project in the state; and

c. securing the project will result in significant positive economic benefit to the state.

3. The Joint Legislative Committee on the Budget may approve the contract for the business' participation in the program for an initial term of up to five years, renewable at the discretion of the secretary for up to an additional five years.

4. Upon approval of the contract, LED shall submit a copy of the contract to the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2737 (November 2012).

§4307. Contract Renewal

A. Upon application by a qualified business, and LED's determination that the business continues to meet eligibility requirements and contract performance obligations, the secretary may renew the contract for an additional period of up to five years. LED shall submit a copy of the renewal to the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2737 (November 2012).

§4309. Annual Certification of Eligibility

A. The qualified business must submit certification (signed by a key employee of the business) that it continues to meet all eligibility requirements of the program as well as all performance obligations of the contract by September 1 of each year unless the contract designates another reporting deadline. A company's failure to submit the annual certification of eligibility by the deadline provided for in this Section shall result in the forfeiture of benefits for the previous tax year and the secretary, in his discretion, may terminate the contract. LED may require an audit of any annual certification at the expense of the qualified business.

B. Annually, LED will verify that a participating company continues to meet the eligibility requirements of the program as well as performance obligations of the contract and submit the rebate claim to the Louisiana Department of Revenue for payment.

C. If a business fails to maintain the eligibility requirements for participation in the program or fails to meet the performance objectives in the contract, the department may suspend or terminate the contract.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2737 (November 2012).

§4311. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with the statutory provisions of this program or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with Act 507 of the 2012 Regular Session of the Louisiana Legislature.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2737 (November 2012).

Chapter 45. Corporate Headquarters Relocation Program

§4501. General

A. The Corporate Headquarters Relocation Program (the "program") provides a rebate equal to 25 percent of a participating company's relocation costs when they relocate or expand their headquarters within Louisiana. The secretary ("secretary") of the Louisiana Department Economic Development ("LED") may invite businesses who meet the eligibility requirements to participate in the program.

AUTHORITY NOTE: Promulgated in accordance with Act 503 of the 2012 Regular Session of the Louisiana Legislature.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2738 (November 2012).

§4503. Eligibility Requirements; Invitation to Participate; Application

A. The secretary may invite a business to participate in the program, upon determining the business meets all of the following criteria:

1. the business is relocating a headquarters to Louisiana or is expanding headquarters in Louisiana;

2. the secretary determines that participation in the program will be a significant factor in a highly competitive site selection situation to encourage the business to relocate or expand the headquarters in Louisiana;

3. the secretary determines that securing the project will result in a significant positive economic benefit to the state; and

4. relocation or expansion of the headquarters will create at minimum of 25 headquarters jobs.

B. A business engaged in the gaming or gambling shall not be eligible for participation in the program.

C. At the invitation of the secretary, a business may apply for participation in the program by submitting certified statements and substantiating documents as required by LED.

AUTHORITY NOTE: Promulgated in accordance with Act 503 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2738 (November 2012).

§4505. Contract Approval

A. Contract. The secretary shall determine the terms and conditions of the contract, including but not limited to, scope of the project, performance obligations, determination of qualifying relocation costs, and the maximum amount of qualifying relocation costs eligible for the rebate.

B. Approval

1. The secretary may request approval of the contract by the Joint Legislative Committee on the Budget upon determining the company meets the eligibility requirements of the program.

2. The Joint Legislative Committee on the Budget may approve the contract for the business' participation in the program.

AUTHORITY NOTE: Promulgated in accordance with Act 503 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2738 (November 2012).

§4507. Certification of Qualifying Relocation Costs and Rebate Payment

A. The qualified business must provide LED with a cost report detailing all relocation costs upon completion of the relocation or expansion. LED will review the cost report and certify a dollar value of relocation expenditures eligible for the rebate. LED may require an audit of the relocation costs at the expense of the qualified business.

B. The rebate shall be claimed by the business in equal installments over a five year period of time.

1. No payment of a rebate shall be made in the same fiscal year in which the contract is approved by the Joint Legislative Committee on the Budget.

2. The business shall claim the rebate on a form prescribed by the Secretary of the Louisiana Department of Revenue.

3. A request for rebate may not be made more than 30 days prior to the business's right to receive the rebate.

AUTHORITY NOTE: Promulgated in accordance with Act 503 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2738 (November 2012).

§4509. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with the statutory provisions for this program or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with Act 503 of the 2012 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 38:2738 (November 2012).

Chapter 47. Competitive Projects Tax Exemption Program

§4701. General

A. The competitive projects tax exemption program provides an ad valorem property tax exemption for the facility of an eligible business. The secretary of the department economic development ("LED") or a local governmental entity listed in R.S. 47:4353 may invite targeted non-manufacturing businesses who meet the eligibility requirements to participate in the program.

B. Only property on which ad valorem taxes have not previously been paid will be eligible for the exemption. The applicant shall provide documentation to LED that property taxes have not previously been paid on the property for which it seeks the exemption.

C. Definitions

Facility—the land, buildings, infrastructure, and equipment necessary or beneficial to the project, and any additions, expansion and improvements thereto.

Program—the competitive projects tax exemption program.

Secretary—secretary of the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 39:1419 (June 2013).

§4703. Parish Participation in the Program

A. A contract for the program is available for projects located in parishes which have agreed to participate in the program.

B. A parish is eligible to participate in the program upon approval by all of the following local governmental entities:

1. the parish governing authority;

2. all municipalities in the parish which levy an ad valorem tax;

3. all school boards in the parish which levy an ad valorem tax;

4. the parish law enforcement district; and

5. the parish assessor.

C. The parish governing authority shall provide the secretary with written notification of the parish's agreement to participate in the program, together with copies of resolutions or other written evidence of each local governmental entity's agreement to participate.

D. Any of the entities listed in Subsection B of this Section may revoke its approval of participation in the program, by providing the secretary with written notification thereof, together with a copy of the resolution or other written evidence of the revocation action.

E. The parish will be deemed to have withdrawn from the program, effective 90 days after the secretary's receipt of written notice of revocation as provided in Subsection D of this Section. The parish's withdrawal shall not affect contracts executed prior to the effective date of the withdrawal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 39:1419 (June 2013).

§4705. Eligibility Requirements; Invitation to Participate; Application

A. At the invitation of the secretary or a local governmental entity of a participating parish, a business may apply for participation in the program by submitting certified statements and substantiating documents as required by LED.

B. The secretary or a local governmental entity of a participating parish may invite a business to participate in the program, upon the secretary's determination that the business meets all of the following criteria:

1. at least 50 percent of the total annual sales of the business from its Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers or buyers who resell the product or service to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof;

2. the business will primarily engage in one of the following activities at the project site:

a. corporate headquarters;

b. distribution facilities;

c. data service centers;

d. research and development operations; or

e. digital media and software development centers; and

3. the business shall make capital expenditures of at least $25,000,000 for the facility and create and maintain at least 50 new direct jobs during the contract period;

4. except for a business providing at least 50 new headquarters jobs or shared service center jobs, a business primarily engaged in the following types of businesses shall not be eligible for participation in the program:

a. retail sales;

b. real estate;

c. professional services;

d. natural resource extraction or exploration;

e. financial services; or

f. venture capital funds;

5. no business engaged in gaming or gambling operations shall be eligible for participation in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 39:1420 (June 2013).

§4707. Contract Approval

A. Contract. The secretary shall determine the terms and conditions of the contract, including the term, performance obligations, monitoring by the department, reporting by the business, auditing of contract performance and the consequences of any failure to perform such obligations.

B. Approval

1. The secretary may request approval of the contract by the board of commerce and industry upon determining that:

a. the business meets all eligibility requirements;

b. participation in the program is needed in a highly competitive site selection situation to encourage the business to locate the project in the state; and

c. securing the project will result in significant positive economic benefit to the state.

2. Following approval by the board of commerce and industry, the contract shall be executed by the secretary.

3. LED shall submit a copy of the executed contract to the assessor and the parish governing authority of the affected parish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 39:1420 (June 2013).

§4709. Annual Certification of Eligibility; Suspension or Termination

A. The qualified business must submit certification (signed by a key employee of the business) that it continues

to meet all eligibility requirements of the program as well as all performance obligations of the contract by April 1 of each year. A company's failure to submit the annual certification of eligibility by the deadline provided for in this section shall result in the forfeiture of benefits for the previous tax year and the secretary, in his discretion, may terminate the contract. LED may require an audit of any annual certification at the expense of the qualified business.

B. Annually, LED will verify that a participating company continues to meet the eligibility requirements of the program as well as performance obligations.

C. If a business fails to maintain the eligibility requirements for participation in the program or fails to meet the performance objectives in the contract, the secretary may, at his discretion, suspend or terminate the contract.

1. A contract suspension shall remove the exemption for the year in which the failure occurred, but the secretary may lift the suspension following a year in which eligibility requirements and performance obligations are met, and the exemption shall then be restored effective for that year.

2. A contract cancellation shall remove the exemption for the calendar year in which the failure occurred and all future years.

D. Upon receipt of notification from the secretary that a contract is suspended or cancelled, the assessor shall adjust the property assessment in the manner provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4351, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 39:1420 (June 2013).

Subchapter B. Import Export Cargo Credit (Reserved)

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP) and Economic Development Site Readiness Program (EDRED)

Subchapter A. Economic Development Award Program (EDAP)

§101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support, promote and enhance the state's commitment to Targeted Industry-Based Economic Development, and the state's long term goals as set forth in the Louisiana Department of Economic Development's Master Plan for Economic Development for the State of Louisiana.

B. The purpose of this EDAP program is to assist in the financing or funding of Sponsored Projects and/or Unsponsored Projects, further described below, for which LED and LEDC assistance is requested in order to promote economic development in this state and provide an incentive to influence a company's decision to locate, relocate, maintain, rebuild and/or expand its business operations in Louisiana, and/or to increase its capital investment in Louisiana:

1. a sponsored project would include the financing or funding of an expansion, improvements and/or provision of publicly-owned infrastructure for a public entity for the benefit of industrial or business development projects that promote targeted industry economic development and that require state assistance for basic infrastructure development, with a public entity recommending the award, serving as a sponsor of and participating in the award application and the award agreement;

2. an unsponsored project would include the financing or funding for locating, obtaining and/or improving privately-owned property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, the demolition or removal of existing buildings and/or improvements if a part of the site preparation for the construction of new buildings and/or improvements, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, but without the requirement of a public entity sponsor.

C. The Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 40:264 (February 2014).

§103. Definitions

Applicants—the company or business enterprise and (if a Sponsored Project) the public entity, collectively, requesting or seeking financial assistance from LED and LEDC under this program.

Award—the funding of financial assistance and/or appropriations, including performance-based grants or loans approved under this program for eligible applicants, which will promote economic development in this state, and will serve as an incentive to influence a company's decision to locate or relocate its business operations in Louisiana, maintain, rebuild and/or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

Award Agreement—that agreement or contract hereinafter referred to between the company, LED and LEDC, and (if a sponsored project) the public entity, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives or obligations of the award provided pursuant to the rules of this program.

Awardee—an applicant, company or business enterprise, and (if a sponsored project) the public entity receiving an award under this program.

Borrower—the awardee receiving and accepting a loan award under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the State of Louisiana, in need of funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking and/or receiving the benefit of the award under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, or to employ, to retain, or to maintain the employment of the number of employees as agreed; the failure to achieve and/or to maintain the employee compensation or payroll levels as agreed; the failure to pay or to repay any loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDAP—the Economic Development Award Program.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Financed Lease—a lease entered into that satisfies the criteria of a lease intended as a security device in which a security interest may be reserved in favor of LED or LEDC, for the payment or repayment of an award, a debt, a loan or some other obligation; in which case LED or LEDC, as the creditor or lender, shall be the lessor, the awardee, as the debtor or borrower, shall be the lessee, and the installment payments of the award, loan or other obligation shall be the lease or rental payments.

Grant or Grant Award—funding of financial assistance approved under this program for eligible applicants, provided the awardee achieves and maintains the performance obligations as required in the award agreement. This type of award is not ordinarily intended to be repaid in cash payments except in the event of a default by the awardee in the performance of its obligations under the award agreement. In the event of a default, the full repayment by the awardee of the award may be required, or repayment of the unpaid or uncredited balance may be required of the awardee after appropriate *performance credits*, have been applied against the repayment obligation.

Guaranty—an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

Infrastructure—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

Infrastructure Project—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, servitudes, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Loan or *Loan Award*—funding of financial assistance approved under this program for eligible applicants, provided the awardee achieves and maintains the performance obligations as required in the award agreement, which award is to be repaid in cash payments over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest (at the discretion of the LEDC Board), and may also be repaid by applying against the unpaid or uncredited balance of the award appropriate *performance credits* earned by the awardee through the performance of its required obligations during the term of the award agreement; and in the event such "credits" are utilized and earned, any interest due may also be waived, all to be determined in its discretion by the LEDC Board, or by the LED or LEDC staff.

Loan Participation—the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and any interest income.

Performance Credits—may include any of the following or any combination of the following credits earned by the awardee through the performance of its required obligations during the term of the award agreement, as determined in its discretion by the LEDC Board, or by the LED or LEDC staff, and as provided in the award agreement:

1. *Jobs Credits*—refers to credits, in an amount determined as provided in the award agreement, earned for the number of new permanent full-time jobs created, filled with employees and maintained within the agreed employment and/or contract term, which credits are applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement;

2. *Payroll Credits*—refers to credits, in an amount as provided in the award agreement, earned for dollar amounts of new job annual payroll, for increases to existing job annual payroll, or for total new annual payroll for all new and existing permanent full-time jobs, or any combinations thereof, paid by the company within the agreed employment and/or contract term, which credits are applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement; and

3. *Jobs/Payroll Credits*—refers to a combination of "Jobs Credits" and "Payroll Credits" applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement.

Permanent Full-Time Jobs or Permanent Full-Time Equivalent Jobs—refers to direct jobs which are not contract

jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

Program—the Economic Development Award Program (EDAP), which may include sponsored projects or unsponsored projects that are undertaken by a company and a public entity (if a sponsored project), and funded wholly or partially by LED and LEDC through an award pursuant to these rules and the bylaws of LEDC.

Project—refers to the undertaking related to the location, relocation, maintaining, rebuilding or expansion of a business enterprise or an industrial facility in this state, for which an award is sought and/or is granted under this program which will promote economic development in this state, for which LED and LEDC assistance is requested under this program.

Public Entity or Sponsoring Entity—the public or quasi-public entity that is responsible for recommending to LED and LEDC the approval of the financial award for the project, for engaging in the award agreement with the company, and pursuant thereto is responsible with the company for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives and obligations of the award agreement.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC, or his designee.

Security Interest—a lien, incumbrance or mortgage affecting movable or immovable property, or a Uniform Commercial Code (UCC-1) Financing Statement, given by an awardee, as debtor or borrower, in favor of LED and/or LEDC, as creditor or lender, to assure the awardee's payment or repayment of all or the unpaid or uncredited balance of an award, loan, debt, or promise to pay an amount of money, or for the fulfillment or performance of an obligation or obligations. A security interest may also be reserved in favor of LED or LEDC, as the creditor or lender, in the form of a lease, commonly called a *financed lease*, as defined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 40:264 (February 2014).

§105. General Principles

A. The following general principles, including the eligibility requirements set forth in §107 and the criteria provided in §109 below, will direct the administration of the Economic Development Award Program (EDAP).

1. LEDC acting through LED may make an EDAP award, by grant or loan, on terms and conditions which are determined by the LEDC board in its discretion, considering the recommendations of the Secretary and/or the staff of LED or LEDC, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, will be beneficial in meeting the goals and purposes stated in the preamble and purpose of these rules.

2. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendations of the Secretary and/or the staff of LED or LEDC.

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

4. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

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

6. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in approving and making the award.

7. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

8. Appropriate cost matching or funds matching by the applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of an award.

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

10. In a sponsored project, during the term of the award agreement the sponsoring public entity shall maintain public ownership of the public property and infrastructure improvements acquired or paid for with state funds; and in an unsponsored project, during the term of the award agreement the awardee/company shall maintain ownership of the property and improvements acquired or paid for with state funds. These parties shall not transfer ownership of such property or improvements for less than the fair market value thereof. Should either of these parties elect to sell such property or improvements, or should any other party to the award agreement or any other third party elect to purchase such property or improvements for fair market value during

the term of the award agreement, the proceeds derived from such purchase and received by the selling party shall be refunded to LED or LEDC by the selling party immediately on receipt of such proceeds, to be applied as a credit against the remaining unpaid or uncredited balance of the award.

11. In the discretion of the LEDC board, after considering the recommendations of the Secretary and/or the staff of LED or LEDC, a two-year moratorium from the date of an LEDC board approval or award of a grant or a loan may be required on additional EDAP awards for the benefit of the same company at the same location, and a company shall not be eligible for or receive another EDAP award so long as the same company is currently still obligated under an existing EDAP award involving the same location.

12. Whether or not an award will be made is entirely in the discretion of the LEDC board, after considering the recommendations of the secretary and/or the staff of LED or LEDC, and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent.

13. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application or award.

14. A loan award may also take the form of a loan participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:872 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 40:266 (February 2014).

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth in Section 105 above and the criteria provided in Section 109 below; must demonstrate a need for the funding of the project consistent with these rules; and,

1. In connection with a sponsored project, the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

a. a public or quasi-public entity; or

b. a political subdivision of the state; or

2. In connection with an unsponsored project, the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant/ company, business enterprise or awardee, which in the case of a loan award, will also be the borrower.

B. A company or public entity shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company or public entity has another contract with LED or LEDC in which the company or public entity is in default and/or is not in compliance. Should a company or a public entity, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this program shall include:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments (whether commercial or residential);

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:872 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 40:267 (February 2014).

§109. Criteria for Projects

A. In addition to the general principles set forth in §105 and the eligibility requirements provided in §107 above, projects must meet the criteria hereinafter set forth for an award under this program.

1. Job Creation and/or Retention and Capital Investment

a. Projects must create or retain at least 10 permanent full-time jobs in Louisiana, at the project location.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created and the compensation or payroll amounts or levels to be achieved and maintained as stated in the application for the award or as up-dated and finalized in the award agreement, will be strictly adhered to, and will be made an integral part of the award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand, or improve basic infrastructure supporting mixed use by the company and the surrounding community, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment in this state.

6. The minimum award request size shall be $50,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within six (6) months after its award approval by the LEDC Board, the LEDC Board of Directors, in its discretion, may extend the time period for the company's start of the project, reconsider and withdraw the award or funding for the project, and/or require reapplication. LED or LEDC may require copies of written, signed documentation demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 40:268 (February 2014).

§111. Application Procedure for Projects

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

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and, in the discretion of the LEDC Board or the LED or LEDC staff, either audited financial statements, or an independent CPA certification of the company's net worth sufficient to demonstrate to LED or LEDC the financial ability of the company considering the circumstances relating to the award, as well as financial statements of any guarantors which may also be required by the LED or LEDC staff in its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for any loan for which the applicant has applied which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation or payroll levels of jobs to be created and/or retained by the company in connection with the project, and the amount of capital investment for the project;

5. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application, including documentation from any commercial banks or other lenders specifying the reasons why the banks or other lenders would not extend funding to the applicant;

6. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be funded as requested or described in the award application; and

7. any additional information that the LED or LEDC staff may require.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

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§113. Submission and Review Procedure for Projects

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

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

2. validate the information presented; and/or

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

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by the LED or LEDC staff.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and the criteria provided for this program under §109, the secretary of LED and/or the staff of LED or LEDC will then make recommendations to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendations of the secretary of LED and/or the staff of LED or LEDC. The LED director or the targeted industry specialist in whose industrial area the applicant company participates may also make recommendations to the LEDC board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 40:269 (February 2014).

§115. General Award Provisions

A. These provisions shall be applicable to all awards (whether grants or loans) under this program. All agreements shall demonstrate the intent of the company, LED, LEDC and (if a sponsored project) the public entity, to enter into the award agreement.

1. Award Agreement. After an award has been approved, a written award agreement, contract or cooperative endeavor agreement will be executed between LEDC, acting through LED, the company or business enterprise and (if a sponsored project) the public entity receiving the award. The agreement will specify the amount of the award; the terms and conditions of any award; a promise to pay or to repay any award in the event of default by the awardee; the performance objectives, obligations and requirements the company and the public entity (if any) will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including but not limited to, time lines for investment, for performance, for job retention and/or creation, as well as the compensation or payroll amounts or levels for such jobs. Under the agreement, the public entity (if any) will oversee the progress of the project and the performance of the company. In a sponsored project, LED or LEDC will disburse funds to the public entity in a manner determined by the LED or LEDC staff. In an unsponsored project, LED or LEDC will disburse funds to the company in a manner determined by the LED or LEDC staff.

2. Interest. As determined by the LEDC Board in its discretion, after considering the recommendations of the Secretary and/or the LED or LEDC staff, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, any award either may or may not require the payment of interest.

a. Award Interest. If interest is to be paid on the award, the rate of interest shall not be less than the then current U.S. Government Treasury security rate that coincides with the term or time period of the award at the time of the award approval, nor more than 2.5 percent above such treasury security rate, as determined by the LEDC board or by the LED or LEDC staff. The award may be repaid in cash payments as hereinafter provided, and may also be repaid by allowing performance credits to be appropriately applied against the unpaid or uncredited balance of the award in an amount determined by the LEDC Board or by the LED or LEDC staff. Performance credits, may include jobs credits, payroll credits or jobs/payroll credits, earned by the awardee through the performance of its required obligations during the term of the award agreement; and in the event such credits are utilized and earned, any interest due may also be waived, all as determined by the LEDC board or by the LED or LEDC staff.

b. Default Interest. Interest payable after default may be at a higher rate, but not to exceed 12 percent per annum, from the date of default, if that date can be determined, or otherwise from the date of the discovery of the default, at a rate determined by the LEDC board or by the LED or LEDC staff.

3. Repayment. The award agreement may provide for the repayment of such awarded funds on a stated date, or within a stated time, in annual installments or on demand, as determined by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such repayment terms, or by the staff of LED or LEDC in the absence of a determination by the LEDC board. If necessary and appropriate, a repayment term may be structured with a balloon payment at the end of the last year of the term of the repayment obligation; however, refinancing of the balloon payment will not be permitted.

4. Collateral Ratio. In connection with unsponsored projects, for the purposes of establishing an acceptable award to value (AtV) ratio for collateral in connection with any awards, or a loan to value (LtV) ratio for collateral in connection with loan awards, the applicant must present to the LED or LEDC staff a current appraisal of the property, improvements or other items being funded or being offered as collateral, or its documented purchase price. After the award or loan request has been approved and the value of the property, improvements or other items to be funded or used as collateral has been substantiated, the LED or LEDC staff will determine the eligible AtV or LtV based on the criteria established by the LED or LEDC staff and these rules. The LED or LEDC staff shall have the discretion and ability to reduce the AtV or LtV based on the applicant's financial ability to repay the award or the loan. If the LED or LEDC staff determines the applicant is financially unable to meet a predetermined debt service coverage ratio of 1.25 to 1 (1.25:1), the award amount or the loan amount shall be reduced in order that the AtV or the LtV may be reduced accordingly to meet the required debt service coverage ratio.

5. Security Interest. When appropriate, and if required by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, the awardee shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in either the funded movable and/or immovable property or any other property or assets of the awardee offered as security for the award as the LEDC Board or the LED or LEDC staff shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

6. Financed Lease. When appropriate, and if required by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of LED or LEDC in the absence of a determination by the LEDC Board, the awardee shall execute an appropriate financed lease for the purpose of financing and providing security for the award as the LEDC board or the LED or LEDC staff shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such financed lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

7. Examination/Audit of Books, Records and Accounts. LED, LEDC and the state shall retain and shall have the right to examine/audit all appropriate books, records and accounts of the awardee relating to the project at any reasonable time and from time to time, as well as such books, records and assets of any and all guarantors of the obligations of the awardee.

8. Guaranties. Should the circumstances warrant, and if required by the LEDC Board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty of an awardee's obligations to pay or repay the award proceeds or any part thereof, and/or a guaranty or guaranties of a company's obligations to perform any or all of its performance requirements or obligations under the award agreement, shall be required from any appropriate person, persons, company, companies, business enterprise, or any public entity, sponsoring entity or governmental authority.

9. Execution of Documents. If an awardee does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the award transaction within 60 days after the completed documentation has been forwarded to the awardee, in the LEDC board's discretion the awardee shall be required to appear before the LEDC board to explain the delay, and the LEDC board shall have the right to reconsider the award, and may either withdraw the award or grant an extension of time to the awardee. In the event the awardee does not execute the documentation within the additional time extended to it, the LEDC board, in its discretion, may reconsider and withdraw the award.

10. Funding.

a. Eligible project costs may include costs related to the acquisition, improvement, design, location, construction and/or installation of assets and other improvements, including, but not limited to, the following:

i. site (land) and/or buildings;

ii. engineering and architectural expenses related to the project;

iii. site preparation;

iv. construction, renovation and/or rebuilding expenses; and/or

v. building materials;

vi. and only with regard to unsponsored projects, real estate fees and/or commissions paid in connection with the acquisition or leasing of land, buildings and/or office space for the location of the business operation;

vii. and again, only with regard to unsponsored projects, purchases or rebuilding of capital machinery and/or equipment that has been approved by the LEDC Board, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC . If any such machinery and/or equipment to be financed by the award is not to be located on property owned by the awardee, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or LEDC staff shall determine such to be in its security interests to do so.

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

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

ii. company moving expenses;

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

iv. refinancing of existing debt, public or private;

v. only with regard to sponsored projects, costs related to furniture, fixtures, computers, consumables, machinery, equipment, transportation equipment, rolling stock or movable equipment;

vi. and again, only with regard to sponsored projects, improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity; and

vii. only with regard to unsponsored projects, purchases or rebuilding of capital machinery and/or equipment that has not been approved by the LEDC board, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC.

11. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan award, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan award funds or may purchase a portion of the loan award; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate loan participation agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing and/or collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such sgreements.

B. Allocation of Amount for Awards. Following the state's appropriation of funds for each fiscal year, the board of directors of LEDC, considering the recommendations of the secretary and/or the staff of LED or LEDC, shall allocate, and may revise from time to time, the amount of such funds available for awards.

1. For all EDAP awards, matching funds shall be a consideration; and

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

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

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

iii. 50 percent for all other projects.

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

c. all monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such awards, in the discretion of the LEDC board, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such deductions;

d. the award amount shall not exceed 25 percent of the total funds allocated to the Economic Development Award Program during a fiscal year, plus any rollover funds from the previous year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of $3.1 million;

e. the LEDC board of directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the board of directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. With regard to sponsored projects, award funds will be disbursed to the sponsoring entity, and with regard to unsponsored projects, award funds will be disbursed to the awardee/company. Award funds will be available for

disbursement as needed, on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the sponsoring entity and/or the awardee/company, as the case may be. After the achievement of conditions required by the award agreement before the advancement of funds will be permitted, funding disbursements or advances of award funds may be made to the awardee at any time during the term of the award agreement, either before, at the same time as, or after other performance requirements or objectives have been accomplished or performance credits have been earned by the awardee.

2. Program Funding Source

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

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

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

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

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event such are required in connection with the project; and

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

4. Awardees will be eligible for the advancement of award funds on an as-needed reimbursement basis, with requests for such funds supplemented with copies of invoices or appropriate documentation showing the use of the funds, after the achievement of any, all or substantially all of the conditions required by the award agreement before the advancement of funds can be made have been met, achieved, performed or completed. After the awardee has met or achieved such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the award agreement before the advancement of funds can be made, the award amount may be disbursed to the awardee as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the award agreement before the advancement of funds can be made have been met, achieved, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when the LED or LEDC staff has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the award agreement may not have been fully met or achieved.

5. After the conditions required by the award agreement have been met, achieved or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase price shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by the LED or LEDC staff, or following the receipt and the LED or LEDC staff approval of copies of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met, achieved or satisfactorily performed or completed as provided above, awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the award amount until all or substantially all of the tasks or work required by the award agreement have been performed or completed. Ten percent of the amount of the award shall be held as a "retainage" until the completion or the substantial completion of such work. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent "retainage" of the award amount will be paid after the LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when the LED or LEDC staff has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

D. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress toward the achievement of performance objectives, obligations and requirements specified in the award agreement. Progress reports by a public entity and/or a company shall include a review and certification of a company's award repayment record, if appropriate, the company's hiring records and the extent of a company's compliance with contract employment commitments, including the number of jobs created, retained and/or maintained, and the compensation or payroll amounts or levels achieved and maintained. Copies of the company's Louisiana Workforce Commission (LWC) ES-4 Forms (quarterly report of wages paid) filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by the LED or LEDC staff to support the company's reported progress toward the achievement of performance objectives, job creation, employment and compensation or payroll level requirements. Further, the

public entity shall oversee the timely submission of reporting requirements of the company to LED or LEDC.

2. Award agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any job creation or employment requirements, including but not limited to the retention or creation of the number of jobs or the achieving or maintaining of compensation or payroll amounts or levels within the time and for the term agreed, as specified in its award agreement with LED and LEDC; if the awardee/company ceases its operations, reduces its employment numbers or payroll amounts or levels to less than the required amounts; if the awardee/company transfers ownership of the company (or substantially all of its assets) to an entity that is not approved by the state; any such acts, omissions or failures shall constitute a default under the award agreement, and LED and LEDC shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless the LED or LEDC staff has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event an applicant, a company, public entity, awardee or other party to an award agreement knowingly files a false statement in its application or in a progress report or other filing, the applicant, company, public entity, awardee or other party to an award agreement and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, awardee or other party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the district attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement official or personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any reasonable time and from time to time, financial and performance audits of a company, public entity, or guarantor, and its project, including all relevant accounts, records and documents of the company, the public entity and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005), LR 35:874 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 40:269 (February 2014).

§§117. - 129. Reserved

Subchapter B. Reserved.

Subchapter C. Economic Development Site Readiness Program (EDRED)

§151. Preamble and Purpose

A. A robust inventory of sites suitable for business and industrial location and expansion, having characteristics that are competitive with site offerings available in other states and availability for such projects within a short time frame, is essential to economic development in the state. Increasing the number of suitable sites, and eliminating or mitigating factors associated with these sites that can cause uncertainties and delays in project development, will enhance the state's ability to secure these projects and thereby increase the number of jobs in the state.

B. The purpose of this program is to provide financial assistance for readying sites that will be useful in promoting the state as a business and industrial location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 38:2528 (October 2012).

§153. Definitions

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation, acting through its board of directors.

Program—the Economic Development Site Readiness Program (EDRED).

Project—the location or expansion of a business or industrial facility in the state.

Public Site—a site which a public entity owns or for which a public entity holds an option to acquire the ownership for a project.

Site—immovable property, with or without improvements thereon, located in the state.

Site Readiness Grant—a monetary grant for the purpose of enhancing the suitability and availability of a site for a project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, LR 38:2528 (October 2012).

§155. Site Readiness Grants

A. Pursuant to R.S. 51:2341, LEDC may award an appropriation or allocation of funds to LED, to be used for site readiness grants.

B. LED may make a site readiness grant upon terms and conditions which it determines, within its discretion, will be beneficial in meeting the goals stated in the preamble and purpose of this Subchapter.

C. Application for a site readiness grant may be made, in a form determined by LED, by the owner or lessor of a site, or by a local governmental entity or an economic development organization on behalf of the owner or lessor.

D. Eligible uses of a site readiness grant may include costs of site assessment, evaluation, preliminary engineering, environmental studies and assessments, soil analysis, wetlands delineation and mitigation, surveys, maps, due diligence, preliminary cost estimates, site preparation, site acquisition, and similar or related costs determined by LED to be beneficial in enhancing the suitability and availability of a site for a potential project.

E. Site readiness grants for non-public sites shall be limited to not more than $1,000 per acre, unless a higher amount is approved by LEDC. This limitation shall not apply to public sites.

F. A site readiness grant shall be made through a cooperative endeavor agreement between LED and the site owner, lessor or other applicant, which shall provide for eligible uses of the grant, obligations as to availability of the site, matching funds if any, and other terms and conditions LED determines to be appropriate to further the purposes of this program. Grant funds may be paid to the site owner, lessor or other applicant to undertake the funded activities, or LED may use grant funds to contract with a third party to undertake such activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:2528 (October 2012).

Chapter 3. Workforce Development and Training Program

§301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Targeted Industry Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the Master Plan for Economic Development for the state of Louisiana.

B. The purpose of the program is to provide a source of funding in order to enable the development of and provide customized workforce training programs for existing and prospective employees of existing and prospective Louisiana businesses as a means of improving the competitiveness and productivity of Louisiana's workforce and business community; and to assist Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1064 (July 2003), LR 35:883 (May 2009).

§303. Definitions

Applicant—the business entity or company authorized to do business in Louisiana requesting a training award from LED and LEDC under this program.

Award—funding of financial assistance, including performance-based grants, approved under this program for eligible training activities.

Award Agreement—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

Contract—a legally enforceable Award Agreement between LED, LEDC and the successful applicant or company governing the terms and the conditions of the training award.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Jobs—refers to *permanent full-time jobs*, direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Net Benefit Return to the State—the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract—an average of that portion achieved by the company of the permanent full-time jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

Preference—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program—the Workforce Development and Training Program.

Project—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate, maintain or expand its operations in Louisiana, to increase its capital investment in Louisiana, to locate a facility in this state, and/or to employ residents of this state.

Secretary—the Secretary of the Louisiana Department of Economic Development, who is, by law, also the President of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq., 36:104, 36:108 and 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), LR 35:883 (May 2009).

§305. General Principles

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana; and such awards shall be subject to the discretion of the LEDC Board;

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. the anticipated economic benefits to the state will be considered as a requirement in making the award;

6. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

7. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

8. award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), LR 35:884 (May 2009).

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), LR 35:884 (May 2009).

§309. Eligibility

A. An eligible applicant is a company authorized to do business in Louisiana and an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are not eligible for the award of workforce development funds: retail businesses, enterprises and/or operations; real estate businesses, enterprises, operations and/or developments; trucking companies, businesses or enterprises; lodging or hospitality businesses or enterprises; assisted living businesses or enterprises, retirement communities, or nursing homes; and gaming or gambling businesses or enterprises.

C. Employees to be trained must be residents of Louisiana and employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained under this program for projects at Stennis Space Center must be Louisiana residents.

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

E. A company must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:884 (May 2009).

§311. Criteria

A. General (These apply to all training programs administered under these rules.)

1. Preference may be given to applicants in industries identified by the state as targeted industries or as industries located in targeted areas, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 180 days after application approval, the LEDC, upon the recommendation of LED staff or the Secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the award agreement.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must initially create in this state at least 10 net new permanent full-time jobs, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 existing permanent full-time employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 2331 et seq., 36:104, 36:108 and 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), LR 35:885 (May 2009).

§313. Application Procedure

A. LED will provide a standard application form which applicants will be required to use to apply for assistance under this program. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information either LED or LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:885 (May 2009).

§315. Submission and Review Procedure

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

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

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and/or

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The accomplishment of the net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to the LEDC Board; and the LEDC Board will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:885 (May 2009).

§317. General Award Provisions

A. Award Agreement

1. A written award agreement, contract or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the successful applicant or company. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation and/or retention, and the achievement of employee salary levels to be reached by the company.

2. LED will oversee the progress of the company's training and will disburse funds to the company on an as needed reimbursement basis as provided by the award agreement, based on cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

3. Funds may be used for training programs extending up to and not exceeding a term of two years in duration.

4. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon the request of the company, the recommendation of LED, and the approval of LEDC.

B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a performance-based grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs—wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. materials and supplies costs—training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and Computer Based Training (CBT) software; and

c. other justifiable costs—when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. travel costs, including but not limited to travel for trainers, training coordinators and trainees;

c. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless owned by a public training provider;

d. out-of-state publicly supported schools;

e. employee handbooks;

f. scrap produced during training for resale;

g. food, refreshments; and

h. awards.

4. Training activities eligible for funding consist of:

a. industry-specific or company-specific skills—skills which are unique to a particular industry or to a company's workplace, equipment and/or capital investment;

b. quality standards skills—skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. other skills—skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on an as-needed reimbursement basis following submission to LED by the company of required documentation (Cost Reports, and any supporting documentation if requested by LED). Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, funds will not be available for reimbursement to the company until an

award agreement, training agreement or contract between the company and LEDC has been finalized and executed.

2. A company will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the award agreement or contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, the company shall be required to complete and submit to LED Cost Reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly LA. Dept. of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination during the contract period of employees who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives as specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits to the state of the training project and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

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

E. LEDC shall retain the right, for itself, for the legislative auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1067 (July 2003), LR 35:886 (May 2009).

§319. Contract Monitoring

A. All monitoring will be done by LED or by an independent contractor under contract with LED or LEDC. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of $200,000, may be used by LED to fund administration or monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:244 (February 1999), LR 25:1665 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003), LR 35:887 (May 2009).

Chapter 5. Port Development Program

§501. Purpose and Scope

A. The purpose of the program is to provide financial assistance to public port authorities for capital projects which improve or maintain waterborne commerce and intermodal port infrastructure. Under this program, the Department of Economic Development (DED) is authorized to accept and review applications from eligible port authorities for project assistance. Upon favorable evaluation and prioritization of individual projects by DED's review committee, recommendations may be made to the Secretary of Economic Development for funding qualified projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1662 (September 1999), LR 26:239 (February 2000).

§503. Definitions

Applicant—the sponsoring Louisiana port authority requesting financial assistance from DED under this program.

Award—funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

Capital Projects—include any port infrastructure development project including land acquisition and attendant development costs.

Cash—any asset on the port's records used for the project. Land's value will be determined by its appraised value.

DED—Louisiana Department of Economic Development.

In-Kind—any service, land or equipment, related to the project, donated to a port outside its legal entity.

Intermodal Infrastructure Development—refers to the provision of highway, rail, water or air access; and internal trans-loading or distribution facilities to property owned and maintained by a local port authority.

Program—the Port Development Program.

Project Priority List—a list of projects proposed by eligible *applicants* ranked for program funding by the Department of Economic Development.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1662 (September 1999), LR 26:239 (February 2000).

§505. Program Objective

A. The objectives of this program are to develop and sustain the Louisiana ports and the navigable waterways system, particularly those infrastructures that improve efficiency of the system and contribute to the location of new industry, or expansion and retention of existing industry and employment within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§507. Eligibility

A. All Louisiana public port authorities are eligible to participate in the program. However, port projects that are eligible for funding under the Port Construction and Development Priority Fund administered by the Department of Transportation and Development will not be eligible for funding under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§509. Types of Projects

A. The types of projects funded under the program will include any type of port capital development projects, rehabilitation and maintenance, intermodal projects, land acquisition, site prep work and project feasibility studies that promote water transport and waterfront development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§511. Match

A. Each port authority will provide a match equal to at least 50 percent of the total cost of the project. The match may be furnished in cash or in-kind. No state funds can be used as matching funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§513. Application Procedure

A. Port authorities sponsoring projects are expected to provide complete and verifiable information on the proposed projects. The project information supplied should be accurate and documented in order for the department to adequately assess the merits of the project and prepare a project priority list. The sponsoring port authority must submit an application on a form provided by the department which will contain, but not be limited to the following:

1. a description of the proposed application procedure project including the nature and goals of the project, design and its major components. Justify the immediate need for the project;

2. indicate the total cost of the project. Also show the sources of funding and when they will be available;

3. provide construction, operation and maintenance plans, and a timetable for the project's completion;

4. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§515. Submission of Applications

A. Applications must be submitted to the DED by March 1 to be considered for funding for the following fiscal year. Two copies of the application with all attachments should be submitted to the Secretary of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§517. Criteria

A. Consideration will be given to projects which have completed preliminary planning work and ensure that the project is initiated within the funding year in which the project is approved.

B. Consideration will be given to the project's contribution to regional economic development.

C. Preference will be given to projects with high employment potential and payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§519. Project Review Procedure

A. Submitted applications will be reviewed and evaluated by a DED review committee. The committee will prepare a list of projects for funding and, if necessary, input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed in order to:

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

2. validate the information presented; and

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

B. After evaluation the review committee will submit a list of projects recommended to be eligible for funding to the Secretary of the Department of Economic Development.

C. The Secretary of DED will have the final authority in funding any recommended project under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:241 (February 2000).

§521. Funding

A. A port shall not be allocated in excess of 50 percent of the total appropriation as long as the appropriation does not exceed $5,000,000. In the event the appropriation for the Port Development Program exceeds $5,000,000, an individual award shall not exceed $1,000,000 each.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:241 (February 2000).

§523. Conditions for Disbursement of Funds

A. Grant award funds will be available to each port on a reimbursement basis following submission of required documentation to DED. Only funds spent on the project after the cooperative endeavor agreement (contract) has been agreed upon, signed and executed will be considered eligible for reimbursement.

B. Ports will be eligible for reimbursement of approved expenses up to 90 percent of the award amount. After all deliverables are completed according to the terms of the contract, the final 10 percent of the award will be made available for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1664 (September 1999), LR 26:241 (February 2000).

§525. Monitoring

A. All monitoring will be done by DED. A portion of the fiscal years' appropriation, up to 5 percent, not to exceed $50,000, may be used by the DED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1664 (September 1999), LR 26:241 (February 2000).

Chapter 7. Regional Initiatives Program

§701. Purpose

A. The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§703. Definitions

Applicant—the entity requesting financial assistance from DED under this program.

Award—grant funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

DED—Louisiana Department of Economic Development.

Operating Costs—ongoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program—the Regional Initiatives Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§705. General Principles

A. The following principles will direct the administration of the Regional Initiatives Program.

1. Awards should be considered to be one time only funding to achieve a specific goal for a regional (multi-parish) economic development organization or coalition of organizations.

2. Grant proposals must delineate clearly what is proposed and what is to be achieved by the award.

3. Awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment, unless approved by the secretary.

4. Projects to be funded must augment the Louisiana Economic Development Council's plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§707. Eligibility

A. An eligible applicant for the Grant Award can include but is not limited to one of the following:

1. an existing regional economic development organization;

2. local chambers of commerce;

3. local economic development organizations;

4. multi-parish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;

5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§709. Criteria

A. Preference will be given to projects that are regional (multi-parish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

E. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§711. Application Procedure

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

1. A narrative proposal (maximum of three pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested.

2. Copy of letter(s) notifying the applicant's local governments, area legislators, and the prevailing economic development organization of your intent to apply for R.I.P. funding.

3. Quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables.

4. A detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project.

5. Résumé(s) of consultants involved with the project.

6. Any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§713. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff.

Input may be required from the applicant and other state agencies as needed in order to:

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

2. determine whether the project's funding requirements are best met by the proposed award;

3. validate the information presented;

4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary. If the secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

2. The secretary will issue a Letter of Commitment to the applicant within five working days of the application review and approval.

3. The final 10 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

§715. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's match.

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

a. ongoing operating costs;

b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment, unless approved by the secretary.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12 1/2 percent of the total project cost may be inkind. For the purposes of this program, inkind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

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

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

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

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress towards the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

Chapter 9. Louisiana Industrial Training Program

§901. Eligibility

A. Applicant must be a manufacturing firm.

B. Applicant must apply for a minimum of 10 net-new, permanent manufacturing jobs that are classed as entry-level unskilled.

C. Applicant must assign a supervisor/instructor to at least 10 trainees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§903. Preference

A. Preference will be given to applicants locating in a parish which has an unemployment rate higher than the state average.

B. Secondary preference will be given to companies in targeted Standard Industrial Classification (SIC) Codes. The target industries for any particular fiscal year shall be determined by the Secretary of Economic Development in June of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§905. Method and Timing of Application

A. An application shall be submitted for approval to the development supervisor for the Department of Economic Development, Office of Commerce and Industry.

B. The application shall include a manning table setting forth job titles, number of employees per job title and hourly wage per job title. A maximum of 10 percent deviation in the proposed manning table will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§907. Contract and Monitoring

A. A contract shall be executed between the state of Louisiana and a local approved non-profit economic development organization from the same geographical area as the site location of the applicant on behalf of the applicant industry.

B. The nonprofit corporation shall monitor the progress of training under the contract and report to the development supervisor who shall also monitor the progress of the training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§909. Method of Payment

A.1. Payment to the non-profit monitor shall be reimbursable from an invoice which shows:

a. name of supervisor(s);

b. Social Security number;

c. number of weeks worked; and

d. weekly rate.

2. Instructors will be paid for a maximum of 40 hours per week.

B. All invoices shall be accompanied by a statement which shows:

1. names of trainees;

2. Social Security number;

3. employment status at time of hiring;

4. sex;

5. race;

6. previous wage rate; and

7. current wage rate.

C. Invoices shall be submitted at the end of the training period if that period is seven weeks or less. Invoices shall be submitted monthly if the training period is seven weeks or more.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§911. Location of Training

A. All training locations shall be in Louisiana.

B. Exceptions to this may be made at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§913. Amount of Training Grants

A. On-the-job training grants will be calculated at $200 per job.

B. Pre-employment training grants will not exceed $70,000.

C. Exceptions to this may be at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

Chapter 11. Local Economic Development Support Fund

§1101. Definitions

Urban—an organization, the service area of which includes a parish with a population of 50,000 or over.

Rural—an organization, the service area of which includes no parish with a population of 50,000 or over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1103. Urban

A. Applicant. Applicant organization may not be a tax levying body.

B. Staff. Must employ professional full-time executive director. Must submit résumé and evidence of employment by applicant organization.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. Monies received through the LEDS program may constitute no more than 50 percent of the current budget of the organization. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the Department of Commerce, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of Work. Performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1105. Rural

A. Applicant. Applicant may not be a tax levying body.

B. Staff. May employ professional full-time executive director or may contract for work. Must submit résumé and evidence of employment by applicant organization. If full-time employee or contract employee not applicable, must submit evidence of capability of completing contracted scope of work.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. If the organization is one year old or less, monies received through the LEDS program may constitute no more than 75 percent of the current 1987 budget of the organization. If the organization is between one and two years old, the monies may constitute no more than 65 percent of the budget. If the organization is three years old or older, the monies may constitute no more than 50 percent of the budget. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the department, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of work. performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

Chapter 15. Louisiana Project Equity Fund

§1501. Purpose

A. The purpose of this program is to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the introduction, growth and retention of Louisiana businesses by providing loan funding for defined

business projects. The Louisiana Economic Development Corporation ("LEDC") in accordance with R.S. 51:2301 et seq., and R.S. 51:2341 and these rules may provide loan funding to companies on a project basis for the purchase of capital equipment, and accompanying necessary inventory and/or technology that introduce innovative development or production of products in Louisiana and that serve to enhance industry clusters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2636 (December 2003).

§1503. Definitions

Applicant—the public entity requesting the loan funding from the Louisiana Project Equity Fund for equipment and other materials to be owned by the public entity during the pendency of the loan and to be utilized by the company for the project.

Award—the funding of the loan from the LEDC under this program to eligible applicants.

Company—a legal entity that is duly authorized to do and doing business in Louisiana in need of loan funding for a project pursuant to these rules.

LED—the Louisiana Department of Economic Development charged by statute with administering the Project Equity Fund and the LED cluster directors and assigned staff shall administer the fund provided for by these rules.

LEDC Board—the board of directors of the Louisiana Economic Development Corporation and when referred to herein in terms of approval of an award, shall mean that the award has been approved in accordance with the by-laws and procedures of the board of directors whether such approval requires or does not require board approval under those by-laws and procedures.

Loan Agreement—the loan agreement of contract hereinafter referred to between DED, LEDC, company and applicant through which the parties by cooperative endeavor or otherwise, including attached or referenced promissory notes, securitization, lease or other appropriate documentation necessary to conventionally protect the interest of the LEDC in the funding of the loan, set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Project—the undertaking of the applicant and company for which a loan pursuant to these Project Equity Fund rules are sought and includes introduction of innovative development or production of products to the state of Louisiana that furthers and promotes the development of cluster industries and businesses through the loan funding of capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of such equipment and results in increased economy and efficiency in Louisiana products.

Secretary—the secretary of the LED, who is also the president of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2636 (December 2003).

§1505. General Principles

A. The following general principles will direct the administration of the Louisiana Project Equity Fund.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and are subject to the discretion of the LED, the secretary of the LED and the LEDC.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, including cluster development, whether in a particular circumstance, or overall.

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

4. Awards that promote retention and strengthening of cluster development of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

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

6. Whether or not an award will be made is entirely at the discretion of the LED, its cluster directors, the secretary and the LEDC board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the LED, its cluster directors, the secretary, or the LEDC board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1507. Eligibility

A. In order to be eligible for a Project Equity Funding Award pursuant to this program, the applicant and company must demonstrate to the satisfaction of the board that the award sought must be consistent with the principles set forth above, and the applicant and company must demonstrate a need for the project funding consistent with the requirements set forth below. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, upon recommendation

of the LED and its contract monitor, withhold funding until there is substantial performance of the contingencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1509. Application for Project Funding

A. The applicant and the company must jointly submit an application to the LED through its assigned staff and cluster director(s) responsible for the business area that will be subject to the project for which the lending is being sought, in proposal form which shall contain the following information:

1. a business plan providing:

a. a detailed description of the project to be undertaken, particularly:

i. the project manufacturing materials and equipment; and/or

ii. technology for which the funding is sought; and

iii. the economic scope of the investment involved in the project;

b. cash flow analysis of the project providing detailed support for the use of the funding provided;

c. the nature of the treatment of the funding in the business plan and cash flow analysis for the project, including a payment schedule for the loan that is consistent with the revenues generated by the innovative manufacturing or technology that is funded for the project;

2. a description of the project:

a. the capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of the equipment;

b. the product being produced in the state of Louisiana as a result of the project;

c. the innovative, efficient and/or economical nature (to Louisiana) of the process of production that will result from the project;

d. a description as to how the project furthers and promotes the development of cluster industries and businesses and will enhance the economic viability of the state and region of the state in which the project is located;

3. a description of the applicant local government entity and the company and the nature of the ownership by the applicant and agreed to by the company, including a schedule for the transfer of ownership from the applicant to the company upon fulfillment of the repayment obligations of the company to the LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1511. Loan Funding

A. All funding applications must be considered by the board after review by the assigned staff and upon recommendation of the relevant cluster director and the secretary. Thereafter, the LEDC board upon such review as may be necessary to make the determination as to the application in accordance with these rules shall either approve or disapprove the application. Upon approval by the LEDC board:

1. the loan shall be funded pursuant to the loan agreement;

2. the credit provided shall be drawn down in accordance with the schedule provided as approved by the cluster director, secretary and LEDC and incorporated into the loan agreement;

3. the loan agreement shall include appropriate enforceable provisions for the monitoring of the contract;

4. the loan agreement shall include such conventional provisions as may be appropriate to protect and secure the loan funding provided by the LEDC board pursuant to these rules;

5. the cluster director making the recommendation for the loan funding shall be designated by the LEDC as the contract monitor for the loan agreement, and the contract monitor shall, on a semi-annual basis, report to the LEDC board on the status and progress of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2638 (December 2003).

Chapter 17. Regional Awards and Matching Grant Program

§1701. General

A. The Louisiana Department of Economic Development ("LED" or "department") has determined that the support of regional economic development efforts is critical to the long-term economic health of the state of Louisiana. The following rules for the regional awards and matching grant awards program ("program") implement the program and provide funding for projects in accordance with the goals of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1703. Program Description

A. The program is designed to provide assistance to eligible economic development organizations in their

comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes, regions or the state as a site for new and/or expanded business development. The program also seeks to encourage economic development through multi entity cooperation and communication. The program has two objectives:

1. regional awards (Tier 1); and

2. matching grant awards (Tier 2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1705. Eligible Participants

A. Eligible applicants for the benefits of this program shall be nonprofit economic development organizations ("EDO") established in accordance with Louisiana law and in good standing in the state of Louisiana. The EDO must have as one of its primary objectives promoting Louisiana to national and world markets for business and industrial location and expansion.

B. Applicants for funding under the program must have federal and state tax identification numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1707. Qualifications

A. Eligible applicants may qualify for grants in the manner hereinafter provided under this program through either:

1. regional awards that are to be administered on behalf of an association of the EDOs acting in concert to promote regional economic development strategies for the region; or through

2. matching grant awards, to an EDO or a combination of EDOs, from LED for a specific project marketing industrial location and expansion or a specific project aimed at supporting future industrial location and expansion.

B. Under either regional awards or matching grant awards, funding for the awards must be for implementation of new and/or continuing programs through the fulfillment of deliverables in accordance with the goals and objectives as shall be hereinafter provided.

C. Eligible funding shall be consistent with the examples of eligible funding as provided by LED as an exhibit to the cooperative endeavor agreements ("CEA") for either the regional awards or the Matching Grant Awards Program. Generally, the exhibits to the CEA will provide for funding of core production costs of marketing and promotional activities and may distinguish the availability of allowable recovery for administrative costs between regional awards and matching grant awards program as hereinafter provided.

D. Award agreements shall be executed and performed in accordance with statutes, rules and Executive Orders as administered by the Louisiana State Division of Administration Office of Contract Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009).

§1709. Regional Awards ("Tier 1")

A. Regional awards shall be in an amount appropriated by the Louisiana Legislature to this program and shall be allocated to the eight regions of this state in accordance with the map to be provided by LED. The regions will closely approximate the regions of the state presently served by LED regional representatives. Subject to Subsection E below, each region shall receive such portion of the available amount in accordance with its percentage of population of the state as established by the most recent census of the state. The secretary of LED shall determine the association of the EDOs for each region with which the department will enter into a CEA through which deliverables reflective of the goals and objectives of this program shall be established. The EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall be responsible for coordination within the region to provide for the delivery of certain administrative documents. The costs related to the production of these documents are to be paid for using funds provided by Louisiana Economic Development (LED).

B. Each region shall produce the following core deliverables as a minimum. A regional business retention and expansion program in coordination with the statewide business retention and expansion program designed and implemented by LED, an inventory of industrial/commercial buildings, an inventory of industrial/commercial building sites, an inventory of industrial parks with available building sites, a comprehensive existing business and industry report (regional overview, major employers, etc.), a comprehensive feature attraction report, a comprehensive new infrastructure report, comprehensive labor information, and a regional business development plan as described in §1709.C. LED, at its sole discretion, may also require additional deliverables from any region. The balance of regional funds available after the production of required core deliverables shall be spent based on a written plan submitted to and approved by LED. This plan will be approved by the issuance and execution of a cooperative endeavor agreement which will be drafted by LED after submission of a regional award application.

C. A forward looking regional business development plan that lists regional business development goals and objectives and that contains the following components at a minimum:

1. target industry sectors;

2. a marketing plan that will accomplish outreach to selected target industry sectors; and

3. a plan to secure local and regional funding support for the regional business development effort.

D. At a minimum, each regional association shall demonstrate to the secretary of LED that it is constituted by EDOs representing a majority of the parishes and a majority of the population in the region.

E. Notwithstanding population percentages for each region, the minimum funding for any region is $150,000 provided that the appropriation for the Regional Awards Program is $1,800,000 or greater. In the event that the appropriation for the Regional Awards Program is less than $1,800,000, the Secretary of LED is empowered to establish a funding distribution for the eight regional groups so as to ensure an appropriate distribution of resources. The Secretary of LED is empowered to place caps on the maximum amount of funding a regional EDO shall receive so as to ensure an appropriate distribution of resources.

F. At a minimum, each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall demonstrate the following to the secretary of LED:

1. that its core responsibility is to market and promote the recruitment of new and diversified businesses in accordance with a regional marketing plan;

2. that it has the capacity to administer the cooperative endeavor agreements (CEAs) for the region;

3. that it has the capacity to act as a fiscal agent for the funds made available to the region in accordance with the CEA;

4. that it is acting to market and promote regional economic development in accordance with a marketing plan as described in §1709.C.2.

G. LED and each EDO identified by the regional association and approved by LED as the fiduciary agent for the region shall enter into agreements that shall include deliverables, goals and objectives for projects to be funded with regional awards. In addition to deliverables, goals and objectives, and such other necessary terms and conditions as may be provided by the CEA between LED and the EDO; projects shall be funded only upon providing the following:

1. a detailed budget and complete description of fund use;

2. demonstration that regional marketing initiatives are being addressed through the funding;

3. use of no more than 30 percent of the funding for eligible administrative costs and costs associated with economic development programs as specified in the LED Tier 1 Eligible Uses section;

4. database, labor information, real estate information, industrial site and building surveys and selection and other empirical data obtained or used in connection with the award shall be provided to the LED for its research and data collection use;

5. the secretary of LED may vary the terms and conditions of the CEA with EDO's including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations;

6. the agreement shall provide for submission of projects meeting the goals and objectives of the agreement by the EDO for advance approval by LED and for funding of the project by LED upon completion of the project and the submission by the EDO of the deliverables in accordance with the goals and objectives of the agreement.

H. Tier 1—LED Regional Funds—Eligible Uses

Tier 1—LED Regional Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Specific, time-limited research studies.
Purchases of demographic data including payment of yearly licensing fees.
Up to 30 percent of funds may be used for administrative costs and costs associated with economic development programs as delineated in the Tier 1 LED Regional Funds Ineligible Uses listed below (e.g. salaries, benefits, etc).
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction, giveaway items or other show specific costs. Meals, lodging, per diem, and travel expenses are not eligible for reimbursement.
Registration fees for EDO staff members to attend professional development seminars and professional development conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Initial fees and yearly licensing and or subscription fees associated with region wide GIS systems.
Initial fees and yearly licensing and or subscription fees associated with systems supporting the regional business retention and expansion program.

Tier 1—LED Regional Funds—Eligible Uses
Professional fees to augment regional capacity supporting the regional business retention and expansion program

I. Tier 1—LED Regional Funds—Ineligible Uses

Tier 1—LED Regional Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the regional economic development associations:
Administrative salaries, benefits, general administrative costs, economic development program costs, and economic development program related salaries and benefits exceeding an aggregate of 20 percent of funds provided.
Administrative costs (e.g. salaries and benefits for accounting, finance, human resources, building management, and information technology functions, etc.) exceeding 10 percent of funds provided.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons including volunteers and paid staff of economic development organizations.
Equipment purchases/rentals with the exception of those charges allowed for tradeshow booths as mentioned in the Tier 1 LED Regional Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:41 (January 2007), amended LR 35:635 (April 2009), LR 36:51 (January 2010).

§1711. Matching Grant Awards ("Tier 2")

A. The remainder of funds available shall be for matching grant awards (Tier 2). Any eligible EDO or a combination of eligible EDOs may apply to LED for a matching grant award which shall include deliverables, goals and objectives for the marketing and promotion of business and industrial development or for programs designed to increase or enhance local, regional or statewide economic development consistent with regional and statewide strategic marketing for such development. Matching grant awards applications demonstrating the use or development of new or innovative programs for the marketing and promotion of business and industrial development shall be given a preference in determining suitability for matching grant awards.

1. Each EDO submitting an application for matching grant awards funding must inform the organization administering their regional award of the existence of the application for matching grant awards funding. Program rules shall not vest any regional EDO with the right to interfere with or prevent an eligible applicant from submitting a matching grant awards application or grant the regional EDO the power to deny the matching grant award application.

B. In reviewing the merits of matching grant awards applications, LED will also give preference to those applications that demonstrate a clear regional benefit (meaning a benefit for all parishes within a region as the region is defined by LED under the Tier 1 program) and those applications that provide for the use of cash as a matching contribution.

C. The award agreement may provide such terms and conditions as are necessary to the fulfillment of the purposes of the award and shall include the following terms and conditions:

1. the award may not exceed $150,000.

2. the award must be matched dollar for dollar or its equivalents by the EDO or combination of EDOs making application for the award;

3. a detailed budget and complete description of fund use;

4. data, surveys and/ or other empirical information obtained or used in connection with the award shall be provided to the LED for its research and data collection use;

5. the secretary of LED may vary the terms and conditions of the award including deliverables, goals and objectives and exhibits in order to accommodate extraordinary situations.

6. applicants and awardees are not allowed to use monies appropriated by the state of Louisiana as a matching contribution. Applicants and awardees are not allowed to use facility and administrative overhead charges as a matching contribution to acquire matching grant awards funding.

D. Tier 2—LED Matching Grant Awards Funds—Eligible Uses

Tier 2—LED Matching Grant Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the direct grant recipients:
Specific, time-limited research studies.
Purchases of demographic data including yearly licensing fees.
Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
Direct mail pieces to targeted audiences such as relocation consultants including related postage.
Participant registration, trade show exhibit fees and/or registration fees for events that support national or international strategic marketing events. Costs may include booth design, booth rental, and furniture rental for a tradeshow booth, booth construction,

Tier 2—LED Matching Grant Funds—Eligible Uses
giveaway items or other show specific costs. Individual participant meals, travel, lodging or per diem costs are not eligible for reimbursement. LED may approve registration for in-state trade shows of national significance.
Registration fees for EDO staff members to attend professional development seminars and conferences that are required as prerequisites for certification in the field of economic development. Registration fees may also be paid to attend continuing education classes needed to maintain certifications in the field of economic development. Meals, lodging, per diem and travel expenses are not eligible for reimbursement.
Production of printed materials, such as brochures and inserts.
Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.
Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
Design of an Internet web site, not for ongoing Internet access or website hosting costs.
Familiarization tours for site location consultants visiting Louisiana. To be used for site location consultant related expenses only, and may include site location consultant travel, meals, lodging and event hosting expenses.
Professional fees and informational materials associated with building prospect development and prospect visit hosting capacity at the regional level.
Professional fees to augment regional capacity supporting the regional business retention and expansion program

E. Tier 2—LED Matching Grant Awards Funds—Ineligible Uses

Tier 2—LED Matching Grant Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between LED and the direct grant recipients:
Salaries, benefits or administrative fees.
Entertainment.
Overhead expenses (postage and shipping charges, office space, furniture, fixtures, equipment, magazine and newspaper subscriptions, utilities, general office software, etc.).
Travel, food, beverages, and/or lodging for any persons other than site location consultants. This includes volunteers and paid staff of EDOs and consultants or professionals hired to perform work for EDOs.
Equipment purchases/rentals except as permitted in the Tier 2 LED Matching Grant Funds Eligible Uses section above.
Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature.
Promotional items, unless part of an out-of-state marketing activity.
Stationery, toll-free numbers, membership solicitation literature.
Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.).
Unreasonable or excessive technical costs.
Construction costs.
Activities or materials that violate the law.
Ongoing Internet access or web site hosting costs.
Organization membership directories and organization memberships.
In state event hosting, in state event sponsorship and venue rental charges.
In state conferences.
Alcoholic Beverages.
Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary and Office of Business Development, LR 33:43 (January 2007), amended LR 35:637 (April 2009)

Chapter 19. Entertainment Workforce Training Award Program

§1901. Preamble and Purpose

A. The Entertainment Workforce Training Award Program is vital to support the State's commitment to the development of strategies and initiatives for the entertainment industry, and the state's long-term goals in its Master Plan for Economic Development for the State of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs for eligible entities interested in applying for funds that will be utilized for entertainment workforce training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:54 (January 2009).

§1903. Definitions

Applicant—the entity or training provider requesting a training award from LED and LEDC under this program.

Award—funding approved under this program for eligible training activities.

Award Agreement—that agreement or contract hereinafter referred to between the training provider, LEDC and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Contract—a legally enforceable Award Agreement between LEDC, LED and the successful applicant governing the terms and the conditions of the training award.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation

OEID—Office of Entertainment Industry Development

Program—the Entertainment Workforce Training Award Program.

Secretary—Secretary of the Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

Training Provider—the entity or applicant undertaking the workforce training project.

WFD—Office of Workforce Development

Workforce Training Program—a program related to the short-term employment needs of the entertainment industry. Examples of workforce training programs which may be deemed unrelated include, but are not limited to; credit courses at post-secondary education institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:231, et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:54 (January 2009).

§1905. General Principles

A. The following general principles will direct the administration of the Entertainment Workforce Training Award Program.

1. LEDC shall serve as the single review board for this Entertainment Workforce Training Award Program, which is to be administered by LED, through OEID and WFD.

2. Training awards are not to be construed as an entitlement for companies located or locating in Louisiana; and such awards shall be subject to the discretion of LED.

3. LED shall negotiate with each company seeking an award, based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1907. Program Descriptions

A. This program provides training assistance to enhance the quantity and quality of individuals who possess sufficient skills to perform jobs in the entertainment industry. The training to be funded may include, but is not limited to:

1. film—lighting: hair and make-up,: grip: electric; set construction; camera; post visual editing; post sound editing; post visual effects; digital animation;

2. sound—scoring; engineering;

3. live performance—staging; lighting; sound; rigging; carpentry; wardrobe; special effects; and

4. digital media—programming; animation/computer generated imagery; interactive animation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1909. Eligibility

A. An eligible applicant is a training provider that seeks customized training services to provide training in an entertainment sector.

B. Persons to be trained must be residents of Louisiana.

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

D. Training providers must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1911. Criteria

A. LED will consider various factors when determining which proposals will be funded. Among the factors which may be taken into account in the review of the award requests are the following;

1. needs of the entertainment industry;
2. training cost per student;
3. the number of students to be trained;
4. evidence of a method of job placement;
5. evidence of need; and
6. evidence of likely success of project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1913. Application Procedure

A. LED will provide a standard application form which applicants will be required to use to apply for assistance under this program. The application form will contain, but not be limited to, detailed descriptions of the following:

1. justification of need;

2. the training provider's overall training plan, including a summary of the types and amounts of training to

be provided and a description of how the training provider determined its need for training;

3. a preliminary budget, including but not limited to, proposed trainer salaries; and

4. any additional information LED may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1915. Submission and Review Procedure

A. Applicants must submit their completed application to LED Submitted applications will be reviewed and evaluated by LED staff. Further input may be required from the applicant in order to;

1. evaluate the importance of the proposed training;

2. identify the availability of existing training programs which could be adapted to meet the training provider's needs;

3. verify that the training provider will continue to operate during the period of the contract; and

4. determine if the training provider's training plan is cost effective.

B. LED staff will make a determination of how many students will be taught by the training provider and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC and LEDC will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:55 (January 2009).

§1917. General Award Provisions

A. Award Agreement

1. A written award agreement, contract or cooperative endeavor agreement will be executed between LEDC and the successful applicant training provider. The contract will specify the performance objectives expected of the training provider and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training

2. LEDC will disburse funds to the training provider as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the training provider on the basis of the cost reports and supporting documentation certifying the amount expended by the training provider for the training for which reimbursement is sought. Submitted on a form provided by LED. LED may request the training provider at any time and from time to time to submit additional or supporting information.

4. Funds may be used for workforce training programs extending up to six months in duration.

B. Funding

1. The Entertainment Workforce Training Award Program offers financial assistance in the form of a performance-based grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following, on an individual, negotiated basis:

a. instruction costs: wages for trainers and training coordinators;

b. materials and supplies costs: training texts and manuals, audio/visual materials, computer based training (CBT) software; and

c. other justifiable costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. employee handbooks;

c. food, refreshments; and

d. awards.

4. Training activities eligible for funding consist of:

a. industry-specific skills: skills which are unique to the entertainment industry;

b. quality standards skills: skills which are intended to increase the quality of skilled workers employed in the entertainment industry and/or to ensure compliance with accepted international and industrial quality standards; and

c. other skills: skills pertaining to entertainment instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the training provider. Only funds spent on the project after LEDC's approval, will be considered eligible for reimbursement. However, funds will not be available for reimbursement to the training provider until an award agreement, training agreement or contract between the training provider and LEDC has been finalized and executed.

2. Training providers will be eligible for reimbursement based upon performance objectives as provided in the contract.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, training provider's shall be required to complete and submit to LED cost reports certifying the amount expended by the training provider for training, along with progress reports describing the training provider's progress toward the performance objectives specified in its contract with LEDC. LED shall oversee the timely submission of reporting requirements by the training provider.

2. In the event a training provider fails to meet its performance objectives as specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the training provider in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LEDC. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits to the state of the training project and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

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

4. LEDC shall each retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:56 (January 2009).

§1919. Contract Monitoring

A. All monitoring will be done by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 35:57 (January 2009).

Chapter 21. Louisiana Entertainment Development Fund

Subchapter A. Education Development Grant Programs

§2101. Preamble and Purpose

A. Workforce development and job training is vital to support the state's commitment to the development of strategies and initiatives for the entertainment industry, and the state's long-term goal of achieving an independent, self-supporting entertainment industry.

B. The purpose of the program is to support entertainment industry workforce development and education with appropriate curriculum and equipment by approved training providers and educational institutions as a means of improving the competitiveness and productivity of Louisiana's entertainment industry workforce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1077 (August 2020).

§2103. Definitions

Applicant—the entity or training provider requesting an award from LED under this program.

Award—funding approved under this program for eligible equipment, technology or training activities.

Award Agreement—that agreement or contract hereinafter referred to between the training provider and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

LED—Louisiana Department of Economic Development, or their designee, including any third party administrator engaged by LED.

OEID—Office of Entertainment Industry Development.

Program—the Education Development Grant Program.

Secretary—Secretary of the Department of Economic Development, or designee.

Training Provider—the entity or applicant undertaking the approved project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1077 (August 2020).

§2105. General Principles

A. The following general principles will direct the administration of the program.

1. Awards are not to be construed as an entitlement for companies, and the secretary has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicants' award status.

2. Award amounts may vary at the discretion of LED, with a minimum of $5,000 up to a maximum of $250,000 per applicant, per year.

3. LED shall negotiate with each applicant seeking an award based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be used for the approved project only.

6. Awards may be administered by LED through OEID, or LED may use funds to contract with a third party administrator to undertake such activities.

7. Applications will be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1077 (August 2020).

§2107. Program Descriptions

A. This program provides two types of assistance:

1. technology or equipment funding for approved training providers, related to entertainment industry training, as approved by LED. The funding may include but not be limited to:

a. replacement or upgraded equipment to replace existing equipment that has exceeded its useful life, which goes beyond replacing basic technology or performing incremental upgrades;

b. new technology or equipment, including the following by example: apps, cloud-based software, or technology now known or hereafter developed, or as otherwise approved by LED; and

2. on-the-job (and/or upgrade) training assistance to enhance the quantity and quality of individuals who possess sufficient skills to perform jobs in the entertainment industry. The training to be funded may include, but is not limited to:

a. film—lighting: hair and make-up: grip: electric; set construction; camera; post visual editing; post sound editing; post visual effects; digital animation;

b. sound—scoring; engineering;

c. live performance—staging; lighting; sound; rigging; carpentry; wardrobe; special effects; and

d. digital media—immersive technology (VR/AR/MR), programming; animation/computer generated imagery; interactive animation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1078 (August 2020).

§2109. Eligibility

A. An eligible applicant is an accredited Louisiana higher education institution, or customized training provider in the areas of arts, media and entertainment, with a proven track record of offering career oriented programs, as approved by LED.

B. Applicants must demonstrate a track record of successful organization and operations that have been in effect for at least two years. Start-up companies or training providers with less than two years of documented program history or performance shall be ineligible for this program, unless evidence of funding can be provided from established arts and entertainment organizations, as approved by LED.

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

D. Training providers must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1078 (August 2020).

§2111. Criteria

A. LED will consider various factors when determining which proposal will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. needs of the entertainment industry;

2. unique or innovative nature of the proposed project;

3. training or equipment cost per student;

4. the number of students to be trained;

5. evidence of a method of job placement;

6. evidence of need;

7. availability of other federal, state, local or private funding programs for the project;

8. the terms of the "clawback" (or refund) provisions, in the event of a default;

9. evidence of likely success of project;

10. availability of funding; and

11. best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1078 (August 2020).

§2113. Application Procedure

A. The applicant(s) must submit an application to LED, which may be in letter form or in a more formal application format, as directed by LED, which shall contain, but not be limited to the following:

1. an overview of the training provider institution, its history, and the business climate in which it operates;

2. a preliminary budget, overall description of the proposed project, and specific breakdown of costs for equipment to be purchased, or training programs to be provided, as applicable;

3. information evidencing eligibility;

4. an articulation of any relevant factors in §2111; and

5. any additional information required to make a determination of qualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1078 (August 2020).

§2115. General Award Provisions

A. In the event the secretary determines, in his discretion, that an award would be appropriate, an award agreement shall demonstrate the intent and commitments of the applicant and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the applicant and the compliance requirements in exchange for the award. Under the agreement, LED or its designated third party administrator will oversee the progress of the project.

2. Eligible training costs are limited to the scope of the approved project only and may include the following, on an individual, negotiated basis: instruction costs, wages for trainers and training coordinators, materials and supplies costs, and other justifiable costs when necessary for training, such as equipment or software.

3. Project costs ineligible for award funds include, but are not limited to: trainee wages and fringe benefits, employee handbooks, food and refreshments, costs associated with infrastructure upgrades or renovation of office space necessary to accommodate new equipment or technology, or any other costs LED determines to be ineligible.

4. Award funds will be disbursed to the applicant on an as-needed reimbursement basis following submission of required documentation to LED or its third party administrator, sufficient to demonstrate compliance, as set forth in the award agreement between the parties.

5. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

6. In the event an applicant knowingly files a false statement in its application or in subsequent compliance documentation, the applicant may be guilty of the offense of filing false public records, and may be subject to the penalty provided in R.S. 14:133.

7. LED shall retain the right, for itself, for the Legislative Auditor, and for the Division of Administration, to require and/or conduct financial and performance audits of a project, including all relevant documents of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1078 (August 2020).

Subchapter B. Louisiana Filmmaker Matching Grants

§2125. Preamble and Purpose

A. Film festivals, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent provide vital opportunities for new and aspiring filmmakers to showcase their work and receive feedback, and support the state's long-term goal of achieving an independent, self-supporting filmmaking industry.

B. The purpose of the program is to support filmmakers statewide by providing matching funds to existing arts and film organizations with film festivals, film grant programs, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED, as a means of ensuring a high-quality filmmaker matching grant program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1079 (August 2020).

§2127. Definitions

Applicant—the arts or film organization requesting a matching award from LED under this program.

Award—funding approved under this program for eligible matching funds.

Award Agreement—that agreement or contract hereinafter referred to between the training provider and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms,

conditions and performance objectives of the award provided pursuant to these rules.

LED—Louisiana Department of Economic Development, or their designee, including any third party administrator engaged by LED.

OEID—Office of Entertainment Industry Development.

Program—the Education Development Grant Program.

Secretary—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1079 (August 2020).

§2129. General Principles

A. The following general principles will direct the administration of the program.

1. Awards are not to be construed as an entitlement for companies, and the secretary has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicants' award status.

2. Award amounts may vary at the discretion of LED, up to a maximum of $100,000 per applicant, per year.

3. LED shall negotiate with each applicant seeking an award based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be used for the approved project only.

6. Awards may be administered by LED through OEID, or LED may use funds to contract with a third party administrator to undertake such activities.

7. Applications will be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1079 (August 2020).

§2131. Eligibility

A. An eligible applicant is a non-profit arts or film organization approved by LED, with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED.

B. Applicants must demonstrate a track record of successful organization and operations that have been in effect for at least two years. Start-up companies or training providers with less than two years of documented program history or performance shall be ineligible for this program, unless evidence of funding can be provided from established arts, film or entertainment organizations, as approved by LED

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

D. Applicants must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1080 (August 2020).

§2133. Criteria

A. LED will consider various factors when determining which proposal will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. needs of the entertainment industry;

2. disbursement of funding statewide;

3. unique or innovative nature of the proposed project;

4. availability of other federal, state, local or private funding programs for the project;

5. the terms of the "clawback" (or refund) provisions, in the event of a default;

6. evidence of likely success of project;

7. availability of funding; and

8. best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1080 (August 2020).

§2135. Application Procedure

A. The applicant(s) must submit an application to LED, or if a third party administrator has been engaged, as otherwise directed by LED, which may be in letter form or in a more formal application format, as directed by LED, which shall contain, but not be limited to the following:

1. an overview of the arts organization, its history, and the business climate in which it operates;

2. a preliminary budget, overall description of the proposed film initiative, and funding to be provided;

3. information evidencing eligibility;

4. an articulation of any relevant factors in §2133; and

5. any additional information required to make a determination of qualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1080 (August 2020).

§2137. General Award Provisions

A. In the event the secretary determines, in his discretion, that an award would be appropriate, an award agreement shall demonstrate the intent and commitments of the applicant and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the applicant and the compliance requirements in exchange for the award. Under the agreement, LED or its designated third party administrator will oversee the progress of the project.

2. Award funds will be disbursed to the applicant on an as-needed reimbursement basis following submission of required documentation to LED or its third party administrator, sufficient to demonstrate compliance, as set forth in the award agreement between the parties.

3. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

4. In the event an applicant knowingly files a false statement in its application or in subsequent compliance documentation, the applicant may be guilty of the offense of filing false public records, and may be subject to the penalty provided in R.S. 14:133.

5. LED shall retain the right, for itself, for the Legislative Auditor, and for the Division of Administration, to require and/or conduct financial and performance audits of a project, including all relevant documents of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:1080 (August 2020).

Subchapter C. Loan Guarantee Program—Reserved.

Subchapter D. Deal Closing Fund—Reserved.

Title 13
ECONOMIC DEVELOPMENT
Part V. Office of the Secretary

Chapter 1. Substance Abuse and Drug-Free Workplace Program

§101. Philosophy

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this state. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our department and employees.

B. DED's philosophy is consistent with the state of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the governor of the state of Louisiana issued Executive Order MJF 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001 et seq. This department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§103. Applicability

A. These rules apply to all employees and appointees of this department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions and individuals providing service to this department through a contract with a third party employer, i.e., temporary agency employees), and all other persons having an employment relationship with the department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary [hereinafter "employee(s)" unless otherwise noted].

B. These rules do not apply to the Louisiana Racing Commission which will amend its current rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who occupy safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this department is attached as §121, Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;

2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;

3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off-duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/state premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a state vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood.

2.a. Illegal or unauthorized drugs include:

i. any drug which is not legally obtainable;

ii. any drug which is legally obtainable, but has been illegally obtained;

iii. prescription drugs not being used in accordance with the prescription;

iv. or any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of Subparagraph a and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

NOTE: When post-accident/incident testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc., to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

NOTE: When reasonable suspicion testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§109. Drug Testing Procedures

A. Drug testing pursuant to these rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001 et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the medical review officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

NOTE: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006.D, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:416 (March 1999).

§111. Alcohol Testing Procedures

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this department's mission. While the department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first 10 workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;

2. refusal to submit to a drug or alcohol test;

3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;

4. submission of an adulterated or substitute sample for testing;

5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a state vehicle or on DED/state premises; and

6. operating a state vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to:

1. written employee consent;

2. federal agencies when licensure or certification actions are required;

3. to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test;

4. and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these rules, discovered in/on DED/state property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale,

distribution or transfer of illegal drugs or controlled substances while on duty or on DED/state property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§117. Employee Assistance Program (EAP)

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the department's EAP coordinator within the human resources division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the return-to-duty/rehabilitation monitoring testing set forth in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§119. General Provisions

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§121. Appendix A

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

Chapter 2. Governor's Economic Development Rapid Response Program

§201. Purpose

A. The Secretary of the Department of Economic Development and the governor of this state, on their own initiative, may offer an award of financial assistance to a business entity under circumstances they, in their discretion, determine to be appropriate; and they may in their discretion require the business entity to submit some or all of the information required of applicants under these rules, or they may invite a business entity to become an applicant to request an award of financial assistance subject to the rules of this program.

B. The purpose of this program is to provide an application, review and approval process for applicants to seek state financial assistance for immediate funding of all or a portion of economic development projects in order to successfully secure the creation and/or retention of jobs by a business entity in Louisiana under such circumstances as may be determined appropriate by the Secretary of Economic Development and the governor of Louisiana, in their discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:887 (May 2009).

§203. Definitions

A. The following definitions shall be applicable to this program.

Applicant—the company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State and/or any public entity requesting financial assistance from the state under this program that represents the set of circumstances through which funding may be applicable under these rules.

Award—funding of financial assistance, which may include a performance-based grant, loan, and/or loan guaranty, for eligible applicants under this program.

Award Agreement—the agreement or contract hereinafter referred to between the company and/or the public entity, and LED through which, by cooperative endeavor agreement, loan guaranty agreement, or otherwise, the parties set forth the amount of the grant, loan or loan guaranty award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—a company or other business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

Department—the Louisiana Department of Economic Development.

Economic Development Project—the undertaking for which an award is granted, under the circumstances presented, that provides the opportunity for immediate funding of a project or portion of a project that will serve to finalize the commitment of a business entity for the creation and/or retention of jobs in Louisiana.

Jobs—refers to permanent full-time jobs, being direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. Also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

Program—the Governor's Economic Development Rapid Response Program that is undertaken and administered, overseen or supervised by LED, pursuant to these rules and an award agreement with the applicant after becoming an award recipient that serves the purposes of obtaining or retaining an Economic Development Project.

Project—economic activity that, in whole or in part, as determined appropriate by the Secretary of Economic Development and the governor of Louisiana, will result in the creation and/or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner that will create and/or retain jobs.

Public Entity—the public or quasi-public entity that:

a. pursuant to these rules, may be eligible to seek funding, through a grant, a loan or a loan guaranty, for a project; or

b. that may, with a company, apply for funding through a grant, a loan or a loan guaranty pursuant to these rules; or

c. that, pursuant to the request of LED, may be responsible for engaging in the award agreement and thereby responsible for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:888 (May 2009).

§205. General Principles

A. The following general principles will direct the administration of the Governor's Economic Development Rapid Response Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and the secretary and governor have the sole discretion to determine whether or not each particular business entity or application meets the criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of a company's award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and the immediate use of the funds through a grant, loan or loan guaranty pursuant to the award must reasonably be expected to be a significant factor in a company's location, investment, retention and/or expansion decisions.

4. The award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award for the creation and/or retention of jobs, their compensation or payroll levels, and other economic consequences as represented in the application for the award, and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

5. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

6. Awards shall be administered or overseen by or under the supervision of the LED.

7. Contracts for awards will contain "clawback" (or refund) provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its award agreement with LED, any such acts, omissions or failures shall constitute a default under the award agreement, and LED shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:888 (May 2009).

§207. Eligibility

A. An eligible application for the award must meet the eligibility requirements set forth in this section, the general principles set forth in §205 above and the criteria set forth in §209 below.

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

C.1. Businesses not eligible for awards under this program are:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This provision shall not apply, however, to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to the above business enterprises, provided that retail sales, hospitality services, assisted living, retirement or nursing home services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:889 (May 2009).

§209. Criteria

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including the sharing of responsibility for the company's compliance with the terms and conditions of the award);

2. availability of other federal, state, local or private funding programs for the project;

3. jobs created, jobs retained, compensation or payroll levels, company investment prior to the request for the project, and company commitment to match funds that will equal or exceed the amount of the award grant, loan or loan guaranty;

4. company membership in and utilization of cooperative organizations for industry best practices and improvement;

5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;

6. compelling evidence that the award, if approved, will retain and/or create jobs; that the award, when committed and implemented, needs immediate funding; and the immediate funding is the final necessary commitment to secure the project;

7. the period of time that the company will commit to maintain its new and/or retained jobs and their compensation or payroll levels; and

8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the secretary's or the department's recommendations to the governor as to the terms and conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with secretary and/or departmental recommendations upon which the award is conditioned and administered by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:889 (May 2009).

§211. Application Procedure

A. The applicant(s) must submit to LED an application, which may be in letter form or in a more formal application format, which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the anticipated or proposed use or expenditure of the funds sought for the project;

5. evidence of the number, types and compensation or payroll levels of the jobs to be created and/or retained which will be filled with employees by the company in connection with the project, and the amount of capital investment to be made for the project;

6 details of the health insurance coverage that is or will be offered to employees at all levels of the company;

7. the period of time for which the company will commit to maintain the newly created and/or retained jobs and their compensation or payroll levels;

8 the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs 1 - 8 above, fulfill the general principles of §205, the eligibility requirements under §207, and meet the criteria set forth in §209 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:889 (May 2009).

§213. Submission and Review Procedure

A. Applicants must submit their completed application to LED for review and evaluation. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, targeted industry directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under §209, LED staff will then make a recommendation to the secretary, who may accept or reject the staff's recommendation. The secretary may or may not, in his discretion, then make his own recommendation to the governor, which may or may not follow the recommendation of the staff. The application will then be reviewed and approved or rejected by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:890 (May 2009).

§215. General Award Provisions

A. In the event the secretary and the governor determine, in their discretion, that the award would be appropriate, an award agreement resulting from the expedited procedures for the award shall demonstrate the intent and commitments of the company, the public entity, and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. An award agreement will be executed between LED and the award recipient, and may include as a party the public entity through which the funding is to be administered. The award agreement will specify the amount of the grant or loan award or loan guaranty, the terms and conditions of the award, the performance objectives expected of the company and/or the public entity, and the compliance requirements to be enforced in exchange for state financial assistance, including, but not limited to, the company's commitments and time lines as to the number of jobs to be created and/or retained and their compensation and payroll levels, and commitments and time lines for investment. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED, and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the secretary, or LED and the governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; costs associated with site, building and/or office space acquisition and/or leasing; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment; relocation or moving expenses; real estate fees, commissions, compensation or associated costs; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable

training expenses; and any other justifiable costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the public bid laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as the refinancing of existing debt, public or private, and expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds.

4. The secretary, or LED and/or the governor, may limit the amount of awards under this program to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

5. Award funds will be available to the public entity and/or company on an as-needed reimbursement basis following submission to LED of required documentation (cost reports, and any supporting documentation, if requested by LED) as set forth in the award agreement between the parties.

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

a. the LED and the award recipient(s) have entered into an award agreement that is in fulfillment of these rules and is in accordance with the representations made by the applicant(s) for the award; and

b. confirmation is received that all closing conditions specified in the award agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the award agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports, cost reports, or as otherwise requested by LED to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, either LED or the public entity (if a party to the award agreement) shall oversee the timely submission of reporting requirements of the company to LED.

8. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state or as may be otherwise provided by the award agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the District Attorney of the Parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:890 (May 2009).